

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 581 – 2007
	:	
vs.	:	CRIMINAL DIVISION
	:	
DAVID WAYNE FRANTZ,	:	
Defendant	:	Omnibus Pre-trial Motion

**OPINION AND ORDER**

Before the Court is Defendant's Motion to Suppress, contained in his Omnibus Pre-trial Motion, filed June 20, 2007. A hearing on the motion was held August 31, 2007.<sup>1</sup>

Defendant was charged with DUI and two summary offenses following a stop of his vehicle on February 11, 2007. In the instant motion to suppress, Defendant contends the officer lacked the necessary reasonable suspicion to effectuate the traffic stop.

The Commonwealth presented the testimony of the arresting officer<sup>2</sup> who indicated he stopped Defendant's vehicle because he failed to signal appropriately when turning. The applicable Vehicle Code section states, in pertinent part:

§ 3334. Turning movements and required signals

(a) GENERAL RULE.-- Upon a roadway no person shall turn a vehicle or move from one traffic lane to another or enter the traffic stream from a parked position unless and until the movement can be made with reasonable safety nor without giving an appropriate signal in the manner provided in this section.

(b) SIGNALS ON TURNING AND STARTING.-- At speeds of less than 35 miles per hour, an appropriate signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning. ...

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<sup>1</sup> At the time of hearing, Defendant indicated he was not pursuing the motion to dismiss, also contained in his omnibus pre-trial motion.

<sup>2</sup> The testimony was presented in the form of a stipulation that the Court consider a transcript of the testimony presented at the preliminary hearing in this matter on March 26, 2007.

75 Pa.C.S. Section 3334. It is not disputed that Defendant did not give a continuous signal of intention to turn during the last 100 feet traveled by his vehicle in making both a left turn and then a right turn, both of which turns were observed by the arresting officer. The officer testified that Defendant signaled once before turning left and then once before turning right and once during the right turn. Defendant does not dispute this, but instead argues that “the ‘momentary and minor’ lapse, in distance and continuity, was not sufficient to provide reasonable suspicion”, citing Commonwealth v. Gleason, 785 A.2d 983 (Pa. 2001), and Commonwealth v. Garcia, 859 A.2d 820 (Pa. Super. 2004).

In Gleason, *supra*, the Court held that an officer must have probable cause to believe a violation of the Vehicle Code is occurring before making a traffic stop. The Court went on to find probable cause lacking where the stop was for an alleged violation of Section 3309(1) of the Vehicle Code, Driving within single lane,<sup>3</sup> and the evidence showed that the defendant’s vehicle crossed the berm line by six to eight inches on two occasions for a period of a second or two over a distance of approximately one quarter of a mile. In Garcia, the Court was asked to apply Gleason in order to determine whether the driving behavior witnessed by police in the case before it (driving over the right berm line of the road two times, in response to another car coming toward him in the opposite lane of traffic) was sufficient to establish the probable cause necessary to support a traffic stop. The Garcia Court found probable cause lacking, and explained its decision as follows:

... [A] close reading of the Gleason rationale, combined with careful attention to the facts of that case, lead us to conclude that where a vehicle is driven outside the lane of traffic for just a momentary period of time and in a minor manner, a traffic stop is unwarranted. Thus, appellant Gleason's crossing of the berm line on two occasions for a second or two were inadequate to support a traffic stop, while appellant Lindblom's repeated weaving within his lane, coupled with his driving over the center double lines and the berm line four or five times, provided probable cause to support a lawful traffic stop.

Id. at 823 (footnote omitted). This Court finds Defendant’s reliance on Gleason and Garcia misplaced, however, since as of February 1, 2004, the probable cause standard

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<sup>3</sup> (1) Driving within single lane.--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 safely.

has been replaced by a reasonable suspicion standard, *see* 75 Pa.C.S. Section 6308(b),<sup>4</sup> and the Superior Court has indicated that the reasoning of Garcia is no longer applicable. *See Commonwealth v. Fulton*, 921 A.2d 1239, 1242 (Pa. Super. 2007)(Court refused to apply Garcia for the proposition that where a vehicle is driven outside the lane of traffic “for a moment in a minor manner”, stopping the vehicle is not warranted, finding the argument to be “really only a continuation of his claim that the probable cause standard should apply.”) Furthermore, the Vehicle Code section at issue in Gleason and Garcia, Driving on roadways laned for traffic,<sup>5</sup> requires that a vehicle “shall be driven *as nearly as practicable* entirely within a single lane”, thereby leaving room for discretion, whereas the section at issue herein, Turning movements and required signals,<sup>6</sup> requires very specifically that when turning while traveling at speeds less than 35 miles per hour, a signal must be given “continuously during *not less than the last 100 feet* traveled by the vehicle before turning”, and that a signal “shall be given during *not less than the last 300 feet* at speeds in excess of 35 miles per hour,” 75 Pa.C.S. Section 3334(b), eliminating any room for the exercise of discretion.

In any event, even were the Court to apply the “momentary and minor” standard to the facts of this case, such might provide Defendant with relief had he signaled continuously for 95 of the required 100 feet, but inasmuch as it appears he signaled once just prior to turning on both occasions,<sup>7</sup> the Court cannot find such to be a “momentary and minor lapse”.

Accordingly, the stop having been properly based on reasonable suspicion that Defendant was violating the Vehicle Code, Defendant’s request to suppress the evidence obtained as a result of the stop must be denied.

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<sup>4</sup> Section 6308(b), pertaining to investigation by police officers, now states in pertinent part that “[w]henver a police officer ... has reasonable suspicion that a violation of [the Motor Vehicle Code] is occurring or has occurred” he may stop a vehicle. 75 Pa.C.S. § 6308(b)

<sup>5</sup> 75 Pa.C.S. Section 3309(1)(emphasis added).

<sup>6</sup> 75 Pa.C.S. Section 3334.

<sup>7</sup> The Court considers Defendant’s signal as the right turn was being made to have no effect as it was not made “before turning”.

**ORDER**

AND NOW, this 13<sup>th</sup> day of September 2007, for the foregoing reasons, Defendant's Motion to Suppress is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA  
Kyle Rude, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson