

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
 :
 vs. : No. 1381 CR 2015
 :
 NATHAN ALAN KLINGEL, :
 Defendant :

Criminal Law- Investigatory Stop of Jointly Owned Vehicle -
Driving Privileges of One of the Owners Known to
Have Expired - Identity of Driver Unknown Before
Stop - Absence of Statutory Presumption That
Vehicle Ownership is Driver - Legality of Stop -
Reasonable Suspicion/Probable Cause - Motion to
Suppress

1. A vehicle stop must be supported by either reasonable suspicion or probable cause, depending upon the reason for the stop. If nothing can be gained by investigation after the stop, the stop must be supported by probable cause. If the stop involves a suspected violation of the Vehicle Code with respect to which further investigation is likely to shed light on confirming or negating the violation, the stop need only be supported by reasonable suspicion.
2. A traffic stop of a motor vehicle jointly owned by two males, one of whose driving privileges had expired, in order to determine whether the driver of the vehicle, a male, was the owner of the vehicle whose driving privileges had expired, constituted an investigatory stop which, to be valid, needed to be supported by reasonable suspicion.
3. Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. Both the information possessed by the police and its degree of reliability is evaluated under the totality of the circumstances in determining whether reasonable suspicion existed at the time of a vehicle stop.
4. To establish reasonable suspicion, "specific and articulable facts" must be set forth leading a police

officer to suspect that criminality was afoot. The officer "must be able to articulate something more than an inchoate and unparticularized suspicion or hunch."

5. A police officer's stop of a motor vehicle known to be owned by two men, one of whose driving provisions had expired, coupled with the officer's observation that the driver was a male, is not sufficiently restricted to support a reasonable suspicion to justify the stop as a valid means to further investigate whether the driver was operating the vehicle under an expired license. Such facts, standing alone, support at most a possibility that the operating privileges of the driver were expired.
6. No statutory presumption exists in criminal proceedings that the driver of a vehicle is its owner.
7. Where a traffic stop is unlawful, all incriminating information gained from the stop must be suppressed.

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| NATHAN ALAN KLINGEL, | : | |
| Defendant | : | |
| Seth E. Miller, Esquire | | Counsel for Commonwealth |
| Assistant District Attorney | | |
| Brian C. Jordan, Esquire | | Counsel for Defendant |

MEMORANDUM OPINION

Nanovic, P.J. - June 23, 2016

Is an investigatory stop of a motor vehicle to determine the identity of its driver constitutionally permitted when, at the time of the stop, the investigating officer reasonably believes the vehicle has two owners - both men, the driving privileges of one of the two owners have expired, and the officer visually observes the driver to be a man? This is the primary issue raised in Defendant's Omnibus Pretrial Motion to Suppress which we now decide.

PROCEDURAL AND FACTUAL BACKGROUND

On August 10, 2015, while driving behind a black Honda Accord traveling north on State Route 209 in Franklin Township, Carbon County, Pennsylvania, Trooper Jonathan Lazarchick of the Pennsylvania State Police ran a routine computer check of the

vehicle's registration through NCIC. This search disclosed that the vehicle was jointly owned by the Defendant, Nathan Alan Klingel, and William Leader, and that the driving privileges of the Defendant had expired on May 1, 2015. (N.T. Suppression Hearing, 3/18/16, pp.7-8, 27-30, 35-36; Defendant Exhibit Nos. 1 and 2¹). Based on this information and Trooper Lazarchick's observation that the driver of the vehicle was a male, Trooper Lazarchick initiated a traffic stop to investigate further. (N.T. 3/18/16, p.26).

Trooper Lazarchick requested the driver to provide his driver's license, the vehicle's registration and proof of insurance. (N.T. 3/18/16, p.9). At this time, Trooper Lazarchick learned for the first time that Defendant was the driver of the vehicle, that the vehicle's inspection sticker had expired, and that the vehicle was not currently insured. (N.T. 3/18/16, p.9). With the driver's identity now known to him, Trooper Lazarchick knew as well that the driver was the owner of the vehicle whose driving privileges had expired, a fact confirmed when Trooper Lazarchick examined Defendant's driver's license. (N.T. 3/18/16, p.42).

