

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 02-11,594
 :
 :
 vs. : CRIMINAL DIVISION
 : Motion to Suppress
 DANIEL G. FETZER, :
 Defendant :

OPINION AND ORDER

Defendant has been charged with driving under the influence of alcohol (two counts) and related summary offenses following a vehicle stop by Jersey Shore Police on July 21, 2002. In the instant Motion to Suppress, filed November 21, 2002, Defendant contends the vehicle stop was unlawful, specifically that the officer did not have reasonable grounds to believe that Defendant had violated a provision of the vehicle code prior to making the stop.

At the hearing on Defendant’s motion, held December 27, 2002, counsel stipulated to the facts contained in the Affidavit of Probable Cause filed by Officer Gill and Officer Gill was also questioned further by both counsel. It appears from both the affidavit and Officer Gill’s testimony that he first observed Defendant’s vehicle in the 800 block of Allegheny Street in Jersey Shore. According to Officer Gill, the vehicle almost struck a curb, specifically coming within six to eight inches of the curb, then pulled back across the lane and crossed slightly over the double yellow lines. Defendant’s vehicle then proceeded back across the lane and again almost struck the curb and then once again, traveled back across the lane and crossed the double yellow lines again, traveling a short distance partially in the opposite lane. At that point, Officer Gill stopped Defendant’s vehicle. Defendant cites Commonwealth v Gleason, 785 A.2d 983 (Pa. Super. 2001) in support of his contention the observations of Officer Gill were insufficient to justify the stop. The Court does not agree, however,

that the circumstances in the instant matter are sufficiently similar to those in Gleason to require suppression of the evidence herein.

In Commonwealth v Gleason, 785 A.2d 983 (Pa. Super. 2001), the vehicle crossed the fog line two to three times over the distance of ¼ mile on a four-lane divided highway on which there were no other vehicles at the time. The Court found such circumstances to be insufficient to support the stop. In Commonwealth v Battaglia, 802 A.2d 652 (Pa. Super. 2002), the vehicle was observed over the course of 2 ½ miles, was weaving from side to side within its lane, traveled from 5 to 10 mph under the 35 mph speed limit, made a wide left turn and crossed the broken white line from the right lane into the left lane. Again the Court held such circumstances to be insufficient to support the stop. In Commonwealth v Slonaker, 795 A.2d 397 (Pa. Super. 2002), the vehicle was observed to travel over the white fog line completely onto the berm of the roadway three times during the course of being observed for five miles. The vehicle also drove over the centerline and over the fog line without going completely out of the lane and the vehicle's speed varied, from 40 mph to 60 mph in a 55 mph zone. Further, the vehicle was observed to continuously weave within its lane over the course of the five miles. These circumstances were found sufficient to justify a vehicle stop. Finally, in Commonwealth v Howard, 762 A.2d 360 (Pa. Super. 2000), the vehicle drove onto the berm two times, veered into the center of the roadway and crossed the yellow centerline. Again, these circumstances were determined sufficient to justify the stop.

The Court believes the instant circumstances of nearly striking the curb twice and crossing the double yellow lines twice, are more similar to those presented in Slonaker and Howard than to those presented in Gleason and Battaglia. The Court thus finds the vehicle stop was justified and the evidence obtained as a result thereof will not be suppressed.

ORDER

AND NOW, this 6th day of February, 2003, for the foregoing reasons, Defendant's Motion to Suppress is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Peter Campana, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson