NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. BRADFORD GEORGE CHRISTINE Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1544 MDA 2012

Appeal from the Judgment of Sentence August 13, 2012
In the Court of Common Pleas of York County
Criminal Division at No(s): CP-67-CR-0001522-2012

BEFORE: GANTMAN, J., ALLEN, J., and MUNDY, J.

MEMORANDUM BY GANTMAN, J.: **FILED DECEMBER 13, 2013**

Appellant, Bradford George Christine, appeals from the judgment of sentence entered in the York County Court of Common Pleas, following his bench trial conviction for two charges of driving under the influence of alcohol ("DUI"), general impairment and highest rate of alcohol (75 Pa.C.S.A. §§ 3802(a)(1), 3802(c), respectively). The trial court opinion set forth the relevant facts of this case as follows:

> On January 22, 2012, at 2:36 a.m., Officers Robert Lusk and Officer Garman of the Spring Garden Township Police Department responded to a dispatch call for a hit-and-run. Upon arriving on scene, the Officers observed a vehicle that had been struck in the rear. The owner of the vehicle stated the vehicle was struck by a white SUV, possibly a Jeep or a Ford, and that the striking vehicle had damage to the front-end. The Officers left the scene of the hit-and-run at approximately 2:54 a.m. and started heading back towards the police station.

> On their return to the station, the Officers saw a white SUV about 200-300 yards away, and thinking the vehicle may have been the striking vehicle, initiated a traffic stop. Before executing the traffic stop, the Officers observed the vehicle was a Cadillac Escalade. Prior to making the stop, the Officers could not tell whether the vehicle had any front-end damage.
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> Once stopped, Officer Lusk approached the front-driver side door while Officer Garman approached on the passenger side of the vehicle to check the front-end for damage. Once Officer Lusk approached the driver, he smelled the odor of alcohol coming from the driver's breath, observed the driver had bloodshot and glassy eyes, and moved slowly. The driver was identified as Appellant. The distance from the scene of the hit-and-run to the site of the traffic stop was 1.572 miles.

(Trial Court Opinion, filed September 17, 2012, at 1-2) (internal citations to record omitted).

On April 10, 2012, the Commonwealth charged Appellant with two counts of DUI. Appellant filed a motion on May 9, 2012, to suppress the evidence obtained during the traffic stop. The court held a suppression hearing on May 31, 2012, and heard testimony from Officers Lusk and Garman. The trial court opinion continues as follows:

> [At the suppression hearing,] Officer Lusk testified that the reason he walked up to [the] driver's side window was "[f]or officer safety issues. We never walk by a driver door or driver window up to the front of the vehicle. I went to the driver first to explain why we had stopped him." Officer Lusk also testified that Appellant's vehicle was the only vehicle they had encountered in that area.
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> At the conclusion of the hearing, Appellant argued that there was no reasonable suspicion for the police to have initiated the traffic stop. Appellant argued that Appellant's

> vehicle was encountered 25 minutes after the hit-and-run about a mile and a half away from the accident, and so it was unreasonable to think that if Appellant's vehicle engaged in a hit-and-run that it remain close to the scene of the crime. Appellant also argued a Jeep or Ford SUV is built distinctly different than a Cadillac Escalade. Appellant argued the officers had plenty of opportunity to view the front-end of the vehicle without stopping the vehicle, and could have pulled ahead of the vehicle to see the front-end, which would have more effectively ensured officer safety than stopping the vehicle.
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> The Commonwealth argued that Appellant's vehicle was spotted within a short amount of time—4 minutes after clearing the scene and 22 minutes after receiving the dispatch call—and was still in the area of the hit-and-run. Commonwealth also argued it was reasonable to believe the striking vehicle might return because someone had been left at the scene of the hit-and-run. In addition, the Commonwealth argued the Officers could not get a good look at the front-end of the vehicle from the police car and the intrusion into Appellant's privacy was limited by having both of the officers approach simultaneously, one to speak to the driver and one to check for damage.
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> [The court] determined that reasonable suspicion existed for the Officers to stop Appellant's vehicle. [The court] found it persuasive that the striking vehicle had left someone behind and so it [would] be reasonable to think that the striking vehicle would return to pick up that person. [The court] also noted that the Officers were near the end of their shift, which ended at [3:00] a.m., and did not just stop the vehicle because they were looking for something to do; rather, because it was a white SUV vehicle as the victim described, the Officers reasonably believed it could have been the vehicle involved in the hit-and-run, warranting an investigatory stop.

