

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1190-2021**
 v. :
 :
 TYMIR MARTIN, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Tymir Martin (Defendant) was charged with Firearms not to be Carried without a License¹, Escape², Resisting Arrest³, Disorderly Conduct⁴, and Receiving Stolen Property⁵. The charges arise from a traffic stop conducted on Defendant. Defendant filed this Omnibus Pre-trial Motion on October 26, 2021 and a supplemental motion on October 29, 2021. This Court held a hearing on the motions on August 9, 2022. In his Motions, Defendant asserts that the Commonwealth did not have sufficient probable cause or reasonable suspicion to conduct the traffic stop and all evidence seized pursuant to the stop must be suppressed. Defendant also argues that incriminating statements Defendant allegedly made following the traffic stop must also be suppressed as fruit of the poisonous tree.

Background and Testimony

Detective Michael Caschera (Caschera) of the Lycoming Count Narcotics Enforcement Unit (NEU) testified on behalf of the Commonwealth. Caschera testified that the NEU was investigating Defendant and during the investigation received information that Defendant, an individual named Tahjair Dorsey (Dorsey), and others were at Fairfield Inn in the city of Williamsport posting photographs of them brandishing firearms on social media. One such

¹ 18 Pa.C.S. § 6106(a)(1).

² 18 Pa.C.S. § 5121(a).

³ 18 Pa.C.S. § 5104.

⁴ 18 Pa.C.S. § 5503(a)(4).

⁵ 18 Pa.C.S. § 3925(a).

photograph showed Dorsey holding a black and silver pistol. After the NEU set up surveillance on Fairfield Inn, officers saw a black male and a black female exit the inn and get into a vehicle. Some units followed the car while others remained at the inn. Eventually, a traffic stop was conducted on this car. Caschera testified that he was present for this stop but did not effectuate the stop because he was in an undercover capacity in a Kia Sorento. The male in the car was arrested and the vehicle was towed to the Pennsylvania State Police lot. A stolen firearm and approximately one (1) pound of marijuana were located in the vehicle.

Caschera returned to Williamsport while Detective Anderson (Anderson) watched a house located at 409 High Street, known to police as a gang or drug house. Caschera further testified that many shootings from and at that house had occurred. Anderson saw Defendant and Dorsey on the porch of 409 High Street and observed them leaving the house and enter the same car as a woman. Two (2) cars left the High Street address and the NEU tailed these vehicles to a gas station on Sixth and High Street. The vehicles parked at fuel pumps and multiple people exited each car. The NEU made a perimeter around the gas station in approximately two (2) minutes or less. Caschera testified that one of the cars made a left turn onto High Street without using a turn signal and he believed this was a violation of the Motor Vehicle Code. A woman was driving this vehicle and Defendant was in the rear seat on the driver's side. Detective Irvin and Officer Gardner were in a marked police unit on the scene. They positioned their unit directly behind the vehicle Defendant was traveling.

Caschera stated that he has tailed countless dealers in cars and watched or participated in drug deals. He said that drug dealers have told him to park in strange places to catch a tail. Caschera also believed that Defendant was trying to shake a tail and was looking for police units. Caschera followed the second car down to Union Company Bank and returned to

Williamsport in thirty (30) to sixty (60) minutes. The other officers were radioing information to Caschera while they were surveilling Defendant and radioed Caschera that Defendant was on the porch. No officer was able to see anyone pumping gas while at the gas station. Caschera could not recall if anyone went into the gas station. Caschera did not personally observe firearms, a fight, or a drug deal. There was a lot of civilian activity at the gas station when Defendant was there. Caschera watched Defendant and Dorsey get in the back of one of the cars at the gas station. The parking lot was not marked with travel lanes and did not have a stop sign at the exit. Caschera thought that the driver was required to use a turn signal in order to lawfully leave the gas station parking lot. Caschera further testified that he believed there was reasonable suspicion of illegal guns because of the firearm photos Dorsey was posting online. Caschera could not recall when the photos were posted but knew they were shared on the same day as the incident in question. Caschera admitted that there was no other reason to pull this car over other than the suspicion of guns and the lack of a turn signal. Caschera did not see Dorsey with a gun at the gas station.

Detective Calvin Irvin (Irvin) of the Lycoming County District Attorney's Office testified on behalf of the Commonwealth. Irvin testified that on August 30, 2021, he was partnered with Officer Gardner. They stopped a car after the NEU surveilled this car and Caschera told them this vehicle did not use a turn signal. Irvin was in the passenger seat of the patrol unit and testified that there was an open line of communication between all officers involved. Irvin activated the emergency lights and sirens once they caught up to the car. The vehicle went a few hundred yards and then stopped. Irvin stated that their police unit was unmarked but he was wearing a police vest. This interaction was Irvin's first involvement in this case. Irvin also said that he was not watching the gas station but was in the city when he

was informed this particular vehicle did not use a turn signal out of the gas station. Irvin said the station does not have markings or a stop sign. Irvin also said that he did not observe any other traffic violations while behind this car.

Analysis

Defendant challenges the traffic stop of his vehicle asserting that law enforcement did not have sufficient probable cause to conduct the stop. The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend IV. “Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure...within the meaning of this provision.” Whren v. U.S., 517 U.S. 806, 809 (1996) (internal quotations omitted). The stop of an automobile “is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.” Id. at 810. “As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” Id.; See Pennsylvania v. Mimms, 434 U.S. 106, 109 (1977). “For a stop based on the observed violation of the Vehicle Code or otherwise non-investigable offense, an officer must have probable cause to make a constitutional vehicle stop.” Commonwealth v. Harris, 176 A.3d 1009, 1019 (Pa. Super. 2017). “Pennsylvania law makes clear that a police officer has probable cause to stop a motor vehicle if the officer observes a traffic code violation, even if it is a minor offense.” Id.; See 75 Pa. C.S. § 6308(b). “Whenever a police officer . . . has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle.” 75 Pa. C.S. § 6308(b).

Defendant's first contention is that law enforcement did not have probable cause to justify the traffic stop of his vehicle pursuant to 75 Pa.C.S. § 3334. Subsection a states, "[u]pon a roadway no person shall turn a vehicle or move from one traffic lane to another or enter the traffic stream from a parked position unless and until the movement can be made with reasonable safety nor without giving an appropriate signal in the manner provided in this section." 75 Pa.C.S. § 3334(a). Defendant asserts that the vehicle was not traveling on a roadway but made a turn out of a parking lot and therefore a turn signal was not required. As a result, Defendant believes that law enforcement cannot use the failure to utilize a turn signal as part of the consideration in determining if there was sufficient reasonable suspicion to conduct a traffic stop because it was not a traffic violation. Defendant also argues that the only remaining factor to support the traffic stop is the photographs of firearms on social media and Defendant does not believe the photos are enough to justify the traffic stop. Therefore, Defendant contends that all evidence must be suppressed due to the unlawful traffic stop.

The Commonwealth referred to the collective knowledge doctrine, "which instructs that an officer with the requisite level of suspicion may direct another officer to act in his or her stead." Commonwealth v. Yong, 177 A.3d 876, 889 (Pa. 2018). The Commonwealth argues that this doctrine allowed Irvin to pull Defendant over based on Caschera's observation of the driver not using the turn signal. Additionally, the Commonwealth provided several cases demonstrating that traffic laws have been applied to areas other than the roadway and to support their position that the turn signal was required. In Commonwealth v. Proctor, 625 A.2d 1221 (Pa. Super. 1993) the Superior Court was presented with a driver who was alleged to be driving drunk in a mall parking lot. The defendant challenged his conviction, arguing that the parking space in a shopping area was not a highway or trafficway. The court articulated the

