

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

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
vs.	:	No. 816-CR-2015
	:	
JEFFREY RAIL,	:	
Defendant	:	
Jean Engler, Esquire		Counsel for Commonwealth
District Attorney		
Matthew Rapa, Esquire		Counsel for Defendant

MEMORANDUM OPINION

Serfass, J. - December 29, 2016

Here before the Court is the "Omnibus Pre-Trial Motion", in the nature of a motion to suppress evidence, filed by Defendant, Jeffrey Rail (hereinafter "Defendant"). For the reasons that follow, the aforesaid omnibus motion will be denied.

FACTUAL AND PROCEDURAL BACKGROUND

On May 10, 2015, Corporal Shawn Noonan of the Pennsylvania State Police was on patrol parked alongside Maury Road in Franklin Township near the Penn Forest Township line. At approximately 1:00 a.m., the corporal observed Defendant's vehicle following a van at a distance of about one (1) car length. Corporal Noonan proceeded to pull out and began to follow Defendant's vehicle. He determined that Defendant's vehicle was traveling at an approximate speed of forty (40) miles per hour in a forty-five (45) mile per hour zone.

Moreover, Corporal Noonan testified that he observed Defendant's vehicle "still remain at a distance that was not safe to be behind the van." N.T.5/13/16 at 7. He further testified that "I was unable to see the bumper of the van and if it wasn't for a larger vehicle, I may not have been able to see that there was even a car in front of [Defendant's vehicle]." Id. Corporal Noonan stated that there was nothing noteworthy about the weather and that he initially observed Defendant's vehicle on a relatively flat portion of the road before an incline. After following the vehicle, the corporal determined that it wasn't merely a momentary misjudgment where Defendant's vehicle had gotten a bit too close to the van. Consequently, Corporal Noonan conducted a traffic stop on Maury Road at or near the intersection with Long Run Road in Franklin Township.

When he first made contact with Defendant, Corporal Noonan informed Defendant why he had stopped him. Defendant told the corporal that it was his friend who was operating the van and that he was following his friend to a hotel. Upon speaking to Defendant, Corporal Noonan detected a strong odor of marijuana coming from inside the vehicle. He also smelled the odor of an alcoholic beverage. Corporal Noonan noticed that Defendant had extremely dilated pupils which constricted for a short amount of time when light was applied and then became dilated again. He then had Defendant exit the vehicle for the purpose of

performing field sobriety tests. Defendant displayed eyelid tremors and his eyes failed to properly converge upon testing. Corporal Noonan then placed Defendant under arrest for driving under the influence of a controlled substance based upon the above observations. Defendant was transported to Gnaden Huetten Memorial Hospital in Lehighton for a blood test. Defendant was subsequently charged with one (1) count of DUI: Controlled Substance-Schedule 1,¹ one (1) count of DUI: Controlled Substance-Schedule 2 or 3,² one (1) count of DUI: Controlled Substance-Impaired Ability,³ one (1) count of Following Too Closely,⁴ and one (1) count of Careless Driving.⁵

On March 22, 2016, Defendant filed an "Omnibus Pre-trial Motion" seeking to suppress evidence obtained as a result of the traffic stop and subsequent roadside investigation. A hearing on that motion was held on May 13, 2016. Thereafter, briefs were submitted by counsel for Defendant and counsel for the Commonwealth and this matter is now ripe for disposition.

DISCUSSION

In his brief, Defendant argues that Corporal Noonan needed probable cause to believe that the subject vehicle or driver was in violation of some provision of the Vehicle Code in order to

¹ 75 Pa.C.S.A. § 3802(d)(1)(i).

² 75 Pa.C.S.A. § 3802(d)(1)(ii).

³ 75 Pa.C.S.A. § 3802(d)(2).

⁴ 75 Pa.C.S.A. § 3310(a).

⁵ 75 Pa.C.S.A. § 3714(a).

justify the traffic stop at issue. Moreover, Defendant asserts that the corporal did not possess probable cause to believe Defendant violated Section 3310(a) of the Vehicle Code, which relates to following another vehicle too closely. Defendant relies upon Commonwealth v. Samuel, 23 Pa. D. & C.4th 29 (Com. Pl.), aff'd, 671 A.2d 772 (Pa. Super. 1995), a decision rendered by then-President Judge John P. Lavelle of the Carbon County Court of Common Pleas, for the proposition that "whether an officer possesses probable cause to stop a vehicle for a violation of Section 3310(a) of the Vehicle Code depends largely upon whether the operator is in control of his vehicle considering the speed of the vehicles and traffic upon and condition of the highway." Defendant's Brief at 7.

