

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
SADIKI BARRO,	:	
	:	
Appellant	:	No. 170 MDA 2013

Appeal from the Judgment of Sentence Entered December 20, 2012,
In the Court of Common Pleas of Franklin County,
Criminal Division, at No. CP-28-CR-0000976-2012.

BEFORE: BENDER, SHOGAN and MUSMANNNO, JJ.

MEMORANDUM BY SHOGAN, J.: **FILED SEPTEMBER 09, 2013**

Appellant, Sadiki Barro, appeals from the judgment of sentence entered December 20, 2012, following his convictions of two counts of driving under the influence ("DUI"). We affirm.

According to the trial court's factual summary:

[t]he arresting officer testified at the suppression hearing that he has extensive training and experience in recognizing signs of impairment. The officer testified that at approximately 2:30 a.m., a time when DUI is common, he began observing a vehicle. The area in which the vehicle was observed was so well known for impaired driving that, at the time of this traffic stop, a police officer was permanently stationed there to monitor alcohol related activity. The officer observed that [Appellant's] vehicle failed to come to a complete stop at a stop sign, failed to stay within the clearly marked lane of travel, that is, crossing over the center line, and activated a turn signal for an unusual amount of time. Additionally, the vehicle was observed driving in a lane clearly designated for street parking. Finally, the officer testified that he stopped the vehicle due to suspicion of

DUI and because he witnessed more than one motor vehicle violation.

Rule 1925(a) Opinion, 3/21/13, at 2.

Appellant was charged with two counts of DUI on March 27, 2012, by Officer Matthew Lynch of the Chambersburg Police Department. On August 2, 2012, Appellant filed a motion to suppress evidence of his impairment and blood alcohol content. The trial court held a suppression hearing on August 27, 2012, and denied the motion by order dated August 29, 2012. According to the trial court, "the stop of [Appellant's] vehicle was lawful because it was supported by reasonable suspicion of DUI and probable cause of a motor vehicle violation." Suppression Opinion, 8/29/12, at 2; Rule 1925(a) Opinion, 3/21/13, at 2. Appellant proceeded to a waiver trial on November 27, 2012, where the trial court found him guilty of both counts of DUI. Following imposition of sentence on December 20, 2012, Appellant filed a timely appeal. Appellant and the trial court have complied with Pennsylvania Rule of Appellate Procedure 1925.

Appellant's sole issue on appeal is whether the trial court erred in denying his motion to suppress. In support of his position that the trial court erred, Appellant presents two arguments. First, Appellant asserts that Officer Lynch lacked reasonable suspicion to conduct an investigatory stop for DUI. Appellant's Brief at 10. Second, Appellant asserts that Officer Lynch lacked probable cause to conduct a traffic-violation stop. *Id.* at 16.

We employ an established standard and scope of review in suppression matters:

We are limited to determining whether the lower court's factual findings are supported by the record and whether the legal conclusions drawn therefrom are correct. We may consider the evidence of the witnesses offered by the Commonwealth, as verdict winner, and only so much of the evidence presented by [the] defense that is not contradicted when examined in the context of the record as a whole. We are bound by facts supported by the record and may reverse only if the legal conclusions reached by the court were erroneous.

Commonwealth v. Sanders, 42 A.3d 325, 330 (Pa. Super. 2012) (quoting ***Commonwealth v. Feczko***, 10 A.3d 1285, 1287 (Pa. Super. 2010) (*en banc*)). Furthermore:

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. The suppression court is also entitled to believe all, part or none of the evidence presented. Finally, at a suppression hearing, the Commonwealth has the burden of establishing by a preponderance of the evidence that the evidence was properly obtained.

Commonwealth v. Galendez, 27 A.3d 1042, 1046 (Pa. Super. 2011), *appeal denied*, 40 A.3d 120 (Pa. 2012) (internal quotation marks, brackets, and citations omitted).

Appellant first argues that Officer Lynch lacked reasonable suspicion to stop him for DUI. In order to justify a stop based on reasonable suspicion:

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. Holmes, 14 A.3d 89, 95–96 (Pa. 2011).

Here, the trial court justified the traffic stop for suspicion of DUI as follows:

The officer testified that he is well trained in recognizing DUI. During a routine patrol at 2:30 a.m., which he testified is a common time for DUI, he began following one of the few vehicles on the road at that time. The vehicle failed to come to a complete stop at a stop sign, drove unusually slow [sic] through an intersection, the vehicle's tires crossed over or onto the center yellow line, the vehicle's turn signal was on for an abnormally long amount of time, and the vehicle drove approximately two feet into a shoulder clearly designated for parking. Additionally, this all occurred in a vicinity where police have had numerous alcohol related incidents and have had to station an officer to monitor this activity in addition to regular patrol officers. We find that, given the totality of the circumstances, the officer had reasonable suspicion that the driver may have been impaired due to intoxication.

Suppression Court Opinion, 8/29/12, at 1.

Upon review, we conclude that the record supports the trial court's suppression findings. After describing his DUI training and experience, Officer Lynch testified that he was patrolling a DUI area on March 18, 2012 at 2:30 a.m. in a marked vehicle when he encountered Appellant's blue Honda Accord. N.T., 8/27/12, at 4–6. He followed the Honda given the location and hour, keeping some distance, to observe Appellant's driving.

Id. at 6. Officer Lynch observed Appellant conduct “what is commonly referred to as a rolling stop. [He] failed to come to a complete stop before pulling out onto the roadway.” **Id.** at 7, 17. Officer Lynch also observed Appellant pull “very slowly out into the intersection and the driver side tires went onto the double yellow lines as he crossed over there.” **Id.** He “noticed that [Appellant] was operating his vehicle very close to that center lane, and . . . saw him swerve a little bit at one point.” **Id.** at 8, 20. After several turns, during which Appellant had his turn signal on for an unusually long time, Officer Lynch saw Appellant operate his vehicle two feet “into the shoulder of the roadway which is lined off for on-the-side of the street parking. They had parking meters there.” **Id.** at 8-9, 19-21.

We are bound by the trial court’s suppression findings because they are supported by the record. Next, we consider its conclusions of law. The trial court heard Officer Lynch testify that he stopped Appellant upon suspicion of DUI, and it observed the video of Appellant’s driving. The trial court concluded that Officer Lynch’s suppression testimony was credible. Having considered the totality of the circumstances and afforded due weight to the facts and the reasonable inferences drawn from those facts in light of the officer’s experience and knowledge, the trial court concluded that Officer Lynch legally conducted the traffic stop for suspicion of DUI. We discern no error. Officer Lynch provided “specific and articulable facts” which led him to

reasonably suspect a violation of the Motor Vehicle Code that required further investigation. Thus, we conclude the trial court did not err in holding that Officer Lynch legally stopped Appellant for suspicion of DUI. Accordingly, we affirm the suppression order insofar as it admitted evidence of Appellant's driving and intoxication in support of the DUI charge.

Next, Appellant argues Officer Lynch lacked probable cause to stop his vehicle for violations of the Motor Vehicle Code. We disagree.

We have held conclusively that an officer needs probable cause to stop a vehicle for a violation of the Motor Vehicle Code where further investigation of the situation is not required:

Mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation. In such an instance, "it is incumbent [sic] upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code."

Feczko, 10 A.3d at 1291.

Officer Lynch informed the trial court during the suppression hearing that he observed Appellant commit two traffic violations: "a stop sign violation at Spring Street and West King Street and also driving on roadways laned for traffic on the unit block of East King Street as well as North Second Street." N.T., 8/27/12, at 31.

Pursuant to the Motor Vehicle Code:

Except when directed to proceed by a police officer or appropriately attired persons authorized to direct, control or regulate traffic, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line or, if no stop line is present, before entering a crosswalk on the near side of the intersection or, if no crosswalk is present, then at the point nearest the intersecting roadway where the driver has a clear view of approaching traffic on the intersecting roadway before entering.

75 Pa.C.S.A. § 3323(b). Additionally:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others not inconsistent therewith shall apply:

(1) Driving within single lane.--A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety.

75 Pa.C.S.A. § 3309(1).

Here, the trial court justified the stop for traffic violations as follows:

Further, we find that the [officer's] testimony and the video recording indicate that the officer had probable cause for motor vehicle violations. The video recording clearly shows the vehicle veer onto the shoulder which was marked for parking and also has meters. Although challenged by the defense, we find the officer credible in his testimony that he saw [Appellant] come to a "rolling stop" at a stop sign. This offence [sic] occurred to the officer's left and would not be on the video recording because the video is affixed to look straight ahead. We find that the evidence shows that the officer had probable cause of motor vehicle violations.

Suppression Court Opinion, 8/29/12, at 2; **see also** Rule 1925(a) Opinion, 3/18/13, at 2 ("The officer observed that [Appellant's] vehicle failed to come

to a complete stop at a stop sign, failed to stay within the clearly marked lane of travel . . . and [went] in a lane clearly designated for street parking.”).

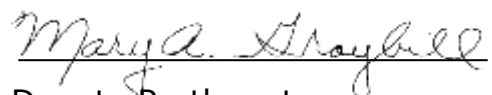
Upon review, we conclude that the record supports the trial court’s suppression findings. In court, Officer Lynch reviewed the video recording taken from his patrol car. He then testified that the recording accurately depicted what occurred during the incident. N.T., 8/27/12, at 10–13. The recording showed a police vehicle parked outside Tracy’s Coffee House, an after-hours club, which was in the vicinity of where Officer Lynch encountered Appellant’s vehicle. **Id.** at 15–16. Officer Lynch explained that he initiated the traffic stop because “at the time there were different Motor Vehicle Code violations.” **Id.** at 22. Specifically, Officer Lynch observed Appellant conduct “what is commonly referred to as a rolling stop. [He] failed to come to a complete stop before pulling out onto the roadway.” **Id.** at 7, 17. He also saw Appellant pull “very slowly out into the intersection and the driver side tires went onto the double yellow lines as he crossed over there.” **Id.** He “noticed that [Appellant] was operating his vehicle very close to that center lane . . . and swerve a little bit at one point.” **Id.** at 8, 20. After several turns, Officer Lynch witnessed Appellant operate his vehicle two feet “into the shoulder of the roadway which is lined off for on-

the-side of the street parking. They had parking meters there.” **Id.** at 8-9, 19-21.

We are bound by the trial court’s suppression findings because they are supported by the record. Next, we consider its conclusions of law. The trial court heard Officer Lynch testify that he stopped Appellant for traffic violations, and it observed the video of Appellant’s driving. The trial court concluded that Officer Lynch’s testimony was credible. Having considered the totality of the circumstances and afforded due weight to the facts and the reasonable inferences drawn from those facts in light of the officer’s experience and knowledge, the trial court concluded that Officer Lynch legally conducted the stop for traffic violations. We discern no error. Officer Lynch articulated specific facts possessed by him, at the time of the questioned stop, which provided probable cause to believe that Appellant violated sections 3309(1) and 3323(b) of the Motor Vehicle Code.

Judgment of sentence affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 9/9/2013