¹ At the time of the stop, the computer in Trooper Lazarchick's cruiser did not allow the photograph of Defendant depicted on Exhibit 2 to be transmitted. Therefore, Trooper Lazarchick did not have this photograph available at the time of the stop to compare with his visual observations of the driver of the vehicle. (N.T. 3/18/16, pp.36-37).

During this stop, Trooper Lazarchick detected an odor of marijuana coming from the vehicle of which Defendant was the sole occupant and observed that Defendant's eyes were bloodshot and glassy. (N.T. 3/18/16, pp.9-10). In response to questions asked by Trooper Lazarchick, Defendant admitted to having marijuana in the car and smoking marijuana approximately two to three hours earlier. (N.T. 3/18/16, pp.13, 15-16). A consensual search of Defendant's vehicle also yielded a small plastic bag containing marijuana, a cigarette box containing several burnt marijuana cigarettes, and a multi-colored bowl. (N.T. 3/18/16, pp.14-17).

Defendant was placed under arrest and transported to the Pennsylvania State Police Barracks in Lehighton where standard field sobriety tests were conducted, which Defendant failed, and where a drug recognition expert examined Defendant. (N.T. 3/18/16, pp.17-20). Defendant was next transported to the Palmerton Hospital where Defendant's blood was drawn and sent for testing which results, made available on August 25, 2015, indicated the presence of marijuana in Defendant's system. (N.T. 3/18/16, p.22).

A criminal complaint charging Defendant with Possession of a Controlled Substance,² Possession of Drug Paraphernalia,³

² 35 P.S. § 780-113(a) (16) .

³ 35 P.S. § 780-113(a) (32) .

Driving Under the Influence of a Controlled Substance - Presence in the Driver's Blood of Any Amount of a Schedule I Controlled Substance,⁴ Driving Under the Influence of a Controlled Substance - Impairment,⁵ Driving Without a License,⁶ Operating a Motor Vehicle Without Required Financial Responsibility,⁷ and Operating a Motor Vehicle Without Official Certificate of Inspection⁸ was filed on September 3, 2015. The case was waived into court and, on January 25, 2016, Defendant filed his instant Omnibus Pretrial Motion to Suppress any and all evidence obtained as a result of the traffic stop conducted by Trooper Lazarchick contending, *inter alia*, that Trooper Lazarchick possessed neither probable cause nor reasonable suspicion to make the stop.

A hearing on Defendant's Motion was held on March 18, 2016, the issues have been briefed by the parties, and the Motion is ripe for disposition.

DISCUSSION

Defendant claims Trooper Lazarchick's traffic stop was unlawful because Trooper Lazarchick possessed neither probable cause nor reasonable suspicion at the time of the stop to believe that the Motor Vehicle Code or any criminal statute had

⁴ 75 Pa.C.S.A. § 3802(d)(1)(i).

⁵ 75 Pa.C.S.A. § 3802(d)(2).

⁶ 75 Pa.C.S.A. § 1501(a).

⁷ 75 Pa.C.S.A. § 1786(f).

⁸ 75 Pa.C.S.A. § 4703(a).

been violated by Defendant or was being violated by Defendant. Section 6308(b) of the Motor Vehicle Code sets forth a statutory standard for vehicle stops for suspected Vehicle Code violations equivalent to the constitutional standard set forth in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), allowing an investigatory stop based on reasonable articulable suspicion. Commonwealth v. Chase, 960 A.2d 108, 112 (Pa. 2008). Specifically, Section 6308(b) states:

Authority of Police Officer.--Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or 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.

