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Commonwealth v. Baker

COMMONWEALTH OF PENNSYLVANIA V. BRIAN W. BAKER
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 2108-2001

Probable Cause - Traffic Stop - Safety Hazard

1. An officer must be able to articulate specific facts that establish probable cause to believe that the vehicle or its driver was in violation of some provision of the Vehicle Code.

2. Where the defendant crossed the center line on a two-lane undivided roadway at points where cars could not be seen in an area frequented by pedestrians, this constitutes a safety hazard.

3. An officer may execute a traffic stop if facts exist that would make a hazard to the public safety more inevitable.

4. An officer who observed the defendant cross the fog line on two or three occasions did not have probable cause to justify a traffic stop if there is a lack of evidence that the defendant's driving created a safety hazard.

5. An officer who observed the defendant weave back and forth in the right-hand lane on a five-lane highway, lacked probable cause to execute a traffic stop.

Appearances:

John F. Nelson, Esq., *District Attorney*

Mark F. Bayley, Esq., *Counsel for Defendant*

OPINION

Walker, P.J., October 1, 2002

Summary of Facts

At approximately 12:07 a.m., the defendant, Brian Baker, was traveling eastbound on South Mountain Road in Quincy Township, Franklin County. This section of the roadway is a two-lane no passing zone stretch of South Mountain that has a posted speed limit of forty (40) miles per hour. State Trooper Walter Brunner was traveling westbound while the defendant was traveling in the opposite direction.

Trooper Brunner testified at the suppression hearing that he observed the defendant negotiate a curve "that made it [the car] appear to [him] to be traveling at a high rate of speed." Trooper Brunner also testified that the defendant's car was at least one-quarter over the center line at two points in the road where it would be difficult for a driver to see oncoming traffic. Trooper Brunner added that this particular stretch of highway was frequented by pedestrians, even at this time of the night. Trooper Brunner testified that he regularly patrolled this area, so he would be familiar with the traffic on the road. Finally, Trooper Brunner testified that he believed that the defendant crossed the center line two times, one for about 100 feet and the other for about 200 feet, creating a safety hazard for any possible on-coming vehicles.

Defendant Brian Baker filed his omnibus pre-trial motion seeking to suppress the evidence from the

traffic stop. The defendant claimed that the officer did not have probable cause that the vehicle or the driver was in violation of the Vehicle Code.

Discussion

After reviewing the defendant's brief in support of concise statement of matters complained of on appeal, the transcripts and the applicable law, this court stands by its earlier decision to deny the defendant's motion to suppress the evidence.

Under Commonwealth v. Whitmyer, 542 Pa. 545, 668 A.2d 1113 (1995), an "officer must be able to articulate specific facts which establish probable cause to believe that the vehicle or its driver was in violation of some provision of the Vehicle Code." Whitmyer, 668 A.2d at 1116. The court in Whitmyer ruled that there was no probable cause because Whitmyer did not fail to yield to an oncoming vehicle nor did he pass a vehicle in a non passing zone. Id.

The evidence presented at the preliminary hearing establishes that Trooper Brunner had probable cause to believe that the driver was in violation of Section 3309(1) of the Motor Vehicle Code. *See* 75 Pa. Con. Stat. § 3309(1) (1977).

Section 3309(1) states:

> A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has ascertained that the movement can be made with safety.

See 75 Pa. Con. Stat. § 3309(1).

First, Trooper Brunner testified that the defendant had crossed the center line twice, once for about 100 feet and the second time for about 200 feet. This court agrees that this fact by itself does not establish probable cause for a legal stop. *See* Whitmyer, 668 A.2d at 1116. More specific facts exist in this case than existed in Whitmyer. In Whitmyer, the defendant crossed a solid white line to allow merging traffic to enter the traffic lane on Route 81, a four lane-divided highway. Id. The Supreme Court recognized that the facts, as existed, did not constitute a safety hazard. Id.

Trooper Brunner testified that the defendant crossed the center line on a two-lane roadway at two different points, where small crests existed that might hide small cars. South Mountain Road, at the point in question, contains several blind curves. The defendant was driving on a roadway that was frequented by pedestrians, even at seven minutes past midnight. Consequently, this court believes that Trooper Brunner had ascertained that the defendant's driving constituted a safety hazard before executing a traffic stop.

The defendant would have us believe that no safety hazard existed because no traffic appeared during the period in question. The defendant states he "crossed the center line on the road in the middle of the night in the middle of nowhere and where there were no vehicles on the road." Defendant's Brief in Support of Concise Statement of Matters Complained of on Appeal, p 4. The defendant would force Trooper Brunner to wait until an oncoming car around a blind curve appeared before executing a traffic stop. This court cannot imagine such a rule. This court is sure that the Supreme Court did not mean that an officer can never execute a traffic stop when a driver crosses the center line twice. More likely, as is the case here, the Supreme Court meant that an officer may execute a traffic stop if facts exist that would make a hazard to the public's safety more inevitable. The fact that the defendant crossed the center line on a two-lane undivided roadway at points where cars could not be seen in an area frequented by pedestrians constitutes a safety hazard.

The defendant argues that the facts in Commonwealth v. Gleason and Commonwealth v. Baumgardner are substantially similar to the facts here. This court does not share that belief.

The court in Commonwealth v. Gleason, 567 Pa. 111, 785 A.2d 983 (Pa. Super. Ct. 2001), cited to Whitmyer as authority when it ruled that the stop of defendant's vehicle was not justified. The court reasoned that, based upon the facts, the police officer did not have probable cause to legally stop the defendant. The defendant in Gleason was stopped in the early morning hours on the West Chester Pike, which is a four lane divided highway. The police officer observed the defendant cross the solid fog line on two or three occasions. There was no other vehicle on the roadway during the period in question. There was no indication about whether the defendant could see oncoming cars. In its decision, the Supreme Court recognized the lack of evidence "at the suppression hearing that [the defendant's] driving created a safety hazard." At the end, the Supreme Court reversed the Superior Court's decision and returned to the trial court's ruling.

This court believes that the facts are not substantially similar in the case before it. The defendant in Gleason was driving on a four-lane divided highway. There was no evidence of possible danger with oncoming traffic. There was a lack of evidence that the defendant's driving constituted a safety hazard. That's not the case here. Trooper Brunner's testimony establishes that the defendant crossed the center line on a two-lane undivided roadway at two different points where cars could not be seen and in an area frequented by pedestrians. There is not a lack of evidence in this case like in Gleason.

The defendant also cites to Commonwealth v. Baumgardner, 796 A.2d 965 (Pa. 2002), to support his argument that Trooper Brunner lacked probable cause. The Supreme Court in Baumgardner ruled that the police officer lacked probable cause based upon its opinion in Gleason. The police officer executed a traffic stop on the defendant because the defendant was observed weaving back and forth in the right-hand lane on a five-lane highway, which has two lanes on each side and a turning lane in the middle. This weaving was the basis for the stop.

This court believes that the defendant's reliance on Baumgardner is misplaced. The facts are not substantially similar. Like the officer in Gleason, the officer in Baumgardner lacked probable cause that the defendant's driving constituted a safety hazard. But, that is simply not the case here. The evidence shows that the defendant's driving constituted a safety hazard. His driving was a danger to oncoming traffic, not separated by a divider like in Gleason, and to pedestrians who might have been out walking on South Mountain Road. Accordingly, Trooper Brunner had probable cause to execute a traffic stop upon the defendant based on the facts that Trooper Brunner observed the defendant cross the center line at two points where oncoming cars could not be seen and in an area frequented by pedestrians.

Conclusion

This court stands by its earlier decision to deny the defendant's motion to suppress because the evidence does establish that Trooper Brunner had probable cause to execute a legal traffic stop on the defendant based upon the conditions of the road and location.