

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PENNSYLVANIA:

vs.

EUGENE EVANS,

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No. 04-21,071

OPINION

Issued Pursuant to Pa. R.A.P. 1925(a)

The defendant has appealed this court's order of April 22, 2005, finding him guilty of Violating §3714 of the Motor Vehicle Code, Careless Driving.

The crime of Careless Driving is defined as follows: "Any person who drives a vehicle in careless disregard for the safety of persons or property is guilty of careless driving, a summary offense." The appellate courts have defined the level of culpability required for this offense. In Commonwealth v. Cathey, 645 A.2d 250 (Pa. Super. 1994), the Superior Court stated,

The language "careless disregard," as used in this statute, set the level of culpability of the statutory offense at less than willful and wanton conduct, but more than ordinary negligence or the mere absence of care under the circumstances.

At trial, this court did not find the defendant to be credible. However, we found the testimony of Corporal Todd Weltmer to be very credible. Corporal Weltmer testified that at the time of the offense, he was stationed on an active construction site. His primary goal was to slow down traffic in the left lane to ensure the safety of the construction workers, who were paving the right lane of the highway. N.T., p. 5. While parked on the median strip in a marked police car, monitoring traffic with a radar gun, Corporal Weltmer heard screeching brakes, glanced into his rearview mirror, and saw a tractor trailer operated by the defendant coming toward him. The trailer started to slide

sideways on the roadway, to such an extent that Corporal Weltmer lunged his car forward, fearful he would be hit. The tractor trailer then straightened out, and passed Trooper Weltmer's vehicle.

Trooper Weltmer followed the tractor trailer, which pulled over after a short distance. Trooper Weltmer asked the defendant about the incident and the defendant told him he had been talking on his cell phone at the time and he had "just braked." N.T., p. 8. Trooper Weltmer then issued the defendant a citation for careless driving.

Based upon this credible testimony, the court found the defendant was careless in talking on his cell phone while driving, in a manner that caused him to be less attentive to the situation than was required in an active construction zone. This carelessness resulted in him applying his brakes in such a way that the trailer slid sideways to the extent that Trooper Weltmer believed the defendant's vehicle might strike his own.

The defendant argues the evidence did not establish the level of culpability required for careless driving. The court does not agree. The defendant's actions, although not wanton and willful, certainly constitute more than mere negligence. The construction zone was clearly marked by orange signs, including a sign held by a worker in the middle of the roadway that read, "Slow." Moreover, the highway workers were clearly visible. Under these circumstances, the defendant's actions were certainly careless, and created a very real hazard for Trooper Weltmer as well as the highway workers.

BY THE COURT,

Richard A. Gray, J.

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