

Franklin County Legal Journal

Vol. 39, No. 25

December 17, 2021

Pages 109 - 115

Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

Commonwealth of Pennsylvania, Plaintiff, v.

Joseph Roy Martin, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Criminal - Law No. 1381-2020

HOLDING: The Defendant's Motion to Suppress, asserting that incriminating evidence was obtained as the result of an unlawful traffic stop and therefore must be suppressed as fruit of the poisonous tree, is GRANTED.

HEADNOTES

Criminal Law – Presumptions and Burden of Proof

1. Where a suppression motion has been filed, the burden is on the Commonwealth to establish by preponderance of the evidence that the challenged evidence is admissible. Pa. R. Crim. P. 581(h), see also Commonwealth v. Andersen, 753 A.2d 1289,1294 (Pa. Super. 2000).

Automobiles – Arrest, Stop, or Inquiry; Grounds

2. A police officer has authority to stop a vehicle when he or she has reasonable suspicion that a violation of the Motor Vehicle Code is occurring or has occurred. 75 Pa.C.S.A. § 6308(b).

3. In order to establish reasonable suspicion, an officer must be able to point to specific and articulable facts which led him to reasonably suspect a violation of the Motor Vehicle Code. Commonwealth v. Farnan, 55 A.3d 113, 116 (Pa. Super. 2012) (citing Commonwealth v. Holmes, 14 A.3d 89, 95-96 (Pa. 2011)).

Automobiles – License or registration offenses, in general; Grounds; Arrest, Stop, or Inquiry

4. Police officers' knowledge that a vehicle is owned by individual whose driving privileges are suspended, coupled with the mere assumption that the owner is driving the vehicle, does not give rise to articulable and reasonable grounds to suspect that a violation of the Vehicle Code is occurring every time this vehicle is operated during the owner's suspension for purposes of determining the validity of a stop of the vehicle. Commonwealth v. McGraw, 118 A.3d 459 (Pa. Super. 2015) (unpublished)(citing Commonwealth v. Andersen, 753 A.2d 1289, 1294 (Pa. Super. 2000); Commonwealth v. Farnan, 55 A.3d 113, 114-15, 118 (Pa. Super. 2012); Commonwealth v. Hilliar, 943 A.2d 984, 990 (Pa. Super. 2008)).

Automobiles – License or registration offenses, in general; Grounds; Arrest, Stop, or Inquiry

5. Police officers' knowledge that a vehicle was owned by a defendant whose driving privileges were suspended, coupled with the mere assumption that defendant was driving the vehicle, did not give rise to articulable and reasonable grounds to suspect that a violation of Vehicle Code had occurred, and as such, the officers' stop of defendant's vehicle was not justified. Commonwealth v. Andersen, 753 A.2d 1289, 1294 (Pa. Super. 2000).

Appearances:

William McGinnis, Esquire *for the Commonwealth*

Steven Kulla, Esquire *for Defendant*

OPINION

Before Sponseller, J.

Before the Court is Defendant's *Omnibus Motion to Suppress Evidence Obtained as a Result of Improper and/or Illegal Stop of Motor Vehicle* ("Motion to Suppress"), filed December 2, 2020. Defendant is facing charges of two counts of Driving Under the Influence of a Controlled Substance and one count of Driving Under Suspension stemming from a traffic stop which occurred in the early morning hours of February 26, 2020. Defendant avers that the traffic stop was improper and that the evidence gathered as a result of the traffic stop must be suppressed as fruit of the poisonous tree. We agree. For the reasons that follow, Defendant's Motion shall be granted.

I. FACTUAL AND PROCEDURAL HISTORY

In the early morning hours of February 26, 2020, Trooper Colton Wassell ("Trooper Wassell") of the Pennsylvania State Police observed a red 2018 Hyundai Elantra traveling west on Lincoln Way West in Chambersburg. Recognizing the vehicle as one he had stopped a week earlier, Trooper Wassell began following it. Trooper Wassell testified that the only reason he began following the Hyundai was because he had issued its owner, a female, a citation for driving under suspension at the prior traffic stop. Trooper Wassell testified that he followed the vehicle for "five minutes" and that he never observed the operator make any driving infractions.

Trooper Wassell stated that, looking through the rear window of the Hyundai, he believed the operator to be a female with long hair pulled up into a "bun" style. He never saw the vehicle from the side and never got a view of the driver's face. Trooper Wassell also testified that, at the time he had stopped the female owner before, she had not been wearing her hair in a bun, but in fact had long dreadlocks. Nevertheless, believing the operator to be the same female to whom the vehicle was registered and to whom Trooper Wassell had issued a citation prior, Trooper Wassell initiated a traffic stop of the vehicle.

Upon approaching the driver's side window, Trooper Wassell immediately recognized that the operator was not the female owner of the vehicle. In fact, Defendant is the female owner's brother, and was authorized to drive the vehicle on the morning in question. Defendant, a 6'1" male with a beard, did not resemble his 5'1" sister in any way. Defendant did not have long hair and was in fact wearing a close-fitting skullcap at the time of the

traffic stop. He was, however, wearing a winter coat with a fur-lined hood which may have been visible to Trooper Wassell through the rear window and mistaken for a “bun” style hairdo.

Although he observed that the driver was not in fact the female owner of the vehicle, Trooper Wassell still initiated contact with Defendant. When Defendant rolled down the driver’s side window of the vehicle, Trooper Wassell immediately smelled the fresh odor of burnt marijuana emanating from the passenger compartment. Defendant subsequently confessed to having recently smoked marijuana, showed signs of impairment on a field sobriety test, and submitted to a blood draw which revealed the presence of THC in his system.

Defendant contends that all of the evidence that was gathered after Trooper Wassell initiated the traffic stop was obtained as the result of an illegal stop and therefore must be suppressed. Defendant contends that, at the time Trooper Wassell initiated the traffic stop, Trooper Wassell did not have reasonable suspicion to stop his vehicle.

On December 2, 2020, Defendant filed the instant *Motion to Suppress*. A hearing was held on May 14, 2020, at the conclusion of which this Court ordered the parties to submit briefs on the issue. Defendant submitted his brief in support of his *Motion to Suppress* on May 25, 2021. The Commonwealth submitted their brief in opposition to the *Motion* on June 4, 2021. Having considered the original motion, evidence adduced at the May 14, 2020, hearing, and the arguments by counsel, this matter is now ripe for decision.

II. DISCUSSION

Pennsylvania Rule of Criminal Procedure 581 sets forth the law in Pennsylvania regarding the suppression of evidence, in accordance with the Fourth, Fifth, and Sixth Amendments to the Constitution. The explanatory comment of Pa. R. Crim. P. 581 explains that “the rule is designed to provide one single procedure for the suppression of evidence alleged to have been obtained in violation of the defendant’s rights.” The Commonwealth bears the burden “of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the defendant’s rights.” Pa. R. Crim. P. 581(h).

In order to justify a traffic stop, the Commonwealth must show that the police had reasonable suspicion that a violation of the motor vehicle code is occurring or has already occurred. 75 Pa.C.S. § 6308 (b). Our Supreme Court defines reasonable suspicion as:

a less stringent standard than probable cause necessary

to effectuate a warrantless arrest, and depends on the information possessed by police and its degree of reliability in the totality of the circumstances. In order to justify the seizure, **a police officer must be able to point to “specific and articulable facts” leading him to suspect criminal activity is afoot.** In assessing the totality of the circumstances, courts must also afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer’s experience and acknowledge that innocent facts, when considered collectively, may permit the investigative detention. Thus, under the present version of Section 6308(b), in order to establish reasonable suspicion, an officer must be able to point to **specific and articulable facts** which led him to reasonably suspect a violation of the Motor Vehicle Code[.]