(***Id.*** at 2-4) (internal citations to record omitted). That same day, the court denied Appellant's motion to suppress.

Appellant proceeded to a bench trial on August 13, 2012, after which

the court found Appellant guilty on both counts. On the same day, the court sentenced Appellant to five (5) years' intermediate punishment and imposed a $1,500.00 fine. Appellant timely filed a notice of appeal on August 22, 2012. On August 23, 2012, the court ordered Appellant to file a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b). Appellant timely complied on September 11, 2012.

Appellant raises two issues for our review:

> WHETHER THE [TRIAL] COURT ERRED IN HOLDING THE OFFICERS POSSESSED REASONABLE SUSPICION TO INITIATE A TRAFFIC STOP OF THE APPELLANT'S VEHICLE TO OBSERVE THE FRONT END PORTION OF THE VEHICLE, WHICH UNDER THE CIRCUMSTANCES OF THE INSTANT CASE, WAS, SHOULD HAVE BEEN, OR COULD HAVE BEEN PLAINLY VISIBLE TO THE OFFICERS WITHOUT THE NECESSITY OF A TRAFFIC STOP.
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> WHETHER, ASSUMING THE STOP OF APPELLANT'S VEHICLE TO VIEW ITS FRONT END WAS SUPPORTED BY REASONABLE SUSPICION, THE OFFICERS EXCEEDED THE NECESSARY SCOPE OF ANY PERMITTED LIMITED INVESTIGATION AFTER DETERMINING INSTANTANEOUSLY THAT APPELLANT'S VEHICLE DID NOT HAVE FRONT END VISIBLE DAMAGE.

(Appellant's Brief at 4).

Appellant argues the officers failed to point to specific, articulable facts which reasonably led them to suspect Appellant had violated the motor vehicle code. Appellant maintains the officers lacked sufficient information to believe Appellant had been involved in the hit-and-run accident that occurred before Appellant's traffic stop. Appellant avers the officers did not identify who had given them information about the striking vehicle at the

accident scene. Appellant contends the officers learned only that the offending vehicle was a white SUV, which could have possibly been a Ford or a Jeep. Appellant's vehicle, a Cadillac Escalade, is distinctly different from either a Ford or a Jeep SUV. Appellant maintains the officers indicated they could differentiate a Cadillac SUV from either a Jeep or Ford SUV. Appellant asserts that at the time the officers first viewed his vehicle, they saw no obvious signs of damage. Appellant also contends that while the officers were following him, and before they even initiated the stop, the officers did not observe any erratic, unsafe driving or other vehicle code violations. Appellant claims the officers "could have continued to follow [his vehicle] to determine, at some point, whether [it] had visible front end damage" rather than initiate a traffic stop. (***Id.*** at 14). Appellant maintains the Commonwealth failed to prove the officers had reasonable suspicion to stop Appellant to investigate the condition of Appellant's vehicle, and the stop was invalid.

Appellant further argues that, even if the officers did have reasonable suspicion for the traffic stop, the officers did not have to interact with Appellant during the stop. Appellant avers the officers offered no specific and articulable facts leading them to believe Appellant might have posed any danger to them. Appellant maintains that, without those facts, the officers were unjustified in initiating any interaction with Appellant to ensure their safety. Appellant contends the officers could simply have observed the state

of Appellant's vehicle from their patrol vehicle, without any threat of danger. Appellant also asserts the officers' interaction with Appellant did not maintain the *status quo*. Appellant suggests the officers could have maintained the *status quo* by merely observing the front-end of Appellant's vehicle. Appellant concludes the trial court erred in denying his motion to suppress the evidence obtained during the traffic stop. We disagree.

This Court reviews the denial of a suppression motion as follows:

> Our standard of review in addressing a challenge to a trial court's denial of a suppression motion is limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct.
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> > [W]e may consider only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the findings of the suppression court, we are bound by those facts and may reverse only if the court erred in reaching its legal conclusions based upon the facts.

