

COMMONWEALTH OF PENNSYLVANIA
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 2139-2008

Criminal Law; Scope of Review; Findings of Fact; Sufficiency of the Evidence; Credibility; Inconsistent Evidence; Searches and Seizures; Reasonable Suspicion; Probable Cause; Vehicle Stop

1. To sustain a conviction, the fact finder must be able to find each element of a charged offense has been established beyond a reasonable doubt. The evidence produced to sustain this burden may be entirely circumstantial.
2. Pennsylvania jurisprudence recognizes that it is within the "sole province" of a suppression court to decide the credibility of witnesses and determine the weight which should be given to their testimony.
3. In cases where the evidence presented is conflicting or inconsistent, the trier of fact alone determines issues of credibility and the proper resolution of the inconsistency. The law is well settled in the commonwealth that in resolving inconsistent allegations, the trier of fact is free to believe all, part, or none of the evidence.
4. Because any inconsistencies in the arresting officer's testimony were resolved to the court's satisfaction, given the clear interest in the case of the defendant and his witness, the court found the testimony of the officer credible. Given this determination, the Commonwealth produced sufficient evidence to convict the defendant.
5. Evidence produced at trial is not required to preclude every possibility of innocence. Unless the evidence, as a matter of law, is so weak and inconclusive as to preclude conviction, any uncertainties or doubts regarding a defendant's guilt are resolved by the fact-finder.
6. Under the statutory standard for vehicle stops, 75 Pa. C.S. § 6308(b), whenever a police officer has a reasonable suspicion that a violation of the Vehicle Code has or is occurring, he can permissibly stop the vehicle to secure information reasonably necessary to enforce the law.
7. If there is a legitimate stop based on the officer's observation of a Vehicle Code violation, additional suspicion may arise before the initial stop's purpose has been fulfilled, after which an additional period of detention is permissible to investigate the new suspicion.
8. 75 Pa.C.S. §4303(a) requires every vehicle operated on a public highway to be equipped with headlights conforming to regulations by the Department of Transportation. Under 67 Pa. Ad. C. §175.66 (2009), the headlamps are required to be in safe operating condition, be properly fashioned, and direct light properly.
9. When the state police officer observed defendant's vehicle being driven with one headlight out, in violation of the Vehicle Code, he could permissibly conduct a lawful traffic stop. Once the stop was initiated, several observations gave rise to reasonable and additional suspicion that other violations were in progress.
10. Probable cause to arrest exists where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief an offense has been committed.
11. Probable cause for a warrantless arrest is determined from the totality of the circumstances, taking into account the factual and practical certainties of everyday life. A determination of probable cause must be from the vantage point of a prudent, reasonable, cautious police officer on the scene at the time of the arrest guided by his experience and training.
12. After stopping the defendant because of his vehicle equipment violation, the officer observed his pupils were dilated, his eyes were bloodshot and red, and he had difficulties producing his license and registration. The officer testified

defendant acted sluggish, his speech was slurred, and he looked sleepy. Even if these observations, taken in light of the officer's training and experience, were insufficient to provide probable cause for an arrest, surely the defendant's own admission he had smoked marijuana that evening was sufficient to sustain the arrest.

Appearances:

John M. Liskol, Esquire, *Assistant District Attorney*

Scott J. Thomas, Esquire, *Assistant Public Defender*

OPINION sur Pa.R.A.P. 1925(a)

Van Horn, J., September 16, 2009

Statement of the Case

On April 13, 2009, Defendant Michael A. Zeek was before this Court for a combined suppression hearing and non-jury trial on the charge of DUI: Controlled Substance, in violation of 75 Pa. C.S.A. §3802(d)(1)(i). The Court declined to suppress evidence of the concentration of marijuana and its metabolite in his blood, and the Defendant was convicted on that date, and subsequently sentenced on June 3, 2009. The Court sentenced Defendant to incarceration in the Franklin County Jail for a period from three days to six months, as well as imposing customary monetary fines. On the same date the Court granted Defendant's request for bail at ROR pending this appeal.

