NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. ERIC PAUL NEWHARD Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 414 WDA 2012

Appeal from the Judgment of Sentence of February 3, 2012
In the Court of Common Pleas of Crawford County
Criminal Division at No(s): CP-20-CR-0000285-2011

BEFORE: GANTMAN, J., WECHT, J., and FITZGERALD, J.*

MEMORANDUM BY WECHT, J. Filed: March 4, 2013

Eric Newhard ["Appellant"] appeals from a February 3, 2012 judgment of sentence. We affirm.

The trial court made the following findings of fact:

> Pennsylvania State Trooper, Joseph R. Lobdell (Trooper Lobdell), testified that on February 12, 2011 through February 13, 2011 he was working a 10:00 p.m. until 7:00 a.m. shift out of the Pennsylvania State Police Meadville Barracks.
>
> He indicated that he was in full uniform and was a passenger in the police cruiser.
>
> Trooper Lobdell testified [that] at 1:50 a.m. the police vehicle was traveling south on State Routes 6 & 19 through Main Street in the Borough of Saegertown.
>
> He testified the police cruiser made a left-hand turn eastbound onto Route 198 at the time a vehicle driven by [Appellant] was

---

* Former Justice specially assigned to the Superior Court.

> traveling west in the westbound lane of Route 198 toward the intersection of Route 198 and Route 6 & 19. Trooper Lobdell indicated that [Appellant] failed to dim his high beams.
>
> Trooper Lobdell pointed out the violation to his partner and they initiated a traffic stop. Upon stopping the vehicle, Trooper Lobdell advised [Appellant] that he had been stopped because he did not dim his high beams. Trooper Lobdell indicated that [Appellant] told him that he had not done so because he was distracted talking to his girlfriend who was seated next to him in his vehicle.
>
> Trooper Lobdell testified that [Appellant's] vehicle was traveling near the grocery store and gas station somewhere near Grant Street with his high beams on as he approached the intersection of Route 198 and Route 6 & 19.
>
> [Appellant] offered a video recording from that evening taken from the police cruiser's motor vehicle recording device (MVR). When played for the [c]ourt, the MVR did not indicate any view of [Appellant's] vehicle when the police vehicle turned left going eastbound on Route 198. It did show the police vehicle shortly after that turn, going through the parking lot of the grocery store and ultimately following [Appellant's] vehicle to stop the defendant.
>
> Trooper Lobdell then testified that because of the placement of the MVR in the police vehicle, [Appellant's] vehicle with the high beams on approaching the intersection did not appear. He did concede that his memory was not totally accurate considering that several months had elapsed since the time of the incident and that [Appellant's] vehicle was clearly not approaching the police vehicle from as far away as the gas pumps next to the grocery store or Grant Street beyond that.

Findings of Fact, Conclusions of Law and Order, 9/13/2011, at 1-2.

While speaking with Appellant, Trooper Lobdell noticed that Appellant's speech was somewhat slurred, that an odor of alcohol was coming from Appellant and the car, and that Appellant's eyes were bloodshot and glassy. Notes of Testimony ["N.T."], 11/12/2011, at 10-11. Trooper Lobdell

administered field sobriety tests that indicated Appellant was impaired. N.T. at 11-14. Trooper Lobdell then placed Appellant under arrest for driving under the influence. N.T. at 15. Appellant was taken to Meadville Medical Center, where he consented to a blood test. ***Id.*** The blood test showed Appellant's blood alcohol content was .105. N.T. at 18.

Appellant was charged with driving under the influence – general impairment, driving under the influence – high rate of alcohol, careless driving, and use of multiple beam road lighting equipment.[1] Criminal Information, 5/19/2011. Appellant filed a pre-trial motion challenging the traffic stop and seeking to suppress all evidence obtained from that stop. After a hearing on August 31, 2011, the court (per The Honorable Anthony J. Vardaro, P.J.) denied the motion. Findings of Fact, Conclusions of Law and Order, September 13, 2011 Following a non-jury trial before The Honorable Mark D. Stevens, at which trial only Trooper Lobdell testified, Appellant was found guilty of all counts except careless driving. N.T. at 33.

