

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

vs.

GARRETT DIETER,

Defendant

No. CR 442-2022

Cynthia A. Dydra Hatton, Esquire

Counsel for Commonwealth
Assistant District Attorney

Matthew Rapa, Esquire

Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - January 25, 2023

Before this Court is a Motion to Suppress filed by Defendant, Garrett Dieter (hereinafter "Dieter" or "Defendant"). Defendant seeks to suppress all evidence in this case, including the identification of Defendant, the discovery that Defendant was in fact the driver, statements from Defendant after the stop, and the breath test and blood test given after the stop. For the reasons stated within this Opinion, upon consideration of Defendant's "MOTION TO SUPPRESS EVIDENCE," after a hearing held thereon, and after consideration of the briefs lodged in support thereof and in opposition thereto, Defendant's Motion is **GRANTED**.

FACTUAL AND PROCEDURAL BACKGROUND

On April 10, 2022, at approximately 3:22 a.m., Trooper John Heffner (hereinafter "Trooper Heffner") and Trooper Anthony

[FM-5-23]

Kingsley of the Pennsylvania State Police were driving west on Fireline Road in Lower Towamensing Township, Carbon County, Pennsylvania, when they observed a dark colored pick-up truck traveling west in front of the patrol vehicle. The patrol vehicle was operating its Pennsylvania State Police Mobile Recorder (hereinafter "MVR" or "dash-camera") was recording the approach upon the pick-up truck. The Troopers followed the truck for approximately two (2) minutes during which time Trooper Heffner testified he observed the vehicle touch and then cross over the double yellow center line on four (4) occasions.¹ After witnessing this, Trooper Heffner then initiated a traffic stop.

Defendant was charged with one count of Driving Under the Influence of Alcohol - General Impairment, one count of Driving Under the Influence of Alcohol - General Impairment, Incapable of Driving Safely, a summary offense of Careless Driving, and a summary offense of Driving within Single Lane.²

LEGAL DISCUSSION

Defendant has filed a Suppression Motion arguing that Trooper Heffner did not possess the requisite reasonable suspicion or probable cause to instigate a vehicle stop upon him and to arrest him for driving under the influence.

¹ Trooper Heffner testified to the vehicle traveling onto and over the double yellow center line on four occasions, however, after review of the dash-camera footage, this testimony is not supported by the evidence presented. See MVR, October 14, 2022 Suppression Hearing ("Suppression Hearing"), Joint Exhibit 1.
² 75 Pa.C.S.A. §§ 3802(A)(2), 3802(A)(1), 3714(A), and 3309(1), respectively.

I. THE COMMONWEALTH'S BURDEN WHEN DECIDING SUPPRESSION OF EVIDENCE MOTIONS.

Rule 581(H) of the Pennsylvania Rules of Criminal Procedure ("Rule 581(H)") provides in pertinent part that "[t]he Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of defendant's rights." See Pa.R.Crim.P. 581(H). With respect to all motions to suppress, the Commonwealth bears the burden of production. See Pa.R.Crim.P. 581(H), Comment citing *Commonwealth ex rel. Butler v. Rundle*, 239 A.2d 426 (Pa. 1968). The Commonwealth also bears the burden of persuasion. See *Id.* citing *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S.Ct. 1602, 1630 (1966). The Commonwealth must satisfy its burden of proof in a suppression hearing by a preponderance of the evidence. See *Id.* citing *Commonwealth ex rel. Butler v. Rundle*, *supra*.

II. CONSTITUTIONALITY OF THE VEHICLE STOP.

A. Standards Governing Vehicle Stops.

When considering whether reasonable suspicion or probable cause is required constitutionally to make a vehicle stop, the nature of the violation has to be considered. *Commonwealth v. Salter*, 121 A.3d 987, 933 (Pa. Super. 2015). If it is not necessary to stop the vehicle to establish that a violation of the Vehicle Code has occurred, an officer must possess probable cause to stop the vehicle. *Id.* Where a violation is suspected, but a stop is

