

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

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : No. 1641-CR-2017
 :
 EDWARD MARX, :
 :
 Defendant :

Seth E. Miller, Esquire Counsel for the Commonwealth
Assistant District Attorney

David V. Lampman, II, Esquire Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - October 22, 2019

Edward Marx (hereinafter "Defendant") has taken this appeal from our Order of Sentence entered in this matter on August 1, 2019. We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the aforesaid order be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL BACKGROUND

On September 29, 2017, at approximately 11:15 p.m., Lehighton Borough Police Officer Bruce Broyles was on routine patrol duty in a marked police vehicle and in full uniform near Bridge Street in Lehighton Borough, Carbon County, Pennsylvania. At that time, Officer Broyles observed a silver Volkswagen sedan exit the Dunkin Donuts parking lot onto the Weissport bridge with an inoperable passenger-

side license plate lamp. The vehicle in question is equipped with two (2) license plate lamps. Officer Broyles did not observe any traffic violation other than the inoperable license plate lamp.

After the vehicle crossed the bridge, Officer Broyles initiated a traffic stop near the municipal park in Weissport Borough. Officer Broyles testified that because the subject vehicle had only one (1) operable license plate lamp, he was unable to confirm the plate until after the vehicle was stopped. Officer Broyles approached the vehicle and identified the driver as Defendant by his driver's license. While speaking with Defendant, Officer Broyles detected the odor of marijuana emanating from inside Defendant's vehicle and observed that Defendant had glassed over, bloodshot eyes. Officer Broyles also observed that the vehicle's certificate of inspection was expired.

Officer Broyles asked Defendant to exit the vehicle to perform field sobriety tests. While Officer Broyles was talking with Defendant outside of the vehicle, Defendant admitted that he had smoked marijuana within the past two (2) hours. Officer Broyles had Defendant perform the HGN test, the walk-and-turn test, and the one-leg-stand test. Officer Broyles observed one (1) clue of impairment during the walk-and-turn test and one (1) clue of impairment during the one-leg-stand test. Officer Broyles also had Defendant perform the lack of convergence test and the modified Romberg balance test. Defendant displayed a lack of convergence. During the balance test, Defendant inaccurately estimated the passage of thirty (30) seconds in a period of twenty-three (23) seconds, which is outside the acceptable range.

Once Defendant had completed the tests, he consented to a search of his vehicle by Officer Broyles. Officer Broyles instructed Defendant to turn the vehicle's lights on to confirm that the passenger-side license plate lamp was inoperable. Once the lights were activated, Officer Broyles confirmed that the license plate lamp was inoperable. Officer Broyles then placed Defendant under arrest for DUI and secured him in the patrol vehicle. Defendant consented to a blood draw and Officer Broyles transported Defendant to Gnaden Huetten Memorial Hospital. Defendant's blood was drawn by a phlebotomist at Gnaden Huetten Memorial Hospital and sent for testing at NMS laboratory.

On February 16, 2018, Edward Marx (hereinafter "Defendant") filed an "Omnibus Pre-Trial Motion" including motions to compel discovery, to suppress evidence based on an illegal stop, to suppress evidence based upon coerced consent to a search and seizure, and for a writ of habeas corpus. On March 16, 2018, this Court approved a stipulation between the parties in which Defendant withdrew each of the aforesaid claims, except the motion to suppress evidence based on an illegal stop. Pursuant to the stipulation, the parties agreed to submit, in lieu of testimony on the suppression motion, the transcript from the preliminary hearing held on December 20, 2017, and the footage of the incident from the mobile video recorder mounted in Officer Broyles' patrol vehicle. On July 24, 2018, upon consideration of the transcript, the video, Defendant's brief filed on April 4, 2018, and the Commonwealth's brief filed on April 13,

2018, this Court entered an order with findings of fact and conclusion of law denying Defendant's omnibus pre-trial motion. We attach a copy of our order for the convenience of the Honorable Superior Court.

On April 9, 2019, on the record immediately prior to the commencement of trial, Assistant District Attorney Seth E. Miller stipulated that the Commonwealth would be withdrawing Count 1 (DUI: Controlled Substance-Impaired Ability - 1st Offense), Count 3 (No Rear Lights), and Count 4 (Operating Vehicle without Valid Inspection). Accordingly, this matter proceeded to a non-jury trial on the sole remaining charge against the Defendant, Count 2 (DUI: Controlled Substance-Schedule 1 - 1st Offense). On that same date, this Court found Defendant guilty of Count 2 - DUI: Controlled Substance-Schedule 1 - 1st Offense (M). On August 1, 2019, Defendant was sentenced to a period of incarceration in the Carbon County Correctional Facility of not less than seventy-two (72) hours nor more than six (6) months.

On August 29, 2019, Defendant filed a notice of appeal with the Superior Court. On September 13, 2019, this Court ordered Defendant to submit a concise statement of the matters complained of on appeal within twenty-one (21) days pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). In compliance with our Order, on September 19, 2019, Defendant filed his concise statement raising the following issue for appellate review:

Whether this Court erred in denying Defendant's "Omnibus Pre-trial Motion" challenging the constitutionality of the traffic stop in this case and seeking suppression of any evidence derived therefrom.

DISCUSSION

Defendant challenges both the factual findings and the conclusions of law of our order of July 24, 2018, denying Defendant's suppression motion.

An appellate court's standard of review in addressing a challenge to a trial court's denial of a suppression motion is limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. [Because] the prosecution prevailed in the suppression court, [the appellate court] may consider only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, [the appellate court is] bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Muhammed, 992 A.2d 897, 899-900 (Pa.Super. 2010). Here, our findings of fact as listed in the attached order are supported by the record.

An officer is permitted to stop a motor vehicle after he has observed a violation of the Vehicle Code. Commonwealth v. Campbell, 862 A.2d 659, 663 (Pa.Super. 2004). A vehicle stop based solely on an offense that is not "investigatable" cannot be justified by a mere reasonable suspicion, so an officer must have probable cause

to make a constitutional vehicle stop for such an offense. Commonwealth v. Chase, 960 A.2d 108, 116 (Pa. 2008). Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most likely inference. Commonwealth v. Lindblom, 854 A.2d 604, 607 (Pa.Super. 2004).

Here, Officer Broyles had sufficient probable cause to initiate a traffic stop of Defendant's vehicle based upon the following observations: first, the vehicle's passenger-side license plate lamp was inoperable/unilluminated, in violation of the Motor Vehicle Code, see Commonwealth v. Muhammed, 992 A.2d at 902 (Pa.Super. 2010) (holding that an originally equipped or installed exterior light must operate properly even if that light is not specifically required under the Motor Vehicle Code); and second, the operable driver-side license plate lamp did not fully illuminate the vehicle's license plate so that it could be confirmed. See Commonwealth v. Banks, No. 791 MDA 2015, 2016 WL 1658122, at *4 (Pa.Super. April 26, 2016) (finding that the purpose of license plate lamps is to make a license plate visible and that where an officer is only able to view a partial plate number due to an inoperable license plate lamp, he has probable cause to stop the vehicle). Therefore, Officer Broyles conducted a lawful traffic stop of Defendant's vehicle and the evidence which he obtained as a result of that traffic stop is not "fruit of the

poisonous tree." Defendant's claims to the contrary are without merit.

CONCLUSION

For the reasons set forth hereinabove, we respectfully recommend that the instant appeal be denied and that our Order of Sentence dated August 1, 2019, be affirmed accordingly.

BY THE COURT:

Steven R. Serfass, J.