

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

COMMONWEALTH OF PENNSYLVANIA :

vs. :

NO. 927 CR 2014

KODY JAMES STROUSE, :

Defendant :

Cynthia A. Dydra-Hatton, Esquire Counsel for Commonwealth
Asst. District Attorney

Joseph P. Nahas, Esquire Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - June 29 , 2015

Before this Court is an Omnibus Pretrial Motion filed by Defendant, Kody James Strouse (hereinafter "Defendant"). In that motion, Defendant is requesting that this Court suppress all evidence uncovered and seized as a result of a traffic stop that occurred on August 8, 2014 on the basis that the Summit Hill Police did not have reasonable suspicion to stop Defendant. Alternatively, and/or concurrently, he requests that this Court dismiss the criminal charges filed against him based upon a lack of prima facie evidence. For the reasons stated within this Opinion, Defendant's motion, in its entirety, is **GRANTED**.

FACTUAL AND PROCEDURAL BACKGROUND

The facts leading to the charges that were filed against Defendant are not complex. On August 8, 2014, at approximately 8:30 p.m., Officers William Curilla and Matthew Blatt of the Summit

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Hill Police Department were on West Hazard Street in Summit Hill Borough. At that time, they observed a white Toyota Avalon drive past them, a vehicle they had previously seen several times that night.¹ The officers decided to turn around and follow the car to "see where he was going"² because the officer "just wanted to follow him."³ Officer Curilla testified that when they got to the intersection of Hazard and Poplar Streets, he looked to his left and observed a "big cloud of dust"⁴ and saw Defendant's vehicle travelling down Carbon Alley at a "high rate of speed."⁵ Officer Curilla then saw Defendant's vehicle in the distance, making a left turn towards White Street. As he approached the intersection of Poplar and White Streets, Officer Curilla then observed the vehicle park "abruptly"⁶ in the 300 block of West White Street. At this point the driver exited the vehicle and began to walk away quickly. The officers, who was now travelling west on White Street, pulled up to the car and activated their vehicle's overhead lights.

¹ At the Omnibus Hearing before this Court, Officer Curillia testified that he and Officer Blatt were parked on West Hazard Street monitoring a stop sign. However, at the Preliminary Hearing, Officer Curillia testified that he and Officer Blatt were on "routine patrol" at the time he observed Defendant's car. N.T. Prel. Hearing, P. 11.

² *Id.* at P. 30

³ *Id.* at P. 31

⁴ N.T. Prel. Hearing, P. 11. The officer also testified that at the time of seeing this cloud of dust, he was still approaching this intersection, and did not actually see Defendant make the turn onto Carbon Alley from Poplar Street. *Id.* at 34.

⁵ *Id.*

⁶ *Id.* at P. 13.

When speaking to the male, the officers asked for his license and identified him as the Defendant. As they spoke to Defendant, the officers smelled alcohol on his breath and noticed his eyes were glossy. Defendant told the officers that he was going to his friend's house. When the officers asked where his friend lived, Defendant stated that the friend's address was in Lansford, and Defendant was unable to explain what he was doing in Summit Hill if that was the case. Defendant agreed to submit to field sobriety tests, which, in the opinion of the officer, he failed. Officer Blatt attempted to administer a portable breath test (PBT), but Defendant was unable to properly blow into the mouthpiece, despite three separate attempts.

The officers then took Defendant to St. Luke's Miners Hospital in Coaldale for a blood draw. Officer Curilla read the implied consent form to Defendant as he was seated in the police vehicle. Defendant stated that he was going to refuse the test. The officers warned Defendant that he was going to lose his license if he refused, and it would be in his best interest to give blood. Defendant refused again, and also refused to sign the accompanying consent form. The officers then asked Defendant once again to attempt to provide another sample of his breath, which he did, the results of which were .189%. Accordingly, he was charged with Driving Under the Influence-General Impairment, 75 Pa.C.S.A. §

3802 §§ A(1)⁷, and Careless Driving, 75 Pa.C.S.A. § 3714 §§ A.

After a preliminary hearing where a *prima facie* case was found on both charges, Defendant filed this Omnibus Pretrial Motion.

DISCUSSION

Defendant, in his Omnibus Pretrial Motion, requests the Court to suppress all evidence in this case uncovered during and after the stop as fruits of the poisonous tree, i.e. the officers lacked a reasonable suspicion to effectuate this stop. Additionally, Defendant filed a writ of habeas corpus claiming the Commonwealth does not have sufficient evidence to establish a *prima facie* case. This opinion will first address the suppression motion in the order of the events that occurred on the night of August 8, 2014.

In a motion to suppress evidence, the burden is placed upon the Commonwealth to establish that the allegedly suppressible evidence was not obtained in violation of a defendant's rights. *Commonwealth v. Ryan*, 407 A.2d 1345, 1348 (Pa. Super. Ct. 1979).

The Legislature of this Commonwealth has authorized a police officer to stop a vehicle for an investigatory purpose whenever the officer has reasonable suspicion to believe that a violation of the Motor Vehicle Code has occurred. 75 Pa.C.S.A. § 6308(b).⁸

⁷ Defendant was not charged with violating 75 Pa.C.S.A. § 3802(c), Highest Rate of Alcohol, as the 0.189% was only the result of a PBT test, and not the result of a blood draw or certified breath test.

⁸ 75 Pa.C.S.A. § 6308(b) reads in full:

(b) **Authority of police officer** - Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or

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The determination of whether a police officer has reasonable suspicion that criminality is afoot so as to justify an investigatory detention is an objective one that must be evaluated based upon the totality of the circumstances. *Commonwealth v. Chase*, 960 A.2d 108 (Pa. 2008) ("[r]easonable suspicion sufficient to stop a motorist must be viewed from the standpoint of an objectively reasonable police officer" (citing *Ornelas v. United States*, 517 U.S. 690, 696 (1996))).

In order to establish reasonable suspicion and effectuate a traffic stop, the police officer must be able to point to specific and articulable facts and reasonable inferences drawn from those facts in light of the officer's experience. See *Commonwealth v. Anthony*, 1 A.3d 914, 919-920 (Pa. Super. Ct. 2010). The Superior Court has also held that "[t]he reasonable suspicion necessary to justify a vehicular stop is less stringent than probable cause, but the officer must have more than a hunch as the basis of a stop." *Commonwealth v. Wright*, 672 A.2d 826, 830 (Pa. Super. Ct. 1996). Additionally, the Superior Court has ruled that "while the Commonwealth has an interest in enforcing rules designed to maintain safety on our roads, an individual does not lose all

has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.

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reasonable expectation of privacy when he takes to the highway in a vehicle. A police officer must have specific facts justifying the intrusion." *Commonwealth v. Slonaker*, 795 A.2d 397, 400 (Pa. Super. Ct. 2002).

Accordingly, in the case *sub judice*, this Court must first determine whether Officer Curilla, when he decided to stop Defendant⁹, had reasonable suspicion that a violation of the Motor Vehicle Code had occurred. Officer Curilla testified at the Preliminary Hearing that he "decided to turn around and follow"¹⁰ Defendant's vehicle after seeing Defendant drive past him three or four times. On cross-examination, Officer Curilla admitted that he "just wanted to follow"¹¹ the Defendant, and that Defendant had not broken any traffic laws at the time Officer Curilla decided to follow him. The Defendant engaged in no erratic driving and did not commit any potential moving traffic violations until after, as alleged by Officer Curilla, he had already decided to begin his pursuit of Defendant. Under such circumstances, Officer Curilla did not have sufficient reason to follow or stop Defendant's vehicle. Without such a basis, the Commonwealth has failed to establish that it had "reasonable grounds" to request Defendant to submit to the portable breath test.

⁹ Due to conflicting testimony at the Preliminary Hearing and the Omnibus Hearing, it is not clear to this Court at what point Officer Curilla actually decided to stop Defendant.

¹⁰ N.T. Prel. Hearing, P. 11.

¹¹ N.T. Prel. Hearing, P. 31.

