

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
JAMES PATRICK LESLIE,		
Appellant		No. 725 WDA 2014

Appeal from the Judgment of Sentence Entered March 17, 2014
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0011834-2013

BEFORE: BENDER, P.J.E., JENKINS, J., and MUSMANNO, J.

MEMORANDUM BY BENDER, P.J.E.:

FILED August 3, 2015

Appellant appeals from the judgment of sentence of ninety days' intermediate punishment, followed by six months' probation, and a fine of \$1,500.00. Appellant challenges the court's denial of his pre-trial motion to suppress. After careful review, we affirm.

On October 11, 2013, the Commonwealth charged Appellant with driving under the influence (DUI) of alcohol - highest rate of alcohol, and DUI - general impairment.¹ Appellant was also charged with violating section 3323(c) of the Motor Vehicle Code (MVC), which sets forth a driver's "[d]uties at yield signs."² Prior to Appellant's trial for these offenses, he filed

¹ 75 Pa.C.S. § 3802(c), and 75 Pa.C.S. § 3802(a)(1), respectively.

² 75 Pa.C.S. § 3323(c) (emphasis omitted).

a motion to suppress, arguing that the traffic stop of his vehicle was not supported by probable cause. After conducting a hearing on January 23, 2014, the court denied Appellant's motion.

Appellant's case proceeded to a non-jury trial, at the conclusion of which the court convicted him of the above-stated offenses. On March 17, 2014, the court sentenced Appellant as stated, *supra*. Appellant filed a timely post-sentence motion, which was denied on March 31, 2014. He then filed a timely notice of appeal, as well as a timely Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. The trial court filed a Rule 1925(a) opinion on August 8, 2014. Herein, Appellant presents one issue for our review:

I. Whether the trial court erred in denying [Appellant's] motion to suppress evidence obtained from the stop of his motor vehicle for failure to yield where such stop was not supported by probable cause because the arresting officer admitted that the intersection in question was confusing, awkward, and set up in such a way that oncoming traffic may not be seen by merging vehicles?

Appellant's Brief at 5.

Our standard of reviewing the denial of a suppression motion is as follows:

In reviewing an order from a suppression court, we consider the Commonwealth's evidence, and only so much of the defendant's evidence as remains uncontradicted. We accept the suppression court's factual findings which are supported by the evidence and reverse only when the court draws erroneous conclusions from those facts.

Commonwealth v. Hoopes, 722 A.2d 172, 174-75 (Pa. Super. 1998).

Here, Appellant and the Commonwealth agree that the officer who stopped Appellant's vehicle did so because he suspected that Appellant violated section 3323(c) of the MVC by failing to properly yield to oncoming traffic when exiting an off-ramp of the Pennsylvania Turnpike. **See** Appellant's Brief at 14; Commonwealth's Brief at 4. Section 3323(c) of the MVC states:

(c) Duties at yield signs.--The driver of a vehicle approaching a yield sign shall in obedience to the sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop before entering a crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering. After slowing down or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute a hazard during the time the driver is moving across or within the intersection of roadways. If a driver is involved in a collision with a vehicle in the intersection or junction of roadways after driving past a yield sign, the collision shall be deemed prima facie evidence of failure of the driver to yield the right-of-way.

75 Pa.C.S. § 3323(c).

The Commonwealth and Appellant also agree that to justify this stop, the officer was required to possess probable cause that Appellant violated section 3323(c). **See** Appellant's Brief at 14; Commonwealth's Brief at 4; **Commonwealth v. Feczko**, 10 A.3d 1285, 1291 (Pa. Super. 2010) (holding that "reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to [a] suspected violation" of the MVC; instead, "[i]n such an instance, 'it is incumbent [*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 [MVC]” (citations and emphasis omitted).

