

COMMONWEALTH OF PENNSYLVANIA  
v. KEITH L. BEADLE, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Criminal Action No. 228-2005

*Driving Under Influence; Motion to Suppress; Probable Cause; Due Process; Preservation of Video Tape*

1. Defendant failed to establish bad faith on the part of officers where they did not preserve a videotape where their failure to preserve the video recording of this traffic stop did not comply with the Pennsylvania State Police Special Order in effect at that time, but did comply with the accepted practice and procedures in place at their barracks.
2. Mere negligence on the part of the police, without any showing of bad faith, does not support a due process violation.
3. Defendant failed to satisfy the two-prong test set out by the United States Supreme Court in California v. Trombetta, 467 U.S. 479 (1984), and adopted by the Pennsylvania Superior Court in Demis: (1) evidence must possess an exculpatory value that was apparent before the evidence was destroyed and (2) evidence must be of such a nature that a defendant would be unable to obtain comparable evidence by other means reasonably available where the Trooper testified that he routinely pulled tapes for copying, and thus preservation, if only something unusual had happened and here nothing unusual occurred; we have nothing more than Defendant's assertion that the tape is potentially exculpatory, an argument the Superior Court found to be deficient in Gamber; Defendant appears to be able to prepare and present a complete defense.

Appearances:

David W. Rahauer, Esq., *First Assistant District Attorney*

David S. Keller, Esq., *Counsel for Defendant*

OPINION

Walsh, J., November 9, 2005

A. Background

Defendant Keith L. Beadle is charged with Driving Under Influence of Alcohol or Controlled Substance.[1] Defendant was arrested on December 10, 2004 following a traffic stop and the Criminal Complaint accuses Defendant of the following additional summary violations of the Vehicle Code: Careless Driving,[2] Maximum Speed Limits,[3] Driving on Roadways Laned for Traffic[4] and Use of Multiple-Beam Road Lighting Equipment.[5] Defendant submitted[6] an Omnibus Pre-Trial Motion seeking to suppress all evidence obtained following the December 10, 2004 traffic stop. The

court set the matter for hearing on August 11, 2005.

At the beginning of the hearing, defense counsel presented a supplemental motion, which had been mailed to the District Attorney on or about July 12, 2005 in the form of a letter. Through the Supplemental Motion, Defendant asks the Court to disregard any evidence related to the traffic stop offered by the Commonwealth at the hearing because the Commonwealth failed to preserve the videotape from the police cruiser. The Court heard argument from Defendant and the Commonwealth, as well as testimony from Trooper Craig Finkle. The Court took the Supplemental Motion under advisement and proceeded with the hearing.

With regard to the Motion to Suppress, the Court heard testimony from Trooper Craig Finkle, Trooper Terri B. Neidigh, formerly Bailey, and Brenda Talhelm ("Talhelm") and the Court entertained argument from counsel. At the close of the hearing, the Court requested post-hearing submissions from counsel. In response to that request, Defendant submitted a Brief to the Court on or about October 3, 2005 and the Commonwealth submitted a Memorandum to the Court on or about October 11, 2005.

### B. Findings of Fact

After having considered the record of the proceedings, we make the following findings of fact:

1. In the early morning hours of Friday, December 10, 2004, Trooper Craig Finkle was driving a marked Pennsylvania State Police patrol unit west on State Route 30 in St. Thomas Township near the intersection of Hade Road.

2. Trooper Neidigh accompanied Trooper Finkle.

3. The road conditions at 12:30 a.m. were wet and slightly foggy.

4. Trooper Finkle observed an eastbound vehicle with its high beams on and he characterized the headlights as "extremely bright."

5. As the eastbound vehicle passed the westbound State Police vehicle operated by Trooper Finkle, Trooper Finkle noted that it was traveling at a high rate of speed.

