

COMMONWEALTH OF PA,

vs.

BRETT HOOVER,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:
: NO. SA 95-2011
:
:
: 1925(a) OPINION

Date: May 14, 2012

OPINION IN SUPPORT OF THE ORDER OF FEBRUARY 9, 2012, IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Defendant Brett Hoover has appealed this Court's sentence imposed pursuant to his de novo hearing in which he was found guilty on February 9, 2012. This Court sanctioned Mr. Hoover with a fine of two-hundred dollars (\$200.00) and the cost of prosecution. This sentence was imposed on February 9, 2012 for the charge of Reckless Driving, 75 Pa. C.S. § 3736 (a).

In Mr. Hoover's Concise Statement of Matters Complained of on Appeal, filed April 27, 2012, Mr. Hoover raised the issue of insufficient evidence by claiming: 1) the evidence was insufficient as a matter of law to sustain the Court's adjudication of guilty on the charge of Reckless Driving; 2) the evidence fails to establish that the Defendant knew that the vehicle following him was not being operated in compliance with the assured cleared distance ahead rule, i.e. that it was tailgating the Defendant and that it was not being driven at a speed which would allow it to stop in time to avoid colliding with the Defendant's vehicle; 3) there is no evidence as to how far behind the Defendant the other vehicle was traveling when the Defendant abruptly applied his brakes; and 4) there is insufficient evidence to show that the vehicle traveling behind the Defendant was traveling at a reasonable and prudent speed under the

circumstances which the Defendant can expect the of other drivers on the highway. Mr. Hoover's appeal should be denied and the verdict and sentence affirmed.

I. FACTS AND PROCEDURAL HISTORY

On Thursday, February, 9, 2012 during a de novo hearing of *Commonwealth v. Hoover* the following facts were determined to have occurred.

On the evening of September 2, 2011 at approximately 10 p.m. Mr. Hoover left his house to go to Kmart. He turned from a secondary side street onto Fourth Street; in doing so he pulled out in front of a Dodge Ram pickup truck. The pickup truck continued to follow Mr. Hoover's car for a distance of a couple of blocks. At times the truck would be closer to Mr. Hoover's vehicle than at other times. Mr. Hoover would accelerate in order to create distance from the truck and then he would slow down. At one point where Mr. Hoover perceived the truck as being extremely close to the point as if the truck was "literally riding on [his] . . . bumper", with a green light, in the middle of an intersection, Mr. Hoover chose to slam on his brakes. The sudden locking up of his brakes caused the truck to slam on his brakes, leaving skid marks on the road and resulting in a collision.

As a result of the events of that night lead to Mr. Hoover received a citation for violating 75 Pa. C. S. § 3736 (a) Reckless Driving. Mr. Hoover challenged the citation at a hearing before Magisterial District Judge James G. Carn and was found guilty of Reckless Driving on October 27, 2011. Mr. Hoover appealed the guilty verdict and appeared before this Court on February 9, 2012 for a de novo hearing. After a de novo hearing Mr. Hoover was determined to be guilty of Reckless Driving.

II. DISCUSSION

A claim challenging the sufficiency of the evidence is a question of law. *Commonwealth v. Sullivan*, 820 A.2d 795, 805 (Pa. Super. 2003). When reviewing a challenge to the sufficiency of the evidence, the following standard of review is employed:

The standard for reviewing the sufficiency of the evidence is whether the evidence admitted at trial and all reasonable inferences drawn therefrom, when viewed in the light most favorable to the Commonwealth as the verdict winner, is sufficient to support all the elements of the offenses beyond a reasonable doubt.

