

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : CR-2024-836
:
vs. :
:
SETH ABDUL POWELL, :
Defendant. : Motion to Suppress

OPINION AND ORDER

This matter came before the Court for an evidentiary hearing on January 2, 2025, on the Defendant’s Motion to Suppress, filed October 15, 2024. The gravamen of that Motion are Defendant’s contentions that the Pennsylvania State Troopers who effected a traffic stop on the Defendant on December 31, 2023, lacked probable cause to do so, or that the traffic stop did not reasonably provide the Troopers with probable cause to undertake an investigation of the Defendant for operating a motor vehicle under the influence.

At the hearing on the Motion, the Commonwealth presented the testimony of Trooper Gary Kunkle. Trooper Kunkle testified that, on December 31, 2023, he was conducting traffic enforcement on Maynard Street in Williamsport, Lycoming County, Pennsylvania, when he conducted a routine, random computer check on a beige colored GMC SUV, bearing PA registration MDG3909. The data contained within the computer program used and maintained by the Pennsylvania State Police reported that the vehicle’s insurance was revoked. Based upon that computer report, Troop Kunkel stopped the vehicle and had contact with Seth Abdul Powell (hereinafter the “Defendant”). Trooper Kunkel noticed that the Defendant’s eyes were of a yellow or grey color. Trooper Kunkel noticed that the Defendant’s response to the Trooper’s request to see his license and registration and insurance information was “slow and sluggish.” Based upon the appearance of the Defendant’s eye color and his “slow and sluggish” response, the Trooper shifted his investigation from the reported insurance revocation to an investigation of driving under the influence.

Trooper Kunkel had the Defendant step out of his vehicle. Thereafter, Troop Kunkel and his partner, Corporal Joel Follmer, conducted both field sobriety tests and Advanced Roadside Impaired Driving Enforcement tests, which caused them to reach the conclusion that

the Defendant was impaired. They took him into custody and required him to submit to a blood test. That test confirmed their conclusion, and the Defendant was charged with driving while under the influence of a controlled substance. After the fact, the Trooper learned that the Defendant had insurance in force, and thus that the information in the data base used and maintained by the Pennsylvania State Police was inaccurate.

ISSUES PRESENTED:

1. WHETHER TROOPER KUNKLE HAD A REASONABLE BASIS FOR STOPPING THE DEFENDANT'S VEHICLE.
2. WHETHER TROOPER KUNKLE HAD PROBABLE CAUSE TO SHIFT HIS INVESTIGATION OF THE DEFENDANT FROM AN INVESTIGATION FOR DRIVING WITH REVOKED VEHICLE INSURANCE TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR A CONTROLLED SUBSTANCE.

RESPONSE TO ISSUES PRESENTED:

1. TROOPER KUNKLE HAD A REASONABLE BASIS FOR STOPPING THE DEFENDANT'S VEHICLE.
2. TROOPER KUNKLE HAD PROBABLE CAUSE TO SHIFT HIS INVESTIGATION OF THE DEFENDANT FROM AN INVESTIGATION FOR DRIVING WITH REVOKED VEHICLE INSURANCE TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR A CONTROLLED SUBSTANCE.

DISCUSSION:

1. TROOPER KUNKLE HAD A REASONABLE BASIS FOR STOPPING THE DEFENDANT'S VEHICLE.

Section 6308(b) of the Pennsylvania Vehicle Code provides as follows:

Whenever a police officer . . . has a 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. CONS. STAT. § 6308.

Section 1786 of the Pennsylvania Vehicle Code provides, in part, that “[a]n owner of a motor vehicle who ceases to maintain financial responsibility on a registered vehicle shall not operate or permit operation of the vehicle in this Commonwealth until proof of the required financial responsibility has been provided to the Department of Transportation.” 75 PA. CONS. STAT. § 1786(e).

Trooper Kunkle had a reasonable basis—based upon the computer check conducted—for believing that the beige colored GMC SUV, bearing PA registration MDG3909, was being operated in violation of 75 Pa.C.S. § 1786(e). Thus, Trooper Kunkel was justified in stopping the vehicle for the purposes outlined in 75 Pa.C.S. § 6308(b).

2. TROOPER KUNKLE HAD PROBABLE CAUSE TO SHIFT HIS INVESTIGATION OF THE DEFENDANT FROM AN INVESTIGATION FOR DRIVING WITH REVOKED VEHICLE INSURANCE TO DRIVING UNDER THE INFLUENCE OF ALCOHOL OR A CONTROLLED SUBSTANCE.

In the matter of *Commonwealth v. Bush*, our Superior Court observed the following:

Probable cause is made out when the facts and circumstances which are within the knowledge of the officer at the time of the [stop], 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. The question we ask is not whether the officer's belief was correct or more likely true than false. Rather, we require only a *probability*, and not a *prima facie* showing, of criminal activity. In determining whether probable cause exists, we apply a totality of the circumstances test. *Commonwealth v. Martin*, 627 Pa. 623, 101 A.3d 706, 721 (2014) (citation omitted) (emphasis in original). Pennsylvania law makes clear, however, that a police officer has probable cause to stop a motor vehicle if the officer observes a traffic code violation, even if it is a minor offense. *Chase, supra*.

Commonwealth v. Bush, 166 A.3d 1278, 1282-83 (Pa. Super. Ct. 2017); *see generally Commonwealth v. Slattery*, 139 A.3d 221, 222-23 (Pa. Super. Ct. 2016) (“If the alleged basis of a vehicular stop is to determine whether there has been compliance with the Commonwealth's vehicle code, it is incumbent 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.”) (citing *Commonwealth v. Spieler*, 887 A.2d 1271 (Pa. Super. Ct. 2005)).

Trooper Kunkel testified that, almost immediately after he mentioned the reason for his stop to the Defendant and asked the Defendant for his license, registration, and insurance information, he noticed that the Defendant’s eyes were of a yellow or grey color. Trooper Kunkel noticed that the Defendant’s response to the Trooper’s request to see his license and registration and insurance information was “slow and sluggish.” Based upon the appearance of the Defendant’s eye color and his “slow and sluggish” response, the Trooper shifted his investigation from an insurance infraction to driving while impaired. Trooper Kunkel had the Defendant step out of his vehicle. Thereafter, Troop Kunkel and his partner, Corporal Joel Follmer, conducted both field sobriety tests and Advanced Roadside Impaired Driving Enforcement tests, which caused them to reach the conclusion that the Defendant was impaired.

It is certainly true that, had the Pennsylvania State Police data bank accurately reported that the Defendant had insurance in place, no stop would have occurred. Troop Kunkel testified that he observed no Vehicle Code moving violation, and that the Defendant’s driving did not demonstrate any inability to operate safely. That “alternate set of facts” in which the stop never occurred, however, was not the set of facts presented to the Court. Rather, Trooper Kunkle was justified in stopping Defendant’s vehicle, based upon his reasonable reliance upon inaccurate computer information. Further, Trooper Kunkel was justified in observing Defendant’s physical condition, even though he stopped the Defendant for a completely unrelated reason. Finally, Trooper Kunkel reasonably concluded that the Defendant was under the influence of controlled substances, based upon the field sobriety tests which he conducted, and based upon the Advanced Roadside Impaired Driving Enforcement tests conducted by Corporal Joel Follmer.

AND NOW, this 3rd day of January, 2025, for the reasons more fully set forth above, Defendant's Motion to Suppress, filed October 15, 2024, is denied.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator
Lycoming County District Attorney's Office
Howard Benjamin Gold, Esquire