

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
JOHN FLEEGER,		
Appellant		No. 985 WDA 2012

Appeal from the Judgment of Sentence entered May 24, 2012,
in the Court of Common Pleas of Jefferson County,
Criminal Division, at No(s): CP-33-CR-640-2010

BEFORE: BENDER, ALLEN, and MUSMANNO, JJ.

MEMORANDUM BY ALLEN, J.:

Filed: January 11, 2013

John Fleeger ("Appellant") appeals from the judgment of sentence imposed after the trial court convicted him of two counts of driving under the influence ("DUI").¹ We affirm.

In this timely appeal, Appellant presents the following issue for our review:

Whether the lower court erred in denying Appellant's Omnibus Pretrial Motion, where there was no evidence of reasonable suspicion of a violation of the Motor Vehicle Code.

Appellant's Brief at 4.

In reviewing Appellant's challenge to the denial of his suppression motion, our appellate standard of review is as follows:

¹ 75 Pa.C.S.A. § 3802(a)(1) and (c).

Our standard of review of a denial of suppression is whether the record supports the trial court's factual findings and whether the legal conclusions drawn therefrom are free from error. Our scope of review is limited; we may consider only the evidence of the prosecution 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 findings of the suppression court, we are bound by those facts and may reverse only if the court erred in reaching its legal conclusions based upon the facts.

Commonwealth v. Reppert, 814 A.2d 1196, 1200 (Pa. Super. 2002)

(citations omitted).

Here, the trial court recounted its relevant findings of fact as follows:

At a hearing held on March 4, 2011, the officers who participated in the stop testified on behalf of the Commonwealth, and Debbie Mumford testified for [Appellant].

Officers Earl Campbell ("Campbell") and Troy Bell ("Bell") were patrolling in the borough of Sykesville in the early morning hours of September 25, 2010, when they heard the sounds of a revving engine and spinning tires. From the intersection of Dr. Fugate Drive and Main Street, they looked to their right to locate the source of the noise and saw what appeared to be a gold GMC sports utility vehicle turning right onto Main Street from an alley beside Bootlegger's bar. Both officers had an unobstructed view of the front end of the vehicle and could see that its operator, whom they later identified as [Appellant], did not use a turn signal. Based on that observation and the officers' determination that [Appellant's] "accelerated skid" onto Main Street constituted careless driving, Campbell turned left and pursued the SUV. At that time, Campbell and Bell did not observe any other vehicular or pedestrian traffic, and as they followed [Appellant], they did not identify any additional traffic violations.[FN 1]

[FN 1] It was suggested that the officers could not have seen the SUV from beside the stop sign because of its setback and interfering foliage. The Court does not disagree with that position. Campbell's testimony, however, was that he was

stopped "at the intersection," not "at the stop sign," and even [Appellant's] witness acknowledged that Main Street was visible from Dr. Fugate Drive if you rolled forward. The Court can reasonably infer, moreover, that Campbell did precisely that, because 75 Pa.C.S.A. § 3323(b) directs that a motorist who cannot see opposing traffic from a stop sign, stop line, or crosswalk should proceed to the point nearest the intersection where he has a clear view of approaching traffic in the absence of a stop line or crosswalk. *Id.*

Trial Court Opinion, 3/18/12, at 1-2.

On appeal, Appellant argues that the police officers lacked reasonable suspicion to stop his vehicle and that the evidence from the stop should have been suppressed. Appellant specifically contends that at the suppression hearing, "the officers could not clearly articulate the facts of the evening," such that they could not have possessed the requisite reasonable "belief that [A]ppellant's actions rose to a violation [of the Motor Vehicle Code]." Appellant's Brief at 9-10. This contention lacks legal and factual support.

With regard to a law enforcement officer's authority to stop a vehicle for an alleged violation, the Motor Vehicle Code provides:

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.A. § 6308(b), amended by 2003 Pa. Laws 24, § 17 (effective Feb. 1, 2004).

Case law interpreting § 6308(b) relative to whether police officers may stop a vehicle based upon reasonable suspicion or the higher standard of probable cause, focuses on the “investigative nature” of the stop. Specifically, we consider whether the police officer has an expectation of learning additional relevant information concerning the suspected criminal activity, or whether no further evidence could be obtained from the stop. ***Commonwealth v. Chase***, 960 A.2d 108, 115 (Pa. 2008).