75 Pa.C.S.A. § 6308(b).⁹

⁹ As interpreted by our Supreme Court, this Section sometimes requires a police officer to possess probable cause and not merely reasonable suspicion to initiate a traffic stop. If nothing can be gained by investigation after the stop (*i.e.*, if the claimed violation of the Vehicle Code which prompted the stop is "not investigatable"; *e.g.*, violations such as running a red light, driving the wrong way on a one-way street, or driving at an unsafe speed), the stop must be supported by probable cause. Commonwealth v. Chase, 960 A.2d 108, 114-16 (Pa. 2008). However, if the stop involves a suspected violation of the Vehicle Code with respect to which further investigation is likely to shed light on confirming or negating the violation (*e.g.*, driving under the influence, where further investigation almost inevitably leads to the most incriminating type of evidence, such as a strong odor of alcohol, slurred speech, and bloodshot eyes), the stop need only be supported by reasonable suspicion. *Id.* See also Commonwealth v. Feczko, 10 A.3d 1285, 1290-91 (Pa.Super. 2010) (*en banc*). Here, further investigation was necessary to determine whether a Vehicle Code violation was occurring - who the operator was and whether the operator was driving with an expired

As to what constitutes “reasonable suspicion,” the Pennsylvania Supreme Court in Commonwealth v. Holmes, 14 A.3d 89 (Pa. 2010), stated:

Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest, and depends on the information possessed by the police and its degree of reliability in the totality of the circumstances. In order to justify the seizure, *a police officer must be able to point to ‘specific and articulable facts’ leading him to suspect criminality is afoot.* In assessing the totality of the circumstances, courts must also afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer’s experience and acknowledge that innocent facts, when considered collectively, may permit the investigative detention.

Id. at 95 (emphasis in original) (internal citations omitted) (quoting Commonwealth v. Brown, 996 A.2d 473, 477 (Pa. 2010)) . To establish reasonable suspicion, an officer “must be able to articulate something more than an inchoate and unparticularized suspicion or hunch.” Commonwealth v. Mason, 130 A.3d 148, 152 (Pa.Super. 2015) (quoting United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989)), *appeal denied*, 2016 WL 1737069 (Pa. 2016).

Distinguishing further the differences between reasonable suspicion and probable cause, the Pennsylvania Superior Court in Commonwealth v. Fell, 901 A.2d 542 (Pa.Super. 2006), stated:

license. Therefore, under the facts of this case, the issue is one of reasonable suspicion, not probable cause.

Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. . . . Reasonable suspicion, like probable cause, is dependent on both the content of information possessed by police and its degree of reliability. Both factors – quantity and quality – are considered in the ‘totality of the circumstances—the whole picture,’ . . . that must be taken into account when evaluating whether there is reasonable suspicion.

Id. at 545 (quoting Alabama v. White, 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990)). See also Navarette v. California, ___ U.S. ___, 134 S.Ct. 1683, 1687, 188 L.Ed.2d 680 (2014) (stating that reasonable suspicion “is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause”) (citation and quotation marks omitted).

“It is the duty of the suppression court to independently evaluate whether, under the particular facts of the case, an objectively reasonable police officer would have reasonably suspected criminal activity was afoot.” Holmes, 14 A.3d at 96.

And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate? Anything less would invite

intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction. And simple "'good faith on the part of the arresting officer is not enough.'" * * * If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers and effects,' only in the discretion of the police.["]

Holmes, 14 A.3d at 96 (quoting Terry v. Ohio, 392 U.S. 1, 21-22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)).

It is well established that the Commonwealth bears the burden "of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the defendant's rights." Pa.R.Crim.P. 581(H); accord Commonwealth v. Wallace, 42 A.3d 1040, 1047-48 (Pa. 2012). In this case, for Trooper Lazarchick's stop to be supported by reasonable suspicion the Trooper must be able to "articulate specific facts which, in conjunction with the reasonable inferences derived from those facts, led him reasonably to conclude, in light of his experience, that criminal activity was afoot" - as applicable here, that a violation of Section 1501(a) of the Motor Vehicle Code had occurred or was occurring and that this violation required additional investigation. Commonwealth v. Beasley, 761 A.2d 621, 626 (Pa.Super. 2000); Chase, 960 A.2d at 114-16; Commonwealth v. Feczko, 10 A.3d 1285, 1290-91 (Pa.Super.

