

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
	:	
v.	:	No. CR 825-2018
	:	
	:	
WENHUI LI,	:	
Defendant	:	

Cynthia A. Dyrda-Hatton, Esq.	Counsel for Commonwealth Assistant District Attorney
Matthew J. Rapa, Esq.	Counsel for Defendant

MEMORANDUM OPINION AND ORDER

Matika, J. - December 30, 2019

I. INTRODUCTION.

This Memorandum Opinion addresses the January 17, 2019 "Omnibus Pre-Trial Motion," consisting solely of a "Suppression Motion" (the "Suppression Motion") filed by Defendant Wenhui Li.

As shall be delineated in detail herein, Defendant seeks to suppress as unconstitutional the items seized and utilized as the basis for the prosecution subsequent to the vehicle stop in this matter and any statements made subsequent to the vehicle stop in this matter shall be suppressed.

In accordance with the Order that follows this Memorandum Opinion, the Suppression Motion shall be **GRANTED**.

II. FACTUAL AND PROCEDURAL BACKGROUND.

A. The Underlying Charges.

Defendant has been charged with:

- Criminal Conspiracy [Count 1] [Felony]
(18 Pa.C.S.A. §903(a)(3));
- Possession with Intent to Deliver, etc.
[Count 2] [Felony]
(35 Pa.C.S.A. §780-113(a)(30));
- Possession, etc. [Count 3] [Misdemeanor]
(35 Pa.C.S.A. §780-113(a)(16));
- Paraphernalia, etc. [Count 4] [Misdemeanor]
(35 Pa.C.S.A. §780-113(a)(32)); and

B. Factual Background.

In the late afternoon of July 9, 2018, Defendant Wenhui Li ("Defendant" or "Mr. Li") traveled eastbound on Interstate 80 in Carbon County near the Luzerne County line.¹ Pennsylvania State Police Trooper James Sohns ("Trooper Sohns") likewise traveled eastbound. Trooper Sohns described July 9, 2018 as a clear, bright, sunny day and noted traffic flow on Interstate 80 to be moderate.

Trooper Sohns began to follow Defendant's vehicle and manually activated the "record" function of the mobile vehicle

¹ The Court gleans the factual background herein set forth from the testimony given at the July 16, 2019 suppression hearing (the "July 16, 2019 Suppression Hearing") in this matter.

recorder in his patrol unit so as to memorialize what Trooper Sohns perceived to be Defendant's violation of the Pennsylvania Motor Vehicle Code ("Motor Vehicle Code") for "Following Too Closely." See 75 Pa.C.S.A. §3310 ["Following Too Closely"].²

The MVR shows Defendant's vehicle in motion for approximately three minutes and, according to Trooper Sohns' testimony, contains everything upon which Trooper Sohns based the traffic stop in this matter. The MVR shows a recording made, up until the time that Trooper Sohns pulls Defendant's car to the right shoulder, entirely from Trooper Sohns' travel position in the left lane of eastbound Interstate 80.

At approximately thirty seconds (00:30) into the MVR, Defendant's vehicle can be observed traveling in the left lane of Interstate 80, following a tractor-trailer, and actively passing slower moving vehicles in the right lane. Defendant's car traveled at or below the sixty-five miles per hour speed limit. Trooper Sohns variously testified that, at this point, Defendant's vehicle was "following too close for the speeds it was traveling" and "following at a distance that was too close for the speed." At

² See Pennsylvania State Police Mobile Video Recording ("MVR"), July 16, 2019 Suppression Hearing ("Suppression Hearing"), Commonwealth's Exhibit 1. Upon Trooper Sohns' activation of the MVR, it began recording present events and preserving the recordings of events that occurred within thirty seconds of Trooper manual activation.

from approximately the forty second (00:40) mark to the fifty second (00:50) mark of the MVR, Defendant's vehicle traveled in excess of a tractor-trailer's length behind the tractor-trailer in the left lane of Interstate 80.

At approximately the one minute ten second (01:10) mark of the MVR, the tractor-trailer that had traveled in front of Defendant's vehicle merged into the right lane of Interstate 80 after passing a slower moving tractor-trailer traveling in the right lane. At and after the time that the tractor-trailer that had been in front of Defendant's vehicle merged into the right lane, Defendant's vehicle remained in the left lane. Trooper Sohns testified that - at this moment - Defendant "should get over to the right lane" and that he perceived a violation by Defendant or the Motor Vehicle Code proscription against driving in the left lane. See 75 Pa.C.S.A. §3313(d) ["Driving in Right Lane"].

At approximately the one minute twenty-five second (01:25) mark of the MVR, the tractor-trailer that previously had merged into the right lane moved back into the left lane of Interstate 80, again in front of Defendant's vehicle. At this point, Trooper Sohns testified that Defendant, as a result of the right-lane-to-left-lane lane change effectuated by the tractor-trailer, again "[was] following that tractor-trailer too close for a period of time" and "[was] again following the tractor-trailer too close."

Additionally, in the seconds that follow the tractor-trailer's merger back into the left lane it passes slower moving right lane traffic. Defendant's vehicle passes the same slower right lane traffic. At approximately the two minute (02:00) mark of the MVR, both the tractor-trailer and Defendant's vehicle begin and complete a merge back into the right lane of Interstate 80.

Trooper Sohns conducted a traffic stop near Mile Marker 274 in Kidder Township, Carbon County at approximately the two minute fifty second (02:50) mark of the MVR.

C. Procedural Background: The Charges Filed and the Instant Motion.

Based upon the foregoing, the Commonwealth charged Defendant with the above-delineated charges.

Defendant, through the Suppression Motion, characterizes issues raised for this Court's consideration thusly:

- Whether "Trooper Sohns' stop of Defendant's vehicle constituted an investigatory seizure of Defendant, and this seizure occurred without any reasonable suspicion or probable cause [that] Defendant committed any violation of the vehicle code or was involved in any criminal activity[.]"

See Suppression Motion at ¶7(a).

Broadly speaking, Defendant contends that Trooper Sohns conducted an unlawful vehicle stop unsupported by the requisite reasonable suspicion or probable cause. Defendant contends accordingly that "Trooper Sohns' stop of Defendant's vehicle

constituted an investigatory seizure of Defendant, and this seizure occurred without any reasonable suspicion or probable cause [that] Defendant committed any violation of the vehicle code or was involved in any criminal activity" and that "[t]he Commonwealth will be unable to carry its burden of proving Defendant's rights under the 4th and 14th Amendment of the United States Constitution and the Pennsylvania Constitution under Article I Section 8 were not violated by the stop of the vehicle and Trooper Sohns' subsequent investigation and arrest of Defendant." See Suppression Motion at ¶7.³

In his Brief in Support of Motion to Suppress, Defendant argues that, at the hearing in this matter, "Trooper Sohns failed to articulate any specific facts regarding Defendant's driving that would give rise to probable cause to initiate a traffic stop for Following Too Closely." See Brief in Support of Motion to Suppress at 7. Defendant further argues that Trooper Sohns lacked probable cause to "conduct a traffic stop of Defendant's vehicle for a violation of Section 3313(d) ["Driving in Right Lane"]." See Brief in Support of Motion to Suppress at 12.

³ The Commonwealth has not taken issue with Defendant's assertion that "Trooper Sohns' stop of Defendant's vehicle constituted an investigatory seizure of Defendant..." As such, the Court shall assume such categorization to be accurate and undisputed for purposes of Defendant's motions.

III. DISCUSSION.

A. The Commonwealth's Burden Applicable to Suppression of Evidence Motions.

Rule 581(H) of the Pennsylvania Rules of Criminal Procedure ("Rule 581(H)") provides in pertinent part that "[t]he Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of defendant's rights." See Pa.R.Crim.P. 581(H). With respect to all motions to suppress, the Commonwealth bears the burden of production. See Pa.R.Crim.P. 581(H), Comment citing *Commonwealth ex rel. Butler v. Rundle*, 239 A.2d 426 (Pa. 1968). The Commonwealth also bears the burden of persuasion. See *Id.* citing *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S.Ct. 1602, 1630 (1966). The Commonwealth must satisfy its burden of proof in a suppression hearing by a preponderance of the evidence. See *Id.* citing *Commonwealth ex rel. Butler v. Rundle*, *supra*.

B. Lack of Constitutionality of the Vehicle Stop.

1. Standards Governing Vehicle Stops.

In a motion to suppress evidence, the Commonwealth bears the burden to establish that it did not obtain the evidence in question in violation of the defendant's rights. *Commonwealth v. Ryan*, 407 A.2d 1345, 1348 (Pa.Super. 1979). "The Fourth Amendment of the United States Constitution and Article I, Section VIII of the

Pennsylvania Constitution guarantee individuals freedom from unreasonable searches and seizures." *Commonwealth v. El*, 933 A.2d 657, 660 (Pa.Super. 2007).