In ***Commonwealth v. Feczko***, 10 A.3d 1285 (Pa. Super. 2010) (*en banc*), this Court clarified the appropriate “quantum of cause” necessary to effectuate a stop pursuant to § 6308(b). We explained:

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.” ***Commonwealth v. Gleason***, 785 A.2d. 983, 898 (Pa. 2001) (citation omitted). ***See also Commonwealth v. Chase***, 960 A.2d 108, 116 (Pa. 2008) (reaffirming ***Gleason's*** probable cause standard for non-investigative detentions of suspected Vehicle Code violations).

Feczko, 10 A.3d at 1291. ***See also Commonwealth v. Sands***, 887 A.2d 261, 270 (Pa. Super. 2005).

To conduct a non-investigative stop for a violation of the Pennsylvania Motor Vehicle Code, a police officer must have probable cause to believe an offense has occurred. *Commonwealth v. Chase*, 960 A.2d 108, 116 (Pa. 2008). An officer has probable cause where the facts and circumstances within the officer's knowledge are sufficient to warrant someone of reasonable caution in believing that a violation has been or is being committed. *Commonwealth v. Hernandez*, 935 A.2d 1275, 1284 (Pa. 2007). Probable cause does not require certainty. *Commonwealth v. Mickley*, 846 A.2d 686, 689 (Pa. Super. 2004). Rather, it exists where a criminal offense is one reasonable inference, even if criminality is not necessarily the most likely inference. *Id.*

In this case, we have reviewed the notes of testimony and conclude that Appellant's claim is without merit because the Commonwealth presented evidence that the police officers in this case had probable cause to stop Appellant's vehicle for a violation of the Motor Vehicle Code. As noted by the trial court, it convened a suppression hearing on March 4, 2011. The Commonwealth presented the testimony of Sykesville Police Officers Earl Campbell and Troy Bell. Appellant presented the testimony of Debbie Mumford.

Officer Campbell testified that around 2:15 a.m. on September 25, 2010, he saw Appellant driving a golden GMC SUV, and making a right-hand turn without using his turn signal. N.T., 3/4/11, at 6-7. Officer Campbell

also observed Appellant make an "accelerated skid" and drive past the officers. *Id.* at 7. Officer Campbell testified *verbatim*:

I could see the front end of the car and he did not use his right turn signal.

Id.

Officer Campbell said there was nothing obstructing his view of the vehicle, and that the officers initiated the traffic stop "because [Appellant] failed to use his turn signal and he also came in an accelerated skid when he turned on [Route] 119." *Id.* Officer Campbell characterized the "accelerated skid" as careless driving. *Id.* at 8.

Officer Bell testified that he was patrolling with Officer Campbell when he heard Appellant revving the engine, and saw Appellant make a right turn "without a turn signal", as well as an "accelerated skid." *Id.* at 17-18. Officer Bell testified:

I saw a vehicle come out of a parking lot from the far side of the street without a turn signal and they did an accelerated skid and proceeded past us at a high rate of speed, and at that point, we made a traffic stop.

Id. at 18. Officer Bell stated that he did not believe anything was obstructing his view, and that he could "clearly see" the vehicle. *Id.* at 19.

Debbie Mumford testified to owning and being a passenger in the GMC SUV that Appellant was driving in the early morning of September 25, 2010. *Id.* at 25. Ms. Mumford averred that "it was a really confusing night", there were many vehicles around, and that the officers would not have been able

to see whether the GMC vehicle had its turn signal on. *Id.* at 28. Ms. Mumford did, however, state that the officers “could probably see the [GMC] if [they] rolled like on just about the road...” *Id.* at 28.

Given the foregoing, the evidence of record supports the trial court’s factual findings, *supra* at 2-3, and legal conclusion that the police officers were justified in stopping Appellant’s vehicle based on a violation of the Motor Vehicle Code. ***Reppert, supra.*** We therefore conclude that the trial court properly denied Appellant’s suppression motion, and affirm the judgment of sentence.

Judgment of sentence affirmed.