2010) (*en banc*). Section 1501(a) generally prohibits a motor vehicle from being driven on a highway of this Commonwealth by a person who does not possess a valid driver's license. 75 Pa.C.S.A. § 1501(a).

At the time Defendant was stopped, Trooper Lazarchick knew, based on what he had learned from NCIC, that the car Defendant was driving was owned by two males, one of whose license had expired. He also knew that the driver of the vehicle he was following was a male. However, Trooper Lazarchick did not know who the driver was, whether the driver was one of the two owners, or whether the driver resembled either of the two owners. The information then available to Trooper Lazarchick was insufficient to reliably make any of these determinations. Accordingly, at the time of the stop, the driver of the vehicle could just as easily have been the other owner, or a friend or relative of either owner, rather than Defendant. In effect, Trooper Lazarchick assumed that the driver of the vehicle might be the owner whose license had expired and decided to investigate.¹⁰

¹⁰ Previously, Section 1212 of the Vehicle Code of 1959, 75 P.S. § 1212, contained a statutory presumption that the driver of a vehicle was its owner. This presumption in criminal proceedings was held unconstitutional by the Pennsylvania Supreme Court as it violated a defendant's presumption of innocence, right not to be compelled to testify against himself, and the requirement that the Commonwealth prove all elements of the offense beyond a reasonable doubt. *Commonwealth v. Slaybaugh*, 364 A.2d 687, 689-90 (Pa. 1976). No comparable presumption exists under the current Vehicle Code, however, in the Judicial Code a statutory inference exists with respect to

This margin of error is too large to support the level of reliability necessary to establish reasonable suspicion. See Commonwealth v. Bailey, 947 A.2d 808, 812 (Pa.Super. 2008) (“[I]t is well settled that a mere assumption is not synonymous with reasonable suspicion.”), *appeal denied*, 959 A.2d 927 (Pa. 2008); see also Commonwealth v. Andersen, 753 A.2d 1289, 1294 (Pa.Super. 2000) (concluding in a case where “articulable and reasonable grounds” was equated with probable cause that “the knowledge a vehicle is owned by an individual whose driving privileges are suspended coupled with the **mere assumption** that the owner is driving the vehicle, does not give rise to articulable and reasonable grounds to suspect that a violation of the Vehicle Code is occurring every time this vehicle is operated during the owner’s suspension”) (emphasis in original). By contrast, in Commonwealth v. Hilliar, 943 A.2d 984 (Pa.Super. 2008), *appeal denied*, 956 A.2d 432 (Pa. 2008), the Court determined that a traffic stop of a vehicle whose owner had a suspended license and whose driver physically matched the age and gender of the owner of the vehicle was a reasonable one. “Based on the officer’s conclusion that it was likely that the person operating the vehicle was the owner because he was a male of the same age as the owner and had possession of the owner’s

the recovery of civil penalties only, that “the person to whom the registration number was officially assigned is the owner of the conveyance and was then operating the conveyance.” 42 Pa.C.S.A. § 6143(a).

vehicle," the Court in Hilliar found the officer had reasonable suspicion to believe the vehicle was being driven by a driver with a suspended license and the stop was held to be legal. 943 A.2d at 987-88, 990.

Here, Trooper Lazarchick testified that his decision to stop and investigate was based on the following facts: that the vehicle was owned by two men, one of whose driving privileges had expired, which information he had obtained from the NCIC report¹¹ and his own observation that the driver was a man. From these facts alone, Trooper Lazarchick concluded that Defendant was the driver, even though it was equally if not more likely from this general information that William Leader, the other owner, or some other man, was the driver. Stated differently, a police officer's reasonable belief that a vehicle being followed by him and driven by a male is owned by two men, one of whose driving privileges has expired, is not sufficiently restricted on these limited facts to raise a reasonable suspicion that a violation of the Motor Vehicle Code is occurring every time the vehicle is driven by a male.¹² Cf. Navarette v. California, 134

¹¹ Trooper Lazarchick testified to no other identifying information in the NCIC report which he reviewed and relied upon before making the stop.