When analyzing the propriety of a vehicle stop, the Court must initially address whether the context of the stop necessitates that a police officer possess probable cause to effectuate the vehicle stop or if mere reasonable suspicion will suffice.⁴

More specifically, when a police officer believes a violation of the Motor Vehicle Code has occurred:

"If reasonable suspicion exists, but a stop cannot further the purpose behind allowing the stop, the "investigative" goal as it were, it cannot be a valid stop. Put another way, if the officer has a legitimate expectation of investigatory results, the existence of reasonable suspicion will allow the stop - if the officer has no such expectations of learning additional relevant information concerning the suspected criminal activity, the stop cannot be constitutionally permitted on the basis of mere suspicion."

⁴ "[T]o establish grounds for reasonable suspicion, the officer must articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. The question of whether reasonable suspicion existed at the time [the officer conducted the stop] must be answered by examining the totality of the circumstances to determine whether the officer who initiated the stop had a particularized and objective basis for suspecting the individual stopped. Therefore, the fundamental inquiry of a reviewing court must be an objective one, namely, whether the facts available to the officer at the moment of the [stop] warrant a [person] of reasonable caution in the belief that the action taken was appropriate." See *Commonwealth v. Basinger*, 982 A.2d 121, 125 (Pa.Super. 2009) (internal citations and quotation marks omitted; alterations in original).

See *Commonwealth v. Chase*, 960 A.2d 108, 115 (Pa. 2008).⁵

"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." See *Commonwealth v. Calabrese*, 184 A.3d 164, 166 (Pa. 2018) (emphasis added) citing *Commonwealth v. Harris*, 176 A.3d 1009, 1019 (Pa.Super. 2017). In such situations, "[i]f the alleged basis of a vehicular stop is to permit a determination whether there has been compliance with the Motor Vehicle Code of this Commonwealth, it is incumbent (sic) upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, **which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code.**" See *Commonwealth*

⁵ See also *Commonwealth v. Mack*, 953 A.2d 587, 589 (Pa.Super. 2008) (internal citations omitted) (Court notes that, "As provided for by statute [75 Pa.C.S.A. §6308(b)], anytime a police officer has "reasonable suspicion" to believe a violation of the Motor Vehicle Code is occurring or has occurred, the officer may initiate an investigatory vehicle stop," that "[i]ncident to this stop, an officer may check the vehicle's registration, the driver's license and obtain any information necessary to enforce provisions of the motor vehicle code," and that "[a]dditionally, police may request both drivers and their passengers to alight from a lawfully stopped car as a matter of right."). In this circumstance, the constitutional reasonableness of a traffic stop does not depend upon the actual motivations of the officer(s) involved, so long as specific facts have been articulated that would have given rise to a reasonable suspicion that the operator had committed a vehicle code violation. See *Commonwealth v. Chase* at 120.

v. *Gleason*, 785 A.2d 983, 989 (Pa. 2001) (citations omitted) (emphasis in original).

Accordingly, in the instant case, the Commonwealth must demonstrate that it possessed probable cause by a preponderance of the evidence.

2. Probable Cause and Following Too Closely.

The Pennsylvania Supreme Court has defined probable cause as follows:

"Probable cause is made out when the facts and circumstances which are within the knowledge of the officer at the time of the stop, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime. The question we ask is not whether the officer's belief was correct or more likely true than false. Rather, we require only a **probability**, and not a prima facie showing, of criminal activity. In determining whether probable cause exists, we apply a totality of circumstances test."

See *Commonwealth v. Calabrese*, 184 A.3d at 166-167 citing *Commonwealth v. Martin*, 101 A.3d 706, 721 (Pa. 2014) (internal citation omitted) (emphasis in original).

Section 3310(a) of the Motor Vehicle Code provides:

"The driver of a motor vehicle shall not follow another vehicle more **closely** than is **reasonable and prudent**, having due regard for the **speed** of the vehicles and the **traffic** upon and the **conditions** of the highway."

See 75 Pa.C.S.A. §3310(a) (emphasis added). [A] police officer's

observations, without more, are legally sufficient to support a vehicle stop for a violation of Section 3310(a). See *Commonwealth v. Calabrese*, 184 A.3d at 167.

