

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

COMMONWEALTH OF PENNSYLVANIA :

vs. :

MICHAEL JOYCE, :

Defendant :

No. CR 305-2020

Cynthia A. Dydra Hatton, Esquire

Counsel for Commonwealth
Assistant District Attorney

Arley L. Kemmerer, Esquire

Counsel for Defendant
Assistant Public Defender

MEMORANDUM OPINION

Matika, J. - April 12, 2022

Before this Court is a Motion to Suppress filed by Defendant, Michael Joyce (hereinafter "Joyce" or "Defendant"). Defendant seeks to suppress all evidence in this case, including any statements he made, his actions following the stop, the Trooper's observations, and the results of the administered Standard Field Sobriety Test. For the reasons stated within this Opinion, upon consideration of Defendant's "MOTION TO SUPPRESS," after a hearing held thereon, and after consideration of the briefs lodged in support thereof and in opposition thereto, Defendant's Motion is **GRANTED**.

[FM-13-22]

FILED
APR 12 2022
CLERK OF COURTS
CARBON COUNTY, PA

FACTUAL AND PROCEDURAL BACKGROUND

On September 21, 2019 at approximately 8:46 p.m., Trooper Mark Bower (hereinafter "Trooper Bower" or "Trooper") of the Pennsylvania State Police was driving west on East Lizard Creek Road in the borough of Bowmanstown, Carbon County, Pennsylvania, when he observed a silver Saturn make a "wide slow left-hand turn onto Bank Street."¹ The Saturn drove on the white fog line through the turn and momentarily after the turn.² The Saturn then made a left turn at the following stop sign and parked in front of a residence.³ Trooper Bower believed that this conduct was indicative of "criminal activity or evading the police" and due to his belief of the nature of "Bowmanstown being a high-crime area," opted to pass the Saturn, make a U-turn, pass the Saturn again, make another U-turn, and park approximately two (2) blocks away to "observe" it. While parked, Trooper Bower queried into the registration plate and noted that the registered owner's address was different from any address near where the vehicle was parked.

Determining that he was not close enough, Trooper Bower moved his car approximately one block closer to the Saturn and parked

¹ This turn was observed on Trooper Bower's dash-camera as the recording began prior to the "slow wide left turn," See Pennsylvania State Police Mobile Recording ("MVR"), December 20, 2021 Suppression Hearing ("Suppression Hearing"), Commonwealth Exhibit 2.

² Trooper Bower testified to this as "straddling" the white fog line, however, after review of the dash-camera footage, this testimony is not supported by the evidence presented. See MVR, Suppression Hearing, Commonwealth Exhibit 2.

³ See MVR, Suppression Hearing, Commonwealth Exhibit 2.

again.⁴ While parked, he observed the Defendant exit the vehicle, walk around the vehicle, then proceed to get back into the vehicle.⁵ Trooper Bower testified he was watching the Saturn to determine if the Defendant was there to possibly engage in "a drug deal," or "a break-in," but ultimately did not witness the Defendant engage in any illegal activity.

Trooper Bower then noticed the Saturn leave the parking spot. Once again he began pursuing the vehicle.⁶ Trooper Bower continued to follow the vehicle and then observed the vehicle stopped on Fireline Road waiting to make a left-hand turn. When Trooper Bower turned on his left turn signal, the vehicle then continued straight.⁷ Trooper Bower assumed this behavior, based upon his "training and experience" to be consistent with someone "evading police."⁸ He followed the vehicle east on Fireline Road where he observed the vehicle "cross or touch" the double yellow and white fog line multiple times.⁹ Trooper Bower testified to the vehicle

⁴ See MVR, Suppression Hearing, Commonwealth Exhibit 2.

⁵ This testimony is not supported by video evidence as the camera view is obscured by the vehicle parked directly in front of Trooper Bower and will be relied upon by the Court based solely upon the Trooper's testimony.

⁶ See MVR, Suppression Hearing, Commonwealth Exhibit 2.

⁷ Trooper Bower's dash-camera did not record this stop on Fireline Road for some unexplained reason. This evidence is only supported by the Trooper's testimony.

