

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 770 – 2007
	:	
vs.	:	CRIMINAL DIVISION
	:	
KENNETH SEGRAVES,	:	
Defendant	:	Motion to Suppress

**OPINION AND ORDER**

Before the Court is Defendant’s Motion to Suppress, filed August 17, 2007. A hearing on the motion was held September 19, 2007.

Defendant was charged with DUI and careless driving after a traffic stop on February 16, 2007. In the instant motion, Defendant contends the officers lacked the necessary reasonable suspicion to effectuate the stop, relying on the “momentary and minor” standard enunciated in Commonwealth v. Garcia, 859 A.2d 820 (Pa. Super. 2004), and followed in Commonwealth v. Almodovar, 70 D. & C. 4<sup>th</sup> 394 (Lehigh County, 2005). Specifically, Defendant contends any violations observed by the officers prior to the stop were insignificant and insufficient to support a finding of reasonable suspicion.

An understanding of the Garcia decision requires reference to the Court’s decision in Commonwealth v. Gleason, 785 A.2d 983 (Pa. 2001). There, 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>1</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, *supra*, 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). As of February 1, 2004, however, the probable cause standard has been replaced by a reasonable suspicion standard, *see* 75 Pa.C.S. Section 6308(b),<sup>2</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.”) Therefore, the Court is to determine whether the officer had a reasonable suspicion that a violation of the Vehicle Code was occurring, and need not weigh the seriousness of the alleged violation.<sup>3</sup>

In the instant case, the investigating officer testified that he first observed Defendant’s vehicle as it was parked in the center of a street which ran perpendicular to the street on which he himself was traveling in his patrol car. After the officer turned around to investigate and saw Defendant’s vehicle pull out in front of him, he then followed Defendant’s vehicle for approximately two miles, during which time the officer observed that the passenger-side tail

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<sup>1</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. 75 Pa.C.S. Section 3309.

<sup>2</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>3</sup> The Court notes it could be argued that there was indeed no violation observed in Gleason and Garcia, inasmuch as the Vehicle Code section there at issue calls for a vehicle to be driven *as nearly as practicable* entirely within a single lane and requires that it not be moved from the lane until the driver has first ascertained that the movement can be made *safely*, 75 Pa.C.S. § 3309(1)(emphasis added), both of which requirements are somewhat subjective.

light was out, that Defendant did not signal as he made a right turn from one street to another street, and that he crossed over into the left lane as he made a right turn. The officer also observed Defendant's vehicle cross the center dotted line (they were traveling on a two-lane, one-way street part of the time) on at least two occasions. The stop followed Defendant's pulling over to the side of the street and the officer's pulling in behind him. Considering the evidence, the Court finds the officer had reasonable suspicion to believe Defendant was violating one or more sections of the Vehicle Code, and thus that the stop was proper.<sup>4</sup>

Accordingly, the traffic stop having been properly effectuated, there is no need for suppression of the evidence obtained as a result of that stop.

**ORDER**

AND NOW, this 24<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

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<sup>4</sup> With respect to Defendant's further argument that the Court cannot base a finding of reasonable suspicion on the alleged turn signal violation and tail light violation because these violations were not charged in the criminal complaint, the Court references the case of Commonwealth v. Spieler, 887 A.2d 1271, 1276 (Pa. Super. 2005) ("it is of no moment that Appellant was not cited for violating the MVC, as an actual violation of the MVC need not ultimately be established to validate a traffic stop"), citing Commonwealth v. Snell, 811 A.2d 581 (Pa. Super. 2002).

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Hon. Dudley Anderson