

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1886-2014
v.	:	
	:	
MARK ALLEN HEADER,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On December 30, 2014, the Defendant filed an omnibus pre-trial motion. A hearing on the motion was held on February 3, 2015.

I. Background

On July 19, 2014, Hughesville Borough Police Officer David Williams (Williams) was working for the Lycoming County DUI Task Force. At 1:49 A.M., Williams was driving a marked patrol car in the westbound lane of State Route 405. It was a clear night, and the road was dry. Williams was slowing down to turn the car around when he saw a vehicle travelling in the eastbound lane of Route 405. The vehicle passed Williams, who then looked in his rear view mirror. Williams noticed that Route 405's yellow line was in the middle of the vehicle that had just passed. Williams testified that almost half of the vehicle was in the westbound lane of Route 405. Williams was 20 to 25 yards away from the vehicle when he saw that it was over the yellow line.

Williams turned the patrol car around to pursue the vehicle. Williams is familiar with the stretch of Route 405 and knows how long it typically takes for a vehicle to get from where he saw the vehicle across the yellow line to where he caught up to the vehicle. Williams testified that the vehicle was "moving pretty good" and he had to go 95 miles per hour to catch up to it. The vehicle, however, was not speeding when Williams caught up to it. On a curve, the

vehicle's left tires touched the yellow line closer to the westbound lane of Route 405. Williams is familiar with the curve and testified that vehicles commonly cross the yellow lines on the curve. Williams activated the patrol car's lights as the vehicle was pulling into a driveway on the 150 block of Route 405 in Muncy, Pennsylvania. Williams then approached the Defendant, who was the only person in the vehicle. The Defendant was charged with DUI,¹ Driving on Roadways Laned for Traffic,² and Careless Driving.³

In his motion, the Defendant argued that Williams did not have probable cause to stop him. In addition, the Defendant "allege[d] no probable cause existed for Williams to request the Defendant submit to field sobriety and blood testing." During the hearing, Defense Counsel and the attorney for the Commonwealth notified the Court that the Defendant was contending only that Williams lacked probable cause to stop the Defendant. There was no testimony on the circumstances surrounding the field sobriety or blood tests. The Defendant argues that Williams did not have probable cause to stop him because Williams was looking only at the vehicle when he saw it swerve into the other lane. The Defendant contends that since Williams was looking only at the vehicle, he was not able to see if the Defendant swerved to avoid an object or a deer.

II. Discussion

"Where a vehicle stop has no investigatory purpose, the police officer must have probable cause to support it." Commonwealth v. Enick, 70 A.3d 843, 846 (Pa. Super. 2013) (citing Commonwealth v. Feczko, 2010 PA Super 239, 10 A.3d 1285, 1291 (Pa. Super. 2011) (en banc)). "The officer must be able 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

¹ 75 Pa.C.S. § 3802(a)(1).

² 75 Pa.C.S. § 3309(1).

³ 75 Pa.C.S. § 3714(a).

in some violation of some provision of the Vehicle Code. Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most likely inference.” Id., n.3. (quoting Commonwealth v. Lindblom, 854 A.2d 604, 607 (Pa. Super. 2004)). “The possibility of an innocent explanation does not vitiate properly established probable cause.” United States v. Booker, 612 F.3d 596, 601 (7th Cir. 2010).

“Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway. . . .” 75 Pa.C.S. § 3301(a). “[Section] 3301 provides that ‘a vehicle shall be driven on the right half of the roadway’ subject to exceptions” Enick, 70 A.3d at 847 (citations omitted). “[T]he language of § 3301 does not include language allowing for unspecified deviations from the rule.” Id. “Where the good faith of the arresting officer is not an issue, and where the crime for which a suspect is arrested and that for which the officers have probable cause are closely related, courts typically use an objective rather than subjective measure of probable cause. . . . When a crime for which the arrest is made and a crime for which probable cause exist are in some fashion related, there is no question that the arrest is a valid one.” Commonwealth v. McElroy, 630 A.2d 35, 40 (Pa. Super. 1993) (citations omitted) (quoting Commonwealth v. Neuffer, 400 A.2d 596, 600 (Pa. Super. 1979)).

Here, the Defendant was stopped for Driving on Roadways Laned for Traffic. Driving on Roadways Laned for Traffic is closely related to Section 3301, also known as Driving on Right Side of Roadway. See 75 Pa.C.S. § 3309 (defining Driving on Roadways Laned for Traffic). Both offenses involve driving in an improper area, and a driver could commit both offenses simultaneously. Because the offenses are closely related, the stop of the Defendant was lawful if Williams had probable cause to believe that the Defendant committed Driving on Right Side of Roadway.

The Court finds that Williams articulated specific facts, which were sufficient to provide him with probable cause to believe that the Defendant committed Driving on Right Side of Roadway. Williams testified that in his rearview mirror, he could see Route 405's yellow line in the middle of the Defendant's vehicle. He testified that almost half of the Defendant's vehicle was in the westbound lane of Route 405. Williams was 20 to 25 yards away from the vehicle when he made the observations.

The Defendant argues that Williams did not have probable cause to stop the Defendant because Williams was looking only at the vehicle and could not see if there was an obstruction in the road. He seemingly relies on the following exception to Driving on Right Side of Roadway:

[A] vehicle shall be driven upon the right half of the roadway except . . . [w]hen an obstruction exists making it necessary to drive to the left of the center of the roadway, provided the driver yields the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the roadway within such distance as to constitute a hazard.

75 Pa.C.S. § 3301(a)(2). Like the Defendant, Williams was driving on Route 405. Williams did not testify that he saw an obstruction in the road before he passed the Defendant's vehicle. The Defendant vehicle's was only 20 to 25 yards behind Williams when it crossed over the yellow line. Williams did not testify that he saw an obstruction in the road after he turned around to pursue the vehicle. Therefore, the circumstances show that Williams had probable cause to believe that the Defendant committed Driving on Right Side of Roadway.

III. Conclusion

Officer Williams articulated specific facts, which provided him with probable cause to believe that the Defendant committed Driving on Right Side of Roadway. Since Driving on Right Side of Roadway is closely related to Driving on Roadways Laned for Traffic, Williams had probable cause to stop the Defendant.

ORDER

AND NOW, this _____ day of April, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Omnibus Pre-trial Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge