

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1615-2020**
 v. :
 :
 ELIJAH GAMON, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Elijah Gamon (Defendant) was charged on December 8, 2020 with Driving Under the Influence (DUI): Controlled Substance—Impaired Ability, First Offense¹, DUI: Controlled Substance—Schedule 1, First Offense², DUI: Controlled Substance—Metabolite, First Offense³, Disregard Traffic Lane⁴, Careless Driving⁵, and Reckless Driving⁶. The charges arise from police conducting a traffic stop of Defendant’s car. Defendant filed this timely Omnibus Pre-trial Motion on January 19, 2021. This Court held a hearing on the motion on July 22, 2021. In his Motion, Defendant sole issue is that police lacked the justification to conduct the vehicle stop and all evidence seized following the stop of Defendant’s car should be suppressed.

Background and Testimony

Trooper Troy Croak (Croak) of the Pennsylvania State Police testified on behalf of the Commonwealth. On February 3, 2020, at approximately 12:40 a.m., Croak and Trooper Paul Beard (Beard) were on patrol near the Lycoming Mall in Lycoming County. Croak noticed a silver Hyundai SUV travelling along Interstate I-80 and followed this vehicle for approximately two or three miles. At some point, Croak observed the vehicle cross the centerline without

¹ 75 Pa.C.S. § 3802(D)(2).

² 75 Pa.C.S. § 3802(D)(1).

³ 75 Pa.C.S. § 3802(D)(1)(iii).

⁴ 75 Pa.C.S. § 3309(1).

⁵ 75 Pa.C.S. § 3714(A).

⁶ 75 Pa.C.S. § 3736(A).

using a turn signal. Croak stated that no roadway hazards, such as potholes, that would account for this movement across the centerline were present in the road when Defendant's vehicle crossed the line. Croak further testified that the road was wet but it was not raining at that time. Croak then observed the vehicle cross the white fog line and cross the centerline a second time. No other cars were around the vehicle at the time it crossed various lane lines. Croak activated his lights and initiated a stop on the vehicle.

The Commonwealth submitted video footage of the vehicle stop and marked as Commonwealth's Exhibit 1. The MVR footage shows the following. Defendant's car is in view on the MVR footage as Croak and Beard follow Defendant. Croak states, "swerve after touching line" after Defendant purportedly drifted over the centerline. Due to the distance and the quality of the footage, it is difficult to see if Defendant crossed the line or not. However, Croak testified that he said this because he witnessed Defendant swerving to get back into his lane of travel after crossing the centerline, but he admitted that you cannot see what he saw that night. He further testified that if he said those words at that moment it was because that is what he was seeing. Beard then says, "there's another one" after Defendant's car can be seen touching the white fog line. Croak also states, "there you go" to acknowledge Defendant crossing the centerline the second time where at least half of Defendant's vehicle crosses over the line. Defendant is pulled over and Croak makes contact with the driver, identified as Defendant. Defendant asks why he was pulled over and Croak explains it was because of Defendant's swerving on the road. Defendant denies consuming any alcohol or drugs, but then Defendant and his back seat passenger both admit to having medical marijuana cards and one of the men provide Croak with an empty marijuana container under the passenger's name. Croak informs Defendant that he can smell marijuana in the car. Then, Croak has Defendant

perform field sobriety tests to determine his ability to drive safely. Defendant was handcuffed and monitored by Beard on the front bumper of the patrol unit while Croak searched the vehicle.

Analysis

Defendant challenges the stop of his vehicle, arguing that law enforcement failed to satisfy the legal standard required to initiate a traffic stop. Police officers are granted the authority to effectuate stops pursuant to violations of the Motor Vehicle Code. 75 Pa. C.S. § 6308(b). “Whenever a police officer . . . has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle.” *Id.* Reasonable suspicion as defined under 75 Pa. C.S. § 6308(b) requires law enforcement “to point to specific and articulable facts which led him to reasonably suspect a violation of the Motor Vehicle Code.” Commonwealth v. Holmes, 14 A.3d 89, 96 (Pa. 2011). Reasonable suspicion “is a less stringent standard than probable cause...and depends on the information possessed by police and its degree of reliability.” Commonwealth v. Melendez, 676 A.2d 226, 228 (Pa. 1996) (citing Terry v. Ohio, 392 U.S. 1, 21 (1968)). “Thus, under the present version of Section 6308(b), in order to establish reasonable suspicion, an officer must be able to point to *specific and articulable facts* which led him to reasonably suspect a violation of the Motor Vehicle Code....” Holmes, 14 A.3d at 95-96 (emphasis in original).

The totality of the circumstances must be considered to determine if an officer had reasonable suspicion of criminal activity to justify an investigatory detention. *Id.* at 96. “In making this determination, we must give ‘due weight...to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.’” Commonwealth v. Fulton, 921 A.2d 1239, 1243 (Pa. 2007) (citing Commonwealth v. Cook,

735 A.2d 673, 676 (Pa. 1999). “It is the duty of the suppression court to independently evaluate whether, under the particular facts of a case, an objectively reasonable police officer would have reasonably suspected criminal activity was afoot.” Id. Under 75 Pa. C.S. § 3309(1) a violation of the Motor Vehicle Code occurs:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others not inconsistent therewith shall apply: (1) 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.