6. Trooper Finkle turned his vehicle around and began traveling eastbound behind the other vehicle. As he closed in on the other vehicle, Trooper Finkle activated his emergency lights in the area of Burger King and Frank Road.

7. There were no vehicles between Trooper Finkle's patrol unit and the vehicle being followed.

8. Trooper Finkle testified credibly that he clocked the other vehicle for three-tenths to five-tenths of a mile.

9. Trooper Finkle testified that he stopped the other vehicle primarily for its use of high beams, followed by its high rate of speed.

10. Trooper Neidigh also testified that the lights on the eastbound vehicle were very bright causing her to have to squint as the vehicle came closer.

11. Trooper Neidigh testified that when the other vehicle was between Back Creek and Frank Road, she looked at the speedometer and it was around 80 mph.

12. Talhelm testified that she was a passenger in the Dodge Magnum operated by the Defendant on that night.

13. Talhelm further testified that she was the owner of the Dodge Magnum, having purchased it only about two weeks before the traffic stop.

14. Talhelm testified that the Defendant driver had consumed three to four beers in the prior

four hours and that she had consumed two to three beers in that same period of time.

### C. Stipulation of Counsel

Counsel for the parties made and filed the following Stipulations of Fact, which we quote verbatim:

1. That the issue was raised at the hearing on Defendant's Omnibus Pretrial Motion held August 11, 2005 as to the activation of the videotape machine in the Pennsylvania State Police cruiser on the night of Defendant's arrest.
2. That Trooper Craig Finkle, the arresting officer, testified in that regard as follows:
  - a. In answer to the question by ADA Rahouser "What activates your taping system?", "When I turned the overheads on." (N.T. 20, lines 3-4)
  - b. In response to the question by ADA Rahouser "So everything from your initial observation until you approached Burger King and turned on the emergency light is not part of any tape?", "No." (N.T. 20, lines 7-10)
  - c. In response to the question by ADA Rahouser "So the tape would have been activated about Frank Road?", "Correct." (N.T. 21, lines 20-22)
3. That Trooper Terri B. Neidigh testified, on that issue, as follows:
  - a. Question by Attorney Keller: "Do you - if you know, do you know how you go about activating the videotape in the cruiser?"  
  
Answer: "You just turn on the camera at the beginning of the shift. You hit the power button and it would automatically come on when the lights come on."  
  
Question by Attorney Keller: "When you say the lights, you mean - "  
  
Answer: "The emergency lights."
4. That ADA Rahouser, based upon the information presented by Trooper Finkle and Trooper Neidigh, argued to the Court on the preliminary issue on the failure of the Commonwealth to preserve the videotape, as follows:

The tape, it seems to me, is a supplement, not an actual, necessarily a totality of what happened. The tape apparently does not activate until the lights and siren activate. I assume they are connected together. So, if there are preliminary observations that the trooper would have made prior to turning on his lights and siren, they would not have been captured on the tape regardless. (N.T. 11, lines 21-25 and N.T. 12, lines 1-3)
5. That counsel have, since the hearing, determined that the testimony by Trooper Finkle was inaccurate in that it is, in fact, possible to activate the videotape in the cruiser without activating the emergency lights and/or siren.

### D. Defendant's Supplemental Motion

Defendant argues that the Commonwealth's failure to preserve the videotape that recorded the traffic stop in question when there was a Pennsylvania State Police Special Order in effect requiring the preservation of such videotapes violates his rights to due process. The Commonwealth denies any violation of Defendant's due process rights. Further, the Commonwealth alleges that the videotape could not have been preserved at the time of the traffic stop due to the procedure Trooper Finkle believed he was to follow at the time of the traffic stop.[7]

At the time of the hearing, Trooper Finkle testified that the video camera in his police cruiser was activated when the cruiser's emergency lights were activated. Thus, there would have been no video recording of anything prior to the Trooper's activation of the emergency lights. However, after the hearing, counsel submitted a stipulation correcting Trooper Finkle's description of how the video camera works. According to counsel's stipulation, it is possible to activate the video camera without activating the emergency lights. Counsel do not specify how it is possible to do so.

Defendant argues that the failure to preserve the videotape shows bad faith on the part of the troopers. We disagree. We found both troopers to be credible. It does not appear from Trooper Finkle's testimony or Trooper Neidigh's testimony that either of them was aware of their ability to activate the video camera short of activating the emergency lights. Although their failure to preserve the video recording of this traffic stop apparently did not comply with the Pennsylvania State Police Special Order in effect at that time, it did comply with the accepted practice and procedures in place at their barracks. We note this not to excuse their failure to abide by a Pennsylvania State Police Special Order, but rather as further evidence of a lack of bad faith on the part of these troopers. The burden to establish bad faith rests on Defendant, United States v. Seibert, 148 F.Supp. 2d 559 at 568 (E.D. Pa. 2001), and he has failed to meet that burden. "Mere negligence on the part of the police, without any showing of bad faith, does not support a due process violation." Id.

In the Seibert case, the court uses bad faith as a threshold issue, choosing not to discuss other issues as soon as it finds that the defendant failed to satisfy the bad faith requirement. Although we find that Defendant failed to make a threshold showing in this case, we will address whether the destruction of videotape violates Defendant's right to due process.

Defendant is correct in pointing out that there is no case law directly on point. Defendant relies on Commonwealth v. Demis, 588 A.2d 30 (Pa. Super. Ct. 1991). The court in Demis held that neither the federal nor state constitution impose a requirement for preservation of a sample of body fluid or breath where the results of the chemical test are inculpatory. Here, we are not dealing with the preservation of a sample and the results of a test of that sample. However, Defendant argues that "[u]nder the Pennsylvania Constitution, the Court denied the suppression motion noting that the defendant had not alleged that the evidence was exculpatory.." Def. Brief at 4. However, the Demis court relies heavily on Commonwealth v. Gamber, 506 A.2d 1324 (Pa. Super. Ct. 1986). In Gamber, the defendant argued that his blood sample would have been potentially exculpatory and the Superior Court affirmed the trial court decision finding the defendant guilty of driving under the influence. Gamber, 506 A.2d at 1324. Here, Defendant makes a similar argument: the videotape is potentially exculpatory.

We find that Defendant failed to satisfy the two-prong test set out by the United States Supreme Court in California v. Trombetta, 467 U.S. 479 (1984) and adopted by the Pennsylvania Superior Court in Demis: (1) evidence must possess an exculpatory value that was apparent before the evidence was destroyed and (2) evidence must be of such a nature that a defendant would be unable to obtain comparable evidence by other means reasonably available. As to the first prong, we note that Trooper Finkle testified that he routinely pulled tapes for copying, and thus preservation, only if something unusual had happened. Here, nothing unusual occurred and we have nothing more than Defendant's assertion that the tape is potentially exculpatory, an argument the Superior Court found to be deficient in Gamber. As to the second prong, we note that Defendant appears to be able to prepare and present a complete defense. The Commonwealth's evidence consists of the testimony of two officers; they have no videotape to aid their case. Defendant called Talhelm to testify on his behalf and he will be able to do the same at trial. The matter will become a credibility determination for the jury. Thus, we do not believe the destruction of the videotape violates Defendant's right to due process.

Since Defendant failed to show bad faith, we deny his Supplemental Motion and we will consider the evidence offered at the August 11, 2005 hearing in determining his Omnibus Pretrial Motion.

#### E. Defendant's Omnibus Pretrial Motion

Defendant's Omnibus Pretrial Motion asserts that on December 10, 2004 Trooper Finkle arrested Defendant following a traffic stop and that the traffic stop was executed in the absence of probable cause. Defendant's Motion asserts that the high beams on the vehicle operated by Defendant, which was a Dodge Magnum owned by Talhelm, were not in use and thus could not have been a basis for the stop. Further, Defendant's Motion asserts that Defendant's speed was substantially less than that apparently observed by Trooper Finkle and that Trooper Finkle failed to clock Defendant's speed for the required three-tenths of a mile.

