

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

REGINALD GERARD ROUNDTREE

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 525 MDA 2012

Appeal from the Judgment of Sentence February 28, 2012
In the Court of Common Pleas of Fulton County
Criminal Division at No(s): CP-29-CR-0000093-2011

BEFORE: SHOGAN, J., LAZARUS, J., and OTT, J.

MEMORANDUM BY OTT, J.:

FILED MAY 03, 2013

Reginald Gerard Roundtree brings this appeal from the judgment of sentence imposed on February 28, 2012, in the Court of Common Pleas of Fulton County. Roundtree was found guilty *in absentia*, after a nonjury trial, of false identification to law enforcement authorities.¹ The trial judge sentenced Roundtree to serve a term of imprisonment of three to six months. Roundtree challenges (1) the denial of his suppression motion, and (2) the sufficiency of the evidence. Based upon the following, we affirm.

¹ 18 Pa.C.S. § 4914(a). The trial judge also found Roundtree guilty of three summary offenses, namely, carrying and exhibiting driver's license on demand, 75 Pa.C.S. § 1511(a); driving while operating privilege is suspended or revoked, 75 Pa.C.S. § 1543(a); and duty of operator or pedestrian, 75 Pa.C.S. § 6308(a).

The facts underlying this appeal were summarized by the trial court in the opinion accompanying its suppression ruling, as follows:

On March 24, 201[1] at approximately 10:30 p.m., Pennsylvania State Police Trooper Michael Sprague was traveling on Route 30 near Harrisonville at the end of his shift. He came to be following a dark in color Chevrolet S-10 Blazer near the Scrub Ridge Bar. Trooper Sprague observed that the operator of the vehicle was repeatedly hitting his brakes, causing the vehicle to weave within his lane of travel and traveling in a jerking manner around the many curves in that area of the roadway. The operator of the vehicle was also causing the vehicle to slow down and speed up. Trooper Sprague followed the vehicle for approximately two (2) miles; the final approximately one half mile of which was captured on the MVR [mobile video recorder] recording in Trooper Sprague's patrol car. The recording started just prior to the activation of the patrol vehicle's overhead lights. Because he believed, based on his training and experience,¹ that the operator of the vehicle was possibly under the influence of drugs or alcohol, Trooper Sprague activated his overhead lights and initiated a traffic stop of the vehicle.

¹ Trooper Sprague testified that he has been a Pennsylvania State Trooper for 19 years, most of those years assigned to the patrol division, and all of those years assigned to the McConnellsburg Barracks. Trooper Sprague has made over 100 DUI [driving under the influence] arrests, and has received training in what to look for with respect to a DUI investigation. Further, Trooper Sprague lives along this stretch of highway and travels it to and from work.

Trooper Sprague approached the operator of the vehicle at the driver's side window. He advised the driver that he needed to see his driver's license and registration. See *Commonwealth's Exhibit 1*² at 22:26:30. The operator advised that [he] did not have his wallet with him. Trooper Sprague then stated, "The reason I stopped you is ... Are you unfamiliar with the road?" See *Commonwealth's Exhibit 1* at 22:26:47. The trooper then

asked the operator for his name and date of birth; the operator responded that his name was "Morris Simpson" and that his date of birth was "7/3/63." *Id. at 22:27:07-22:27:22.* After stepping away from the vehicle and attempting unsuccessfully to confirm the operator's identity through computerized searches, the trooper again attempted to ascertain the operator's identity. At this time, the operator advised the trooper that his name was "Mauris" but that he goes by "Morris." *Id. at 22:29:48-22:30:05.* This process went on for nearly a half-hour. Eventually, Trooper Sprague advised the operator that he was going to be taken to the state police barracks to be "live scanned" so that he could be identified. The operator was taken into custody at which time he provided his accurate name and date of birth.

² Commonwealth's Exhibit is the MVR recording from Trooper Sprague's patrol car.

Trial Court Opinion, 10/19/2011, at 1-3.