First, Defendant challenges the justification for the traffic stop as it relates to the charge against him pursuant to 75 Pa.C.S. § 3309(1). Defendant cites to two cases to support his argument. *See* Commonwealth v. Gleason, 785 A.2d 983, 985 (Pa. 2001); Commonwealth v. Cook, 865 A.2d 869 (Pa. Super. 2004). In Gleason, police followed a car on a four lane divided highway for approximately one quarter of a mile. Gleason 785 A.2d at 985. The officer following the car noticed the vehicle cross the solid fog line approximately two or three times. Id. No other vehicles were on the road at this time, but the officer decided to pull the car over. Id. The officer noticed signs indicating that the defendant was intoxicated so he had defendant perform field sobriety tests, which he failed. Id. The defendant challenged the traffic stop, arguing that the police “must be able to articulate specific facts which establish probable cause to believe that the vehicle or its driver was in violation of some provision of the Vehicle Code.” Id. at 986. The Pennsylvania Supreme Court held that the officer was not justified in stopping defendant’s vehicle under these particular facts. Id. at 989.

In Cook, an off-duty officer noticed a vehicle travelling erratically and reported the driver. Commonwealth v. Cook, 865 A.2d 869, 872 (Pa. Super. 2004). The car drove into the parking lane and almost hit the curb. Id. The officer also noticed the car cross the fog line two

to three times after following the car for approximately one mile. Id. A different officer came upon the same vehicle after the report was made and followed it for about one mile. Id. The officer observed the defendant drive over the fog line three times and quickly jerk back into the proper travel lane. Id. This officer pulled the vehicle over and arrested the driver for driving under the influence. Id. The Court found that the troopers' observations provided probable cause to believe that defendant violated Section 3309(1). The court in Cook cited to Gleason as support for their conclusion.

Unfortunately, neither of these cases nor the cases they depend on reflect the law as it currently stands. Effective in 2004 the legislature amended 75 Pa.C.S. § 6308(b) to require a less stringent legal standard of cause that an officer must possess for traffic stops from “articulable and reasonable grounds” to “reasonable suspicion.” 75 Pa.C.S. § 6308(b). Although the Pennsylvania Superior Court previously held that the “reasonable and articulable grounds” standard differed from probable cause in semantics alone, this language is no longer reflected in the statute. The revision of the Section 6308(b) supersedes Defendant’s argument that the police lacked probable cause to initiate a traffic stop because this standard is no longer required and has been replaced with reasonable suspicion. *See Commonwealth v. Holmes*, 14 A.3d 89 (Pa. 2011). Similarly to this case, another defendant attempted the same argument to suppress the results of the traffic stop of his vehicle. *See Commonwealth v. Fulton*, 921 A.2d 1239 (Pa. Super. 2007). In that case, Fulton attempted to argue that the Pennsylvania State Police did not have probable cause to stop his vehicle after they observed him crossing the fog line twice and the centerline once within the span of thirty (30) seconds in the presence of oncoming traffic. Id. at 1242. The court found that Fulton advanced an argument under the incorrect standard and went further to conclude that even if he had used the correct standard,

the police had reasonable suspicion to stop him anyway. Id. at 1243. This Court is “duty bound to apply all laws passed by the legislature pursuant to their plain language.” Commonwealth v. Little, 903 A.2d 1269, 1271 (Pa. Super. 2006). Therefore, this Court will apply the reasonable suspicion standard to the facts of the case *sub judice* as required and not the probable cause standard Defendant improperly utilized.

Defendant admits to touching the white fog line at the 45:50 mark of the MVR recording while navigating a right curve on the interstate and admits to partially crossing the centerline at the 46:16 mark of the MVR while completing a second curve in the road. Nevertheless, Defendant argues that no other vehicles were on the road near Defendant at this time. Defendant further argues that he did not jerk back into the proper lane of travel or “abruptly course correct” but made “slow careful corrections back into his lane of travel.” Defendant Omnibus Pretrial Motion, at 5. Defendant asserts that he drove safely and appropriately on the night in question and the police had no justification in pulling him over for drifting into different lanes or touching the fog line. Defendant contends that a turn signal was not needed because he did not change lanes, but instead drifted in his own lane and slightly drifted across the centerline. However, this Court disagrees with Defendant on this issue. Even during the instance where it is difficult to determine if Defendant crossed the fog line, Defendant can be seen drifting throughout his lane of travel. The MVR footage clearly shows at least half of Defendant’s car cross the centerline for several seconds before Defendant corrects his trajectory. Defendant can also be seen touching the fog line following his crossing of the centerline. The roads are wet, it is late at night, and Defendant can be seen failing to stay within his lane on at least two occasions. A reasonable officer in Croak’s position watching this occur could fairly make a determination that a violation of the Motor Vehicle Code

occurred which is all that is needed for police to conduct a traffic stop. To drift outside the lane is not a safe practice of driving. Therefore, this Court finds that the police had reasonable suspicion to justify the traffic stop.

Conclusion

The Court finds that the proper reasonable suspicion did exist to justify a traffic stop of Defendant's vehicle. Therefore, the evidence obtained as a result of the stop shall not be suppressed.

ORDER

AND NOW, this 29th day of September, 2021, based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Leonard Gyskewicz, Jr., Esq.
Law Clerk (JH)