Trooper Finkle testified that he observed high beams in use on the vehicle operated by Defendant on December 10, 2004. R. at 16. Trooper Neidigh testified that the lights on the vehicle were "very bright" and that they caused her to squint. R. at 31. As earlier stated, we found both officers to be credible witnesses. Talhelm testified that the high beams were not in use. R. at 40. She also testified that she was the passenger in the vehicle and Defendant was the operator at the time of the traffic stop. R. at 39. She further testified that she had only owned the vehicle for about two weeks at the time of this traffic stop. R. at 39. She testified that she had drunk two or three beers that evening as well. R. at 43. We note that Talhelm was not in the best position to determine whether the high beams were in use: she was a passenger in a car that was new to her. Also, we note that Talhelm testified that she knew the high beams were not on "because of [sic] the fog lamps have [sic] to be on." R. at 40. Talhelm further testified, "if you turn the high beams on the fog lamps go off." R. at 40. Talhelm testified that the effects of having the high beams on in fog would be that you would not see very much in front of you at all. Finally, Talhelm testified to being cautious and being careful with her new car. R. at 40 and 41. In sum, Talhelm would have us believe that she permitted Beadle, after he consumed 3 or 4 beers, to drive her new car at about 50 miles an hour on a wet foggy night. Under all of the circumstances, we find the Troopers' direct observations more convincing.

Trooper Finkle testified that he observed Defendant's vehicle traveling at a high rate of speed and that after turning his car around and catching up to Defendant, he followed Defendant for three-tenths to five-tenths of a mile before he activated his emergency lights. R. at 16-18. Trooper Finkle later clarified that he clocked Defendant for three-tenths to five-tenths of a mile. R. at 23. Trooper Finkle did state that he was estimating the distance. R. at 28. Trooper Neidigh testified that as she and Trooper Finkle followed Defendant she noted a speed of approximately 80 miles per hour on the speedometer. R. at 32. This was in an area with a speed limit of 55 miles per hour. Again, Talhelm testified that from her vantage point as the passenger she observed that Defendant was traveling at about fifty miles per hour. R. at 41. Talhelm testified that the vehicle has bucket seats and that the dash is not a flat dash. R. at 45. Again, we find that the Troopers' testimony regarding their observations of the speed of the Beadle vehicle to be more credible than the testimony of Talhelm.

For the reasons set forth above, we find there was probable cause supporting the traffic stop. Therefore, Defendant's Motion to Suppress is denied.

#### ORDER OF COURT

November 9, 2005, upon consideration of the Defendant's Omnibus Pretrial Motion, the evidence, the arguments and briefs of the parties, and the law, it is ordered that the Defendant's Supplemental Motion is denied.

It is further ordered that Defendant's Omnibus Pretrial Motion seeking suppression of all evidence obtained following the traffic stop is denied.

It is further ordered that the foregoing determinations shall be final, conclusive and binding at trial, except as otherwise provided by law.

[2] 75 Pa.C.S.A. §3714.

[3] 75 Pa.C.S.A. §3362(a)(3).

[4] 75 Pa.C.S.A. §3309(1).

[5] 75 Pa.C.S.A. §4306(a).

[6] It does not appear from the record that Defendant's Motion was filed prior to its review by the court.

[7] At the hearing, Trooper Finkle testified that at the time of the traffic stop, the tape would have been preserved only if he had asked the Corporal to remove the tape from the police cruiser and make a copy of it. He further testified that he would have made such a request only if there were something he deemed unusual about the traffic stop. Since he did not deem this traffic stop to be unusual, he did not make a request for the tape to be copied. Thus, the tape was not preserved. R. at 8-9.