

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
JOHN M. HUETHER,	:	No. 1661 WDA 2012
	:	
Appellant	:	

Appeal from the Judgment of Sentence, September 20, 2012,
in the Court of Common Pleas of Butler County
Criminal Division at No. CP-10-CR-0000524-2011

BEFORE: FORD ELLIOTT, P.J.E., OTT AND MUSMANNO, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: FILED: October 10, 2013

Appellant, John M. Huether, appeals from the judgment of sentence imposed by the Court of Common Pleas of Butler County following his convictions of one count each of driving under the influence, careless driving, and failure to observe traffic lanes. After careful review, we affirm.

The trial court has aptly summarized the facts of this case as follows:

Officer Justin Hewitt, of the Cranberry Township Police Department, was the only witness presented to testify at the suppression hearing. He revealed the following facts. At approximately 1:50 A.M. on November 21, 2010, Officer Hewitt was traveling northbound on State Route 19 in Cranberry Township, Butler County, in the vicinity of Ehrman Road, when he observed a purple Nissan Frontier traveling in the same direction. After first observing the vehicle, Officer Hewitt noticed the vehicle swerve within its travel lane from the center yellow line to the white fog line back to the center yellow line. Officer Hewitt observed the vehicle swerve in that

manner two times before the vehicle approached an intersection with a green traffic signal. The vehicle slowed to a speed where Officer Hewitt thought it was going to stop just before the intersection with the green light. Based on the time of the morning—a time at which impaired drivers are often on the roadway—and the observations of the vehicle swerving in its lane and nearly stopping at a green light, Officer Hewitt suspected that the driver of the Frontier, later identified as the defendant, was under the influence. Officer Hewitt activated his overhead lights and conducted a stop of the vehicle. Officer Hewitt estimated that he followed the vehicle for approximately twenty seconds before he activated his lights.

At the time of the suppression hearing, the Commonwealth introduced into evidence as Exhibit 1 a compact disc that contains a dashboard video recorded prior to the time Officer Hewitt activated his overhead lights. The video supports the testimony of Officer Hewitt. The Frontier can clearly be observed swerving within its lane prior to the time it approached the intersection with the green traffic signal. At that intersection, the vehicle slowed to a near stop. The video also shows that the vehicle touched the white fog line after it went through the intersection just prior to the time Officer Hewitt activated his overhead lights.

Trial court opinion, 6/28/12 at 1-2.

On June 5, 2012, a hearing was held on the omnibus pretrial motion to suppress evidence questioning the legality of the stop before the Honorable William R. Shaffer. On June 25, 2012, Judge Shaffer denied appellant's omnibus pre-trial motion to suppress. On August 2, 2012, a non-jury proceeding was held before Judge Shaffer, where appellant was found guilty of driving under the influence, careless driving, and failure to

observe traffic lanes.¹ Appellant timely appealed. On October 24, 2012, appellant was ordered to file a concise statement of errors complained of on appeal within 21 days; appellant timely complied. Herein, appellant presents two issues for our review:

1. Did the officer have the requisite reasonable articulable suspicion to allow an officer to conduct an investigatory stop as provided for in 75 Pa.C.S.A. § 6308(b) of the Vehicle Code of the Commonwealth of Pennsylvania?
2. Did the officer have probable cause to conduct a traffic stop for a violation of either 75 Pa. C.S.A. § 3714(a) or § 3309(1) of the Vehicle Code of the Commonwealth of Pennsylvania?²

Appellant's brief at 3.

Our standard of review for an order denying a motion to suppress is well established:

We are limited to determining whether the lower court's factual findings are supported by the record and whether the legal conclusions drawn therefrom are correct. We may consider the evidence of the witnesses offered by the Commonwealth, as verdict winner, and only so much of the evidence presented

¹ Respectively, 75 Pa.C.S.A. §§ 3802(a)(1), 3714(a), and 3309(1).

² In his Rule 1925(b) statement, appellant challenges the sufficiency of the evidence to support the trial court's determination that appellant was guilty of careless driving and disregarding traffic lanes. In his brief to this court, appellant questions whether there was probable cause to stop him for these motor vehicle code violations. In the argument section of his brief, which we note is not broken down into as many parts as there are questions to be argued in violation of Pa.R.A.P. 2119(a), appellant does not address either the sufficiency of the evidence or probable cause to stop his vehicle. Thus, this issue does not merit review by this court.

by [the] defense that is not contradicted when examined in the context of the record as a whole. We are bound by facts supported by the record and may reverse only if the legal conclusions reached by the court were erroneous.

Commonwealth v. Feczko, 10 A.3d 1285, 1287 (Pa.Super. 2010) (*en banc*), quoting **Commonwealth v. Hughes**, 908 A.2d 924, 927 (Pa.Super. 2006).

In regards to the legality of the stop, appellant claims there were not enough observations at the time of the stop to provide a reasonable suspicion of criminal activity that would permit a stop of the vehicle. (Appellant's brief at 7.)

The Pennsylvania Motor Vehicle Code states that an officer may stop a vehicle:

[w]henever 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).

Case law interpreting Section 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**, 599 Pa. 80, 92, 960 A.2d 108, 115 (2008). Our supreme court explained that “when an officer has reasonable suspicion a violation of the Vehicle Code is occurring or has occurred, he may interrupt the privileged operation of a vehicle on the public highways and stop the vehicle for the investigative purposes stated therein.” **Chase**, 599 Pa. at 88, 960 A.2d at 112, citing 75 Pa.C.S.A. § 6308(b). Relying on **Chase**, we have concluded that “[t]raffic stops based on a reasonable suspicion: either of criminal activity or a violation of the Motor Vehicle Code under the authority of Section 6308(b) must serve a stated investigatory purpose.” **Feczko**, 10 A.3d at 1291. A motor vehicle stop where the police suspect an individual of driving under the influence is one such situation where an officer would have a legitimate expectation of investigatory results: the officer is likely to make observations that will confirm or dispel his suspicion upon contact with the stopped driver. Such a stop, then, may be based on the lower reasonable suspicion standard. **See Commonwealth v. Busser**, 56 A.3d 419, 423 (Pa.Super. 2012). “Where a vehicle stop has no investigatory purpose, the police officer must have probable cause to support it.” **Commonwealth v. Enick**, 70 A.3d 843, 846 (Pa.Super. 2013).

To establish whether an officer has a reasonable suspicion, we have explained:

In order to determine whether the police officer had reasonable suspicion, the totality of the circumstances must be considered. In making this determination, we must give due weight . . . to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience. Also, the totality of the circumstances test does not limit our inquiry to an examination of only those facts that clearly indicate criminal conduct. Rather, even a combination of innocent facts, when taken together, may warrant further investigation by the police officer.

Commonwealth v. Hilliar, 943 A.2d 984, 990 (Pa.Super. 2008), ***appeal denied***, 598 Pa. 763, 956 A.2d 432 (2008), quoting ***Commonwealth v. Smith***, 917 A.2d 848, 852 n.4 (Pa.Super. 2007) (alteration in original) (citations and quotation marks omitted).

Instantly, Officer Hewitt testified that he had been a police officer for three years and attended several trainings and seminars related to impaired driving prior to the incident with appellant. (Suppression hearing, 6/5/12 at 4-5.) Based on his experience, Officer Hewitt testified that at 1:50 a.m. “a lot of times there are people that are impaired driving at that hour” (***Id.*** at 7.) As the bases for the stop in question, Officer Hewitt testified that he witnessed appellant swerve twice within his lane in a span of a quarter to a half mile. (***Id.*** at 7-8.) Additionally, Officer Hewitt testified that he witnessed appellant slow down to such a degree before a green light that he thought appellant was going to stop, while on the highway. (***Id.*** at 9.)

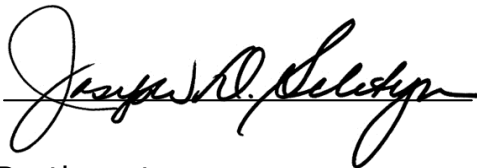
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Further, on cross-examination Officer Hewitt stated that it would not be reasonable to slow down at a green light on the highway to look for vehicles running red lights. (***Id.*** at 19.)

Based on the aforementioned evidence and considering the totality of the circumstances, we hold that Officer Hewitt possessed the requisite reasonable suspicion to conduct an investigatory stop of appellant for DUI.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph R. Seligson", written over a horizontal line.

Prothonotary

Date: 10/10/2013