necessary to further investigate whether a violation has occurred, an officer need only possess reasonable suspicion to make the stop. *Id.* Illustrative of these two standards are stops for speeding and driving while under the influence. If a vehicle is stopped for speeding, the officer must possess probable cause to stop the vehicle. *Id.* This is so because when a vehicle is stopped, nothing more can be determined as to the speed of the vehicle when it was observed while traveling upon a highway. *Id.* On the other hand, if an officer possesses sufficient knowledge based upon behavior suggestive of driving while under the influence, the officer may stop the vehicle upon reasonable suspicion of a Vehicle Code violation, since a stop would provide the officer the needed opportunity to investigate further if the driver was operating under the influence of alcohol or a controlled substance. *Commonwealth v. Salter*, 121 A.3d 987, 933 (Pa. Super. 2015).

In the present case, Trooper Heffner testified he observed Defendant travelled onto and over the double yellow center line on four (4) separate occasions. It was this observation alone that prompted the Trooper to conduct a traffic stop. The Commonwealth argues that the basis for the stop was solely the violations of 75 Pa.C.S.A. §§ 3714(a) and §§ 3309(1).³ Therefore, Trooper Heffner was required to have probable cause for the vehicle stop.⁴ In other

³ Careless driving and driving within single lane on roadways laned for traffic.

⁴ A stop for these two alleged violations is not investigatory in nature, therefore a reasonable suspicion analysis is inapplicable.

words, with regard to his determination of whether the particular violations had occurred, there was no further information Trooper Heffner could have gathered after stopping and confronting Defendant as it relates to either a §§ 3714(a) or §§ 3309(1) violation. See *Commonwealth v. Cephus*, 208 A.3d 1096 (Pa. Super. 2019) citing *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. 2010) (alluding that §§ 3309 is a non-investigable offense); see also *Commonwealth v. Wilson*, 111 A.3d 747, 755 (Pa. Super. Ct. 2015) (alluding that §§ 3714 is a non-investigable offense).

B. The Existence of Probable Cause in this Matter.

The Pennsylvania Supreme Court has defined probable cause as follow:

Probable cause is made out when the facts and circumstances which are within the knowledge of the officer at the time of the stop, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime. The question we ask is not whether the officer's belief was correct or more likely true than false. Rather, we require only a probability, and not a prima facie showing, of criminal activity. In determining whether probable cause exists, we apply a totality of circumstances test.

See *Commonwealth v. Calabrese*, 184 A.3d at 166-167 citing *Commonwealth v. Martin*, 101 A.3d 706, 721 (Pa. 2014) (internal citation omitted). The question turns to whether Trooper Heffner had probable cause to believe a violation of either § 3309(1) or § 3714(a) had occurred.

a. 75 Pa.C.S.A. §3309(1) Disregard Traffic Lane.

Section 3309(1) of the Motor vehicle Code provides:

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 first ascertained that the movement can be made with safety.

See 75 Pa.C.S.A. §3309(1). Whether an officer possesses probable cause to stop a vehicle for violating Section 3309(1), depends largely upon on whether a driver's movements from his lane are done safely. See *Commonwealth v. Cook*, 865 A.2d 869, 875 (Pa. Super. 2004), *appeal denied*, 880 A.2d 1236 (Pa.2005).

There is a wide array of relevant caselaw factually similar to the present case, though the Superior Court's holdings do not appear to offer anything akin to a bright-line rule of when probable cause exists for a vehicle stop when drivers stray from their lanes of travel. Rather, trial courts are left to make narrow distinctions based on any given set of facts.

For instance, in *Commonwealth v. Garcia*, 859 A.2d 820 (Pa. Super. 2004), as an officer approached the defendant's vehicle from the opposite direction, the defendant drove to the right and straddled the white fog line. *Id.* at 821. The officer then followed the defendant and observed the defendant again pull to the right and cross the white fog line when an approaching car passed from the opposite direction. *Id.* at 821-22. At that point, the officer initiated a traffic stop for the violation of 75 Pa.C.S.A. §§ 3309.

Id. at 822, n.1. The Superior Court held that the defendant's two acts of giving oncoming vehicles "wide berth" were "momentary and minor," noting the officer only observed the defendant's driving over a distance of two blocks.⁵ *Id.* at 823. The Court found that this was insufficient for the establishment of probable cause. *Id.*

Additionally, in *Commonwealth v. Cephus*, 208 A.3d 1096 (Pa. Super. 2019), the Court held that the Commonwealth presented sufficient evidence to establish probable cause that a driver had likely violated Section 3309(1) of the Motor Vehicle Code. There, the officer activated his patrol car's dash camera and followed the suspect driver for over "a couple hundred yards." *Id.* at 1098. He observed the driver's wheel cross the left line demarcating the driver's lane of traffic on at least four occasions. *Id.* The Superior Court relied on the dash camera video to corroborate with the officer's testimony. *Id.* at 1100. The Superior Court concluded that "the trial court did not err in finding ... probable cause to stop [Appellant's] vehicle when [the trooper] observed the vehicle failing to maintain its lane on multiple occasions and stopped the vehicle only after observing repeated violations." *Id.* at 1100 (quotation marks and citation omitted).

⁵ The "momentary and minor" analysis stems from the implication that § 3309 allows for momentary and minor lane deviations, due to the inclusion of the statutory language that a vehicle shall be driven within a single lane "as nearly as practicable." So, in essence, an analysis of whether single-lane compliance was effected "as nearly as practicable" and an analysis of whether lane deviations were "momentary and minor" are virtually the same thing. *Commonwealth v. Enick*, 70 A.3d 843 (Pa. Super. Ct. 2013).

As noted previously, the statutory language of 75 Pa.C.S.A. § 3309 allows for momentary and minor deviations from a marked lane of travel. *Commonwealth v. Enick*, 70 A.3d 843 (Pa. Super. 2013) (holding appellant's driving plainly posed a safety hazard since half of appellant's vehicle crossed over the double yellow centerline into an oncoming lane of traffic and remained there for three seconds). The Court also applied the "safety hazard" analysis, concluding that the appellant's driving posed a safety hazard to the officer, who was approaching from the opposite direction. *Id.* at 848. Ultimately, the Court held the officer had probable cause for the stop: *Id.*

This Court's takeaway from these cases is that the "momentary and minor" analysis is a murky one with no clearly defined parameters. The risk of harm/safety hazard test, however, seems to be consistently applied by the Superior Court in conjunction with the "momentary and minor" analysis, yet it is much simpler in its approach and achieves the same end. Therefore, it is the conclusion of this Court that, based on the caselaw, the risk of harm/safety hazard test is the simplest and most logical approach when determining the existence of probable cause for § 3309 violations.

As such, the next step is to apply this test to the facts herein. However, this Honorable Court could not proceed with concluding whether probable cause existed to warrant the traffic stop until it determined the credible evidence to support the

probable cause for this stop. To accomplish this task, the Court received and reviewed Trooper Heffner's testimony and the MVR presented at the Suppression Hearing on October 14, 2022. Trooper Heffner testified that he observed four (4) incidents that led to his belief that the Defendant had violated § 3309(1) by travelling onto and over the double yellow center line. The Court reviewed the MVR provided and found there were inconsistencies between the Trooper's testimony and the MVR. This Court's review of the MVR does not show Defendant travelling onto and over the double yellow center line and is in direct contradiction to Trooper Heffner's testimony.

Therefore, because Defendant's manner of driving did not occur as perceived by Trooper Heffner as observed in the MVR, the Defendant was not a safety hazard that created a risk of harm to either himself and others nor did Defendant commit any minor and momentary lane deviations. Therefore, it is the conclusion of this Court that Trooper Heffner did not have probable cause to believe Defendant had committed a § 3309(1) violation, and was not justified in effecting a stop upon Defendant.

b. 75 Pa.C.S.A. §3714(a) - Careless Driving.

Section 3714(a) of the Motor vehicle Code provides:

Any person who drives a vehicle in a careless disregard for the safety of persons or property is guilty of careless driving, a summary offense.