¹² Defendant cites Commonwealth v. McGraw, 2015 WL 6394791 (Pa.Super. 2015), in support of his Motion. Citing Hilliar, 943 A.2d at 990, the Court in McGraw stated that "information that an owner of a vehicle had her license suspended alone cannot justify the stop of the vehicle," but that "to justify a stop to investigate whether an owner under suspension is operating the vehicle, the Commonwealth must adduce additional evidence to justify the belief that the driver is the owner whose license was suspended." *Id.* at *7.

S.Ct. at 1687 ("The Fourth Amendment permits brief investigative stops. . . when a law enforcement officer has a particularized and objective basis for suspecting the particular person stopped of criminal activity.") (quotation marks omitted).

CONCLUSION

Reasonable suspicion - sufficient to support the traffic stop of a moving vehicle to investigate whether the driver has a valid driver's license - must be predicated on objective, articulable facts known to the detaining officer at the time of

McGraw does not stand, as Defendant contends, for the proposition that a police officer's observation of a vehicle which is owned by a person with a suspended license and which is being driven by an individual of the same gender as the owner is too speculative to support a finding of reasonable suspicion. After noting the precedent set in Hilliar - that where an officer has reliable information that a vehicle being followed by him is owned by an individual whose operating privileges are suspended, together with the officer's observation that the driver of the vehicle matches the owner's description as "a middle-aged man," the officer's decision to conduct a traffic stop is supported by reasonable suspicion - the Court declined to address whether a police officer's receipt of a CLEAN (Commonwealth Law Enforcement Assistance Network) report indicating the owner of a vehicle he was following was a female whose operating privilege was suspended for driving under the influence, coupled with the officer's observation that the driver was a female, with no further identifying information connecting the driver with the owner, was adequate to establish reasonable suspicion, the Commonwealth having failed to assert that this similarity alone was sufficient to justify the stop. In contrast, the Commonwealth cites to Commonwealth v. Schrock, 2016 WL 1623420 (Pa.Super. 2016), which held that an officer's information at the time of the stop, based on an NCIC report, that the owner of a vehicle was a female with a DUI-suspended license, together with the officer's observation that the driver was female, was sufficient to justify the stop as a valid means to further investigate whether the driver was operating the vehicle under a suspended license.

While the opinions in McGraw and Schrock are instructive, both are unpublished memorandum decisions of the Pennsylvania Superior Court which are non-precedential and may not be relied upon or cited by us in support of our decision. Treasure Lake Property Owners v. Meyer, 832 A.2d 477, 479-80 n.3 (Pa.Super. 2003) (citing Superior Court Internal Operating Procedure Section 65.37, 210 Pa.Code § 65.37). Moreover, both McGraw and Schrock are readily distinguishable in material part from the present facts since in both cases the vehicle involved had a single owner of record whose driver's license was suspended, whereas in the instant matter the vehicle involved is owned by two individuals only one of whose driving privileges had expired.

the stop and must be such that the officer can reasonably conclude that the subject of the stop is in violation of the Motor Vehicle Code. This standard is not met in this case where the only facts known by the officer at the time of the stop - that the vehicle stopped was owned by two men, one of whose driving privileges had expired, and the driver was a male - created little more than a possibility that the driver's operating privileges had expired. Under these circumstances, we find that Trooper Lazarchick's belief that the driver was the owner of the vehicle who had an expired license was not reasonable. We hold, therefore, that Trooper Lazarchick did not have reasonable suspicion to believe Section 1501(a) of the Vehicle Code was being violated at the time of the stop, that the stop was unlawful, and that all incriminating information gained from the stop must be suppressed.

BY THE COURT:

P.J.