Commonwealth v. Farna[n], 55 A.3d 113 at 116, citing *Commonwealth v. Holmes*, 609 Pa. 1, 14 A.3d 89, 95-96 (Pa. 2011) (internal citations omitted) (emphasis in original).

The law is also clear regarding traffic stops for driving under suspension. The mere fact that a vehicle is registered to a person with a suspended license is **not** sufficient to justify a stop of the vehicle. Rather, “the Commonwealth must adduce additional evidence to justify the belief that the driver is the owner whose license was suspended.” *Commonwealth v. McGraw*, 2015 Pa. Super. Unpub. LEXIS 3327, 118 A.3d 459 (Pa. Super. 2015) (unpublished); citing *Commonwealth v. Andersen*, 2000 PA Super 153, 753 A.2d 1289 at 1294 (Pa. Super. 2000); *Commonwealth v. Farnan*, 2012 PA Super 221, 55 A.3d 113 at 114-15, 118; *Commonwealth v. Hilliar*, 2008 PA Super 22, 943 A.2d at 990 (Pa. Super. 2008).

Defendant, in his brief, relies heavily on *Commonwealth v. Andersen*, 2000 PA Super 153¹. The facts in *Andersen* are similar to the facts in the instant case, where a police officer initiated a traffic stop on a black Camaro which he had encountered the night before. In that prior encounter, the officer had discovered that the owner of the Camaro had a suspended license and warned him not to drive the vehicle. The following day, with no other reason to stop the Camaro, and no view of the driver, the officer in *Andersen* initiated a traffic stop and discovered the defendant to be intoxicated and carrying illegal drugs.

The Commonwealth states that the instant case can be distinguished

¹ The Court notes that *Andersen* has been partially superseded by statute. See *Commonwealth v. Adaire*, 2019 Pa. Super. Unpub. LEXIS 2325, 219 A.3d 237. At the time *Andersen* was decided, the “articulable and reasonable grounds” standard had been equated with probable cause, but the relevant statute was revised in 2003 when the legislature replaced it with the less stringent standard of “reasonable suspicion.” *Hilliar*, 2008 PA Super 22 at n.1. Nevertheless, *Andersen* remains persuasive authority. *McGraw*, 2015 PA. Super. Unpub. LEXIS 3327 at n.6.

from *Andersen* because, in *Andersen*, the police officer did not make any attempt to identify the driver of the vehicle, and offered no evidence that they had a description of the driver of the vehicle at the time of the stop.² The Commonwealth avers that it has met its burden of providing specific and articulable facts to justify reasonable suspicion because Trooper Wassell had specific knowledge that the owner of the vehicle had a suspended license and because he had a “reasonable belief” to that the female owner of the car was driving. We are not persuaded.

Trooper Wassell testified that he did not, at any time prior to the stop, attempt to view the driver from any vantage other than through the rear window. Thus, the only view of the driver by Trooper Wassell was through the rear window, partially obstructed by a head-rest, in the early morning darkness, from car lengths behind the vehicle. Furthermore, the Commonwealth pointed out in their brief yet another obstruction in Trooper Wassell’s vision – the fur-lined hood of his winter coat. The Commonwealth also correctly states in their brief that “an individual’s size and weight, or if the person is male or female, cannot be determined while seated in a moving vehicle at night.” The number of obstructions in Trooper Wassell’s view made his ability to identify the driver nearly impossible, and indeed, he believed a 6’1” bearded male wearing a skullcap to be a 5’1” female with a “bun” style hairdo.

While the Court does not doubt the sincerity of Trooper Wassell’s claim that he believed the driver to be the female registered owner, hindsight makes it clear that Trooper Wassell’s eyes deceived him. Additionally, Defendant submitted into evidence four still video shots taken from Trooper Wassell’s on-board camera, and nothing about the Defendant’s appearance from the rear looked anything like a “bun” style hairdo. Even if it did, Trooper Wassell testified that at the time he stopped the female registered owner a week earlier, she was not wearing her hair in a bun. Therefore, even assuming *arguendo* that a similar hairstyle alone could be considered sufficient grounds to identify a driver, such evidence of similar hairstyles has not been adduced in this case.

