

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
Appellee :
: v. :
: TIMOTHY R. TULE, :
Appellant : No. 711 WDA 2012

Appeal from the Judgment of Sentence of April 20, 2012,
in the Court of Common Pleas of Greene County,
Criminal Division, at No. CP-30-CR-0000022-2011

BEFORE: PANELLA, J., ALLEN, J., and STRASSBURGER, J.*

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

Timothy R. Tule (Appellant) appeals from his judgment of sentence of probation, fines, and costs following his convictions for driving under the influence (DUI), driving under suspension, and turning movements and required signals.¹ We affirm Appellant’s sentence in part, and vacate it in part.

The facts of the case are not in dispute. At around 2:00 a.m. on November 4, 2010, Waynesburg Borough police officers observed Appellant’s vehicle, with its left turn signal activated, travelling in the left hand lane of High Street in Waynesburg, Pennsylvania. The police vehicle followed Appellant for approximately eight blocks, with Appellant’s signal blinking the

¹ 75 Pa.C.S. §§ 3802(a)(2), 1543(a), and 3334(d), respectively. Appellant was found not guilty of violating 75 Pa.C.S. § 3802(a)(1) (DUI - incapable of safe driving).

*Retired Senior Judge assigned to the Superior Court.

entire time. Appellant finally turned left, and the police stopped Appellant for failure to discontinue use of turn signal. During the course of the traffic stop, Officer DeWitt detected the odor of alcohol on Appellant, who admitted to having been drinking, observed Appellant to have slow motor skills and bloodshot eyes, and discovered that Appellant had been driving with a suspended license. Appellant failed field sobriety tests and was arrested for suspicion of DUI. Blood drawn from Appellant showed Appellant's blood alcohol content to be .09%.

Prior to trial, Appellant filed a motion to suppress the evidence obtained against him during the stop, claiming that the officers lacked probable cause or reasonable suspicion to believe that Appellant had violated the motor vehicle code. The suppression court denied Appellant's motion after a hearing. Following a bench trial held on February 29, 2012, Appellant was convicted and was sentenced as previously indicated on April 20, 2012.

Appellant filed a timely notice of appeal, and both Appellant and the trial court complied with Pa.R.A.P. 1925. Appellant presents two questions for our consideration.

I. Did the trial court err in finding that [Appellant] violated [75 Pa.C.S. §] 3334(d) because there was no proof, whether by a preponderance of the evidence for suppression or beyond a reasonable doubt for guilt, to conclude that [Appellant] failed to discontinue his left turn signal immediately after completing a turn or movement from one traffic lane to another traffic lane?

II. Did the police officer have probable cause to believe that there was a motor vehicle violation of [75 Pa.C.S. §] 3334(d) or reasonable suspicion to believe that [Appellant] failed to discontinue using his turn signal when the officer did not observe the vehicle turn or move from one lane to another such that the court erred in failing to suppress evidence obtained including observations of [Appellant], statements of [Appellant], [and the] blood alcohol content of [Appellant as] fruits of the unlawful stop?

Appellant's Brief at 9 (emphasis and trial court answers omitted).

We address Appellant's first question mindful of the following standard of review.

[O]ur standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

Commonwealth v. Stays, 40 A.3d 160, 167 (Pa. Super. 2012) (internal quotations and citations omitted).

Appellant was found guilty of violating section 3334(d) of the vehicle code, which provides: "[t]urn signals shall be discontinued immediately after completing the turn or movement from one traffic lane to another traffic lane." 75 Pa.C.S. § 3334(d).

Appellant argues that while the evidence possibly or plausibly supported the trial court's conclusion that Appellant violated section 3334(d), the inference from the circumstantial evidence cannot be made beyond a reasonable doubt. **See** Appellant's Brief at 17. We agree.

The officers crested a hill and came upon Appellant driving in the left lane of High Street with his left turn signal activated. The officers observed Appellant travel eight or nine blocks with the left turn signal activated, then proceed to make a left turn. The Commonwealth offered no evidence that Appellant failed to immediately discontinue his signal after turning left onto High Street or after switching from High Street's right lane to its left lane.

The determination whether Appellant failed to discontinue the signal after a prior turn or merely engaged the signal in anticipation of his upcoming left turn was pure speculation.² Verdicts based upon such conjecture cannot stand. **Commonwealth v. Gruff**, 822 A.2d 773, 788 (Pa. Super. 2003) (quoting **Commonwealth v. Scott**, 597 A.2d 1220, 1221 (Pa. Super. 1991)) ("The trier of fact cannot base a conviction on conjecture and speculation and a verdict which is premised on suspicion will fall even

² We note that while section 3334(b) of the vehicle code provides minimum distances for signaling an upcoming turn, it does not provide any maximum distance. **See** 75 Pa.C.S. § 3334(b) ("At speeds of less than 35 miles per hour, an appropriate signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning. The signal shall be given during not less than the last 300 feet at speeds in excess of 35 miles per hour.").

under the limited scrutiny of appellate review.”). Accordingly, we vacate Appellant’s conviction and sentence for violation of 75 Pa.C.S. § 3334(d).