Commonwealth v. Williams, 941 A.2d 14, 26-27 (Pa.Super. 2008) (*en banc*) (internal citations and quotation marks omitted). Further, "It is within the suppression court's sole province as factfinder to pass on the credibility of witnesses and the weight to be given their testimony." ***Commonwealth v. Clemens***, 66 A.3d 373, 378 (Pa.Super. 2013) (quoting ***Commonwealth v. Gallagher***, 896 A.2d 583, 585 (Pa.Super. 2006)).

Under 75 Pa.C.S.A. § 6308(b), a police officer is allowed to conduct an investigative detention if he has a reasonable suspicion that the subject has

violated a section of the motor vehicle code. 75 Pa.C.S.A. § 6308(b). This investigative detention falls into the exception to warrantless seizures set forth in ***Terry v. Ohio***, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). ***Terry*** stops allow police to conduct brief investigative detentions to maintain the *status quo* when they have reasonable suspicion to believe that the subject of the detention has violated the law. ***Id.*** "If the officer has a legitimate expectation of investigatory results, the existence of reasonable suspicion will allow the stop—if the officer has no such expectations of learning additional relevant information concerning the suspected criminal activity, the stop cannot be constitutionally permitted on the basis of mere suspicion." ***Commonwealth v. Chase***, 599 Pa. 80, 92, 960 A.2d 108, 115 (2008). "Indeed, the language of [Section] 6308 reflects this very intent. Stops based on reasonable suspicion are allowed for a stated investigatory purpose: 'to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.' 75 Pa.C.S. § 6308(b). This is conceptually equivalent to the purpose of a ***Terry*** stop. It does not allow all stops to be based on the lower quantum—it merely allows this for investigatory stops, consistent with the requirements of both federal and state constitutions. We interpret the legislature's modification of [Section] 6308 as merely eliminating the statutory requirement of a greater level of information for a stop under the Vehicle Code than is constitutionally

required for all other stops. As such, it is not unconstitutional." ***Id.*** at 94-95, 960 A.2d at 116.

Of course, "an investigative detention, by implication, carries an official compulsion to stop and respond, but the detention is temporary, …, and does not possess the coercive conditions consistent with a formal arrest." ***Commonwealth v. Jones***, 874 A.2d 108, 116 (Pa.Super. 2005). Nevertheless, "[a]n investigative detention…constitutes a seizure of a person and thus activates the protections of Article 1, Section 8 of the Pennsylvania Constitution." ***Id.*** (quoting ***Commonwealth v. Stevenson***, 832 A.2d 1123, 1127 (Pa.Super. 2003)).

> Reasonable suspicion exists only where the officer is able to articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. Therefore, the fundamental inquiry of a reviewing court must be an objective one, namely, whether the facts available to the officer at the moment of intrusion warrant a [person] of reasonable caution in the belief that the action taken was appropriate.

Jones, supra at 116 (internal citation omitted). In other words, "the question of whether reasonable suspicion existed at the time of an investigatory detention must be answered by examining the totality of the circumstances to determine whether there was a particularized and objective basis for suspecting the individual stopped of criminal activity." ***Commonwealth v. Cottman***, 764 A.2d 595, 598-99 (Pa.Super. 2000)

(quoting ***Commonwealth v. Beasley***, 761 A.2d 621, 625-26 (Pa.Super. 2000), *appeal denied*, 565 Pa. 662, 775 A.2d 801 (2001)).

> Also, the totality of the circumstances test does not limit our inquiry to an examination of only those facts that clearly indicate criminal conduct. Rather, even a combination of innocent facts, when taken together, may warrant further investigation by the police officer.

Commonwealth v. Young, 904 A.2d 947, 957 (Pa.Super. 2006), *appeal denied*, 591 Pa. 664, 916 A.2d 633 (2006) (quoting ***Commonwealth v. Conrad***, 892 A.2d 826, 829 (Pa.Super. 2006), *appeal denied*, 588 Pa. 747, 902 A.2d 1239 (2006)) (internal citations and quotation marks omitted). If an objective view of the facts indicates an officer had specific, articulable facts to support the investigative stop, the law deems the stop reasonable. ***Chase, supra*** at 92, 960 A.2d at 114. An officer need only produce facts establishing he reasonably believed the subject of the stop violated the law, regardless of whether that belief is factually accurate. ***Id.***

Furthermore, police officers need not personally observe the illegal or suspicious conduct to form reasonable suspicion; rather, officers may rely on third-party information and citizens' tips. ***Commonwealth v. Swartz***, 787 A.2d 1021, 1024 (Pa.Super. 2001). Tips from identified informants tend to be more reliable than anonymous tips. ***Commonwealth v. Brown***, 606 Pa. 198, 205, 996 A.2d 473, 477 (2010). Tips from known or identifiable informants might be reliable enough to justify an investigatory stop whereas

the same tip from an anonymous source might not. ***Swartz, supra*** at 1204.

To illustrate the "reasonable suspicion" analysis based on an anonymous tip, consider the case of ***Commonwealth v. Knotts***, 663 A.2d 216 (Pa.Super. 1995), in which police stopped Mr. Knotts on January 13, 1994, based on an anonymous tip regarding an unsolved hit-and-run accident that had occurred on December 28, 1993. The information available to the police from the anonymous tip was: "(1) the vehicle that was involved in the hit-and-run accident on December 28, 1993 at the intersection of Routes 519 and 136 was a silver or light blue Oldsmobile Cutlass Calais, and (2) the vehicle travels on Route 136 everyday between 8:00 a.m. and 9:00 a.m." ***Id.*** at 219. This Court evaluated the facts available to the police and stated: "When we evaluate the information available to Trooper Richards in the 'totality of the circumstances' at the time she stopped Knotts, we see that the quantity, as well as the quality, of the information was very poor. First, there was a paucity of information, and the facts which were provided were extremely general in nature. Second, the veracity, reliability and basis of knowledge of the anonymous informant's information were not established." ***Id.*** Thus, the Court held the police had no reasonable suspicion to stop the vehicle in question. The ***Knotts*** Court then analyzed whether the police had probable cause,

emphasizing in particular the lack of veracity and reliability of the anonymous tip as follows:

> At the hearing on the motion to suppress, there was no testimony relating to the veracity or reliability of the anonymous informant. Corroboration of the informant's information, either by police investigation or through other informants, may indeed establish the informant's veracity and reliability. There was no such corroboration of the informant's information in this case.
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> In addition, there was no testimony as to how the informant became aware of the information he provided to Trooper Richards. For example, the informant did not tell Trooper Richards how it was that he knew that this vehicle was involved in the hit-and-run accident, nor did Trooper Richards inquire as to how the informant knew that this vehicle was involved in the accident. Moreover, the informant did not tell Trooper Richard whether the individual driving the vehicle would be a male or a female.
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> It is clear that probable cause did not exist to stop Knotts.
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> In view of these facts, it appears that the legal conclusions of the trial court are not supported by the evidence of record. The objective facts did not create a reasonable suspicion that Knotts was presently involved in criminal activity when stopped by Trooper Richards, nor did the circumstances justify a person of reasonable caution to believe that Knotts had committed a crime.

Id. at 220 (internal citations omitted). The case of ***Commonwealth v. Nagle***, 678 A.2d 376 (Pa.Super. 1996) later relied on ***Knotts, supra*** to conclude the police lacked reasonable suspicion to make an investigatory stop of a vehicle that local residents had reported as "suspicious" for travelling up and down a neighborhood street for about two hours in the early morning of May 7, 1995. The information the officer had when he

stopped Nagle's vehicle was: "(1) there was a suspicious vehicle travelling up and down Vista Road, in Berks County; (2) the vehicle would travel east and westbound on the road, then stop for several minutes, and then resume its back and forth journey up and down the road; (3) the vehicle had been engaged in such activity for approximately two hours; and (4) the vehicle was a large green pick-up truck." ***Id.*** at 378. The ***Nagle*** Court concluded the activities described were too generic to give rise to reasonable suspicion of criminal conduct or a motor vehicle code violation. Moreover, the police had no notice of any previous criminal activity in this neighborhood before the stop at issue. As a result, the ***Nagle*** Court concluded the stop was illegal and reversed the judgment of sentence. ***Id.*** at 379.