As a result of the March 24, 2011 incident, Roundtree was charged with false identification to authorities and various summary offenses. On July 21, 2011, Roundtree filed an omnibus pretrial motion, seeking suppression of statements made by Roundtree in the course of Trooper Sprague's investigation, and *habeas corpus* relief in the form of dismissal of the charge of false identification to law enforcement authorities for lack of *prima facie* evidence. The omnibus pretrial motion was denied on October 19, 2011, and a nonjury trial was scheduled for January 25, 2012.

On the day of trial, Roundtree failed to appear, and the trial court, having found him absent without cause, proceeded with the trial. The Commonwealth presented the uncontradicted testimony of Trooper Michael Sprague and the MVR video that was made by Trooper Sprague as he

followed Roundtree (Commonwealth Exhibit 1). At the close of the Commonwealth's case, trial counsel made a motion for judgment of acquittal as to the charge of false identification, which was denied. The trial court found Roundtree guilty of the above-stated offenses. Following sentencing, Roundtree filed this appeal.²

Roundtree, in the first issue raised on appeal, asks: "Are a trial court's findings of fact that [Roundtree] is driving suspiciously unsupported by the record when the evidence shows that [Roundtree] was braking on curves on a steep and winding mountain road and driving at speeds recommended by PennDOT signs and that his actions were not as described by the Trooper?"³ Specifically, Roundtree maintains that "[t]he trial court's findings of fact that

² The trial court, by order entered March 6, 2012, directed Roundtree to file a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b), within 21 days. On March 22, 2012, Roundtree filed a timely Rule 1925(b) statement. On March 28, 2012, Roundtree filed a supplement to his previous statement "to make clear that the issue raised regarding the alleged error that the 'Court erred in denying [Roundtree's] Motion to quash or dismiss the charge of False Identification' includes [Roundtree's] motion at trial in the nature of a demurrer." Supplement to Statement of Errors Complained of on Appeal, 3/28/2012. The trial court, in her Rule 1925(a) opinion, filed April 5, 2012, addressed the charge of false identification to law enforcement authorities with respect the motion presented at trial, and therefore we will also do so, since, if the issue is not "clear" from the previous statement, it may still be considered by this Court. **See Commonwealth v. Burton**, 973 A.2d 428, 433 (Pa. Super. 2009) ("if there has been an untimely filing, this Court may decide the appeal on the merits if the trial court had adequate opportunity to prepare an opinion addressing the issues being raised on appeal").

³ Roundtree's Brief at 9.

the Trooper had articulated reasons to believe that [Roundtree] was driving under the influence are not supported by the record below and the evidence did not justify a legal conclusion that 'reasonable suspicion' had been established."⁴

Our standard of review of an order denying a suppression motion is well settled:

[I]n addressing a challenge to a trial court's denial of a suppression motion [we are] limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Since the [Commonwealth] prevailed in the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence of the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Cauley, 10 A.3d 321, 325 (Pa. Super. 2010), *quoting* ***Commonwealth v. Bomar***, 826 A.2d 831, 842 (2003).

Our courts have recognized that "[b]ecause of the severe consequences of drunken driving in terms of roadway deaths, injuries, and property damage, ... the government has a compelling interest in detecting intoxicated drivers and removing them from the roads before they cause injury." ***Commonwealth v. Sands***, 887 A.2d 261, 271 (Pa. Super. 2005) (citation omitted). Consistent with this recognition, Section 6308 of the

⁴ ***Id.*** at 13.

Motor Vehicle Code requires that an officer need only have “reasonable suspicion” that a violation of the Vehicle Code has occurred or is occurring to effectuate a traffic stop. **See** 75 Pa.C.S. § 6308(b); **Commonwealth v. Holmes**, 14 A.3d 89, 95 (Pa. 2011). One such type of violation for which an officer may conduct a vehicle stop is suspicion of driving under the influence. **See Sands, supra** at 271–272.

“Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest, and depends on the information possessed by police and its degree of reliability in the totality of the circumstances.” **Commonwealth v. Brown**, 996 A.2d 473, 477 (Pa. 2010). To conduct a stop, “a police officer must be able to point to ‘specific and articulable facts’ leading him to suspect criminal activity is afoot.” **Id.** (citations omitted). “Also, the totality of the circumstances test does not limit our inquiry to an examination of only those facts that clearly indicate criminal conduct.” **Commonwealth v. Hughes**, 908 A.2d 924, 927 (Pa. Super. 2006). “Rather, even a combination of innocent facts, when taken together, may warrant further investigation by the police officer.” **Id.** (citation omitted).