Additionally, this Court must consider what the proper standard is concerning the level of proof required to support Defendant's stop for this alleged violation of the Vehicle Code. In 1995, this question was answered by the Pennsylvania Supreme Court based on its interpretation of the language contained in Section 6308(b) of the Vehicle Code, 75 Pa.C.S.A. § 6308(b), as it existed then. At that time, Section 6308(b) stated that an officer must have "articulable and reasonable grounds to suspect a violation" before effecting a vehicle stop. Finding the term "articulable and reasonable grounds" to be equivalent to "probable cause," the Supreme Court held probable cause was a statutory prerequisite for a traffic stop or a motor vehicle based on the belief by an officer that the vehicle or its driver was in violation of some portion of the Vehicle Code. *Commonwealth v. Whitmyer*, 668 A.2d 1113, 1116 (Pa. 1995).

The holding in *Whitmyer* was shaped by the Court's construction of the standard set by statute, not that set by either the federal or state constitutions. From such a perspective, a traffic stop for a Vehicle Code offense is reasonable and constitutionally sound under both the Fourth Amendment of the United States Constitution and Article I, § 8 of the Pennsylvania Constitution, when an objective review of the facts underlying the stop shows that the officer possessed specific, articulable facts that the driver was violating a traffic law at the time of the stop. Under this

The Act of September 30, 2003, P.L. 120, No. 24, § 17, effective February 1, 2004, amended § 6308(b) of the Vehicle Code to set the standard for a vehicle stop at a constitutional level, thus replacing the higher threshold presented in *Whitmyer*. *Chase*, 960 A.2d at 112; *Commonwealth v. Fulton*, 921 A.2d 1239, 1240 n.2 (Pa. Super. Ct. 2007), *appeal denied*, 934 A.2d 72 (Pa. 2007). Section 6308(b) was specifically amended to permit an officer with reasonable suspicion to believe a violation of the Vehicle Code is occurring or has occurred to make an investigatory stop. See *Chase*, 960 A.2d at 112, 115-16. Under the statute, "in order to establish reasonable suspicion, an officer must be able to point to *specific and articulable* facts which led him to reasonably suspect a violation of the Motor Vehicle Code." *Commonwealth v. Holmes*, 14 A.3d 89, 95-96 (Pa. 2011). This standard is the same, conceptually, as that of a *Terry* stop. *Chase*, 960 A.2d at 116.

In the case *sub judice*, Officer Curilla never testified that Defendant was stopped because he suspected Defendant was driving under the influence as no such indicia was present. Cf. *Commonwealth v. Sands*, 887 A.2d 261 (Pa. Super. Ct. 2005) (holding that "reasonable suspicion" to believe that a driver is operating a vehicle while under the influence of alcohol will normally support a stop of that vehicle for further investigation). Rather, Defendant was stopped because of Officer Curilla's belief that Defendant had violated Section 3714 of the Vehicle Code.

Therefore, the question of whether it is probable cause or reasonable suspicion that supports the stop hinges on whether at the time of the stop Officer Curilla had a legitimate expectation of investigatory results. *Cf. Commonwealth v. Whitmyer*, 668 A.2d 1113 (Pa. 1995) (holding that where the offense forming the basis of the stop was such that no additional evidence to establish a violation of the Vehicle Code could be obtained from a subsequent stop and investigation, the stop must be supported by probable cause). In *Whitmyer*, the Court found that determination of the violation at issue, driving at an unsafe speed (75 Pa.C.S.A. § 3361), would not be furthered by a post-stop investigation.

Turning to the offense of careless driving, this, under the circumstances present in this case, is not the type of offense that is "investigatable" after a stop. For this offense, there was nothing to be gained from Officer Curilla subsequent to the stop to either confirm or negate the alleged violation of careless driving. Therefore, for Defendant's stop to be valid, what Officer Curilla observed must support a finding of probable cause to believe that Defendant had violated the Vehicle Code, and not reasonable suspicion.

Therefore, in applying the required standard of probable cause to Defendant's stop, this Court finds that this standard was not met. The offense of careless driving is defined as follows: "Any person who drives a vehicle in careless disregard for the

safety of persons or property is guilty of careless driving, a summary offense." 75 Pa.C.S.A. § 3714. "The *mens rea* requirement applicable to § 3714, careless disregard, implies less than willful or wanton conduct but more than ordinary negligence or the mere absence of care under the circumstances." *Commonwealth v. Gezovich*, 7 A.3d 300, 301 (Pa. Super. Ct. 2010) (quoting *Matter of Huff*, 582 A.2d 1093, 1097 (Pa. Super. Ct. 1990) (*en banc*), *aff'd per curiam*, 604 A.2d 1026 (Pa. 1992)) (quotation marks omitted).

