NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellant v. DARRYL A. CRAIG, Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 740 EDA 2012

Appeal from the Order February 2, 2012
In the Court of Common Pleas of Bucks County
Criminal Division at No.: CP-09-CR-0007011-2011

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

MEMORANDUM BY PLATT, J. Filed: January 11, 2013

The Commonwealth of Pennsylvania appeals from the order entered in the Court of Common Pleas of Bucks County, granting the motion to suppress evidence filed by Appellee, Darryl A. Craig. We reverse and remand.

On May 21, 2011, Pennsylvania State Trooper Shaun Flynn responded to a radio call of a one-car accident. When he arrived at the scene, he found that a vehicle had struck a tree. The vehicle's driver's side door was open, and Appellee was lying on the ground wearing a t-shirt and one sock, but no pants. The two passengers in the vehicle told Trooper Flynn that Appellee fell asleep while driving. Trooper Flynn attempted to talk to Appellee, but Appellee was incoherent and kept denying that he had been involved in a car

* Retired Senior Judge assigned to the Superior Court.

accident. The vehicle was searched and Appellee was patted down, but no contraband was discovered. Trooper Flynn, believing Appellee to be under the influence of a controlled substance, handcuffed Appellee and transported him to the police station for further evaluation by a drug-recognition expert. At the police station, Appellee was read his ***Miranda***[1] rights, but never signed any waiver. Another officer then performed a drug evaluation that lasted approximately twenty-five minutes and included testing of Appellee's pupils, mouth, and forearms.

Appellee was charged with driving under the influence of a controlled substance (DUI), careless driving, reckless driving, and disregarding a traffic lane. On February 1, 2012, Appellee filed a motion to suppress, alleging that Officer Flynn did not have the requisite reasonable suspicion or probable cause to detain him. Following a hearing held on February 2, 2012, the suppression court granted Appellee's motion and, finding that there was not probable cause to undertake a custodial detention, ordered the suppression of "any evidence that was seized after [Appellee] was taken into custody and removed from the scene." (N.T., 2/02/12, at 96). This timely appeal followed.[2] The Commonwealth presents one question on appeal:

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[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[2] The Commonwealth filed a statement of errors complained of on appeal on March 22, 2012. The suppression court filed an opinion on May 4, 2012. ***See*** Pa.R.A.P. 1925.

> A. Whether the suppression court erred in finding insufficient probable cause[3] for the arrest of Appellee based on the totality of the circumstances, which include the police officer's training and experience, the police officer's observations that the vehicle operated by Appellee was disabled after leaving the road and Appellee was found at the scene of the accident under the influence, having removed his clothes, and present parties identified him as the driver?

(Commonwealth's Brief, at 4).

In ***Commonwealth v. Dean***, 940 A.2d 514 (Pa. Super. 2008), this Court described the pertinent standard and scope of review as follows:

> When reviewing the propriety of a suppression order, an appellate court is required to determine whether the record supports the suppression court's factual findings and whether the inferences and legal conclusions drawn by the suppression court from those findings are appropriate. Because Appellee prevailed in the suppression court, we may consider only the evidence of the defense and so much of the evidence for the Commonwealth as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the suppression court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error. However, where the appeal of the determination of the suppression court turns on allegations of legal error, "[t]he suppression court's conclusions of law [...] are not binding on an appellate court, whose duty it is to determine if the suppression court properly applies the law to the facts." As a result, the conclusions of law of the suppression court are subject to plenary review.

Dean, ***supra*** at 516 (citations omitted).

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[3] At the suppression hearing, the parties argued about whether taking Appellee to the station constituted an investigative or a custodial detention. On appeal, the Commonwealth admits that Officer Flynn's actions were the functional equivalent of an arrest, and probable cause was required to take Appellee into custody. (***See*** Commonwealth's Brief, at 9).

The Commonwealth argues that the suppression court erred in granting Appellee's motion because, based on the totality of the circumstances, Trooper Flynn had probable cause to take Appellee into custody and transport him to the police station for further evaluation. (Commonwealth's Brief, at 9-10). In support of its position, the Commonwealth points to Trooper Flynn's experience from approximately one hundred previous DUI stops, Trooper Flynn's training in detection of persons driving under the influence of a controlled substance, and Appellee's condition at the scene of the accident, where he was not fully dressed, refused to admit he had been involved in a car crash, could not follow simple directions, and was unsteady on his feet. (***See id.*** at 10-13).

Conversely, Appellee argues that the suppression court properly granted his motion because Trooper Flynn did not have probable cause to detain him. (***See*** Appellee's Brief, at 10). He argues that the suppression court's determination is supported by the fact that Trooper Flynn transported him to the police station to undergo an additional evaluation intended to determine if he was under the influence of a controlled substance. (***See id.*** at 10-11).

"[C]itizens are protected by both federal and state constitutional provisions from unreasonable searches and seizures." ***Dean***, ***supra*** at 520 (citation omitted). The Fourth Amendment of the United States Constitution protects "[t]he right of the people to be secure in their persons, houses,

papers, and effects, against unreasonable searches and seizures . . ." U.S. CONST. amend. IV. The Pennsylvania Constitution, which provides even broader protection than its federal counterpart, provides in Article I, Section 8 that "[t]he people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures . . ." PA. CONST. art. I, § 8; ***see Dean***, ***supra*** at 520.