In concluding that the arresting officer possessed probable cause to stop Appellant’s vehicle, the trial court relied on the following evidence presented at the suppression hearing:

On February 18, 2013, Lieutenant [(Lt.)] Otto Gaal of the Harmar Township Police was in a marked patrol car on routine patrol on Freeport Road in Harmar Township. Freeport Road is a heavily congested roadway traveled by both commercial and regular vehicle traffic and consists of [two] lanes of travel in each direction (North and Southbound) separated by a concrete median strip. In the immediate area of this vehicle stop there is an off-ramp from the Pennsylvania Turnpike that merges onto Freeport Road Southbound. Lt. Gaal was one car length behind a Port Authority bus that was traveling Southbound toward Pittsburgh when he noticed [Appellant’s] vehicle traveling down the off[-]ramp at a high rate of speed. The vehicle caught his attention because it was traveling at a high rate of speed, and it did not appear to be slowing [or] stopping as it was approaching the merge point. The off[-]ramp has a clearly posted Yield sign prior to the merge point which requires drivers to [y]ield to the traffic traveling southbound on Freeport Road. [Appellant’s] vehicle traveled down the off[-]ramp, did not slow or stop at the merge point, and entered the right travel lane. [Appellant’s] failure to yield to the traffic on Freeport Road caused the Port Authority bus to have to swerve abruptly into the left travel lane to avoid colliding with [Appellant’s] vehicle. The officer then activated his lights and stopped [Appellant’s] vehicle with the intention of citing him for failure to yield.

Trial Court Opinion (TCO), 8/8/14, at 2-3 (citations to the record omitted).

In explaining why this evidence was sufficient to indicate that Lt. Gaal possessed probable cause to stop Appellant's vehicle, the court emphasized that,

[t]he uncontradicted testimony of Lt. Gaal established that [Appellant's] vehicle traveled from the off[-]ramp at a high rate of speed, failed to slow or stop at the merge point and did not yield to oncoming traffic. This failure to yield caused a bus to take evasive maneuvers and swerve into the left travel lane and remain there while [Appellant] continued to travel in the right lane.

Id. at 5.

In attacking the court's determination, Appellant essentially argues that Lt. Gaal did not possess probable cause to stop Appellant's vehicle because the officer testified that he only observed Appellant's driving for a moment; the area where the off-ramp merges onto Freeport Road is "an awkward intersection" and the "traffic on Freeport Road is below the 'eye level' of motorists on the Turnpike off[-]ramp"; the bus may have been in Appellant's "blind spot"; there are frequent accidents in that area; and Lt. Gaal did not see any other evidence that Appellant committed a traffic violation. Appellant's Brief at 17-18.

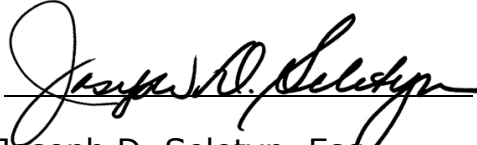
Appellant's argument is unconvincing. Initially, "[i]t is within the suppression court's sole province as factfinder to pass on the credibility of witnesses and the weight to be given to their testimony. The suppression court is free to believe all, some or none of the evidence presented at the suppression hearing." ***Commonwealth v. Elmobdy***, 823 A.2d 180, 183 (Pa. Super. 2003) (citations omitted). In the present case, the court chose

to weigh more heavily certain portions of Lt. Gaal's testimony over those herein emphasized by Appellant. It was within the court's discretion to do so.

Additionally, contrary to Appellant's suggestion, section 3323(c) does not excuse a failure to yield where an intersection is 'awkward' or the driver cannot see oncoming traffic due to a 'blind spot.' Indeed, Appellant's argument that it was difficult for him to see oncoming traffic because of the 'awkward' engineering of the merge point supports a conclusion that he should have slowed or stopped his vehicle so that he could clearly see the oncoming vehicles before attempting to merge onto Freeport Road. **See** 75 Pa.C.S. § 3323(c) ("The driver of a vehicle approaching a yield sign shall in obedience to the sign *slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop ...* at the point nearest the intersecting roadway *where the driver has a view of approaching traffic* on the intersecting roadway before entering.") (emphasis added). Lt. Gaal's testimony, which was believed by the trial court, indicates that Appellant did not stop or slow to a reasonable speed. Instead, Appellant merged at a high rate of speed directly into the lane of travel occupied by a bus. Based on these facts, we ascertain no error in the court's conclusion that Lt. Gaal possessed probable cause to justify the stop of Appellant's vehicle. Therefore, the court did not err in denying Appellant's motion to suppress.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line drawn through the middle of the text.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/3/2015