The trial court analyzed the facts of this case under the “reasonable suspicion” standard as follows:

In the present case, Trooper Sprague testified that he observed [Roundtree] operate his vehicle over a distance of approximately two miles. In that time that he followed [Roundtree], he observed that [Roundtree] operated his vehicle

in such a manner as to apply his brakes more than normal and out of the ordinary. In fact, [Roundtree's] vehicle's constant brake lights caught the trooper's attention. The vehicle was driven in such a manner as to slow down, speed up, and move in a jerking manner around the curves, rather than smoothly. The vehicle was observed by the trooper to weave within its lane of travel, although not crossing the center line or the fog line. To Trooper Sprague, based on his training and experience, it appeared that [Roundtree] was operating his vehicle under the influence of alcohol or a controlled substance.

Based on the trooper's observations, the Court is left to conclude that Trooper Sprague had specific and articulable facts which led him to reasonably suspect that [Roundtree] was driving under the influence of alcohol or a controlled substance. Therefore, additional investigation was warranted, and the stop of [Roundtree's] vehicle was lawful.

Trial Court Opinion, *supra* at 4. Upon review, we discern no basis upon which to disturb the trial court's ruling.

The record supports the trial court's findings that Trooper Sprague encountered Roundtree's vehicle near the Scrub Ridge Bar,⁵ at the top of the mountain, and immediately noticed the driver hitting the brakes repeatedly, slowing down, speeding up, weaving within the lane, and going around the curve in a "jerky" motion, over a two mile distance. N.T., 9/6/2011 at 5-6. The trooper's MVR video, which started recording halfway down the mountain, indeed clearly shows repeated on/off braking by Roundtree. **See** Commonwealth Exhibit 1. Moreover, as the trier of fact, it was solely within the trial court's province to believe the trooper's testimony regarding

⁵ Roundtree did not stop at the Scrub Ridge Bar. N.T., 1/25/2012, at 16.

Roundtree's slowing down, speeding up, "jerky operation" around the curves, and weaving within the lane. **See Commonwealth v. Elmobdy**, 823 A.2d 180, 183 (Pa. Super. 2003), *appeal denied*, 847 A.2d 58 (Pa. 2004) ("It is within the suppression court's sole province as factfinder to pass on the credibility of witnesses and the weight to be given to their testimony.").

While Roundtree argues that his driving was not "unusual" given the steep and curving road and the danger of deer jumping into the roadway, we conclude the trooper's observations of Roundtree's driving — "just brake, brake, brake, brake,"⁶ — coupled with the trooper's familiarity with the road and his 19 years of experience, including over 100 DUI arrests, amply supported a reasonable suspicion that Roundtree was violating the Motor Vehicle Code by driving under the influence. **See e.g., Sands, supra** at 272 (finding officer with experience in observing and arresting drunk drivers had reasonable suspicion to stop defendant after he observed the defendant's vehicle drift and cross over fog line three times); **Commonwealth v. Slonaker**, 795 A.2d 397 (Pa. Super. 2002), *appeal denied*, 812 A.2d 1229 (Pa. 2002) (finding defendant's continuous weaving over a five mile stretch of road, his acceleration and deceleration, and crossing over fog line three times justified trooper's suspicion that he may

⁶ N.T., 9/6/2011, at 14.

have been intoxicated). Therefore, we agree with the trial court that the traffic stop was lawful.

Roundtree further argues that the trial court erred in denying his motion to suppress “because the Trooper, upon approaching the driver determined that there was no evidence of alcohol or drug consumption and any initial suspicion would have been allayed at that time, and the vehicle and driver should not have been detained any longer[.]”⁷ According to Roundtree, even if there was reasonable suspicion to stop his vehicle, upon stopping, Trooper Sprague asked Roundtree if he was unfamiliar with the road and received an affirmative response, and the trooper did not see any indication of intoxication and, therefore, there was no further justification for an investigative detention for driving under the influence.⁸ We find no merit in this argument.

