

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellant

v.

MICHAEL MOFFITT

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 172 MDA 2012

Appeal from the Order Entered December 23, 2011
In the Court of Common Pleas of York County
Criminal Division at No(s): CP-67-CR-0004990-2011

BEFORE: MUNDY, J., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY MUNDY, J.:

Filed: January 11, 2013

The Commonwealth appeals from the December 23, 2011 order granting the omnibus pre-trial suppression motion of Appellee, Michael Moffitt.¹ After careful review, we reverse the order and remand this case for proceedings consistent with this memorandum.

The trial court set forth the relevant facts and procedural history of this case as follows.

* Retired Senior Judge assigned to the Superior Court.

¹ Generally, jurisdiction of this Court is confined to appeals from final orders. 42 Pa.C.S.A. § 742. Pursuant to Pennsylvania Rule of Appellate Procedure 311, however, the Commonwealth is permitted to take an interlocutory appeal as of right from a pre-trial suppression order when the Commonwealth certifies, as is the case here, that the order will “terminate or substantially handicap the prosecution.” Pa.R.A.P. 311(d). Accordingly, the Commonwealth’s appeal is properly before this Court.

[Appellee's] vehicle was stopped on May 31, 2011 at approximately 2:23 A.M. by Officer Gregory Hadfield of the Springettsbury Township Police. Officer Hadfield was traveling south on North Hills Road approaching the entrance to the [] Rutter's Store when he observed a silver Volkswagen Jetta driving quickly through the parking lot at Rutter's.

Officer Hadfield saw the silver vehicle pull out to the traffic light behind another vehicle. At that time the light was red for the Jetta. When the light turned green, the officer observed the vehicle accelerate quickly and squeal its tires. The vehicle went north on North Hills Road.

Officer Hadfield turned his vehicle around in order to follow the silver vehicle. He initiated a traffic stop of the vehicle. The officer testified that he stopped the vehicle to find out what was going on and why the driver squealed his tires – "to investigate further what was going on."

[Appellee] was the driver of the vehicle and according to the Affidavit of Probable Cause, [Appellee] told Officer Hadfield that he had been drinking that evening. Officer Hadfield asked [Appellee] to perform field sobriety tests and Hadfield stated in the Affidavit that [Appellee] failed the [field sobriety tests]. Hadfield took [Appellee] to have a chemical test. [Appellee's] BAC was .151%.

[Appellee] was charged with two counts of Driving Under the Influence and one count of Driving While Operating Privilege is Suspended.^[2] A preliminary hearing was held on August 16, 2011. [Appellee] filed an Omnibus Pre-Trial Motion to Suppress on October 14, 2011. A hearing was scheduled for November 29, 2011 and continued to December 22, 2011.

² 75 Pa.C.S.A. §§ 3802(a)(1), 3802(b), and 1543, respectively.

Officer Hadfield testified at the hearing and also showed a video of the traffic stop at the hearing. [Appellee] did not testify. [The trial court] heard discussion and argument from counsel and issued an Order on December 23, 2011 granting [Appellee's] Motion to Suppress evidence seized after the stop. [The trial court] found Officer Hadfield did not have probable cause to stop [Appellee's] vehicle.

Trial Court Opinion, 3/6/12, at 2-3 (citations omitted; footnote added).

The Commonwealth filed a timely notice of appeal on January 23, 2012, certifying, in accordance with Pa.R.A.P. 311, that the order granting suppression terminated or substantially handicapped its prosecution.³

On appeal, the Commonwealth raises the following issues for our review.

- I. Whether the trial court erred in failing to provide a statement of findings of fact which is required under the Pennsylvania Rules of Criminal Procedure Rule 581[?]
- II. Whether the trial court erred in holding the Commonwealth to the standard of probable cause for the vehicle stop where the proper standard is reasonable suspicion[?]
- III. Whether the trial court erred in holding that the Commonwealth did not have reasonable suspicion and/or probable cause to stop Appellee after Appellee accelerated rapidly through a parking lot with other vehicles present, squealing his tires and accelerating quickly upon entering an intersection[?]

Commonwealth's Brief at 4.

³ The Commonwealth and the trial court have complied with Pa.R.A.P. 1925.

We begin by addressing the Commonwealth's contention that the trial court erred in concluding that Officer Hadfield "did not [possess] reasonable suspicion and/or probable cause to stop [Appellee's vehicle]...." *Id.* at 12.

Our standard of review in addressing a challenge to the trial court's grant of a suppression motion is well settled.