This does not end our inquiry, however, because a valid vehicle stop need not be based upon an actual violation of the vehicle code. **See Commonwealth v. Palmer**, 751 A.2d 223, 226 (Pa. Super. 2000). “In the absence of an actual violation... the officer must provide a reasonable basis for his belief that the Motor Vehicle Code was being violated in order to validate the stop.” **Id.** Therefore, we must address Appellant’s claim that all evidence obtained after the traffic stop should have been suppressed.

[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 for 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) (citation omitted). Further, the “suppression inquiry is analyzed from the perspective of the officer and not from the perspective of the defendant.” **Commonwealth v. Vincett**, 806 A.2d 31, 33 (Pa. Super. 2002).

A police officer has the authority to stop a vehicle when he or she has **reasonable suspicion** that a violation of the vehicle code has taken place,

for the purpose of obtaining necessary information to enforce the provisions of the code. 75 Pa.C.S. § 6308(b). However, if the violation is such that it requires no additional investigation, the officer must have **probable cause** to initiate the stop. *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. 2010).

Put another way, 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, 960 A.2d 108, 115 (Pa. 2008).

Appellant claims that a vehicle stop based upon section 3334 must be supported by probable cause rather than mere reasonable suspicion.

If one moved from one lane to another and failed to disengage the turn signal, one either did or did not commit the violation. There is no investigation into whether or not you did... Either the officers saw the vehicle move from lane to lane and fail to discontinue the lights or they did not.

Appellant's Brief at 19. We disagree.

If the officers observed Appellant before he engaged his turn signal, certainly they would have known for certain whether his turn signal use violated section 3334(d). However, having come upon Appellant after the signal had been activated, officers could not know without further investigation, i.e., asking Appellant when he had engaged the signal, whether Appellant violated the vehicle code. Therefore, the question is

whether the observation of Appellant traveling eight or nine blocks with his turn signal engaged gave the officers reasonable suspicion to believe Appellant may have violated section 3334(d).

The determination of whether an officer had reasonable suspicion that criminality was afoot so as to justify an investigatory detention is an objective one, which must be considered in light of the totality of the circumstances. It is the duty of the suppression court to independently evaluate whether, under the particular facts of a case, an objectively reasonable police officer would have reasonably suspected criminal activity was afoot.

Commonwealth v. Holmes, 14 A.3d 89, 96 (Pa. 2011) (citations omitted).

“[I]n order to establish reasonable suspicion, an officer must articulate specific facts in addition to inferences based on those facts, to support his belief that criminal activity was afoot.” ***Id.*** at 97 (emphasis omitted).

Here, Officer DeWitt testified that he observed Appellant travel at 25 miles per hour for eight or nine blocks with his turn signal continuously activated. Section 3334(d) requires that a driver discontinue use of a signal immediately after making a turn or changing lanes. **See** N.T., 2/29/2012, at 8-9. The suppression court found Officer DeWitt’s testimony to be credible and, based upon the totality of the circumstances, concluded that he reasonably believed that Appellant violated the vehicle code. **See** Suppression Court Opinion, 12/16/2011, at 5 (pages unnumbered).

We agree that under these circumstances, an objectively rational officer could reasonably suspect that Appellant violated section 3334(d).

Although the Commonwealth ultimately failed to prove that Appellant was guilty of the violation, Officer DeWitt had sufficient facts before him to justify the stop, and Appellant's suppression motion was properly denied. **See Vincett, supra** (holding suppression motion should have been denied because, although there may have been inadequate posting of traffic signs to convict the driver of driving the wrong way on a one-way street, the police officer had a reasonable basis for the traffic stop).

In sum, because Appellant's conviction for violating 75 Pa.C.S. § 3334(d) was grounded upon insufficient evidence, we reverse that conviction and vacate Appellant's corresponding judgment of sentence. Appellant's judgment of sentence is affirmed in all other respects.³

Judgment of sentence vacated in part and affirmed in part.
Jurisdiction relinquished.

³ As the portion of Appellant's sentence that we have vacated consists of small fines only, the trial court's sentencing scheme has not been upset, and we see no reason to remand for resentencing. Rather, we amend Appellant's sentence directly to remove all fines imposed for Appellant's conviction under 75 Pa.C.S. § 3334(d). **See Commonwealth v. Dobbs**, 682 A.2d 388, 392 (Pa. Super. 1996) ("Where we determine that a sentence must be corrected, this court has the option of amending the sentence directly or remanding it to the trial court for resentencing. ... If a correction by this court may upset the sentencing scheme envisioned by the trial court, the better practice is to remand.").