

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-1865-2010**  
 :  
**ANDREW BECKER,** :  
**Defendant** :

**OPINION AND ORDER**

By Information filed on February 14, 2011, Defendant is charged with one count of driving under the influence of alcohol or controlled substances (incapable of safely driving) (refusal) and three traffic summaries including driving on roadways laned for traffic, careless driving and general lighting requirements.

On March 16, 2011, Defendant filed a Motion to Suppress alleging that the Commonwealth did not have either probable cause or reasonable suspicion to stop the Defendant's vehicle. Accordingly, Defendant requests that all evidence obtained incident to the stop be suppressed.

A hearing on the Motion to Suppress was held in this matter on May 3, 2011.

Trooper Kenneth Fishel testified first on behalf of the Commonwealth. He is employed by the Pennsylvania State Police as a Trooper. He was on duty on October 16, 2010 in full uniform and in a marked unit.

He and his partner, Trooper Travis Doebler, were traveling east on Four Mile Drive at approximately 3:30 a.m. and observed a silver motor vehicle traveling in front of them in the same direction.

They followed this vehicle for approximately one minute and observed it weaving in its lane of travel and cross the center line on more than one occasion. Trooper

Fishel described “crossing the center line” as the vehicle’s driver’s side tires being completely over the line.

Following this approximate one minute, and thirty seconds before activating the unit’s emergency lights, the unit’s videotape recording device captured what next occurred. The video was introduced into evidence and played for the Court.

During this thirty-second interlude, the Defendant’s vehicle gradually weaved in its lane of traffic with its driver’s side wheels touching the center line on one occasion, with its passenger side wheels traveling on top of, if not over, the clearly marked fog line on one occasion, and its passenger side tires fully crossing the fog line on another occasion coming within a foot or two of striking the guardrail. Following the incident in which the vehicle crossed the fog line coming within feet of striking the guardrail, Trooper Fishel activated his emergency lights and effectuated a stop of the vehicle.

The Defendant was identified as the driver of the vehicle and eventually arrested and charged with the aforesaid criminal and traffic summary offenses.

Trooper Fishel testified that he effectuated the stop on Defendant’s vehicle because of the erratic driving which included the Defendant weaving in his lane of travel, crossing the center line on multiple occasions and crossing the fog line on multiple occasions.

Most recently in Commonwealth v. Feczko, 10 A.3d 1285 (Pa. Super. 2010) the Superior Court en banc addressed the quantum of cause necessary for an officer to stop a vehicle in this Commonwealth. The facts of Feczko are strikingly similar to the facts in the present case. Specifically, in Feczko, the trooper testified that the basis for the stop was because the defendant was “weaving within his lane and also crossed out of his lane of travel

on numerous occasions.” The trooper observed the defendant’s vehicle cross the double yellow center line on two separate occasions as well as “drift over the white fog line on the opposite side of the traffic lane.” Furthermore, the suppression court viewed a video recording from the trooper’s patrol car and observed “numerous touchings of the white fog line of the defendant’s vehicle and clearly saw the vehicle cross over the center yellow line while negotiating a curve.”

Based on the record, the Superior Court concluded that the trooper articulated specific facts which provided probable cause to believe that the defendant was in violation of 75 Pa. C.S. § 3309 (1) entitled “Roadways Laned for Traffic.”

In discussing the Supreme Court’s decision in Commonwealth v. Chase, 960 A.2d 108 (Pa. 2008), the Superior Court in Feczko concluded that when a traffic stop was based on suspected criminal activity, reasonable suspicion would suffice. Where, however, a driver’s detention could not serve an investigatory purpose relevant to the suspected violation, it was incumbent on the officer to articulate specific facts possessed by him, at the time of the questioned stop, which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Traffic Code. Feczko, 10 A.3d at 1291, citing Commonwealth v. Gleason, 785 A.2d 983, 989 (Pa. 2001) and Chase, 960 A.2d at 116.

Applying the standards of Feczko to the instant case, it is clear that the traffic stop of Defendant’s vehicle was legal. Despite Defendant’s arguments to the contrary, the Court finds the testimony of Trooper Fishel to be entirely credible. Trooper Fishel was able to articulate specific facts possessed by him, at the time of the questioned stop, which not only provided reasonable suspicion to believe that the Defendant may have been driving under the

influence of alcohol but also probable cause to believe that the Defendant violated 75 Pa. C.S.A. § 3309 (1) (roadways laned for traffic) as well as 75 Pa. C.S.A § 3714 (a) (careless driving).

Accordingly, the Court will enter the following Order.

**ORDER**

**AND NOW**, this \_\_\_\_ day of May 2011 following a hearing and argument, the Court **DENIES** Defendant's Motion to Suppress.

BY THE COURT,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Gregory A. Stapp, Esquire  
District Attorney (AB)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File