As an appellate court reviewing the ruling of a suppression court, we consider only the evidence from the [Appellee]'s witnesses together with the evidence of the prosecution that, when read in the context of the entire record, remains uncontradicted. We must first ascertain whether the record supports the factual findings of the suppression court, and then determine the reasonableness of the inferences and legal conclusions drawn therefrom. The suppression court's factual findings are binding on us and we may reverse only if the legal conclusions drawn therefrom are erroneous.

Commonwealth v. Hayes, 898 A.2d 1089, 1091-1092 (Pa. Super. 2006) (citations omitted). Moreover, "[i]t 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. Dutrieville*, 932 A.2d 240, 242 (Pa. Super. 2007) (citation omitted).

Preliminarily, we note that the Fourth Amendment to the United States Constitution and Article I, Section 8, of the Pennsylvania Constitution protect individuals from unreasonable searches and seizures, "thereby ensuring the right of each individual to be let alone." *Commonwealth v. Barber*, 889 A.2d 587, 592 (Pa. Super. 2005) (citations and internal quotation marks omitted). "Evidence obtained from an unreasonable search or seizure is

inadmissible at trial.” ***Commonwealth v. Campbell***, 862 A.2d 659, 663 (Pa. Super. 2004) (citation omitted), *appeal denied*, 882 A.2d 1004 (Pa. 2005). “To secure the right of citizens to be free from such intrusions, courts in Pennsylvania require law enforcement officers to demonstrate ascending levels of suspicion to justify their interactions with citizens as those interactions become more intrusive.” ***Commonwealth v. Beasley***, 761 A.2d 621, 624 (Pa. Super. 2000), *appeal denied*, 775 A.2d 801 (Pa. 2001).

This Court has recognized three types of interactions between members of the public and the police.

The first category, a mere encounter or request for information, does not need to be supported by any level of suspicion, and does not carry any official compulsion to stop or respond. The second category, an investigative detention ... is lawful if supported by reasonable suspicion because, although it subjects a suspect to a stop and a period of detention, it does not involve such coercive conditions as to constitute the functional equivalent of an arrest. The final category, the arrest or custodial detention, must be supported by probable cause.

Commonwealth v. Conte, 931 A.2d 690, 692 (Pa. Super. 2007) (citations omitted).

As recognized by the trial court, the proper standard for a vehicle stop where the officer’s investigation subsequent to the stop serves no “investigatory purpose relevant to the suspected violation,” as in the case *sub judice*, is probable cause. ***Commonwealth v. Feczko***, 10 A.3d 1285,

1291 (Pa. Super 2010) (*en banc*) (finding that automobile stops based on a reasonable suspicion, either of criminal activity or a violation of the motor vehicle code, must serve a stated investigatory purpose), *appeal denied*, 25 A.3d 327 (Pa. 2011); **see also** Trial Court Opinion, 3/6/12, at 6-8. In ***Feczko***, a panel of this Court concluded as follows.

[W]e are compelled to conclude that the standards concerning the quantum of cause necessary for an officer to stop a vehicle in this Commonwealth are settled; notwithstanding any prior diversity on the issue among panels of this Court. Traffic stops based on a reasonable suspicion: either of criminal activity or a violation of the Motor Vehicle Code under the authority of Section 6308(b) must serve a stated investigatory purpose. In effect, the language of [75 Pa.C.S.A. §] 6308(b) - to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title - is conceptually equivalent with the underlying purpose of a ***Terry*** stop.

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 encumbent [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, supra at 1290-1291 (citations and footnote omitted; emphasis in original).

"Probable cause exists when an officer has knowledge of sufficient facts and circumstances, gained through trustworthy information, to warrant a prudent man to believe that the person seized has committed a [violation

of the motor vehicle code].” ***Commonwealth v. Slonaker***, 795 A.2d 397, 401 (Pa. Super. 2002) (citation omitted), *appeal denied*, 812 A.2d 1229 (Pa. 2002). “It is only the probability and not a *prima facie* showing of criminal activity that is a standard of probable cause.” ***Commonwealth v. Dommel***, 885 A.2d 998, 1002 (Pa. Super. 2005), *appeal denied*, 920 A.2d 831 (Pa. 2007). “[P]robable cause does not involve certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent [persons] act.” ***Commonwealth v. Williams***, 941 A.2d 14, 27 (Pa. Super. 2008) (citation and internal quotation marks omitted). Whether or not probable cause existed at the time of the stop must be examined by a totality of the circumstances. ***Commonwealth v. Anthony***, 1 A.3d 914, 919 (Pa. Super. 2010).