⁸ Testimony did not suggest that at this point, the Trooper had activated his lights or siren to call attention to his vehicle being behind the Defendant, so we can only assume that Trooper Bower assumed the driver saw him behind him. This assumption is not evidence of the same.

⁹ Trooper Bower's dash-camera began recording again during this pursuit on Fireline Road. Review of evidence does not coincide with Trooper's testimony. Dash-camera footage does not capture the vehicle crossing the line. See MVR, Suppression Hearing, Commonwealth Exhibit 1.

touching the white fog line for less than 2 - 3 seconds. Trooper Bower then initiated a traffic stop after following, observing, and then pursuing the Defendant for approximately five miles from East Lizard Creek Road in Bowmanstown to Fireline Road in Palmerton.

Defendant was charged with one count of Driving Under the Influence of Alcohol or Controlled Substance-Impaired Ability, a summary offense for Driving While BAC .02 or Greater While License Suspended, and a summary offense for Driving within Single Lane.¹⁰

LEGAL DISCUSSION

Defendant has filed a Suppression Motion arguing that Trooper Bower 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.

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

¹⁰ 75 Pa.C.S.A. §§ 3802(D)(2), 1543(B)(1.1)(I), and 3309(1), respectively.

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.

In a motion to suppress evidence, the Commonwealth bears the burden to establish that it did not obtain the evidence in question in violation of the defendant's rights. *Commonwealth v. Ryan*, 407 A.2d 1345, 1348 (Pa.Super. 1979). "The Fourth Amendment of the United States Constitution and Article I, Section VIII of the Pennsylvania Constitution guarantee individuals freedom from unreasonable searches and seizures." *Commonwealth v. El*, 933 A.2d 657, 660 (Pa.Super. 2007).

When analyzing the propriety of a vehicle stop, the Court must initially address whether the context of the stop necessitates that a police officer possess probable cause to effectuate the vehicle stop or if mere reasonable suspicion will suffice. *Commonwealth v. Basinger*, 982 A.2d 121, 125 (Pa.Super. 2009). "[T]o establish grounds for reasonable suspicion, the officer must

articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. The question of whether reasonable suspicion existed at the time [the officer conducted the stop] must be answered by examining the totality of the circumstances to determine whether the officer who initiated the stop had a particularized and objective basis for suspecting the individual stopped. Therefore, the fundamental inquiry of a reviewing court must be an objective one, namely, whether the facts available to the officer at the moment of the [stop] warrant a [person] of reasonable caution in the belief that the action taken was appropriate." See *Commonwealth v. Basinger*, 982 A.2d 121, 125 (Pa.Super. 2009) (internal citations and quotation marks omitted; alterations in original).

More specifically, when a police officer believes a violation of the Pennsylvania Motor Vehicle Code (the "Motor Vehicle Code") has occurred:

If reasonable suspicion exists, but a stop cannot further the purpose behind allowing the stop, the "investigative" goal as it were, it cannot be a valid stop. Put another way, if the officer has a legitimate expectation of investigatory results, the existence of reasonable suspicion will allow the stop - if the officer has no such expectations of learning additional relevant information concerning the suspected criminal activity,

the stop cannot be constitutionally permitted on the basis of mere suspicion.

Commonwealth v. Chase, 960 A.2d 108, 115 (Pa. 2008).¹¹

"For a stop based on the observed violation of the Vehicle Code or otherwise non-investigable offense, an officer must have probable cause to make a constitutional vehicle stop." See *Commonwealth v. Calabrese*, 184 A.3d 164, 166 (Pa. 2018) citing *Commonwealth v. Harris*, 176 A.3d 1009, 1019 (Pa.Super. 2017). In such situations, "[i]f the alleged basis of a vehicular stop is to permit a determination whether there has been compliance with the Motor Vehicle Code of this Commonwealth, it is incumbent (sic) upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code." See *Commonwealth v. Gleason*, 785 A.2d 983, 989 (Pa. 2001) (citations omitted).

