

COMMONWEALTH OF PENNSYLVANIA v. ELLIOT ROJAS

DUI – Traffic Stop -Suppression – Reasonable Suspicion

1. **The Defendant is charged with driving under the influence, possession of marijuana---small amount, and possession of drug paraphernalia.**
2. **In his Omnibus Pre-Trial Motion (“Motion”), the Defendant argues the police illegally stopped him and searched his truck.**
3. **The Court found that the traffic stop was constitutional; that the police had reasonable suspicion to make the stop; that the search of the truck was permissible where the officers had legitimate concern for officer safety; and the chemical testing after the obtaining of a search warrant was proper.**

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

COMMONWEALTH

:

No. CP-67-CR-6689-2016

v.

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:

:

ELLIOT ROJAS,

:

APPEARANCES:

Phoebe Yates, Esquire
Counsel for the Commonwealth

Eric W. White, Esquire
Counsel for the Defendant

ORDER AND SUPPORTING MEMORANDUM

AND NOW, this ____ day of February, 2017, the Court having held a hearing on the Defendant’s Omnibus Pre-Trial Motion, the Court hereby **DENIES** the motion for the following reasons.

Background

The Defendant is charged with driving under the influence, possession of marijuana--small amount, and possession of drug paraphernalia. In his Omnibus Pre-Trial Motion (“Motion”), the Defendant argues the police illegally stopped him and searched his truck. (Motion at 4-6.) He also argues for the suppression of all evidence obtained as a result of chemical testing of the blood draw after he was taken into custody. (*Id.* at 7.) The Court heard the Motion on January 30, 2017.

The Court heard testimony from Northeast Regional Police Officer Corey Sheaffer. On the night of September 24, 2016, he was on routine patrol traveling west on Saginaw Road in East Manchester Township behind a green and silver Dodge pickup truck. (N.T., 1/30/18, at 22.) Officer Sheaffer observed the truck drift to the right and the passenger side tires drift onto the fog line. (*Id.* at 22.) When he ran the registration plate through his computer, it came back with no expiration date, which Sheaffer identified as a “dead tag” or an unregistered plate. (*Id.* at 22.)

Officer Sheaffer then activated his emergency lights to initiate a traffic stop. (*Id.* at 23.) Sheaffer estimated that after he turned on his emergency lights, the truck continued to travel for 300-500 feet for around 45 seconds. (*Id.* at 24.) While he followed the truck with his emergency lights on, he observed the head and torso of the driver lean over 2 to 3 times at a 45 degree angle towards the center console. (*Id.* 23.)

Once the vehicle stopped, Sheaffer approached the vehicle and asked the driver, the Defendant, and a passenger to step out of the truck. (*Id.* at 24.) He asked them to step out of the vehicle for his own safety due to the furtive movements he witnessed while following the truck, and his belief that there was “a high probability that the Defendant could possibly be stashing a weapon or narcotics, or reaching for a weapon or narcotics.” (*Id.* at 26.) Sheaffer patted down both the Defendant and the passenger and found no weapons on their persons, and informed them he was conducting the pat down due to the furtive movements. (*Id.*)

Sheaffer then informed the Defendant and the passenger that he was going to search the truck, but was going to wait for his backup to arrive before beginning the search. (*Id.* at 27.) The backup then arrived and after briefing his backup to the situation, Sheaffer walked back to the Defendant and asked him if there was anything in the vehicle of which he needed to be aware. (*Id.* at 28.) Sheaffer stated that the Defendant “stated something to the effect of that there was a little bud in the vehicle[,]” which from his training and experience the Trooper knew bud to mean marijuana. (*Id.* at 28.) The Defendant stated that the bud was under the driver’s seat. (*Id.* at 29.) Sheaffer asked the Defendant if he was attempting to stash the marijuana while Sheaffer was attempting to stop him, to which the Defendant replied yes. (*Id.*) Defendant also indicated that he was on his way back from a friend’s house and that he had smoked marijuana there. (*Id.*)

Sheaffer then conducted a search of the truck and found a multi colored glass pipe on the rear passenger seat floor board, which he knew is commonly used for smoking marijuana;

he also found a partially burnt marijuana joint inside a pack of cigarettes on the passenger side dashboard. (*Id.* at 30.) Sheaffer could not find any marijuana in the place where Defendant indicated, but after questioning the Defendant again, Defendant indicated that the marijuana was under the rear seat of the vehicle and not the driver's seat as previously indicated. (*Id.*) Schaeffer found a substance under the rear seat which was field tested, which resulted in a positive test for marijuana, and was sent to the State Police Lab in Harrisburg. (*Id.*)

