

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

COMMONWEALTH OF PENNSYLVANIA, :

v. :

No. CR-732-2019

ARTHUR LEE BILLIG, :
Defendant :

Brian B. Gazo, Esquire
Assistant District Attorney

Counsel for the Commonwealth

Andrew T. Bench, Esquire
Assistant Public Defender

Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - December 9, 2020

Arthur Lee Billig (hereinafter "the Defendant") is charged with Driving Under the Influence: Controlled Substance- Impaired Ability- 1st Offense (75 Pa. C.S.A. § 3802(d)(2)); Intentional Possession of a Controlled Substance by a Person Not Registered (35 P.S. § 780-113(a)(16)); Possession of Marijuana (35 P.S. § 780-113(a)(31)); Use/ Possession of Drug Paraphernalia (35 P.S. § 780-113(a)(32)); Driving While Operating Privilege is Suspended or Revoked (75 Pa. C.S.A. § 1543(a)); and No Headlights (75 Pa. C.S.A. § 4303(a)). The Defendant's counsel has filed an "Omnibus Pre-Trial Motion" challenging the stop of the Defendant's vehicle. Based upon the evidence presented at a hearing before the undersigned, and for the reasons which follow, we will deny the Defendant's motion.

Gulla also found evidence to support the remaining charges during the vehicle stop (Criminal Complaint).

The traffic stop took approximately forty (40) minutes to complete. The Defendant's girlfriend, Katrina Collison, arrived during the vehicle stop to drive the Defendant home.

After the traffic stop was completed, Officer Broyles and Officer Gulla parked across the street. They noticed the Defendant engaged in some activity in front of his vehicle, but could not determine what he was doing. The Defendant took photographs of his vehicle's headlight about five (5) to ten (10) minutes after the traffic stop had ended, as evidenced by timestamps on the patrol car MVR and the Defendant's photographs. The photographs depict the headlight in question to have been illuminated. The Defendant and Miss Collison testified that the Defendant did not repair the headlight in question before taking the photographs.

DISCUSSION

Through his pre-trial motion, the Defendant argues that the headlight of his vehicle was, in fact, in working order. Therefore, he contends that Officer Broyles and Officer Gulla did not possess probable cause to conduct a traffic stop of his vehicle.

Where there are contradictions in testimony between witnesses, the court has the discretion to make a credibility determination. In the case of Commonwealth v. Russell, the Superior Court of Pennsylvania upheld a credibility determination

where a trial judge had found that the non-prevailing party witness had an "obvious motive to lie." Commonwealth v. Russell, 665 A.2d 1239, 1243 (Pa. Super. 1995). The Pennsylvania Superior Court further noted that its deferral to the trial judge stemmed from his "first-hand impression of the demeanor of each witness." Id.

Our decision in this case is based on a finding of credibility. Like Commonwealth v. Russell, we have had the opportunity to observe the demeanor of each witness during the evidentiary hearing concerning this matter. Also, as in Russell, we find that the Defendant and Miss Collison, who is the Defendant's paramour, both had an obvious motive to provide false testimony due to their significant interest in the outcome of this matter.

Officer Broyles and Officer Gulla both testified that they had observed the Defendant's vehicle to have an unilluminated headlight. The Defendant and Miss Collison testified that the headlight was in working order and that they did not repair the headlight prior to taking the photographs. We find the testimony of Officer Broyles and Officer Gulla to have superior credibility.

Having made the above determination, we must now address the issue of probable cause. During the hearing on this matter, Officer Broyles testified that he observed a vehicle travelling eastbound on State Route 443 with an unilluminated headlight.

Officer Broyles then immediately initiated a traffic stop of that vehicle.

Section 6308 of the Pennsylvania Motor Vehicle Code provides that:

Whenever a police officer... 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 a vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of the title.

The Pennsylvania Superior Court explained the requisite standard to conduct a traffic stop in Commonwealth v. Salter. The officer in Salter conducted a stop of a motor vehicle that he had observed to have a non-illuminated license plate lamp. After conducting the stop, the officer observed signs that the defendant was intoxicated. Commonwealth v. Salter, 121 A.3d 987, 990 (Pa. Super. 2015).

The Superior Court held that an officer needs either probable cause or simply reasonable suspicion to stop a vehicle depending on the suspected violation of the Motor Vehicle Code. "[W]hen considering whether reasonable suspicion or probable cause is required constitutionally to make a vehicle stop, the nature of the violation has to be considered. If it is not necessary to stop the vehicle to establish that a violation of the Vehicle Code

has occurred, an officer must possess probable cause to stop the vehicle. Where a violation is suspected, but a stop is necessary to further investigate whether a violation has occurred, an officer need only possess reasonable suspicion to make the stop." Id. at 993.

If the standard for the vehicle stop is probable cause then "it is encumbent [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." Id. at 992 (citing Commonwealth v. Gleason, 785 A.2d 983, 989 (Pa. 2001)). The Pennsylvania Superior Court determined that the officer in Salter had met this burden simply by stating that the defendant's license plate lamp was not illuminated. Id. at 993-994.

Like the officer in Commonwealth v. Salter, Officer Broyles articulated in his testimony that he had personally observed an unilluminated headlight on the Defendant's vehicle, which would constitute a violation of the Pennsylvania Motor Vehicle Code. Additionally, the Defendant is charged with the offense of "No Headlights" under the General Lighting Requirements section of the Vehicle Code (75 Pa. C.S.A. § 4303(a)). Therefore, Officer Broyles had probable cause to conduct a stop of the Defendant's vehicle based on his observation of the non-illuminated headlight.

CONCLUSION

For the reasons set forth hereinabove, the Defendant's "Omnibus Pre-Trial Motion" will be denied and we will enter the following

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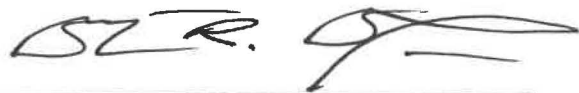
ORDER OF COURT

AND NOW, to wit, this 9th day of December, 2020, upon consideration of "Defendant's Omnibus Pre-Trial Motion" and hearing held thereon, and in accordance with our memorandum opinion bearing even date herewith, it is hereby

ORDERED and DECREED that the Defendant's "Omnibus Pre-Trial Motion" is DENIED.

IT IS FURTHER ORDERED and DECREED that the parties shall appear for a pre-trial conference at 3:15 p.m. on January 8, 2021 in the Office of the District Attorney on the second floor of the Carbon County Courthouse at Jim Thorpe, Pennsylvania.

BY THE COURT:



Steven R. Serfass, J.