"Generally, . . . a search or seizure is not reasonable unless it is conducted pursuant to a search warrant issued by a magistrate upon a showing of probable cause. The 'implied consent' provision of the Motor Vehicle Code, however, dispenses with the need to obtain a warrant." ***Commonwealth v. Keller***, 823 A.2d 1004, 1009 (Pa. Super. 2003), *appeal denied*, 832 A.2d 435 (Pa. 2003) (citations and some quotation marks omitted). Section 1547 of the Motor Vehicle Code states:

> **(a) General Rule—**Any person who drives, operates or is in actual physical control of the movement of a motor vehicle in this Commonwealth shall be deemed to have given consent to one or more chemical tests of breath, blood or urine for the purposes of determining the alcoholic content of blood or the presence of a controlled substance if a police officer has reasonable grounds to believe the person to have been driving, operating or in actual physical control of the movement of a motor vehicle:
>
> (1) in violation of section 1543(b)(1.1) (relating to driving while operating privilege is suspended or revoked), 3802 (relating to driving under influence of alcohol or controlled substance), or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock)[.]

75 Pa.C.S.A. § 1547(a)(1). "The 'reasonable grounds' requirement of this provision 'has been interpreted to require probable cause.'" ***Keller***, ***supra*** at 1009 (quoting ***Commonwealth v. Barton***, 690 A.2d 293, 296 (Pa. Super. 1997)).

> Probable cause to arrest exists when the facts and circumstances within the police officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested. Probable cause justifying a warrantless arrest is determined by the totality of the circumstances. Furthermore, probable 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) (citations and quotation marks omitted); ***see also Illinois v. Gates***, 462 U.S. 213 (1983); ***Commonwealth v. Galendez***, 27 A.3d 1042, 1046 (Pa. Super. 2011), *appeal denied*, 40 A.3d 120 (Pa. 2012).

Here, the suppression court found that "Trooper Flynn's mere suspicion that Appellee was under the influence of a controlled substance did not constitute probable cause to arrest." (Suppression Court Opinion, 5/04/12, at 8). The suppression court explained that while Trooper Flynn, based on his observations of Appellee at the scene of the accident, thought it was possible that Appellee was under the influence of a controlled substance, he decided that "more tests were essential to confirm his suspicion[.]" (***Id.***). Further, the suppression court also noted that "Trooper Flynn could have reached the equally plausible conclusion that Appellee's

confusion and state of undress at the scene of the accident were attributable to a head injury resulting from the collision with an adjacent tree." (***Id.***). The court concluded that Appellee was arrested without probable cause. (***Id.*** at 9). We disagree.

Both Appellee and the suppression court rely on the following exchange that took place during cross-examination of Trooper Flynn at the suppression hearing:

> Q And I believe in your report you indicated specifically you thought there was a possibility he was under the influence of some sort of drug, right?
>
> A Correct.
>
> Q And in your report you indicated that at that point [at the scene of the accident] you believed that he needed more tests to determine that, correct?
>
> A Right.
>
> Q And that is why you took him to [the police station]?
>
> A . . . [Y]es, sir.

(N.T., 2/02/12, at 33-34; ***see*** Appellee's Brief, at 12; Suppression Ct. Op., 5/04/12, at 8).

At the suppression hearing, Trooper Flynn testified that he underwent training on the correct procedure to follow in a DUI matter. (N.T., 2/02/12, at 9-10). He also participated in a three month "coach training period," which involved observing experienced troopers handle incidents and gradually taking on more and more responsibility. (***Id.*** at 11). This training

included instruction in detecting the difference between a driver acting under the influence of alcohol and acting under the influence of a controlled substance. (***Id.*** at 11-13). During his coaching period, Trooper Flynn participated in thirty to forty DUI stops. (***Id.*** at 13). Since his training ended, he has been involved in another fifty to sixty DUI stops. (***Id.*** at 14). He also testified that he undergoes additional DUI training once a year. (***Id.*** at 15).

When Trooper Flynn, who was dressed in a marked Pennsylvania State Trooper uniform, arrived at the scene of Appellee's car accident, he activated the overhead lights on his police car. (***Id.*** at 31). He observed that one vehicle had crashed into a tree off the side of the road. (***Id.*** at 16-17). The car was still running and the keys were in the ignition. (***Id.*** at 16-17, 20). Appellee was laying outside of the open driver's door, wearing only a t-shirt and one sock, but no pants. (***Id.*** at 17). Further, Appellee's "eyes were completely and totally constricted. He could not follow movement of anything." (***Id.*** at 23). The two passengers in the vehicle both told Trooper Flynn that Appellee was driving and had fallen asleep at the wheel. (***Id.*** at 18). When Trooper Flynn tried to help Appellee off the ground, Appellee was "completely and totally incoherent." (***Id.***). Despite Trooper Flynn's repeated explanation that he had been involved in a car accident, Appellee "denied the fact that he was involved in a crash." (***Id.*** at 19; ***see also id.*** at 18-19, 22, 25). Trooper Flynn attempted to perform field sobriety tests,

but was unable to do so because of Appellee's incoherent condition. (***Id.*** at 22-23). Appellee was also uncooperative, would not listen to simple instructions, became suddenly combative, and was unable to stand on his own. (***Id.*** at 23-24).

After describing his observations of Appellee at the scene of the accident, Trooper Flynn testified that, based on his experience and training, he felt that Appellee was under the influence of a controlled substance. (***Id.*** at 24-25, 26). At that point, Trooper Flynn handcuffed Appellee and transported him to the police station because he "felt [Appellee] needed to be evaluated by a drug recognition expert." (***Id.*** at 26).

In ***Commonwealth v. Dommel***, 885 A.2d 998 (Pa. Super. 2005), *appeal denied*, 920 A.2d 831 (Pa. 2007), the appellant drove into an intersection and hit another vehicle. ***Dommel***, ***supra*** at 1000. The driver of the other vehicle called 911 and began to follow the appellant. ***Id.*** While on the phone, the other driver reported seeing the appellant drive through four red lights at a moderate speed, pull into a driveway, and park behind his house. ***Id.*** An officer arrived at the scene, and despite orders to stop, the appellant ran into his house. ***Id.*** at 1000-01. The officer entered the home and arrested the appellant. ***Id.*** at 1001. On appeal, this Court found that based on the phone call and the officer's observations of the appellant's truck, there was probable cause to arrest the appellant for DUI. ***Id.*** at 1002. The Court continued:

> What solidified probable cause to arrest for DUI, however, was [the appellant's] practically trance-like reaction in the face of a highly demonstrative show of authority in his front yard. Confronted with a prominent display of patrol car strobe lights, overhead flashers, and an officer's repeated calls to stop where he was, [the appellant] neither stopped nor ran away; instead, he just continued to walk into his home and left the door standing wide open behind him. This abnormally insensible reaction to what most would consider an intimidating official presence in their yard, coupled with the officer's knowledge of [the appellant's] hazardous driving and slow-paced flight, supplied a fair probability that [the appellant] was too chemically impaired to appreciate his surroundings or exercise sound judgment. Under the totality of the circumstances, therefore, an officer exercising reasonable caution would have had probable cause to believe the [the appellant] had been driving under the influence of drugs or alcohol.

Id. at 1003.

We find ***Dommel*** to be analogous to the current matter. Here, Trooper Flynn had extensive training and experience with DUI matters. When he arrived at the scene of the accident, he was dressed in his uniform and was driving a police vehicle with flashing lights. He talked to two passengers who testified that Appellee was driving the vehicle that crashed into a tree off the side of the road. Appellee, whose eyes were constricted and could not follow movement, had lost his pants and was lying on the ground outside of the vehicle, while the engine was still running. When questioned by Trooper Flynn, Appellee denied ever being involved in an accident, despite the obvious evidence in front of him. Further, Appellee ignored simple instructions from Trooper Flynn and was too incoherent to even be able to attempt to perform field sobriety tests. As in ***Dommel***,

Appellee's abnormal response to Trooper Flynn's questioning, combined with his condition at the scene of the accident, the passengers' testimony that he was driving at the time the accident occurred, and Trooper Flynn's training in DUI detection, leads us to conclude that there was probable cause to arrest Appellee at the scene of the accident. ***See also Commonwealth v. Welshans***, 580 A.2d 379, 381 (Pa. Super. 1990), *affirmed sub nom.*, ***Commonwealth v. Voshall***, 605 A.2d 1222 (Pa. 1992) (finding probable cause existed where appellant was in a single-car accident in good weather and police officer smelled alcohol on appellant); ***Commonwealth v. Haynos***, 525 A.2d 394, 399 (Pa. Super. 1987), *appeal denied*, 536 A.2d 1329 (Pa. 1987) (finding probable cause existed where appellant was driver in one-car accident involving car crashing into a tree and officer smelled alcohol on appellant's breath).

Further, we also note that the suppression court provided no legal authority for its assertion that suppression was warranted in the instant matter because it was an "equally plausible conclusion that Appellee's state of confusion and state of undress at the scene of the accident were attributable to a head injury resulting from the collision with an adjacent tree." (Suppression Ct. Op., 5/04/12, at 8). The amount of evidence needed to establish probable cause "is not equivalent to the proof beyond a reasonable doubt standard applied in a criminal trial." ***Commonwealth v. Dennis***, 618 A.2d 972, 980 (Pa. Super. 1992), *appeal denied*, 634 A.2d 218

(Pa. 1993) (citation and internal quotation marks omitted). Rather, "[i]t is only the probability and not a *prima facie* showing of criminal activity that is a standard of probable cause." ***Dommel***, ***supra*** at 1002 (citation omitted). The suppression court erred when it found that Trooper Flynn lacked probable cause to arrest Appellee and granted the motion to suppress.

Order reversed. Matter remanded for proceedings consistent with this Memorandum. Jurisdiction relinquished.