definition of a trafficway as “open to the public for purposes of vehicular travel as a matter of right or custom.” 75 Pa.C.S. § 102. The court stated that when it is unclear if a particular parking lot is open to the public, the Commonwealth has the burden to establish that it is for the public. Id. at 1224. However, in that particular case the evidence clearly established that the defendant drove in the parking lot of a mall open to the public for shopping and it was sufficient to conclude the parking area was a trafficway. Id.; See Commonwealth v. Cozzone, 593 A.2d 860 (Pa. Super. 1991) (holding that parking area of condominium complex is generally open to the public and is therefore a trafficway); See also Commonwealth v. Wilson, 553 A.2d 452 (Pa. Super. 1989) (holding Elk’s Lounge parking lot is a trafficway because it is generally open to the public). The Commonwealth also cited to two additional cases to support their assertion the turn signal was needed in the case *sub judice*. See Commonwealth v. Zabierowsky, 730 A.2d 987 (Pa. Super. 1999) (holding restricted parking facility was for public use and considered a trafficway for purposes of DUI); See also Commonwealth v. Tillery, 249 A.3d 278 (Pa. Super. 2021) (holding driver is not required to utilize turn signal when pulling into parking space from trafficway under 75 Pa.C.S. § 3334(a)).

Section 3334(b) requires a turn signal to be used “prior to the entry of the vehicle into the traffic stream from a parked position.” 75 Pa.C.S. § 3334(b). Defendant argues that this refers to when a vehicle is parked in a spot along the street and wishes to pull out into traffic, but the Commonwealth asserts that this includes when a vehicle’s position has been halted. The Commonwealth contended that the testimony was clear that the cars were parked at the fuel pumps and people exited the vehicles. The cars were parked for several minutes and then drove through the throughway in the parking lot and stopped before exiting the lot. The Commonwealth believes that, for this reason, the turn signal was still required because the

vehicle was “parked” and the traffic stop was justified. This Court disagrees with the Commonwealth’s interpretation of this section of the statute based on the plain language chosen by the legislature to restrict that section to parked vehicles and not those that have come to a stop in order to safely enter a different roadway.

Following a review of the caselaw on this issue, it is apparent that parking lots open to the public are considered to be trafficways. Based on the testimony provided, it is the opinion of this Court that the parking lot of the gas station was certainly open to the public for shopping inside the convenience store and purchasing gasoline. The courts of Pennsylvania have established a clear precedent that public parking lots, even those that restrict their use, are to be treated as trafficways to which traffic laws are applicable. Based on this precedent, this Court finds that the turn signal to leave the gas station parking lot was required as it would be from one street to another. Failure to utilize the turn signal from the parking lot was a violation of the Motor Vehicle Code and, in conjunction with the collective knowledge doctrine, law enforcement was justified in conducting the traffic stop of Defendant and his group.

Secondly, Defendant argues that statements he allegedly made to police after the traffic stop are fruit of the poisonous tree and must also be suppressed. The United States Supreme Court held that “evidence constitutes poisonous fruit, and, thus, must be suppressed, if, ‘granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.’” Commonwealth v. Shabazz, 166 A.3d 278, 289 (Pa. 2017) (quoting Wong Sun v. United States, 371 U.S. 471, 488 (1963)). “The fruit of the poisonous tree doctrine excludes evidence obtained from, or acquired as a consequence of, lawless official acts; it does not exclude evidence obtained from an independent source.”

Commonwealth v. Brown, 700 A.2d 1310, 1318 (Pa. Super. 1997) (internal quotations omitted); *See* Commonwealth v. Ariondo, 580 A.2d 341, 347 (Pa. Super. 1990). “The burden rests on the Commonwealth to demonstrate that the secondary evidence was gathered by means sufficiently distinguishable from any illegality so as to be ‘purged of its primary taint’ rather than deriving from exploitation of the illegality.” *Id.* at 1319; *See* Wong Sun, 371 U.S. at 488.

This Court has determined that Defendant was not subjected to an unlawful traffic stop and therefore Defendant’s argument on this issue must fail.

Conclusion

The Court finds that law enforcement had sufficient probable cause to conduct a traffic stop. Therefore, the evidence obtained pursuant to the stop shall not be suppressed. The Court also finds that the statements Defendant allegedly made following the traffic stop were not fruit of the poisonous tree and shall not be suppressed.

ORDER

AND NOW, this 4th day of October, 2022, based upon the foregoing Opinion, Defendant’s Motion to Suppress Evidence is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (KG)
Robert Hoffa, Esq.
Law Clerk (JH)