We also note that the standard for reasonable suspicion is not overly burdensome. In *Hilliar*, an officer identified a vehicle which was registered to a middle-aged male with a suspended license. After observing that the driver appeared to be a middle-aged male reasonably matching the description of the driver, he initiated a traffic stop and discovered the

² The Commonwealth attempts to rely on a passage from *Farnan*, 55 A.3d 113, pointing out that the officer in that case did not need to be “absolutely certain that Appellant was driving under a suspended license in order to commence his investigation.” *Farnan* at 118. This reliance is inapposite, as in *Farnan*, there was no question as to whether the owner of the vehicle and the driver were one in the same. The driver in *Farnan* had been clearly identified as the owner. The question in *Farnan* related to whether the officer had reason to believe, acting on thirty (30) day old information, that the defendant’s license was suspended. Thus, it is inapplicable here.

defendant intoxicated. The Superior Court in *Hilliar* found that an officer's observation that the driver matched the gender and general age of the driver constituted reasonable suspicion to substantiate the stop.

Conversely, in *McGraw*, the Superior Court upheld a trial court's finding that the reasonable suspicion standard had **not** been met in a case where the officer observed a vehicle owned by a female with a suspended license, and where the officer observed the driver to be a female. The subsequent traffic stop revealed that the driver of the vehicle was, in fact, not its owner, who was sitting in the passenger seat. Unlike in *Hilliar*, even though the Commonwealth had presented evidence that police observed the driver and owner both to be female, the Commonwealth had not presented any evidence that they were around the same age. Taken alone, in the circumstances of that case, the Superior Court upheld suppression.

In this case, we find that given the totality of the circumstances and the number of things preventing a clear view of the driver by Trooper Wassell, the weight of the "bun" style hairdo evidence is so minimal that Trooper Wassell had no reason to believe that the owner and the driver of the Hyundai were one and the same *except* for the vehicle's registration to the female owner. Furthermore, even if we were to view Trooper Wassell's identification with any credibility, the evidence presented does not even meet the facts of *McGraw*, let alone *Hilliar*. The Commonwealth did not present any evidence of the owner and driver sharing a *gender*, let alone being members of a similar age group. Thus, even if the driver had, indeed, been a female with a "bun" style hairdo, it is unlikely even that would be sufficient to justify the stop.

Given the above findings, the stop was improper, and any evidence obtained as a result of the improper stop must be suppressed.

III. CONCLUSION

In conclusion, we find that Defendant's *Omnibus Motion to Suppress Evidence Obtained as a Result of Improper and/or Illegal Stop of Motor Vehicle* is meritorious, that the traffic stop in question was illegal, and that the evidence obtained during the stop is inadmissible under the Exclusionary Rule. For these reasons, Defendant's *Motion* shall be **GRANTED**. An appropriate Order follows.

ORDER OF COURT

AND NOW, this 11th day of June, 2021, upon review and consideration of the Defendant's *Omnibus Motion to Suppress Evidence Obtained as a Result of Improper and/or Illegal Stop of Motor Vehicle*, filed December 2, 2020, the evidence of record, arguments of counsel, and the applicable law,

IT IS HEREBY ORDERED that the Defendant's motion is **GRANTED** for the reasons fully set forth in the attached Opinion.

Pursuant to the requirements of Pa.R.Crim.P. 114 (B)(1), (2) and (C)(1), (2), the Clerk shall promptly serve this Order or court notice on each party's attorney, or the party if unrepresented; and shall promptly make docket entries containing the date of receipt in the Clerk's office of the Order or court notice; the date appearing on the Order or court notice; and the date and manner of service of the Order or court notice.