

SUMMARY

Defendant, charged with numerous drug offenses, filed this motion to suppress all evidence seized during a traffic stop, alleging that the stop was made in the absence of probable cause or reasonable suspicion. In the alternative, Defendant argues that the proffered justification for the stop is merely and impermissibly pretextual.

After careful consideration, the Court finds that reasonable suspicion existed to justify the stop. Further, Defendant cannot show that the proffered justification was merely pretextual. Defendant's motion to suppress is **DENIED**.

FACTS

_____ In the early morning hours of February 14, 2012, Corporal Matthew Long of the Delaware State Police and Senior Probation Officer Kevin McClure, operating together in conjunction with the Governor's Task Force, instituted a traffic stop, seizing Anthony McNeil (Defendant) as he traveled on Route 1 in Dover, Delaware. As Cpl. Long approached Defendant's vehicle pursuant to that stop, he recognized the smell of burnt marijuana. Accordingly, Cpl. Long instructed Defendant to exit the vehicle, at which time Cpl. Long discovered marijuana in plain view.

Defendant was charged with a series of drug and traffic offenses. He filed the instant motion praying that the Court suppress all evidence seized on the grounds that the traffic stop was not supported by probable cause or reasonable suspicion. Further, Defendant alleged that the proffered justification for the detention was pretextual. A hearing was held on the matter, during which the Court heard testimony from Cpl. Long, SPO McClure and Defendant regarding the sequence of events

leading up to the traffic stop.

Cpl. Long and SPO McClure testified that they were traveling south on Route 13 in Dover when they received a bulletin instructing them to be on the lookout for a gold sedan leaving Star Hill, an area known for drug activity, and traveling north on Route 13. As they paused at a red light at Webbs Lane, they observed Defendant traveling north in a vehicle matching that description. Without more, the officers turned around to follow Defendant onto the Puncheon Run connector toward Route 1.

Cpl. Long and SPO McClure testified that, while they were traveling behind Defendant, he committed a series of traffic offenses leading them to believe that Defendant was driving under the influence. First, Defendant failed to utilize his turn signal as the right lane in which he was traveling ended, forcing him to merge into the left lane. Second, as Defendant merged onto Route 1, he failed to utilize his turn signal for 300 feet. Next, Defendant followed a semi-truck in the right lane of Route 1 too closely. As of that point, the officers asserted that, while those actions would have sufficed to legitimize a lawful traffic stop, the officers would not actually have made such a stop. However, Defendant (then in the left lane, passing the semi) was observed by Cpl. Long and SPO McClure swerving within that lane approximately three to four times. After having passed the truck, Defendant moved back into the right lane, leaving his turn signal on for an extended period of time. It was at this point that Cpl. Long and SPO McClure initiated the traffic stop, believing Defendant to be operating his vehicle while substance impaired.

STANDARD OF REVIEW

“When presented with a motion to suppress, the Delaware Courts have consistently stated that the Defendant bears the burden of establishing that the challenged search or seizure violated his rights under the United States Constitution, the Delaware Constitution or the Delaware Code. The Defendant must demonstrate that he is entitled to the relief requested by a preponderance of the evidence.”¹

DISCUSSION

_____ Defendant presents what may be characterized as two alternative arguments for suppression. First, Defendant argues that the traffic stop was not supported by probable cause or reasonable suspicion. Second, Defendant argues that Cpl. Long’s and SPO McClure’s proffered justification for the traffic stop is pretextual.

“A traffic stop is reasonable if it is supported by reasonable suspicion or probable cause that a traffic violation has occurred.”² “For a Court to determine if there is reasonable suspicion, it must look at the totality of the circumstances.”³ Those circumstances are to be considered from the perspective of “a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such officer’s subjective interpretation of those facts.”⁴

Defendant’s vehicle was identified leaving an area known for drug activity.

¹ *State v. Heath*, 929 A.2d 390, 397 (Del. Super. 2006) (citing *State v. Dollard*, 788 A.2d 1283 (Del. Super. 2001)).

² *State v. Rickards*, 2 A.3d 147, 151 (Del. Super. 2010).

³ *Heath*, 929 A.2d at 404.

⁴ *Rickards*, 2 A.3d at 152.

Without independent evidence, his presence in that area cannot serve to justify the subsequent stop.⁵ In this case, Defendant's traffic offenses were individually minor, but were numerous. Particularly given the observed swerving, independent evidence provided justification for the stop on the officers' reasonable suspicion that Defendant was operating a vehicle under the influence.

