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Commonwealth v Norris

Commonwealth of Pennsylvania v. Sean Norris, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Criminal Action No. 1336-2012

HEADNOTES

*Reasonable Suspicion for a Traffic Stop*

1. A traffic stop is lawful when an objective review of the facts shows that an officer possessed specific, articulable facts that an individual was violating a traffic law at the time of the stop. Where an officer initiates a stop based on a mistaken understanding of the law, the stop is unreasonable if the officer does not offer facts that objectively show that the identified law was actually broken.
2. Even stops based on factual mistakes generally are constitutional if the mistake is objectively reasonable. In other words, a traffic stop must be the result of a reasonable belief on the part of the officer that the Motor Vehicle Code is being violated. While an actual violation need not be established, a reasonable basis for the officer's belief is required to validate the stop.
3. Whether there is sufficient reasonable suspicion to stop a motorist must be viewed from the standpoint of an objectively reasonable police officer. A finding of reasonable suspicion does not demand a meticulously accurate appraisal of the facts.
4. If an officer's first warning of a Motor Vehicle Code violation is an improperly functioning light on a vehicle, it is not an improper pretext for a traffic stop as long as the officer had reasonable belief that the light was not operational.

*Traffic Stop for Motor Vehicle Code Violations*

1. There is no regulation in the Motor Vehicle Code and related PennDOT regulations requiring the installation of fog lamps on an automobile or the illumination of fog lamps on an automobile during normal weather conditions.
2. Although certain lighting equipment on the outside of a vehicle may not be required by law, if the equipment has been installed by the manufacturer or by the owner, it is required to be operational.
3. Based upon the review of the Motor Vehicle Code, 67 Pa. Code § 175.80(a)(9), which includes the equipment and inspection requirements, a passenger car or light truck cannot pass an inspection to be operated on the roadways of the Commonwealth if the lamps fail to light properly or there is a missing or broken lens. Both original or installed lamps and lenses must comply with the requirement. Only ornamental lights are excluded from the requirement.
4. If a police officer observes a broken lamp or missing lens, the officer has reasonable suspicion that the vehicle is in violation of the Motor Vehicle Code and, therefore, has a lawful purpose in stopping the Defendant's vehicle.

Appearances:

Sean Norris, Defendant  
Steven N. Necaster, Esq., Attorney for Defendant  
Franklin County District Attorney's Office

OPINION

Before Meyers, J.

FACTS

Pennsylvania State Trooper Alex Grote was on patrol on the evening of Friday, February 17, 2012. The weather was clear and dry. At approximately 11:45 p.m. the mobile video recorder in Trooper Grote's automobile captured video that this

court finds relevant in its analysis of the Defendant's motion to suppress the evidence based upon the Trooper's lack of reasonable suspicion to stop the Defendant's vehicle. Trooper Grote testified that he observed a fog light on the Defendant's automobile that did not appear to be illuminated. As a result, Trooper Grote made a stop of the Defendant's vehicle. Following the stop the Trooper made observations of the Defendant which caused him to arrest the Defendant for the offense of Driving Under The Influence.

Prior to stopping the Defendant's vehicle, the video reveals that an SUV was driving north bound on Wayne Avenue. From the vantage point of Trooper Grote's automobile, a front fog light was not illuminated on the right side of the SUV. Trooper Grote proceeded to turn onto Stouffer Avenue in order to take up a following position behind the SUV. Trooper Grote activated the lights on his car which prompted the operator of the SUV to turn off of Stouffer Avenue into a parking area in front of a supermarket. Trooper Grote advised the operator of the vehicle that a fog light on the SUV was out. The operator offered to provide documentation to Trooper Grote which he declined. Presumably, Trooper Grote did not have any further basis to suspect the driver of the SUV had committed a motor vehicle code violation or reason to ask the driver to submit to any additional investigation by the Trooper. At that moment Trooper Grote was observed looking over his right shoulder, past his vehicle, to the area of Stouffer Avenue. Trooper Grote quickly dismissed the driver of the SUV and returned to his car. He then started driving his car at a high rate of speed, passing several cars who responded to the flashing lights on his car. Eventually Trooper Grote's vehicle caught up with the Defendant's vehicle, a Subaru, and the Defendant pulled his vehicle to the side of the road. Trooper Grote advised the Defendant he observed a fog lamp that was not illuminated on the Defendant's vehicle. Trooper Grote did not take time to confirm the fog lamp was in fact broken. The video recorder on Trooper Grote's automobile did not capture the non-illuminated fog lamp. Defendant's counsel questioned why the Trooper referenced a head lamp or fog lamp violation in his report but was not more specific. Trooper Grote indicated that when writing his report he did not specifically recall if it was a fog lamp or head lamp as he became focused on the Defendant's condition after his initial interaction with him.