While talking with the Defendant, Sheaffer noticed the order of intoxicating beverages coming from the Defendant, and after the search of the vehicle, had the Defendant attempt a series of field sobriety tests. (*Id.* at 31.) At the conclusion of the testing¹, Sheaffer placed the Defendant under arrest for suspicion of Driving Under the Influence. (*Id.* at 31.) After being placed under arrest, Defendant agreed to a Drug Recognition Evaluation (DRE) at the scene, but then changed his mind and would not submit to the DRE evaluation at the Police Station. (*Id.* at 32.) Defendant was then taken to York County Central Booking and read the DL-26 form to consent to blood draw for chemical testing. The Defendant did not consent to the blood draw (*Id.*) At that point, Sheaffer then got a search warrant for the blood draw for chemical testing, which was shown to the Defendant (*Id.* at 33.) Defendant then submitted to the blood draw per the search warrant. (*Id.*)

¹ The adequacy of the Field Sobriety Tests that lead to the Defendant being placed under arrest for DUI is not at issue before this Court.

Discussion

The Traffic Stop

The parties dispute whether there was reasonable suspicion present for Officer Sheaffer to initiate a traffic stop on the defendant. The evidence in this case supports that the traffic stop was proper.

In *Commonwealth v. Chase*, the Supreme Court of Pennsylvania stated that “if the officer has a legitimate expectation of investigatory results,” that reasonable suspicion is sufficient to conduct a traffic stop. *Commonwealth v. Chase*, 960 A.2d 108 (Pa. 2008). Here, Sheaffer ran the registration plate and it came back without an expiration date. Through his experience this was indicative of an unregistered plate, or “dead tag,” which is a violation of the motor vehicle code. In conducting a traffic stop, Sheaffer would certainly gain an investigatory result, namely confirmation whether the vehicle had a current registration or not, along with the identity of the driver to potentially explain the dead tag response from the system. This stop would enable Officer Scheaffer to either determine the vehicle was unlicensed and to issue a citation, or to learn additional facts from the driver explaining why the vehicle was lawfully on the road. Accordingly, Officer Sheaffer had a reasonable suspicion to initiate the traffic stop.

The Search of the Truck

The Defendant also challenges under the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution the

search of the truck. Specifically, Defendant argues that Officer Sheaffer lacked probable cause to search the vehicle prior to informing the Defendant he was going to do so, and that his claim of authority to search the vehicle was coercive. (Motion at 4)

Officer Sheaffer was legally justified to search the Defendant's vehicle. Protective searches are justified when police have a reasonable belief that the suspect poses a danger. *Michigan v. Long*, 463 U.S. 1032 (1983). The search of a passenger compartment of an automobile is permissible if the officer possess a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts reasonably warrant the officer's belief that the suspect is dangerous and may gain immediate control of weapons. *Id* at 1049. Based upon the facts in the case at hand, Officer Sheaffer reasonably believed that the Defendant was potentially dangerous and was trying to conceal or retrieve a weapon. This was supported by the fact the Defendant did not immediately pull over once Officer Sheaffer engaged his emergency lights, instead traveling another 500 feet before stopping his vehicle. Officer Sheaffer also witnessed the defendant making furtive movements towards the area of the center console. Officer Shaffer could make a rational inference based upon his training and experience that the Defendant was attempting to reach for or conceal a weapon. This inference would establish a reasonable belief that the defendant was dangerous and would justify a protective search.

Further, in the case before the Court, the defendant admitted prior to the search being conducted that he was engaged in illegal activity by possessing illegal drugs, namely

marijuana. This in turn validated Officer Sheaffer's already existing concern that his safety might be at risk due to the Defendant's furtive movements and 45 second delay in pulling over, which suggested a potential attempt to conceal or retrieve a weapon. The fact that the Defendant was engaged in illegal activity with drugs provided a potential motive for him to utilize force against the officer to avoid apprehension. Accordingly, it would have been extremely hazardous for the officer to permit the Defendant and his passenger to return to the Defendant's vehicle without conducting a sweep for weapons upon the Defendant volunteering he possessed illegal drugs. Similarly, it would have been hazardous to leave it unresolved as to whether or not the Defendant had been concealing a weapon while a search warrant was obtained. A limited sweep for weapons was appropriate for officer safety under these facts, which created a reasonable suspicion to the officer that the Defendant had a weapon. Thus, Officer Sheaffer's claim of authority to search the vehicle was supported by the facts.