On February 3, 2012, Appellant was sentenced on the driving under the influence charge to intermediate punishment for six months, and was required to spend fifteen days in the county jail followed by thirty days of electronic monitoring in addition to fines, education, and a suspension of

---

[1] 75 Pa.C.S.A. §§ 3802(a)(1), 3802(b), 3714, and 4306(a), respectively.

driver's license. Judgment of Sentence, 2/3/2012, at 1-4. On the use of multiple-beam road lighting equipment charge, Appellant was charged $65 in fines and costs. ***Id.*** at 4. Appellant filed a timely post-sentence motion on February 13, 2012. On February 14, 2012, the motion was denied. On March 1, 2012, Appellant timely filed the instant appeal.[2]

On appeal, Appellant raises two issues:

> I. Did the troopers meeting the Appellant at a perpendicular intersection constitute approaching an oncoming vehicle, thus leading to probable cause of a vehicle code violation to justify a traffic stop of Appellant's car?
>
> II. Did the troopers meeting the Appellant at a perpendicular intersection constitute approaching an oncoming vehicle, thus providing sufficient evidence to constitute a conviction of use of multiple beam road lighting equipment?

Appellant's Brief at 11.

Appellant's first issue re-asserts his pre-trial suppression issue: to wit, whether there was a violation of section 4306(a) that provided probable cause to stop Appellant. We review a denial of a motion to suppress according to the following test:

> Our standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as

---

[2] The trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied.

> remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, we are bound by these findings and may reverse only if the court's legal conclusions are erroneous. Where … the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to our plenary review.

Commonwealth v. McAdoo, 46 A.3d 781, 783-84 (Pa. Super. 2012) (internal citations omitted).

The statute at issue states:

> **Approaching an oncoming vehicle.--**Whenever the driver of a vehicle approaches an oncoming vehicle within 500 feet, the driver shall use the low beam of light.

75 Pa.C.S.A § 4306(a). Appellant observes that section 4306(a) requires a driver to use low beam lights when approaching an "oncoming vehicle," and that the police vehicle here was *perpendicular* to Appellant's vehicle. Thus, reasons Appellant, the police vehicle was not an "oncoming vehicle" for purposes of the statute. Appellant contends that, if the police vehicle was not an "oncoming vehicle," Trooper Lobdell lacked probable cause to believe Appellant had violated section 4306(a).

In support of this view, Appellant argues that the purpose of the statute is to prevent a driver from being blinded by high beam lights, and that such danger was not present here because the two cars were perpendicular to one another. Appellant maintains that, because there was no violation of section 4306(a), there was no reasonable suspicion or

probable cause to initiate a traffic stop, and the evidence of driving under the influence that resulted from the stop should have been suppressed. Appellant's Brief at 15-17.

The Commonwealth concedes that probable cause was required to stop Appellant because the offense did not require further investigation. ***See generally Commonwealth v. Feczko***, 10 A.3d 1285 (Pa. Super. 2010). However, the Commonwealth argues that the police vehicle was an oncoming vehicle. The Commonwealth reasons as follows. The plain language of the statute means that a vehicle which is coming nearer is oncoming and an approaching vehicle is one that draws closer. By those definitions, Appellant's car was approaching an oncoming vehicle. Further, Appellant did not dim his high beam lights. Therefore, probable cause existed to initiate the traffic stop. The Commonwealth also argues that the legislative intent behind section 3406(a) was to prevent motorists from being blinded by the glare of high beam lights and that vehicles approaching an intersection can be blinded by high beam lights. The result herein was thus consistent with the intent of the statute. Commonwealth's Brief at 8-10.

First, we observe that probable cause, and not merely reasonable suspicion, was required to initiate the traffic stop in the instant case. When a traffic stop would not serve an investigatory purpose, there must be specific and articulable facts at the time of the stop which would provide probable cause to believe that there has been a violation of the Motor

Vehicle Code. ***Commonwealth v. Feczko***, 10 A.3d 1285, 1291 (Pa. Super. 2010). A police officer's observations of traffic violations suffice to provide that probable cause. ***Id.*** Here, Trooper Lobdell testified that he observed that, as Appellant approached the intersection, Appellant did not dim his high beam lights. N.T. at 6.

To determine whether there was probable cause for the stop, we must determine whether Appellant was approaching an oncoming vehicle. The Motor Vehicle Code does not define "approaches" or "oncoming." We therefore turn to our principles of statutory construction. "[I]n construing a statute to determine its meaning, the courts must first determine whether the issue may be resolved by reference to the express language of the statute, which is to be read according to the plain meaning of the words." ***Commonwealth v. Irwin***, 769 A.2d 517, 521 (Pa. Super. 2001).