Neither party calls into question the actions of Trooper Grote or the Defendant from the point when Trooper Grote advises the Defendant of the motor vehicle code violation..

#### DISCUSSION

ISSUE: Did Trooper Grote possess reasonable suspicion, reasonable belief or have a reasonable basis that the Defendant was violating the Motor Vehicle Code by operating a vehicle with a non-illuminated fog light?

First, the Court observed that Trooper Grote's hearing testimony conformed with the video provided to the court. Moreover, Trooper Grote accurately observed a fog lamp not functioning on a third party vehicle prior to stopping the Defendant's vehicle. He correctly advised the third party for his reason for stopping the SUV. There is nothing to call into question Trooper Grote's credibility as to his testimony that he observed a fog lamp not illuminated on the Defendant's vehicle. The Court finds the trooper's observation was accurate even though there is no corroborating evidence to support his testimony.

Defense counsel made a general allegation at the close of the hearing that Trooper Grote's stop of the Defendant's vehicle may have been "pretextual" or perhaps he was inaccurate in his assertion that the fog lamp or head lamp on the Defendant's vehicle was not operational. The Court finds Trooper Grote's testimony credible as to the facts and as to his belief that the non-illuminated fog lamp on the Defendant's automobile constituted a violation of the Pennsylvania Motor Vehicle Code.

The Defendant asserts that the case of *Commonwealth v. Muhammed*, 992 A.2d 897, 2010 Pa.Super. 44 (Pa. Super. 2010), provides this Court with the necessary ruling to grant the requested relief. However, a review of both *Muhammed* and *U.S. v. Johns*, 410 Fed.Appx. 519 (3d Cir. 2011), reveal that the decision of Trooper Grote to stop the Defendant's vehicle was proper under current law.

As the Third Circuit Court of Appeals pointed out, the Fourth Amendment allows a police officer to initiate a brief investigatory stop pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), if he "has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). A traffic stop is lawful "when an objective review of the facts shows that an officer possessed specific, articulable facts that an individual was violating a traffic law at the time of the stop." *United States v. Delfin-Colina*, 464 F.3d 392, 398 (3d Cir. 2006). If an officer initiates a stop based on a mistaken understanding of the law, the stop is unreasonable if "the officer does not offer facts that objectively show that the identified law was actually broken." *Id.* at 399; *U.S. v. Johns*, 410 F. App'x 519, 522 (3d Cir. 2011). In *Johns*, the question was whether or not a police officer was mistaken in his belief that Pennsylvania law required the center brake light on a defendant's car be operational. If so, then the traffic stop would be unconstitutional, for the United States could not show that the Defendant had violated the law. The court

reviewed the regulations, and found that although the center brake light was not required to be installed, if it was installed by the manufacturer, it was required to be operational. Thus, the officer was reasonable in his belief that the driver was committing a Motor Vehicle Code violation.

Likewise, "reasonable suspicion sufficient to stop a motorist must be viewed from the standpoint of an objectively reasonable police officer...A finding of reasonable suspicion does not demand a meticulously accurate appraisal of the facts. Indeed, even stops based on factual mistakes generally are constitutional if the mistake is objectively reasonable." Chase, supra at 101-02, 960 A.2d at 120 (internal citations and quotation marks omitted). In other words, "a traffic stop must be the result of a reasonable belief on the part of the officer that the [MVC] is being violated. While an actual violation need not be established, a reasonable basis for the officer's belief is required to validate the stop." Commonwealth v. Benton, 655 A.2d 1030, 1033 (Pa. Super. 1995); Commonwealth v. Muhammed, 992 A.2d 897, 901 (Pa. Super. 2010).

In the case before the Court, Trooper Grote articulated a reasonable belief that the Motor Vehicle Code was being violated by the Defendant because he established that, in the darkness of night, the Defendant was required to have lights illuminating his car and headlights to illuminate the road. Apparently, one of two fog lights were also illuminated indicating the Defendant intentionally or unintentionally activated the fog lamps, to assist in illuminating the roadway before him.

This Court has undertaken a similar analysis as that undertaken by both the Pennsylvania Superior Court in Muhammed and the United States Third Circuit Court of Appeals in Johns to address whether or not Trooper Grote's belief was reasonable that a violation of the Motor Vehicle Code occurred. First, this Court finds that no regulation exists in the Motor Vehicle Code and related PennDOT regulations requiring the installation of fog lamps on an automobile or the illumination of fog lamps on an automobile on a clear night without any apparent adverse weather conditions such as those on the night Trooper Grote stopped the Defendant's car. The Court has found, however, that under Title 67 Transportation. Part I. Department of Transportation. Subpart A. Vehicle Code Provisions. Article VII. Vehicle Characteristics. Chapter 175 Vehicle Equipment and Inspections. Subchapter E. Passenger Cars and Light Trucks. Section 175.80 Inspection Procedures, that an automobile and light truck inspector must:

(9) Check the lamps and lenses and reject if one or more of the following apply:

- (i) An exterior bulb or sealed beam, if originally equipped or installed, fails to light properly, except ornamental lights . . .[or] . . .
- (vii) The lamp has a missing or broken lens... 67 Pa. Code § 175.80(a)(9).

Based upon the review of the Motor Vehicle Code, which includes the equipment and inspection requirements, a passenger car or light truck cannot pass an inspection to be operated on the roadways of the Commonwealth if the lamps fail to light properly or there is a missing or broken lens. Both original or installed lamps and lenses must comply with the requirement. Only ornamental lights are excluded from the requirement. Since this is the applicable law, this Court finds Trooper Grote had a reasonable belief, reasonable basis and ultimately reasonable suspicion that the Defendant's car, a Subaru crossover, was in violation of the Motor Vehicle Code. Thus, he had a lawful basis on which to stop the Defendant's vehicle.

The Court will comment on the assertion of Defendant's counsel that Trooper Grote's stop was "pretextual." The video reveals that the trooper was stopping vehicles on the basis of a reasonable belief that the vehicles he observed and stopped were in violation of the Motor Vehicle Code, as he is entitled to do. As evidenced by the first stop, he gave the driver a warning to have the fog lamp fixed and it appears in the video that he proceeded to look to other vehicles for equipment or inspection violations. Combine 1) the trooper's decision to simply issue a warning to the driver of the SUV and decline her offer of documentation with 2) the fact that the stops were taking place in the late evening of a weekend, and 3) the fact that there was no evidence offered to indicate either the operator of the SUV or the Defendant drove their vehicle in a manner that violated the Motor Vehicle Code, it is easy for this Court to conclude the officer had the desire and intent to obtain driving under the influence arrests, if further investigation warranted an arrest. The Defendant and his counsel have to accept, under existing Pennsylvania law, that the Defendant's failure to ensure his car would pass a motor vehicle inspection provided the officer with a lawful basis to stop the Defendant's vehicle after which the Defendant's conduct warranted further investigation leading to his arrest for driving under the influence. For the aforementioned reasons, the Court has previously signed an order denying the Defendant's Motion for suppression of evidence.

ORDER OF COURT

AND NOW THIS 19th day of February, 2013, the Court having considered the Defendant's Omnibus Motion to Suppress Evidence and having held hearing on this matter,

IT IS HEREBY ORDERED that the attached Opinion shall be filed and attached in support of the Court's Order of February 15, 2013 denying the Defendant's Omnibus Motion.

Pursuant to the requirements of Pa.R.Crim.P. 114 (B)(1), (2) and (C)(1), (2), the Clerk shall promptly serve this Order or court notice on each party's attorney, or the party if unrepresented; and shall promptly make docket entries containing the date of receipt in the Clerk's office of the Order or court notice; the date appearing on the Order or court notice; and the date and manner of service of the Order or court notice.