Officer Sheaffer's second search of the vehicle was also legally justified, but for distinct reasons. Sheaffer searched the truck a second time after the Defendant informed him of the true location of the marijuana as Officer Sheaffer was unable to locate it in the location Defendant initially indicated during his security sweep search. The prerequisite to conduct a warrantless search of a motor vehicle is probable cause to search, and no exigency beyond the inherent mobility of that vehicle is required. *Commonwealth v. Gary*, 91 A.3d 102 (Pa. 2014). Defendant's voluntary admission that there was marijuana in the vehicle created the

probable cause necessary for Officer Sheaffer to conduct the warrantless second search of the car to locate the contraband in the location the Defendant indicated.

At the hearing, Defendant attempted to draw a parallel to the case in *Commonwealth v. Cartagena*, in which the Superior Court did not uphold a protective sweep of that defendant's vehicle by police. 63 A.3d 294 (Pa.Super. 2010). However, Defendant's case is distinguishable from the situation in the *Cartagena* case in several aspects. The defendant in *Cartagena* pulled over immediately, whereas Defendant did not pull over for 45 seconds after Officer Schaffer engaged his emergency lights, suggesting to the officer the Defendant was trying to buy time to conceal or retrieve a weapon. The Suppression hearing transcript in *Cartagena* also contained no information about the officer's level of training or experience in conducting traffic stops, whereas the Court finds that Officer Sheaffer possessed advanced training on DUI stops. He testified to receiving such training as Standard Field Sobriety Testing training, Advanced Roadside Impairment Driving Enforcement (ARIDE) school, conducting complete traffic stops training at the North East County Drug Training Center, Improving Vehicle Patrol Officers Safety and Awareness which had information on DUIs, and "The Wolf and the Raven, PCP and Club Drugs" training through Lancaster County Public safety center which also touched on DUIs and drug DUIs. The Officer's extensive training and experience distinguishes this case from *Cartagena*.

The Blood Draw

The Defendant lastly challenges the taking of Defendant's blood sample and subsequent chemical testing of it, namely that once the Defendant indicated his refusal to consent to the blood draw, that the blood draw should not have been taken under any circumstances. (Motion at 6) However, the statute contains no such limitation.

The Pennsylvania standards for conducting chemical testing to determine the amount of alcohol or controlled substance can be found at 75 Pa.C.S. §1547. Specifically, the Statute outlines that if an individual arrested for a violation of 75 Pa.C.S. §3802 refuses to submit to chemical testing that "the testing shall not be conducted..." 75 Pa.C.S. §1547(b)(1). Defense argues that this language states, if an actor refuses to submit to chemical testing, that the testing shall not happen at all, even if a valid search warrant is obtained to conduct the testing. The Court finds this unpersuasive.

In considering a question of statutory construction, the Court is guided by the principles of the Statutory Construction Act. 1 Pa.C.S. §1921. Courts may not add provisions to statutes that the General Assembly has omitted unless the phrase is necessary to the construction of the statute. *Commonwealth v. Campbell*, 758 A.2d 1231, 1234 (Pa.Super 2000). A phrase necessary to the construction of a statute may be added if it does not conflict with the obvious purpose and intent of the statute or in any way affects its scope. *Commonwealth v. Fisher*. 400 A.2d 1284, 1287 (Pa. 1979). Courts do not have the power to insert words into a statutory provision where the Legislature has failed to supply it. *Worley v. Augustine*, 456 A.2d 558 (Pa.Super 1983).

If it was the intent of the legislature that once an actor refuses to submit to chemical testing that no testing shall occur, even if a valid search warrant is obtained, then it would state that expressly in the statute that this is the case. The intent of the Implied Consent Law is to encourage those arrested for Driving Under the Influence to cooperate with police to provide a blood draw. “The purpose of 75 Pa.C.S. § 1547 and prior enactments has been to facilitate the acquisition of chemical analyses and to permit their utilization in legal proceedings.” *Commonwealth v. Tylwalk*, 258 Pa. Super. 506, 511, 393 A.2d 473, 475 (1978) To read into the statute a ban on obtaining a search warrant once a suspect refuses a blood draw is not necessary to the construction of the statute, and it would conflict with the obvious purpose of the statute of facilitating chemical testing for DUI offenses. This is especially true in light of the fact that obtaining consent is in fact an exception to the requirement of obtaining a search warrant.

Conclusion

Every step of Officer Sheaffer’s actions in this case was legally justified and did not violate the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. The traffic stop was proper in light of the unregistered plate issue. The search of the truck was permissible where the officers had legitimate concern for officer safety. And the chemical testing after the obtaining of a search warrant was proper.

Disposition

For the foregoing reasons, the Court hereby **DENIES** the Defendant's Omnibus Pre-Trial Motion.

Copies of this Order to York County Clerk of Courts, Phoebe Yates, Esquire, Eric White, Esquire, and the Defendant, Elliot Rojas.

BY THE COURT:

CRAIG T. TREBILCOCK, JUDGE