Instantly, the suppression court reasoned as follows:

> Unlike in ***Knotts***, the facts and circumstances surrounding Appellant's stop show the [officers] had reasonable suspicion to stop Appellant's vehicle. The information provided to Officers Lusk and Garman was not from a[n] [anonymous] informant, but rather from the victim of the hit-and-run. Thus, the Officers knew who the victim was, how the victim obtained the information provided to police, and could assess the victim's credibility. In addition, the information provided to the Trooper in ***Knotts*** was in January, and the hit-and-run the Trooper was investigating occurred in December. Here, the Officers observed Appellant's car within 22 minutes of the incident, and within the same vicinity as the hit-and-run. Furthermore, the color and type of vehicle the Officers observed matched the victim's description: a white SUV.
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> These facts, combined with the facts that it was the end of the officers' shift and someone had been left at the scene of the hit-and-run, and considering also that it was almost 3 o'clock in the morning and no other vehicles were seen

> on the road, the Officers had reasonable suspicion to conduct a traffic stop of Appellant's vehicle to investigate a possible hit-and-run.
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> [F]or the purpose of ensuring police officer safety during investigatory stops, at a minimum, it is essential officers be permitted to approach and view the driver of the vehicle and inform the driver the reason for the stop. That is exactly what happened here, and the Officers did not exceed the limits of the stop by speaking with the driver.

(Trial Court Opinion at 6-7). The record supports the court's rationale. Here, the police had evidence of a very recent rear-ender collision that they were sent to investigate. The collision itself was a probable violation of the motor vehicle code. The victim of the accident was present at the scene to inform police of the general facts of the collision and the size and shape of the offending vehicle, which had driven away. Although left at the scene, the "purported" driver of the offending vehicle was apparently in "no condition" to assist in the investigation. When the officers left the scene that night, they encountered very few cars on the road, and only one white SUV. The SUV fit the general description of the hit-and-run vehicle. The officers were behind the SUV and followed it, but they were unable from their vehicle to view the front end of the SUV to determine whether it had damage corresponding to the accident. The officers briefly stopped the vehicle to check the front end for damage and simultaneously informed the driver of the reason for the stop.

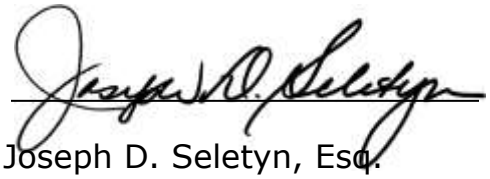
The present case involved the following facts: (1) the occurrence of a rear end collision that was a probable motor vehicle code violation; (2) the police officers took information about the accident from the victim at the scene, who could certainly be identified in the accident report and held accountable for false information (unlike an anonymous source); (3) the police officers assisted in the investigation of the accident until relieved by other officers; (4) on their way back to the station, the officers encountered one SUV, which was white, within about twenty-two minutes of the accident and fairly close to the scene; (5) the officers could not see the front end of the SUV without the stop; (6) the situation itself was dangerous, given the late hour, the isolated area, with no other vehicles around, and the real risk that the driver would bolt suddenly and risk injury to the officers; (7) the one officer's interaction with the driver was strictly to maintain the *status quo* while the other officer viewed the front end of the SUV. The police were under no obligation to follow the SUV indefinitely, until they could somehow, from their own vehicle, view the SUV's front end. Although the SUV actually involved in the accident could have conceivably traveled farther away in the time that had passed between the accident and the stop, it could just as easily have lingered in the general vicinity to rescue the purported "driver" left behind at the scene. Thus, the ***Knotts*** and ***Nagle*** cases are distinguishable on their facts and inapposite for numerous reasons. ***See Young, supra***.

Moreover, Section 3743 of the Motor Vehicle Code requires: "The driver of any vehicle involved in an accident resulting only in damage to a vehicle or other property which is driven or attended by any person shall immediately **stop the vehicle at the scene** of the accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section 3744 (relating to duty to give information and render aid)." 75 Pa.C.S.A. § 3743 (a) (emphasis added). The text of the statute obliges the offending vehicle to stop and stay at the scene. So, the statute is not satisfied just because the purported "driver" is dropped off at the scene, while the offending vehicle drives away, particularly where the alleged "driver" is in no condition to give information and render aid. Based on the text of that statute, there **was** a violation of Section 3743 for the officers to investigate, in addition to the accident itself, and the stop of the SUV was intended to serve that inquiry. ***See Chase, supra***. In other words, the stop was for the purpose of obtaining additional pertinent information related to the accident. Thus, the trial court's decision to deny Appellant's suppression motion was proper. Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.

*JUDGE MUNDY FILES A DISSENTING MEMORANDUM.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/13/2013