In the instant matter, we conclude that Officer Hadfield possessed ample probable cause to justify a stop of Appellee’s vehicle based on multiple violations of the motor vehicle code, namely 75 Pa.C.S.A. §§ 3361, 3714, and 3736. Section 3361 sets forth the offense of driving at an unsafe speed and provides as follows.

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, nor at a speed greater than will permit the driver to bring his vehicle to a stop within the assured clear distance ahead. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when

approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

75 Pa.C.S.A. § 3361.

Section 3714, in turn, sets forth the crime of careless driving and provides, in pertinent part, as follows.

(a) General rule.--Any person who drives a vehicle in careless disregard for the safety of persons or property is guilty of careless driving, a summary offense.

75 Pa.C.S.A. § 3714(a).

Lastly, section 3736 governs reckless driving and provides as follows.

(a) General rule.--Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

75 Pa.C.S.A. § 3736(a).

Herein, the record reflects that in the early morning hours of May 31, 2011, Officer Greg Hadfield, a nine-year police veteran with extensive DUI training, stopped Appellee's vehicle after he observed it traveling at an excessive rate of speed through the parking lot of Rutter's gas station, and squealing its tires on two occasions. N.T., 12/22/11, at 2-6. Officer Hadfield characterized Appellee's driving as "faster than I've normally seen vehicles drive through the parking lot[,]” and noted that there were at least two other vehicles present in the lot on that evening. *Id.* at 5-6. Officer

Hadfield further noted that this parking lot is frequently busy and that “there’s constantly people coming and going.” *Id.*

Although Officer Hadfield testified that it was not necessarily “his intent to ... write [Appellee] a ticket for reckless driving[,]” our review of the record indicates that his stop of Appellee’s vehicle was based on his belief, at least in part, that Appellee was driving carelessly and recklessly in violation of sections 3714 and 3736. *Id.* at 14

Q. What was your reason for stopping [Appellee]?

A. It was to find out what was going on and what his reasons for squealing his tires like that and his careless or reckless driving in the parking lot. So it was to investigate further what was going on.

Id. at 6. Officer Hadfield echoed this sentiment on cross-examination, testifying that his stop of Appellee’s vehicle was part investigatory, and in part for a purported violation of the motor vehicle code. *Id.* at 13-14.

Furthermore, our review of the record indicates that Appellant’s erratic acceleration from the traffic light intersection, a violation of section 3361 of the motor vehicle code, was a factor in Officer Hadfield conducting the traffic stop.

Q. Officer Hadfield, you also testified earlier that in your opinion the vehicle, [Appellee’s] vehicle, accelerated quickly, correct?

A. Yes.

Q. Did that also factor in to why you effectuated the stop?

- A. I guess. At what point are you referring to me referring to his starting to accelerate?
- Q. Not in the parking lot but at the traffic light.
- A. It appeared that the first time [Appellee] squealed his tires that the car lunged forward, the first vehicle. About the same time started to pull away, the squealing stopped in [Appellee's] vehicle, and then it started up again as he went to make his turn.

Id. at 14-15.

This Court has held that the “[o]bservation of erratic driving has been recognized as providing the basis for probable cause to arrest for reckless driving.” ***Commonwealth v. Gommer***, 665 A.2d 1269, 1273 (Pa. Super. 1995) (citations omitted), *appeal denied*, 686 A.2d 1308 (Pa. 1996). Likewise, in ***Commonwealth v. Perry***, 982 A.2d 1009 (Pa. Super. 2009), which involved, *inter alia*, the offense of driving a vehicle at an unsafe speed, this Court noted that the “potential danger of causing an accident is sufficient to establish probable cause to initiate a traffic stop[.]” ***Id.*** at 1010, *citing Commonwealth v. Minnich*, 874 A.2d 1234, 1235-1236 (Pa. Super. 2005) (holding that probable cause existed for an officer to stop a defendant’s vehicle for violating section 3361, driving vehicle at safe speed, after he observed defendant take a sharp bend at a very high rate of speed on an icy roadway), *appeal denied*, 885 A.2d 41 (Pa. 2005).

Based on all of the foregoing, we conclude that there existed probable cause to support a stop of Appellee’s vehicle based upon a violation of the

motor vehicle code. Accordingly, we agree with the Commonwealth that the trial court erred in granting Appellee's suppression motion. We therefore reverse the December 23, 2011 order of the trial court and remand for proceedings consistent with this memorandum.⁴

Order reversed. Case remanded. Jurisdiction relinquished.

Judge Ott Concur in the Result.

⁴ In light of our disposition, we need not address the Commonwealth's remaining claims.