Commonwealth v. Greenberg, 885 A.2d 1025, 1026 (Pa. Super. 2005) (*quoting Commonwealth v. DeJesus*, 787 A.2d 394, 398 (Pa. 2001)).

a. Reckless Driving

75 P.C.S. A. § 3736(a) defines the offense of Reckless Driving as “[a]ny person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.” Willful or wanton has been described as a gross deviation from the norm that creates a substantial risk of harm or injury. *Commonwealth v. Carroll*, 936 A.2d 1148, 1151 (Pa. Super. 2007) (citing *Commonwealth v. Greenberg*, 885 A.2d 1025, 1027-28 (Pa. Super. 2005)). Reckless driving is “. . . something more than ordinary negligence” it is “. . . a gross departure from prudent driving standards.” *Greenberg* at 1027. *See also Commonwealth v. Fieldler*, 931 A.2d 745,748 (Pa Super. 2007).

“The *mens rea* necessary to support the offense of reckless driving is a requirement that Appellant drove in such a manner that there existed a substantial risk that injury would result from his driving, . . . , that he was aware of that risk and yet continued to drive in such a manner,

in essence, callously disregarding the risk he was creating by his own reckless driving.” *Commonwealth v Bullick*, 830 A.2d 998, 1003 (Pa. Super. 2003). In Mr. Hoover’s case, Mr. Hoover was aware that there was a vehicle behind him; in his opinion the vehicle was driving aggressively. Mr. Hoover testified that it was like someone thought he was “the locomotive on a train because he was literally riding on my bumper.” N.T. February 9, 2012, p. 41. Mr. Hoover was so aware of the other vehicle that he got hot, felt his neck stiffen and could see the head lights glaring through the back of his window. *Id.* Disregarding his own safety and the safety of others, there was eye witness testimony and it was undisputed, that Mr. Hoover slammed on the brakes of his car in the middle of an intersection thus resulting in a collision. N.T. February 9, 2012, p. 7, 30, 41. Mr. Hoover was aware that the probability of a collision was indeed a real risk and when he abruptly engaged his brakes he consciously disregarded that risk. Mr. Hoover’s actions that night are the pure definition of reckless.

A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

18 Pa. C.S. 302 (b) (3). In Mr. Hoover’s case, the conviction was established when the Commonwealth proved beyond a reasonable doubt that Mr. Hoover willfully and consciously disregarded the safety of himself and others and acted recklessly. *Commonwealth v. Schmohl*, 2009 PA Super 97, 975 A.2d 1144, 1148 (Pa. Super. 2009).

During the hearing, Mr. Hoover's defense was weak at best. Mr. Hoover admitted to abruptly braking in the middle of an intersection but claimed that he employed brake checking as a means of self protection. N.T. February 9, 2012, p. 57. Mr. Hoover opined that he was alarmed and felt threatened. N.T. February 9, 2012, p. 40-41. Abruptly braking in the middle of an intersection with a green light was not the only self protection tactic Mr. Hoover had available to him. Mr. Hoover admitted he did not attempt to pull over, he did not call 911, nor did he drive to the nearest police station. Simply putting on his turning signal would have signaled to the driver behind him the need to slow down or back off because Mr. Hoover intended to turn. Brake checking an individual in the middle of an intersection is a "gross deviation from prudent driving standards" and reckless driving. *Commonwealth v. Greenberg*, 885 A.2d 1025, 1027-28 (Pa. Super. 2005).

CONCLUSION

Whether it is direct, circumstantial, or a combination of both, what is required of the evidence is that it taken as a whole links the accused to the crime beyond a reasonable doubt. *Commonwealth v. Robinson*, 864 A.2d 460, 478 (Pa. 2004). Again addressing his Concise Statement of Matters Complained of on Appeal, there was more than sufficient evidence to prove that Mr. Hoover was driving recklessly on the evening of September 2, 2011; Mr. Hoover clearly knew the vehicle following him was not in compliance with the assured clear distance ahead rule; and Mr. Hoover acted will willful and wanton disregard to the safety of himself, others and property by grossly deviating from prudent driving standards.

Given the overwhelming evidence of Mr. Hoover's guilt, the Court's verdict and sentence of February 9, 2012 should be affirmed and Mr. Hoover's appeal dismissed.

BY THE COURT,

Joy Reynolds McCoy, Judge