Accordingly, Defendant's motion must rest upon his second argument: that the State's proffered justification for the stop was merely pretextual. In *Whren v. United States*,⁶ the Supreme Court held that subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." In *State v. Heath*, this Court held that purely pretextual stops do not comport with Article I, Section 6 of the Delaware Constitution. Thus, this Court established a three-part burden-shifting test to address pretext challenges within Delaware's constitutional framework.

Under *Heath*, where a police officer's proffered motive is challenged as pretextual, upon the State's having established that the stop was justified by either probable cause or reasonable suspicion, the burden shifts to the defendant to show that an unrelated purpose motivated the stop; and that, in the absence of that unrelated purpose, a reasonable police officer would not have made the stop.⁷

"The defendant meets this burden by showing that:

- (1) he was stopped only for a traffic violation;

⁵ *Heath*, 929 A.2d at 404.

⁶ 517 U.S. 806, 813 (1996).

⁷ *Heath*, 929 A.2d at 403.

- (2) he was later arrested for and charged with a crime unrelated to the stop;
- (3) the crime or evidence of the crime was discovered as a result of the stop;
- (4) the traffic stop was merely a pretextual purpose, alleging that the officer had a hunch about, or suspected the defendant of, a non-traffic related offense *unsupported* by reasonable suspicion; and
- (5) the pretext can be inferred, at least, when the suppression hearing evidence is presented.”⁸

_____Further, this Court identified six, non-exhaustive factors to consider in determining whether the defendant meets this burden. Those factors include:

- (1) evidence of the arresting officer’s non-compliance with written police regulations;
- (2) evidence of the abnormal nature of the traffic stop;
- (3) testimony of the arresting officer that his reason for the stop was pretextual;
- (4) evidence that the officer’s typical employment duties do not include traffic stops;
- (5) evidence that the officer was driving an unmarked car or was not in uniform; and
- (6) evidence that the stop was unnecessary for the protection of traffic safety.”⁹

⁸ *Id.*

⁹ *Id.*

_____ In *Heath*, the defendant was stopped in his vehicle after having failed to signal before turning. As the officer approached Heath's vehicle, he discovered that the occupants were in possession of a controlled substance. Heath, the driver, was arrested and charged with various drug offenses. He filed a motion to suppress on the grounds that the justification for the stop was pretextual. At the hearing, the officer did not testify that he had any independent basis to believe that criminal activity was afoot. He admitted that he did not know the occupants of the car but that he initiated the traffic stop to determine if they happened to be involved in an unrelated drug investigation.

In the case at bar, while Defendant was stopped, in part, for failing to signal, he was stopped for suspicion of driving under the influence also. That suspicion was derived from Defendant's egress from a "high drug area" and from his subsequent driving infractions. Neither Cpl. Long nor SPO McClure testified that they initiated the traffic stop for the purpose of conducting a drug investigation. Their testimony was, uniformly, that the stop was the result of their suspicion that Defendant was under the influence. Defendant has failed to show that Cpl. Long's and SPO McClure's justification is pretextual.

_____ In the instant case, the officers commenced following Defendant because of the report that he had emerged from a "high drug area." He was, however, not stopped on that basis. While the police officers were simply driving behind Defendant, he then was observed committing a series of traffic offenses. Initially, the offenses were not such as would have caused the officers to make a traffic stop – and they did not. At a point when Defendant was in the process of passing a semi, though, Defendant

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began swerving. That, underscored by Defendant's having left a lane change signal on for an unusually lengthy period, certainly provided the officers with the justification for a traffic stop on the suspicion of driving under the influence.

Then, once the legitimate stop had been effected, the officers properly approached Defendant's vehicle. Still, at that point, the intent of the officers was to determine whether or not Defendant's driving ability was impaired. Yet, as the officers neared Defendant's vehicle, and Defendant partially rolled down his driver's side window, Cpl. Long immediately smelled the bouquet of marijuana. That aroma identification by Cpl. Long – not the original call warning; not the initial offenses; not the swerving; not the stop for possible impaired driving – led the officers to suspect, and to investigate for, drug involvement. Ensuing, of course, were Defendant's nervous reactions, his shaking, what turned out to be his criminal history, and the plain-view marijuana presence.

All of that created the reasonable, articulable foundation for the ultimate arrest based upon the evidence Constitutionally seized by the officers.

Accordingly, Defendant's Motion to Suppress Evidence is **DENIED**.

SO ORDERED.

/s/ Robert B. Young

J.

RBV/lmc

oc: Prothonotary

cc: Counsel

Opinion Distribution

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