As discussed above, we conclude that the stop was lawful, and we further note, contrary to the argument of Roundtree, that the very first thing that Trooper Sprague did when he approached the vehicle was to ask Roundtree for his drivers’ license and registration. Section 6308 of the Motor Vehicle Code imposes a duty upon the operator of a motor vehicle to produce a driver’s license upon request of a police officer when the officer

⁷ Roundtree’s Brief at 9.

⁸ **See id.** at 16.

has a reasonable belief that a violation of the Motor Vehicle Code has taken place.⁹ Here, Trooper Sprague's request that Roundtree produce his license and registration was in accordance with Section 6308. The ensuing detention arose out of Roundtree's failure to provide his driver's license. Accordingly, we reject Roundtree's challenge to the trial judge's suppression ruling.

Next, Roundtree contends that the court erred in denying his pretrial request for *habeas corpus* relief, and his motion for judgment of acquittal raised at the close of the Commonwealth's case-in-chief, because Trooper

⁹ Section 6308 of the Motor Vehicle Code provides, in pertinent part:

- (a) *Duty of operator or pedestrian.* --The operator of any vehicle ... reasonably believed to have violated any provision of this title shall stop upon request or signal of any police officer and shall, upon request, exhibit a registration card, driver's license and information relating to financial responsibility, ... and shall write their name in the presence of the police officer if so required for the purpose of establishing identity.
- (b) *Authority of police officer.* --Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or 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(a), (b).

Sprague never expressly informed Roundtree that he was conducting an investigation, as required by 18 Pa.C.S. § 4914.¹⁰ We disagree.

Our standard of review is well-settled: “We must view all the evidence in the light most favorable to the verdict winner, giving that party the benefit of all reasonable inferences to be drawn therefrom.”

Commonwealth v. Flamer, 848 A.2d 951, 952–953 (Pa. Super. 2004),

¹⁰ Roundtree frames two questions concerning his conviction for false identification, pursuant to 18 Pa.C.S. § 4914:

Does the “False Identification” statute require an express notification to a person that police are conducting an investigation, or can that element of “informing” be established by circumstantial evidence that permits a Defendant to infer that there is an investigation pending?

At trial, is the element that the Defendant has been “informed” that police are conducting an investigation proven by circumstantial evidence, without an express notice by police having been given?

Roundtree’s Brief at 9.

We note that in order to properly contest the denial of a pre-trial request for *habeas corpus* relief, a defendant should seek to take an immediate appeal by permission pursuant to 42 Pa.C.S. § 702(b). ***Commonwealth v. Bibbs***, 970 A.2d 440, 452 (Pa. Super. 2009), *appeal denied*, 982 A.2d 1227 (Pa. 2009). At this juncture, our review focuses on the challenge to the sufficiency of the evidence. However, Roundtree’s argument regarding the denial of *habeas corpus* relief is essentially the same as his challenge to the sufficiency of the evidence. ***See id.*** (“Appellant’s argument in support of this second issue [that the trial court erred by denying his pretrial motion for writ of *habeas corpus*] is essentially a reiteration of his argument in support of his first issue challenging the sufficiency of the evidence.”).

appeal denied, 862 A.2d 1253 (Pa. 2004). “Additionally, it is not the role of an appellate court to weigh the evidence or to substitute our judgment for that of the fact-finder.” ***Id.*** at 953 (citations omitted).

False identification, a third-degree misdemeanor, is defined in the Crimes Code as follows:

A person commits an offense if he furnishes law enforcement authorities with false information about his identity after being informed by a law enforcement officer who is in uniform or who has identified himself as a law enforcement officer that the person is the subject of an official investigation of a violation of law.

18 Pa.C.S. § 4914(a).

Our Supreme Court has stated the following with regard to the elements of this offense:

Under the plain language of the statute, three conditions must be satisfied before an individual will be found to have violated the statute by providing false information about his identity. First, if the law enforcement officer is not in uniform, the officer must identify himself as a law enforcement officer. Second, the individual must be informed by the law enforcement officer that he is the subject of an official investigation of a violation of law. Third, the individual must have furnished law enforcement authorities with false information after being informed by the law enforcement officer that he was the subject of an official investigation of a violation of law.

In the Interest of D.S., 39 A.3d 968, 974 (Pa. 2012).