Alternatively, Defendant asserts that Corporal Noonan lacked probable cause to arrest Defendant for suspicion of driving under the influence because the corporal failed to specify whether the marijuana he smelled was burnt or raw, and because he failed to conduct additional testing pursuant to his certification as a drug recognition expert.

By contrast, the Commonwealth argues that the traffic stop was lawful. In rebuttal to Defendant's argument that the traffic stop was illegal, the Commonwealth relies upon a Pennsylvania Superior Court decision in the case of Commonwealth v. Phinn, 761 A.2d 176 (Pa. Super. 2000). The Commonwealth also contends

that Corporal Noonan's observations established probable cause to arrest Defendant for suspicion of driving under the influence.

I. PROBABLE CAUSE TO INITIATE TRAFFIC STOP

It is the settled law of this Commonwealth that traffic stops based upon a reasonable suspicion, either of criminal activity or a violation of the Vehicle Code under the authority of Section 6308(b), must serve a stated investigatory purpose. Commonwealth v. Feczko, 10 A.3d 1285, 1291 (Pa. Super. 2010) (citing Commonwealth v. Chase, 960 A.2d 108, 115 (Pa. 2008)). Indeed, mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation. Feczko, 10 A.3d at 1291. The Pennsylvania Supreme Court has acknowledged that if Terry v. Ohio, 88 S.Ct. 1868 (U.S. 1968), allows an investigatory stop based on reasonable suspicion, there must be something to investigate. Chase, 960 A.2d at 115. Where no such investigatory purpose can be served, "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." Feczko, 10 A.3d at 1291 (citation omitted).

In Pennsylvania, 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 condition of the highway. 75 Pa.C.S.A. §3310(a). In Samuel, the Carbon County Court of Common Pleas analyzed whether a Pennsylvania State Trooper was justified in conducting a traffic stop where the defendant was traveling within the posted speed limit and was following a tractor-trailer by less than one (1) car length. 23 Pa. D. & C.4th 29. There, the court determined that the purpose of Section 3310 is "to prevent accidents by requiring a driver to have his vehicle under such control that he or she can stop or maneuver safely if the vehicle in front stops or swerves unexpectedly." Id. at 33. The court found that the trooper offered no testimony that the driver lacked any control of his vehicle at the time of the stop, nor did the trooper state anything about the traffic conditions, weather or condition of the roadway. Id. at 34-35. As such, the court found that the trooper lacked reasonable suspicion to make a valid traffic stop and, therefore, the defendant's motion to suppress was granted. Id.

Subsequent to the Samuel decision, however, the Pennsylvania Superior Court had occasion to address this issue. See Phinn, 761 A.2d 176. In Phinn, the Superior Court determined that a traffic stop of a vehicle traveling less than a

motorcycle-length distance behind a tractor-trailer while the vehicles' respective rates of speed were at or near the speed limit for the interstate was lawful. Id. at 180. There, the evidence of record established that the driver's vehicle was following the vehicle ahead of it in bumper-to-bumper fashion. Id. The court found that this evidence "clearly bespeaks a hazard within the contemplation of Section 3310." Id. Significantly, the court also addressed the relevance of the Samuel decision noting that a published opinion of the Carbon County Court of Common Pleas is not binding precedent. Id. at 179. Moreover, the Superior Court's affirmance of Samuel was reported by unpublished memorandum. Id. The court stated that unpublished memoranda of the Superior Court have no precedential value. Id. Thus, the court concluded that "the Carbon County court's rationale for disposition of the issue in *Samuel* holds no precedential value beyond law of the case as to the parties directly involved." Id. at 180 (emphasis added).

Initially, we submit that Defendant's reliance upon Samuel is misplaced. As the Commonwealth correctly points out, the Pennsylvania Superior Court in Phinn specifically observed that "the Carbon County court's rationale for disposition of the issue in *Samuel* holds no precedential value beyond law of the case as to the parties directly involved." Id. Although we agree with Defendant that there is no evidence of record indicating

that Defendant lacked control of his vehicle, we nevertheless find that Corporal Noonan had probable cause to justify the traffic stop. The corporal testified that he observed Defendant's vehicle following one (1) car length behind the van in front of him. After following the vehicle, the corporal determined that it wasn't just a momentary misjudgment where Defendant's vehicle was positioned a little too closely to the van. Rather, he observed Defendant's vehicle "still remain at a distance that was not safe to be behind the van." N.T.5/13/16 at 7. The fact that Defendant was not involved in an accident nor displayed any other type of erratic driving is irrelevant. Similar to Phinn, Corporal Noonan testified as to how unreasonably close Defendant's vehicle was to the van that he was following. Specifically, he testified that "I was unable to see the bumper of the van and if it wasn't for a larger vehicle, I may not have been able to see that there was even a car in front of [Defendant's vehicle]." Id. Even though there were no inclement weather conditions nor any specific testimony regarding the volume of traffic on the roadway, we find Corporal Noonan's testimony that Defendant's vehicle was following too closely and in violation of the Vehicle Code to be reasonable. Moreover, Defendant was following the van closely as it approached an intersection with a stop sign. This fact further supports Corporal Noonan's probable cause insofar as this

evidence "clearly bespeaks a hazard within the contemplation of Section 3310." See Phinn, 761 A.2d at 180. On these facts and testimony, we find that Corporal Noonan articulated specific probable cause to stop Defendant's vehicle for violation of Section 3310(a) of the Vehicle Code and, therefore, we hold that the traffic stop was lawful.

II. PROBABLE CAUSE TO ARREST DEFENDANT FOR SUSPICION OF DUI

An individual may not drive, operate or be in actual physical control of the movement of a vehicle if the individual is under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle. 75 Pa.C.S.A. § 3802(d)(2). To be constitutionally valid, an arrest must be based on probable cause. Commonwealth v. Smith, 979 A.2d 913, 916 (Pa. 2009) (citation omitted). In determining whether probable cause exists to justify a warrantless arrest, courts must consider the totality of the circumstances. Commonwealth v. Martin, 101 A.3d 706, 721 (Pa. 2014) (citations omitted) cert. denied sub nom. Martin v. Pennsylvania, 193 L. Ed. 2d 155 (U.S. 2015). Probable cause is established when "the facts and circumstances which are within the knowledge of the officer at the time of the arrest, 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." Commonwealth v. Thompson, 985 A.2d 928, 931 (Pa. 2009) (quoting Commonwealth v. Rodriguez, 585 A.2d 988, 990 (Pa. 1991)). The question we ask is not whether the officer's belief was "correct or more likely true than false." Thompson, 985 A.2d at 931 (citation omitted). Rather, we require *only a "probability*, and not a prima facie showing, of criminal activity." Id.

In the instant matter, there was sufficient probable cause to arrest Defendant for suspicion of DUI. There is no question that Defendant was operating his vehicle at the time of the traffic stop. Moreover, Corporal Noonan testified that upon speaking to Defendant, he detected a strong odor of marijuana coming from inside the vehicle. The corporal further testified that he noticed Defendant had extremely dilated pupils which constricted for a short amount of time when light was applied, but then became dilated again. He then had Defendant exit the vehicle for the purpose of performing field sobriety tests. Defendant displayed eyelid tremors and his eyes failed to properly converge upon testing. Defendant took issue with the fact that Corporal Noonan, who is a certified drug recognition expert, did not perform the more involved 12-step evaluation. However, the corporal testified, *inter alia*, that performing the additional testing was not necessary because he had four (4) or five (5) different indicators that Defendant was under the

influence and that it would be more practical to take Defendant for a blood test. On redirect examination, Corporal Noonan further testified that he was satisfied that he had sufficient indicia to establish probable cause for the DUI arrest. With respect to Defendant's contention that Corporal Noonan failed to testify as to whether he smelled burnt or raw marijuana, we note that the corporal acknowledged that a portion of his police report indicated that he "also noticed the odor of marijuana about [Defendant's] breath and person," and that this relevant portion of the police report was consistent with his previous testimony and observations. N.T. 5/13/16 at 58. It must be emphasized that we require *only* a "*probability*, and not a *prima facie* showing, of criminal activity." *Id.* Based upon Corporal Noonan's observations, we find that he had sufficient probable cause to arrest Defendant for suspicion of driving under the influence.

CONCLUSION

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

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JEFFREY RAIL,	:	
Defendant	:	

ORDER OF COURT

AND NOW, to wit, this 29th day of December, 2016, upon consideration of Defendant's "Omnibus Pre-Trial Motion," an evidentiary hearing held thereon, review of the briefs of counsel, and in accordance with our Memorandum Opinion bearing even date herewith, it is hereby **ORDERED and DECREED** that the aforesaid motion is **DENIED**.

IT IS FURTHER ORDERED and DECREED that Defendant shall appear for Call of the List at 9:00 a.m. on January 31, 2017 in Courtroom No. 1 of the Carbon County Courthouse at Jim Thorpe, Pennsylvania. Counsel and Defendant are also attached for Jury Selection and Trial commencing at 10:00 a.m. on February 6, 2017 in Courtroom No. 3 of the Carbon County Courthouse.

BY THE COURT:

Steven R. Serfass, J.