

**IN THE COURT OF COMMON PLEAS FOR
LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH	:	
	:	
v.	:	No.: 03-10,208
	:	
STEVE CHARLES ROSSMAN,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is the Defendant's Omnibus Pre-Trial Motion in which he sets forth his Motion to Suppress (Lack of Probable Cause to Stop), Motion to Suppress (Lack of Probable Cause to Arrest), Motion for Dismissal (Violation of Pennsylvania Rule of Criminal Procedure 518), and Motion for Dismissal (Habeas Corpus Venue).

The facts of this case reveal that Defendant was driving his vehicle on August 29, 2002 at approximately 11:45 p.m. on state route 654 in Armstrong Township, Lycoming County when he was observed by Trooper Justin Bieber of the Pennsylvania State Police. Tpr. Bieber observed the Defendant's car cross the double yellow lines on the road on three occasions within a distance of approximately one-half mile. Based on his training and experience, as well as the fact that he has observed other individuals operate their vehicles in a similar manner when they were intoxicated, Tpr. Bieber formed the opinion that the driver could be intoxicated and conducted a traffic stop of the Defendant. He made contact with the Defendant to discover that he had an odor of alcohol about him, red, bloodshot eyes and slurred speech. The Defendant was removed from his vehicle whereupon Tpr.

Bieber observed Defendant attempt to perform two field sobriety tests, which in the Trooper's opinion the Defendant failed. Defendant was then transported to a local hospital where blood was drawn showing a blood alcohol concentration of .14%. A criminal complaint was filed on September 25, 2002, charging Defendant with Driving Under the Influence, Driving on Roadways Laned for Traffic, and Careless Driving.

In his first Motion to Suppress, Defendant asserts that the Troopers lacked probable cause to conduct a stop of his vehicle. He relies upon the Pennsylvania Supreme Court case of Commonwealth v. Gleason, 785 A.2d 983, 567 Pa. 111 (Pa. 2001) in support of his position. In Gleason, the Supreme Court notes that "(t)he legislature has vested police officers with the authority to stop vehicles whenever they have "articulable and reasonable grounds to suspect a violation" of the Vehicle Code." Gleason, id., citing 75 Pa.C.S. Section 6308(b). See also Commonwealth v. Whitmyer, 668 A.2d 1113, 542 Pa. 545 (Pa. 1995). The Defendant in Gleason was stopped after an officer observed him cross the solid fog line on two or three occasions over a distance of about one quarter mile. Here, the Trooper observed the Defendant cross the double yellow center lines on three occasions within a distance of approximately one half mile. There was no other evidence presented at the time of the hearing on Defendant's motions which tended to prove that a vehicle code violation had occurred. Indeed, the Trooper testified specifically that the Defendant's vehicle was stopped because he was suspected of driving while intoxicated. However, "there is no basis for "profiling" a suspected drunk driver merely on the basis of observing undisciplined operation of a vehicle which does not form the basis for a conclusion that there has been a violation of the Vehicle Code. . . (P)erceived "erratic driving" in and of itself is not a violation of the Code and,

without more, does not provide probable cause to execute a traffic stop.” Commonwealth v. Battaglia, 802 A.2d 652 (Pa.Super. 2002). It is clear to the Court from the testimony of the Trooper that the only reason for conducting a vehicle stop of the Defendant in his vehicle was because the officer suspected that he might be driving under the influence of alcohol. There was no testimony elicited by the Commonwealth to support a different conclusion.

The information filed in this case lists two summary offenses, Driving on Roadways Laned for Traffic and Careless Driving. Trooper Bieber testified that he observed the Defendant’s vehicle cross the double yellow line on three occasions within a half mile. This is presumably the action of the Defendant which the Commonwealth alleges constitutes the summary offenses. However, it is clear from a number of decisions in other Pennsylvania jurisdictions that this activity, without more, is not enough to justify a stop of the offending vehicle. See e.g., Commonwealth v. Spade, 54 Pa. D. & C.4th 348 (2000) (defendants, each of which made a turn under circumstances that placed their vehicles over the center yellow line, did not warrant officer’s belief that traffic violation had occurred); Commonwealth v. Malone, 19 D.& C.4th (1993) (holding that section 3309(1) does not require perfect adherence to driving entirely within a single marked lane on all occasions); Commonwealth v. Snyder, 13 Franklin L.J. 11 (1995) (stating that one wide turn does not constitute erratic driving which would warrant the belief that a traffic violation was occurring where there were no center line markings); Commonwealth v. Manning, 30 Centre 7 no. 44 (1996) (“defendant’s one wide swing to the right does not constitute erratic driving which would warrant a belief that a traffic violation was occurring”).

This Court also notes that the Commonwealth alleges that the same conduct – crossing the double yellow line on three occasions within a distance of one half mile – is a

violation of two separate sections of the vehicle code, each of which it intends to prosecute against this Defendant. In this particular case, the offense charged under Count 2 of the information, Driving on Roadways Laned for Traffic, is an offense which more specifically addresses the conduct alleged to have been committed by the Defendant than Count 3 of the information, Careless Driving. In Pennsylvania, a merger doctrine has developed to prevent punishing a defendant more than once for one criminal act. Commonwealth v. Gatling, 807 A.2d 890 (Pa. 2002). See also Commonwealth v. Brown, 29 A.2d 793, 346 Pa. 192 (Pa. 1943). (to hold that a defendant can be subject to prosecution under different penal provisions for the same act "is to eschew the ideal of precision in criminal law and criminal penalties"). Here, the conduct asserted to support conviction under 75 Pa.C.S.A. Section 3714 (Careless Driving) is also prohibited more specifically under 75 Pa.C.S.A. Section 3309(1) (Driving on Roadways Laned for Traffic). Section 3309(1) does not require perfect adherence to driving entirely within a single marked lane on all occasions. It only requires that a vehicle be driven *as nearly as practicable* entirely within a single marked lane. The requirement to drive entirely within a single marked lane "as nearly as practicable" is further subject to the exception *until the driver has first ascertained that the movement can be made with safety*. Malone, supra. The record contains no evidence that the operation of the Defendant's vehicle constituted a safety hazard. Furthermore, there is no evidence creating probable cause for the officer to believe that defendant was not operating his vehicle in a single lane of travel "as nearly as practicable." Sections 3309 and 3714 are safety provisions. If the legislature had wished to demand absolute compliance with the single lane requirement it would not have included the words "as nearly as practicable" within the language of Section 3309. See Malone, id. For these reasons, this Court finds that even if the Trooper had stopped the

Defendant's vehicle because of perceived violations of Title 75, Section 3309(1) or Section 3714, there was insufficient probable cause for the Trooper to make a stop on that basis. The Court will therefore suppress the vehicle stop and all evidence obtained following the stop.

Given the Court's decision on the first portion of Defendant's Omnibus Pre-Trial Motion, there is no need to reach any other issues raised by the Defendant in his motion.

ORDER

AND NOW, this ____ day of April, 2003, after a hearing and argument, the Court GRANTS Defendant's Motion to Suppress (Lack of Probable Cause to Stop) and SUPPRESSES all evidence pertaining to the stop of the Defendant's vehicle and all evidence obtained as a result of the impermissible stop.

By the Court,

_____ J.

xc: DA
Patrick Lauer, Esquire
Hon. Nancy L. Butts
Gary Weber, Esquire
Diane L. Turner, Esquire