In the present case, Trooper Bower testified to his initial motivation for pursuing the vehicle being his contention that

¹¹ See also *Commonwealth v. Mack*, 953 A.2d 587, 589 (Pa.Super. 2008) (internal citations omitted) (Court notes that, "As provided for by statute [75 Pa.C.S.A. §6308(b)], anytime a police officer has "reasonable suspicion" to believe a violation of the Motor Vehicle Code is occurring or has occurred, the officer may initiate an investigatory vehicle stop," that "[i]ncident to this stop, an officer may check the vehicle's registration, the driver's license and obtain any information necessary to enforce provisions of the motor vehicle code," and that "[a]dditionally, police may request both drivers and their passengers to alight from a lawfully stopped car as a matter of right."). In this circumstance, the constitutional reasonableness of a traffic stop does not depend upon the actual motivations of the officer(s) involved, so long as specific facts have been articulated that would have given rise to a reasonable suspicion that the operator had committed a vehicle code violation. *Commonwealth v. Chase* at 120.

Bowmanstown is a high crime area and Defendant may be involved in a "drug deal" or "criminal activity". Trooper Bower proceeded to pursue the vehicle subsequent to the lack of criminal activity he assumed would have occurred and then changed his motivation for the pursuit to following a suspected DUI driver. After Trooper Bower felt that Defendant "crossed or touched" the double yellow or white fog line enough times, he initiated a traffic stop.

The Commonwealth raised the purpose of the stop being of an investigatory purpose, however, this Court does not find the argument applicable because the stop was not for the purpose of an investigation but rather the stop was initiated for a violation of the Motor Vehicle Code. Since Defendant was ultimately charged with the violation of 75 Pa.C.S.A. §§ 3309(1),¹² this Court is left to conclude that the violation stands as the basis for the stop. That being the case, Trooper Bower was required to have probable cause for the vehicle stop, not mere reasonable suspicion,¹³ as there would not have been a legitimate expectation of investigatory results when Trooper Bower made the stop. In other words, with regard to his determination of whether the particular violation had occurred, there was no further information Trooper Bower could have gathered after stopping and confronting Defendant as it

¹² Driving within single lane on roadways laned for traffic.

¹³ Even if we believed that reasonable suspicion was the basis for the stop as alleged, we still do not find that under a totality of the circumstances analysis, Trooper Bower had reasonable suspicion to stop the vehicle.

relates to a §§ 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).

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).

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 appellant's vehicle from the opposite direction, the appellant drove to the right and straddled the white fog line. *Id.* at 821. The officer then followed the appellant and observed the appellant 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 appellant's two acts of giving oncoming vehicles "wide berth" were "momentary and minor," noting the officer only observed the appellant's driving over a distance of two blocks.¹⁴ *Id.* at 823. The Court found that that was insufficient for the establishment of probable cause. *Id.*

¹⁴ 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).

Likewise, in *Commonwealth v. Gleason*, 785 A.2d 983 (Pa. 2001), an officer who observes a vehicle crossing the berm line by six to eight inches on two occasions for a period of a second or two over a distance of approximately a quarter mile without creating a safety hazard does not possess requisite probable cause.

Conversely, in *Commonwealth v. Feczko*, 10 A.3d 1285 (Pa. Super. 2010), the left tires of the appellant's vehicle briefly crossed over the double yellow line and entered the oncoming lane of traffic while the appellant negotiated a curve. *Id.* at 1286. The vehicle then gradually swayed within its lane and crossed over the white fog line two or three times, then briefly crossed over the double yellow line a second time before being stopped by a state trooper. *Id.* The basis for the stop was a § 3309(1) violation. *Id.* at 1291. The Superior Court noted no other vehicles were required to take evasive action in response to the appellant's weaving, but concluded that because the trooper testified there was traffic present in the oncoming lane, the "[a]ppellant's deviations from his lane of travel created a significant safety hazard on the roadway." *Id.* The Court ultimately held there was probable cause for the stop. *Id.* at 1292. Additionally, in *Commonwealth v. Anderson*, 889 A.2d 596 (Pa. Super. 2005), Defendant straddled the double yellow line for a full city block, inexplicably stopped his vehicle for unusual lengths of time or without stop signs, all of which created a hazard to himself and

others. *Id.* at 601. The Superior Court held that appellant's actions while driving were sufficient to establish probable cause for the stop. *Id.*

Finally, 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).