Over the past approximately two decades, the Superior Court, when evaluating potential violations of Section 3310(a), has placed unmistakable analytical primacy upon the distance between subject vehicles. Hence, in *Commonwealth v. Phinn*, where police observed the defendant "traveling less than a motorcycle-length distance behind a tractor-trailer on Interstate 80 where the vehicles' respective rates of speed were at or near the speed limit for that highway," the Superior Court, with no discussion of traffic or conditions, and a discussion of speed confined solely to noting that the subject vehicles proceeded at or near the speed limit, unequivocally pronounced that "the evidence clearly bespeaks a hazard within the contemplation of Section 3310(a)" and found the initial traffic stop to be lawful. See *Commonwealth v. Phinn*, 761 A.2d 176, 180 (Pa.Super. 2000).⁶

⁶ As the Superior Court explicitly acknowledged, its decision in *Commonwealth v. Phinn*, with its overarching emphasis upon vehicle distance, represented a divergence from the more multi-faceted Section 3310(a) analysis of the style which this Court, per Lavelle, P.J., had earlier undertaken in *Commonwealth v. Samuel*, 23 Pa. D&C 4th 29, 1995 WL 520694 (C.C.P. Carbon 1995), *aff'd* 671 A.2d 772 (Pa.Super. 1995)(table), a published decision of this Court that had been affirmed by the Superior Court in an unpublished memorandum. See *Commonwealth v. Phinn* 761 A.2d at 180. In *Commonwealth v. Samuel*, this Court found law enforcement testimony on behalf of the Commonwealth that related solely to observed distance between vehicles, in the absence of

One year after deciding *Commonwealth v. Phinn*, the Superior Court, in *Commonwealth v. Bybel*, analyzed Section 3310(a) when presented with a factual context in which a "Honda coupe follow[ed] two to three feet behind a tractor trailer in the passing lane" of Interstate 80 when "both vehicles were traveling the posted sixty-five mile per hour speed limit in good driving conditions..." See *Commonwealth v. Bybel*, 779 A.2d 523, 524 (Pa.Super. 2001). In *Bybel*, the Superior Court confronted a solitary issue: "**Whether evidence of the proximity of Appellant's vehicle to the tractor, alone, was sufficient to support a conviction under Section 3301(a)?**" See *Id.* at 524 (emphasis added).

In resolving this issue, the Court determined that, as with the *Phinn* holding, "the evidence clearly bespeaks a hazard within the contemplation of Section 3310(a)," "[t]he same conclusion holds here, for the Commonwealth presented evidence that Appellant not only tailgated the tractor trailer, but also compromised safety on the Interstate in the process." See *Id.* at 524-525. The Court particularly emphasized relative vehicle proximity in noting that

supporting evidence of "lack of control by the driver of defendants' vehicle," "traffic conditions," "the weather," and "conditions of the highway," to be inadequate to establish either probable cause - or even reasonable suspicion - for a vehicle stop. See *Commonwealth v. Samuel*, 1995 WL 520694 at *3 ("We hold that a suspected violation of section 3310(a) of the Vehicle Code requires more articulation than just 'traveling less than one car length' from another vehicle on the highway...").

the appellant in that case "**could not have avoided a collision if the tractor trailer had cause to brake suddenly.**" See *Id.* at 525 (emphasis added).

Most recently, the Superior Court, in *Commonwealth v. Calabrese*, again emphasizing vehicle proximity, found probable cause to support a vehicle stop based upon a purported violation of 75 Pa.C.S.A. §3310(a). In that case, the Superior Court confronted a factual narrative in which the offending vehicle traveled "at a high rate of speed," "got on the tail of another vehicle," and "was so close in proximity that the officer thought there as going to be an accident." See *Commonwealth v. Calabrese*, 184 A.3d at 167 (internal citations omitted).

In the instant matter, the Commonwealth has provided no testimonial facts or evidence with respect to the distance between the Defendant's vehicle and the tractor-trailer that it purportedly followed too closely. In contrast, the Court has before it only conclusory testimony on behalf of the Commonwealth that Defendant followed "too close." The MVR presented by the Commonwealth provides no visual evidence that demonstrates observable distances other than showing more than a tractor-trailer length between the subject tractor-trailer and Defendant's vehicle.