That Defendant's vehicle created a "cloud of dust" when turning down Carbon Alley, and travelled at an alleged, but albeit admittedly unmeasured "high rate of speed" on that alley, without more does not establish probable cause to believe Defendant was guilty of careless driving. Further, no evidence of the Defendant creating a hazard to persons or property was proffered. Consequently, the post-stop observations of Officer Curilla along with any evidence obtained thereafter shall be suppressed and inadmissible at trial as Fruits of the Poisonous Tree.

The other issue this Court must dispose of is Defendant's motion for habeas corpus. Defendant asks the court in his Motion to dismiss the charges asserted against him based on, *inter alia*, the anticipation that his suppression motion would be granted. Defendant argues that as a result of the improper traffic stop and the suppression of any evidence illegally obtained, the Commonwealth lacks sufficient evidence to establish a *prima facie*

case for the charges asserted against him.

It is well settled that a petition for a writ of habeas corpus is the correct means for testing a pretrial finding that the Commonwealth has sufficient evidence to establish a *prima facie* case. *Commonwealth v. Morman*, 541 A.2d 356, 357 (Pa. Super. Ct. 1988). A *prima facie* case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes the commission of a crime and that the accused is probably the perpetrator of the crime. In criminal matters, a *prima facie* case is that amount of evidence which, if accepted as true, would justify the conclusion that the defendant did commit the charged offense. See *Commonwealth v. Scott*, 578 A.2d 933 (Pa. Super. Ct. 1990).

In this case, Defendant is charged with two crimes; the first offense listed on the information is Driving Under the Influence: General Impairment. Pursuant to this statute:

- (1) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

75 Pa.C.S.A. § 3802(a)(1).

Given the standard the Court must apply in regard to a writ of habeas corpus motion, that being accepting only the evidence that the Commonwealth could present at trial as true, this Court

finds there is insufficient evidence presented by the Commonwealth to establish a *prima facie* case for this charge. This Court, in suppressing the evidence obtained as a result of this improper traffic stop, leaves the Commonwealth with no admissible evidence that can be used at trial. Therefore, the Commonwealth lacks sufficient evidence to establish a *prima facie* case that Defendant was Driving Under the Influence, and thus, Defendant's writ of habeas corpus is granted in relation to this charge.

The second offense that Defendant is charged with is a summary offense labeled on the information as "Careless Driving". To violate this statute, a defendant must drive a vehicle in "careless disregard for the safety of persons or property."¹² Officer Curilla's testimony, both at the preliminary hearing and before this Court, indicated that at the time he decided to follow Defendant, Defendant was not operating his vehicle in any manner that could be construed as "careless disregard." Further, while Officer Curilla saw a cloud of dust on Carbon Alley, he admitted that he did not actually see the manner in which Defendant turned his vehicle onto the alleyway. Additionally, the Officer's testimony that Defendant was travelling at a "high rate of speed" was not supported by any other evidence beyond his brief observation that would demonstrate a disregard for persons or

¹² 75 Pa.C.S.A. § 3714 §§ A

property. Here, once again, the Commonwealth does not have adequate evidence to establish a *prima facie* case, and this charge must also be dismissed.

Accordingly the Court enters the following order:

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ORDER OF COURT

AND NOW, this 29th day of June, 2015, upon consideration of Defendant's omnibus pretrial motion and accompanying brief in support thereof, along with Commonwealth's brief in opposition to, and after a hearing held on the matter, it is hereby **ORDERED and DECREED** that Defendant's Motion to Suppress is **GRANTED**. The Commonwealth shall be precluded from introducing, at the time of trial, any evidence obtained as a result of the illegal stop of Defendant's vehicle on August 8, 2014.

As a result, it is **FURTHER ORDERED and DECREED** that Defendant's Motion for Writ of Habeas Corpus is **GRANTED**. Accordingly, the charges against Defendant are **DISMISSED**.

BY THE COURT:



Joseph J. Matika, J.

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