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, what remains 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 evidence provided in the record to be accurate. To accomplish this task, the Court relied on Trooper Bower's testimony and the MVR presented at the Suppression Hearing on December 20, 2021. Trooper Bower testified to a number of incidents that led to his belief that the Defendant had violated § 3309(1) which included: "a wide slow left turn; straddling the white fog line; and crossing the double yellow and white fog

lines". 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 Commonwealth's exhibits shows that the "straddling the white fog line and crossing the double yellow and white fog lines" are not readily evident nor apparent in the MVR. Trooper Bower testified to a technical problem in the MVR that did not record the "signaling a left turn and coming to a stop to turn, then subsequently continuing straight" and therefore, the Court accepted Trooper Bower's testimony regarding the false turn into the record as true and correct.¹⁵

The Court's review of credible and non-contradicting nature of Trooper Bower's testimony and the MVR finds that the following incidents did occur: "a wide slow left turn; signaling a left turn and coming to a stop to turn, then subsequently continuing straight;" and touching the white fog and double yellow lines a few times. Upon the Court's conclusion as to the credible evidence in the record, we then analyzed whether probable cause existed for Trooper Bower to initiate the traffic stop for a violation of § 3309(1).

Of the cases recounted, the one that bears the most resemblance to the case *sub judice* is that of *Garcia*. There, the officer witnessed the appellant drive to the right of the road and

¹⁵ This, however, would not necessarily impact this Court's §§ 3309(1) analysis.

straddle the white fog line. 859 A.2d at 820. The appellant then again pulled the vehicle to the right and crossed the white fog line when an approaching car passed from the opposite direction. *Id.* The Superior Court found that the appellant's two acts were momentary and minor and did not rise to probable cause to initiate the stop. *Id.* In the present case, Trooper Bower's MVR showed the Defendant drive on the white fog line through a turn and remain on the line for a short distance thereafter.¹⁶ The MVR then showed the Defendant touch the white fog line a few times and the double yellow line once. This evidence presented would conclude that Trooper Bower did not have the requisite probable cause for the traffic stop.

This case is significantly different than *Feczko*, because Defendant here did not cross over the double yellow line into the oncoming lane of traffic. 10 A.3d at 1291. Additionally, the present case does not compare to *Anderson*, because the Defendant did not straddle the double yellow line for an extended period of time. 889 A.2d at 597. Both *Feczko* and *Anderson* were found to have sufficient evidence to establish probable cause because they created a significant safety hazard on the roadway. The Defendant in the present case did not create a safety hazard when he touched the double yellow and white fog lines. He did not create a safety

¹⁶ See MVR, Suppression Hearing, Commonwealth Exhibit 2

hazard when he took a wide slow left turn while riding the white fog line. Lastly, he did not create a safety hazard when he signaled for a left turn and came to a stop, then subsequently continued straight. Such actions on Defendant's part were not a safety hazard that created a risk of harm to himself or others on the roadway and instead are viewed as "momentary and minor," deviations that consequently do not give rise to Trooper Bower establishing probable cause to commence the traffic stop. 859 A.2d at 820

Therefore, because Defendant's manner of driving was not a safety hazard that created a risk of harm to either himself and others, and the incidents witnessed were "momentary and minor", it is the conclusion of this Court that Trooper Bower did not have probable cause to believe Defendant had committed a § 3309(1) violation, and was not justified in effecting a stop upon Defendant.

CONCLUSION

In finding inconsistencies between Trooper Bowers' testimony and the dash-camera footage on the MVR; the 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), Driving within Single Lane. Therefore, the Motion to Suppress shall be **GRANTED**.

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

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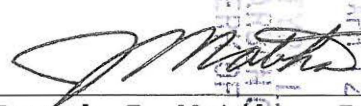
Arley L. Kemmerer, Esquire

Counsel for Defendant
Assistant Public Defender

ORDER OF COURT

AND NOW, this 12th day of April, 2022, 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, J.

[FM-13-22]