Based upon review of the record evidence and the applicable

law, in the absence of the presentation by the Commonwealth of any actual facts or evidence with respect to a distance other than an MVR that shows greater than a tractor-trailer length separating the subject tractor-trailer from Defendant's vehicle and which cannot be considered "too close," and in a jurisprudential context in which relative vehicle distance assumes great importance, the Court finds the Commonwealth's evidence to be insufficient to establish probable cause for Trooper Sohns to believe that Defendant in this matter followed another vehicle more closely than is reasonable and prudent, and for Trooper Sohns to conduct a vehicle stop.

For the reasons set forth in this section, Defendant's suppression motion based upon an improper vehicle stop shall be granted.

3. Lack of Probable Cause for Driving in Right Lane Violation.

Section 3301(d) of the Motor Vehicle Code provides:

"(d) **Driving in right lane,--**

(1) Except as provided in paragraph (2) and unless otherwise posted, upon all limited access highways having two or more lanes for traffic moving in the same direction, all vehicles shall be driven in the right-hand lanes when available for traffic except when any of the following conditions exist:

(i) When overtaking and passing another vehicle proceeding in the same direction.

(ii) When traveling at a speed greater than the traffic flow.

(iii) When moving left to allow traffic to merge.

(iv) When preparing for a left turn at an intersection, exit or into a private road or driveway when such left turn is legally permitted."

See 75 Pa.C.S.A. §3313(d).

In instant matter, Defendant's driving in the left lane of Interstate 80 at the time Trooper Sohns perceived a Driving in Right Lane violation - from approximately the one minute ten second (01:10) mark of the MVR until the one minute twenty-five second (01:25) mark of the MVR falls squarely within exceptions permitting such left lane driving as set forth at 75 Pa.C.S.A. §3313(d)(i) and 75 Pa.C.S.A. §3313(d)(ii). The MVR shows, at virtually all times that Defendant's vehicle traveled in the left lane of Interstate 80, that it either (1) endeavored to overtake or pass vehicles in the right lane proceeding in the same direction or (2) traveled at a speed greater than traffic flow.

Even if the Court did not find the applicability of the above-specified exceptions to this case, the Court finds the fifteen seconds of the MVR that Trooper Sohns as constituting a Driving in Right Lane violation to be momentary, minor, *de minimis*, and


insufficient to provide probable cause for a vehicle stop. See *Commonwealth v. Slattery*, 139 A.3d 221, 225, n.8 (Pa.Super. 2016) (*de minimis* Motor Vehicle Code violations do not afford probable cause for a vehicle stop); *Commonwealth v. Garcia*, 859 A.2d 820 (Pa.Super. 2004) (momentary and minor Motor Vehicle Code violations insufficient to afford probable cause for a vehicle stop).

For the reasons set forth in this section, Defendant's suppression motion based upon an improper vehicle stop shall be granted.⁷

IV. CONCLUSION.

For the foregoing reasons, the Suppression Motion shall be **GRANTED**. The items seized and utilized as the basis for the prosecution subsequent to the vehicle stop in this matter and any statements made subsequent to the vehicle stop in this matter shall be suppressed.

BY THE COURT:



Joseph J. Matika, J.

⁷ In so deciding, the Court notes, based upon the MVR evidence, that Interstate 80 qualifies as a "limited access highway" for purposes the Motor Vehicle Code.

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CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,	:	
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WENHUI LI,	:	
Defendant	:	

Cynthia A. Dyrda-Hatton, Esq.	Counsel for Commonwealth Assistant District Attorney
Matthew J. Rapa, Esq.	Counsel for Defendant

ORDER OF COURT

AND NOW, this 30th day of December, 2019, upon consideration of

- the January 17, 2019 "Suppression Motion" filed by Defendant Wenhui Li,
- the August 13, 2019 "Brief in Support of Motion to Suppress" filed by Defendant Wenhui Li,
- the August 14, 2019 "Brief in Opposition to Omnibus Motion" filed by the Commonwealth,

upon consideration of the July 16, 2019 hearing thereon, and upon comprehensive review of this matter, it is hereby **ORDERED and DECREED** that the Suppression Motion filed by Defendant Wenhui Li is **GRANTED**.

DEC 30 PM 4:27

The items seized and utilized as the basis for the prosecution subsequent to the vehicle stop in this matter and any statements made subsequent to the vehicle stop in this matter shall be suppressed.

BY THE COURT:


Joseph J. Matika, J.

2019 DEC 30 P 19:27