Post-sentence motions were filed by the Defendant on June 15, 2009, which were denied by the Court on June 16. On July 16, 2009, the Defendant filed his Notice of Appeal to the Superior Court. By Order of Court dated July 20, 2009, the defendant was directed to file a Concise Statement of Matters Complained of on Appeal pursuant to Pa. R.A.P. 1925(b). On August 10, 2009, said statement was filed with the Court.

Believing in error that the Defendant's Notice of Appeal was untimely filed, on August 12, 2009, the Court filed an Opinion and Order under Pa. R.C.P. §1925 requesting the appeal be dismissed. Upon discovery of its error, the Court submits this Amended Opinion under the same rule.

The appeal consists of two interrelated issues, which the Court will discuss conjointly. First, the Defendant claims the Court erred in finding the testimony of Trooper Bryan Maltony, the arresting officer, credible. Defendant argues that given the officer's lack of credibility, the Commonwealth did not present sufficient evidence to sustain his conviction. Second, the Defendant argues the officer did not possess the requisite reasonable suspicion to stop Defendant's vehicle, or the requisite probable cause to arrest him. Defendant bases this argument on the asserted lack of credibility of the trooper's testimony, in essence maintaining that because his version of events rather than the officer's should have been believed, the Motion to Suppress should have been granted.

After carefully reviewing the entire record in this case, the Court is now prepared to respond to the issues raised in Appellant's Concise Statement of Matters Complained of on Appeal.

Discussion

Defendant first claims that the Court erred in finding the testimony of Trooper Bryan Maltony as to the circumstances of the traffic stop and arrest to be credible. The Defendant points to several purported "inconsistencies" in the Officer's testimony. First, Defendant argues that the Trooper's report, prepared on the night of the arrest, conflicts with the later testimony of the Officer as to his location when he first observed the Defendant. Further, Defendant maintains the decision of the Officer first not to charge him, and then later to arrest him, was made out of anger and rationalized with untruthful testimony. Finally, the Defendant claims that the decision of the Officer not to search his vehicle after testifying he smelled the odor of marijuana when the door opened indicates this lack of veracity. Defendant argues that because the testimony of the officer should have been judged not worthy of belief, the Commonwealth failed to present sufficient evidence to sustain his conviction.

To sustain a conviction, the fact finder must be able to find each element of a charged offense has been established beyond a reasonable doubt. See Commonwealth v. Hawkins, 701 A.2d 492, 499 (Pa. 1997). The evidence produced to sustain this burden may be entirely circumstantial. See Commonwealth v. Etchison, 916 A.2d 1169, 1171 (Pa. Super.

2007). Pennsylvania jurisprudence recognizes that it is within the "sole province" of a suppression court to decide the credibility of witnesses, and determine the weight which should be given to their testimony. Commonwealth v. Cotton, 740 A.2d 258, 261 (Pa. Super. 1999). See also, e.g., Commonwealth v. Williams, 854 A.2d 440, 512 (Pa. 2004) quoting Commonwealth v. Shaver, 460 A.2d 742, 745 (Pa. 1983). In cases where the evidence presented is conflicting or inconsistent, the trier of fact alone determines issues of credibility and the proper resolution of the inconsistency. See Commonwealth v. Lillock, 740 A.2d 237, 242 (Pa. Super. 1999).

In this case, the Court was faced with two vastly different accounts of the same event, one by a Pennsylvania State Police Officer, and the other by Defendant and his girlfriend. As fact finder, the Court was thusly required to make a determination as to the credibility of the witnesses before it, and the proper weight to be accorded their testimony. See Commonwealth v. Griscavage, 517 A.2d 1256, 1257 (Pa. 1986). The law is well settled in the Commonwealth that in making such determinations, the trier of fact "is free to believe all, part, or none of the evidence." E.g., Commonwealth v. Murray, 334 A.2d 255, 257 (Pa. 1975); Commonwealth v. Griscavage, 517 A.2d 1256, 1257 (Pa. 1986); Commonwealth v. Clark, 895 A.2d 633, 634 (Pa. Super. 2006). As the Court in Griscavage explained:

"The trier of fact has the unique opportunity to see and hear the subtleties of answers and movements of witnesses and parties...Words are delivered in a wider context than appear on a printed page. What they mean is often determined from how they are said, by whom and for what reason, for which reason the trier of fact is not required to accept all he hears." Griscavage, 517 A.2d at 1259.

The Defendant bases his assertion that Officer Maltony was not credible on several "inconsistencies" in his testimony. First, the Officer's report stated he was traveling southbound on Route 11, while at trial Maltony stated he was facing northbound. The Officer also testified he knew the report was in error, and had attempted to correct the error at the preliminary hearing. Further, the Officer could relate the path defendant's vehicle took, and describe the previous stop he had been engaged in. Taken with the rest of the evidence presented, this testimony did not reduce the Court's belief the Officer was credible. The defendant also raises the fact that Maltony intended to let him go, and later decided to arrest him because he was uncooperative. As the Officer testified, whether or not to arrest defendant was within his discretion, and he would have been within his authority to issue the defendant a warning. See Commonwealth v. Benton, 655 A.2d 1030, 1033 (Pa. Super. 1995). Both the Defendant and the Officer testified the stop ultimately took place near the home of one of Zeek's friends. Maltony's testimony that he considered releasing Mr. Zeek to the custody of his friend, but reconsidered when the Defendant failed to honestly answer his questions, was reasonable. The Court does not find Maltony's decision to arrest Zeek rather than allow him to leave, adversely impacted his credibility.

Finally, there is no requirement that an officer conduct a search of a vehicle they do not plan to impound. Maltony testified he released the vehicle to the defendant's friend. Further, given the Officer's testimony that the Defendant asked him to search the vehicle, and told the Officer he had smoked marijuana earlier that night, it could be reasonable for Maltony to believe nothing further would be found inside the vehicle. Viewing the evidence as a whole, the Court found Maltony's account credible. On the other hand, the Defendant produced only the testimony of himself and his girlfriend, both of whom had a clear interest in the case. Taken against the testimony of the arresting officer, the Court, in its discretion and in light of its experience, found the Officer more credible than the Defendant and his witness.

Given that Officer Maltony's testimony was found to be credible, the Commonwealth did produce sufficient evidence to convict the Defendant of the charged offense. Evidence produced at trial is not required to "preclude every possibility of innocence." See Commonwealth v. Hughes, 908 A.2d 924, 928 (Pa. Super. 2006). Unless the evidence, as a matter of law, is so weak and inconclusive as to preclude conviction, any uncertainties or doubts regarding a defendant's guilt are resolved by the fact-finder. See *id.* Here, because of the bias of the witnesses for the defense, and the completeness of the testimony of an experienced arresting officer, the Court in its discretion found the Officer's testimony to be truthful.

The Defendant also claims the evidence of marijuana in his blood should have been suppressed because the Officer lacked reasonable suspicion to stop his vehicle, or probable cause to make an arrest after the stop. Once again, the Defendant's argument turns on the credibility determination made by the Court. The Defendant and his girlfriend denied either of his headlights were inoperable at the time of the stop. The Officer, on the other hand, testified the burned out headlight was the reason the Defendant's vehicle initially came to his attention. Thus, the Court, weighing the evidence which was presented, made a credibility determination in light of the testimony before it, and the witnesses presented by both sides.

The statutory standard for stops based on vehicle code violations can be found in 75 Pa. C.S. §6308(b). Whenever a police officer has a reasonable suspicion that a violation of the Vehicle Code has or is occurring, he can permissibly stop the vehicle to secure information reasonably necessary to enforce the law. *Id.* See also Commonwealth v. Chase, 960

A.2d 108, 115 (Pa. 2008). If an officer reasonably believes a car is in violation of a Vehicle Code equipment provision, he or she may conduct a lawful traffic stop. See Commonwealth v. Hynes, 730 A.2d 960, 962 (Pa. Super. 1999). Further, if there is a legitimate stop based on the officer's observation of a Vehicle Code violation, "additional suspicion may arise before the initial stop's purpose has been fulfilled," after which an additional period of detention is permissible to investigate the new suspicion. See Chase, 960 A.2d at 115 n.5.

In this case, the Officer observed the defendant's vehicle with one headlight out, in violation of 75 Pa.C.S. §4303(a), which requires that every vehicle operated on a public highway to be equipped with headlights conforming to regulations by the Department of Transportation. The headlamps are required to be in safe operating condition, be properly fashioned, and direct light properly. See 67 Pa. Ad. C. §175.66 (2009). Officer Maltony observed the defendant's vehicle being driven with one headlight out, in violation of the requirement they be in safe operating condition and direct light properly. As such, the officer could permissibly conduct a lawful traffic stop. Once the stop was initiated, Maltony made several observations which gave rise to a reasonable and additional suspicion that other violations were in progress.

As he followed the defendant in order to legitimately stop him due to the equipment violation, the Officer observed the defendant cross the center line on three occasions in a relatively short period. In Officer Maltony's experience, swerving in and out of a lane of traffic is a violation indicative of a DUI offense. The officer permissibly initiated a stop because of the vehicle equipment violation, and in the process of completing the stop, observed actions which made him suspect other violations. Besides the Defendant's erratic driving, when Zeek opened his car door and the odor of marijuana emanated from the vehicle, the Officer gained reasonable suspicion sufficient to further detain the defendant to investigate the new suspicion.

Probable cause to arrest exists where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief an offense has been committed. See Commonwealth v. Dommel, 885 A.2d 998, 1002 (Pa. Super. 2005). Probable cause for a warrantless arrest is determined from the totality of the circumstances, taking into account the "factual and practical certainties of everyday life." Id. Further, a determination of probable cause must be "from the vantage point of a prudent, reasonable, cautious police officer on the scene at the time of the arrest guided by his experience and training." See In re R.P., 918 A.2d 115, 121 (Pa. Super. 2007). After stopping the Defendant because of his vehicle equipment violation, the Officer observed Zeek's pupils were dilated, his eyes were bloodshot and red, and he had difficulties producing his license and registration. The Officer testified Defendant acted sluggish, his speech was slurred, and he looked sleepy.

As an Officer with almost nine years of experience, Maltony had participated in previous DUI arrests involving marijuana, and had been exposed to intoxicated people on several previous occasions. Even if the Officer's observations, taken in light of his training and experience, were insufficient to provide the probable cause to arrest Zeek, then surely the Defendant's own admission to the officer that he had smoked marijuana after finishing work provided the probable cause necessary for an arrest. If an officer reasonably suspects an individual is engaging in criminal conduct, the officer may detain an individual in order to investigate. See Commonwealth v. Hughes, 908 A.2d 924, 927 (Pa. Super. 2006). To determine whether or not reasonable suspicion existed, the Court must consider the totality of the circumstances, giving due weight to the "specific and reasonable inferences" an officer "is entitled to draw from the facts in light of his experience." Id.

In Hughes, the defendant similarly argued the trial court had abused its discretion in accepting the testimony of the arresting officer, due to conflicting testimony during different stages of his adjudication. Hughes, 908 A.2d at 928. The Officer testified to differing distances between their vehicle during his first observations of the defendant, as well as changing his recollection as to how erratically the defendant was driving. Id. In reviewing the Trial Court's credibility determination in Hughes, the Superior Court decided there had been no abuse of discretion. Id. Considering the facts within the totality of the circumstances, and pointing to the officer's experience, the Superior Court disagreed that the trial court had abused its discretion, finding the discrepancies "innocuous" in light of the overwhelming evidence against the defendant. Id. at 928-29. Similarly, in this case, the Court judged the Officer and his version of events to be more credible than that of the Defendant, and found any inconsistencies in Maltony's testimony slight in light of the totality of the evidence. Given this determination, the Officer permissibly stopped the Defendant, and upon discovering a further violation of the Vehicle Code, legitimately arrested him.

Conclusion

Pennsylvania law clearly places determinations as to the credibility of witnesses within the purview of the fact finder. After hearing all the evidence presented, the Court found the testimony of Officer Maltony more credible than that of Defendant, and therefore found the stop and arrest legitimate. Therefore, for all the reasons stated herein, this Court respectfully requests that the Superior Court dismiss the appeal of the Defendant.

ORDER OF COURT

September 16, 2009, pursuant to Pa.R.A.P. 1931(c), it is hereby ordered that the Clerk of Courts of Franklin County shall promptly transmit to the Prothonotary of the Superior Court the record in this matter along with the attached Opinion sur Pa.R.A.P. 1925(a).