We previously have interpreted the General Assembly's employment of the term "approaches." In the ***Irwin*** case, construing a different section of the same statute at issue here,[3] we held that "approaches" is defined as "to come nearer in space." ***Id.*** at 522. By that definition, the Appellant here was approaching Trooper Lobdell's vehicle because the two vehicles were coming closer together.

---

[3] That section, 4306(b), deals with a driver's use of high beam lights when the driver approaches another vehicle from behind.

We have found no Pennsylvania cases specifically defining "oncoming." Its dictionary definition is "coming nearer." Webster's New College Dictionary 783 (3d ed. 2008). By this definition, the police vehicle was oncoming: it was coming nearer to Appellant's vehicle as both cars approached the intersection. Additionally, Trooper Lodbell testified that, after the officers made the left-hand turn and were then travelling east as Appellant was travelling west, Appellant failed to dim his high beam lights, and Trooper Lobdell pointed this fact out to his partner. N.T. at 6-7. Without a doubt, once the police officer turned left, Appellant was approaching an oncoming vehicle.[4]

Section 7721 of the Motor Vehicle Code further undermines Appellant's argument. Appellant contends that, because the vehicles were coming from perpendicular streets, those vehicles could not be "oncoming." Section 7721(c) refers to traffic coming from a perpendicular direction as "oncoming" traffic. 75 Pa.C.S.A. § 7721(c) (stating that an ATV may cross a

---

[4] While we have found no Pennsylvania law on point, we note that at least two other states have addressed similar factual situations and similar statutory language. In a Georgia case, where the police vehicle was stopped at an intersection facing east and the appellant turned from a northbound lane into a westbound lane while driving with high beam lights on, the court found the police vehicle was an oncoming car for the short period of time after the appellant turned. ***State v. Mussell***, 571 S.E.2d 518, 518 (Ga. App. 2002). Similarly, in an Ohio case, where a police officer travelling east observed the appellant stop at an intersection and then turn to travel west without dimming his high beam lights, there was reasonable suspicion to believe appellant committed a traffic offense. ***State v. Gist***, 2009 WL 2915765 at *1 (Ohio App. 2009).

road or highway at an approximate 90-degree angle, but must yield the right of way to "oncoming" traffic).

By contrast, in applying Section 4306(b) (which prohibits the use of high beam lights when approaching another car from behind), we held that, when one car passes another and then continues to move away at a higher rate of speed with the gap between the cars widening, the overtaken car cannot be described as approaching. ***Irwin***, 769 A.2d at 522-23. The distinction from our facts is significant. In the case before us, the two cars were moving closer together, even if they were not moving in a straight line toward one another except for a brief period toward the end.

While we need not reach the issue of the intent behind the statute, we have previously held that the object of this section is to prevent drivers from being blinded by excessive glare from high beam lights and to avoid the safety hazard that would result. ***Commonwealth v. Beachey***, 728 A.2d 912, 913 (Pa. 1999). The hazard which the statute seeks to prevent also is present when a vehicle arrives at an intersection and then turns in a direction that faces a (previously perpendicular) driver who persists in using his or her high beam lights. We believe that, by its plain meaning, the statute aims to prevent that hazard.

We conclude that the facts of this case presented probable cause of violation of section 4306(a) for purposes of the traffic stop. Further, Trooper Lobdell offered specific and articulable facts that provided probable cause that Appellant violated the section. Accordingly, the traffic stop complied

with our law, and the trial court did not err in denying Appellant's pre-trial motion.

Appellant also asserts that there was insufficient evidence to show that he violated section 4306(a). Here, Appellant relies upon the same argument that he employs in asserting a lack of probable cause: to wit, that cars approaching an intersection from perpendicular directions are not oncoming. Appellant's Brief at 18. The Commonwealth relies upon its argument that the cars were oncoming and approaching. Commonwealth's Brief at 10. For the reasons articulated above, we conclude that Trooper Lobdell's testimony provided sufficient evidence to support the trial court's judgment convicting Appellant of a violation of section 4306(a).

Judgment of Sentence affirmed.

Gantman, J. and Fitzgerald, J. concur in the result.