As already mentioned, the operator of a vehicle who is the subject of a traffic stop is required, pursuant to 75 Pa.C.S. § 6308, to supply a driver’s license upon the request of a police officer when the officer has a reasonable belief that a violation of the Vehicle Code has taken place. Here, Trooper

Sprague, upon approaching Roundtree's vehicle, immediately requested Roundtree's "driver's license and registration."¹¹ Commonwealth's Exhibit 1, MVR video at 22:26:27. Roundtree responded that he did not have his wallet with him. **Id.** at 22:26:30. Trooper Sprague then stated, "The reason I stopped you is ... Are you unfamiliar with the road?" **Id.** at 22:26:47. Trooper Sprague asked Roundtree for any identification, and when Roundtree said he had none, Trooper Sprague asked his name and date of birth. Roundtree responded that he was "Morris Simpson" and his date of birth was "7/3/63." **Id.** at 22:27:05–22:27:22.

Trooper Sprague left Roundtree sitting in his vehicle, and went back to his patrol car to confirm the information through a computer search, but was unable to do so. He returned to Roundtree's vehicle and again questioned him regarding his name and whether he had a Pennsylvania driver's license. Roundtree said he did have a Pennsylvania driver's license, that his name was "Morris Simpson," and although he used the name "Mauris", his driver's license showed his name as "Morris." **Id.** at 22:28:59–22:30:05. Trooper Sprague's attempts to ascertain Roundtree's identity again failed, and he returned to Roundtree.

¹¹ Roundtree did produce a registration for the vehicle, and explained he had borrowed the vehicle from the owner. **See** Commonwealth's Exhibit 1, MVR video at 22:26:46; 22:29:28–31; 22:34:25. **See also** N.T., 1/25/2012, at 13.

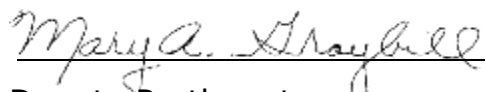
Trooper Sprague told Roundtree he could not find a Pennsylvania driver's license for him, and stated: "I just want to make sure you got a valid driver's license." **Id.** at 22:33:34. Roundtree still maintained that his name was "Morris Simpson." **Id.** at 22:34:05. Trooper Sprague told Roundtree, "I gotta find something," or he would have to take Roundtree to the police station "to get you printed to find out who you are." **Id.** at 22:34:55. When Roundtree protested, Trooper Sprague told him: "You're not telling me something right," to which Roundtree responded that he was "telling [him] the truth" and "not lying." **Id.** at 22:35:12-14. Trooper Sprague explained that the computer was not giving him a driver's license for the name and date of birth provided by Roundtree, and that meant "something's wrong." **Id.** at 22:35:19. Roundtree replied, "There's nothing wrong." **Id.** at 22:35:20.

Trooper Sprague was again unsuccessful in ascertaining Roundtree's identity and went back to Roundtree's vehicle. Roundtree repeated that his last name was "Simpson." **Id.** at 22:39:54. Trooper Sprague told Roundtree, "All I'm worried about is finding out who you are." **Id.** at 22:40:09. Roundtree continued to give the same false name, "Morris Simpson." **Id.** at 22:40:10, 22:41:27, and 22:47:23. He did not give his true name until he was in the patrol vehicle ready to be taken to the police station.

In light of this record, we conclude that the uniformed trooper's statements to Roundtree were sufficient to inform him that he was "the subject of an official investigation of a violation of law." 18 Pa.C.S. § 4914(a). **Compare In the Interest of D.S., supra** at 975 (finding evidence insufficient to support adjudication of delinquency under 18 Pa.C.S. § 4914 where "no evidence was presented that plainclothes officers (1) identified themselves, or (2) informed D.S. that he was the subject of an official investigation of a violation of the law, prior to D.S. providing the officers with false information regarding his identity"); **Commonwealth v. Barnes**, 14 A.3d 128, 132 (Pa. Super. 2011) (where occupant of vehicle was not yet under official investigation for a violation of law when asked for his name and date of birth, his provision of false information was not a violation of Section 4914). Accordingly, Roundtree's final issue fails.

Judgment of sentence affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 5/3/2013