See 75 Pa.C.S.A. §3714(a). Whether an officer possesses probable cause to stop a vehicle for violating Section 3714(a), depends largely upon on whether the driver had a careless disregard for the safety of others and engaged in "less than willful or wanton conduct but more than ordinary negligence or the mere absence of care under the circumstance." *Commonwealth v. Gezovich*, 7 A.3d 300, 301 9Pa. Super. 2010), see also *Commonwealth v. Negron-Walther*, 262 A.3d 584, 585 (Pa. Super. Ct. 2021), *reargument denied* (Nov. 4, 2021).

Consistently, probable cause for a § 3714 violation has been found to exist where an officer observes careless driving behavior beyond just the motorist's speed, which clearly demonstrates a disregard for the safety of persons or property. *Comm. v. Negron-Walther*, 262 A.3d 584, 585 (Pa. Super. Ct. 2021), *reargument denied* (Nov. 4, 2021). For example, the Superior Court held that probable cause existed to stop a driver for suspected violation of § 3714 where officer observed the driver "spinning his tires," fishtailing into the opposing lane of traffic, and then accelerating very quickly. *Commonwealth v. Venable*, 200 A.3d 490, 499 (Pa. Super. 2018). In addition, the Superior Court held that an Officer possessed probable cause to believe the driver had violated § 3714 when the officer observed a driver swerve **over** the double yellow and white fog lines multiple times. *Commonwealth v. Wilson*, 111 A.3d 747, 755 (Pa. Super. 2015) (emphasis ours).

The Court's next step is to apply this test to the facts herein for a §3714 violation for Careless Driving, which again requires the Court to make an initial determination of the evidence provided in the record to evaluate its accuracy. As noted earlier, the Court received and reviewed both Trooper Heffner's testimony and the MVR presented at the Suppression Hearing on October 14, 2022. Similarly, as to the §3309 analysis, Trooper Heffner testified that he observed four (4) incidents that led to his belief that the Defendant had violated § 3714(a) by travelling onto and over the double yellow center line. As we stated earlier as well, the contents of the MVR contradicted the Trooper's testimony. This Court's review of the MVR does not show Defendant travelling onto and over the double yellow center line and is in direct contradiction to Trooper Heffner's testimony.

Based on the evidence in the record, the Court must conclude that Trooper Heffner lacked probable cause to believe Defendant had committed a violation of § 3714. The evidence in the record does not indicate that the Defendant's conduct demonstrated "careless disregard for the safety of persons or property," as required in order for a violation of § 3714 to have occurred. We find that the credible evidence established by the MVR shows that a lack of probable cause existed for Trooper Heffner to initiate the traffic stop for a violation of § 3714(a).

CONCLUSION

After a review of Trooper Heffner's testimony and the otherwise credible and uncontradicted evidence shown on the MVR, we find that **NO** incidences occurred that could rise to establish probable cause to initiate a traffic stop for either a violation of § 3309(1) or §3714(a).

In finding inconsistencies between Trooper Heffner's testimony and the dash-camera footage on the MVR, this Court finds that the evidence that remains equates to a few instances of imperfect driving. This Honorable Court could not conclude that the evidence in the record supports the heightened standard of probable cause required for a traffic stop based on the violation of 75 Pa.C.S.A. §§ 3309(1) or §3714(a). We therefore, find that the stop of Defendant's vehicle and his subsequent seizure were in contradiction of the safeguards set forth in Article I, § 8 of the Pennsylvania Constitution. Therefore, the Motion to Suppress shall be **GRANTED**.

Based upon the foregoing, the Court enters the following order:

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

vs. :

No. CR 442-2022

GARRETT DIETER, :

Defendant :

Cynthia A. Dydra Hatton, Esquire

Counsel for Commonwealth
Assistant District Attorney


Matthew Rapa, Esquire

Counsel for Defendant

ORDER OF COURT

AND NOW, this 25th day of January, 2023, upon consideration of Defendant's "MOTION TO SUPPRESS," and after a hearing held thereon, and after reviewing Defendant's Brief in Support, as well as the Commonwealth's Brief in Opposition, it is hereby ORDERED and DECREED that Defendant's Suppression Motion is GRANTED.

BY THE COURT:


Joseph J. Matika

CLERK
OF COURTS
CARBON COUNTY
PENNSYLVANIA

2023 JAN 26 P 1:05

FILED IN OFFICE

[FM-5-23]