IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
	)	
v.	)	Cr. A. No.: 1112010628
	)	
	)	
MARISSA FERNANDES,	)	
	)	
Defendant.	)	

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Date Decided: August 6, 2014

ORDER ON
DEFENDANT'S MOTION FOR REARGUMENT

Defendant Marissa Fernandes ("Fernandes") brings this Motion for Reargument pursuant to *Court of Common Pleas Criminal Rule* 57(b) and *Court of Common Pleas Civil* Rule 59(e) for reconsideration of the Court's May 7, 2014, decision, in which the Court denied Fernandes' motion to suppress. This is the Court's Final Decision and Order on Defendant's Motion for Reargument.

FACTS & PROCEDURAL POSTURE

On November 13, 2013, Fernandes filed a motion to suppress, challenging the legality of the stop of her vehicle. A suppression hearing was held on March 19, 2013, and the Court heard

testimony from Delaware State Police Officer Michael Ripple ("Officer Ripple"). Based on the testimony presented, the Court found the following facts:

At approximately 12:30 a.m. on December 15, 2011, Officer Ripple was traveling westbound on Kirkwood Highway behind Fernandes' vehicle. Over the distance of roughly one mile, Officer Ripple observed Fernandes' vehicle drift entirely over the right-hand fog line on three separate occasions. Officer Ripple stopped the vehicle after it crossed the fog line a third time. Officer Ripple did not intend to cite the driver for unsafe lane change in violation of 21 *Del. C.* § 4122. Rather, he acted out of concern that the driver risked hitting the curb; the shoulder on the roadway was particularly narrow, and the distance between the fog line and the curb was roughly two feet in width.

At the suppression hearing, Fernandes argued that the stop was not based on a suspected violation of 21 *Del. C.* § 4122; thus, Officer Ripple lacked reasonable articulable suspicion to stop the vehicle. The State contended that Officer Ripple had the requisite reasonable suspicion because the vehicle was crossing the fog line and Officer Ripple was concerned the vehicle would collide with the curb.

On May 7, 2014, the Court entered an order denying the Motion to Suppress on the grounds that Officer Ripple had pointed to specific articulable facts that reasonably warranted stopping Fernandes' vehicle.

On May 19, 2014, Defendant filed this Motion for Reargument on the grounds that the Court failed to consider or overlooked prior precedent. It is Fernandes' position that the Court's decision is in conflict with established precedent.

The State, on the other hand, contends that the facts of this case are distinguishable from the cases cited by Fernandes and, furthermore, the Court already considered these arguments at the suppression hearing.

DISCUSSION

A motion for reargument is not addressed in the criminal rules of this Court, however, *Court of Common Pleas Criminal Rule* 57(b) addresses procedures not specified by rule as follows: "[i]f no procedure is specifically prescribed by Rule, the Court may proceed in any lawful manner not inconsistent with these Rules or with any applicable statute."[1] The Court has considered motions for reargument in the criminal context under the standard of review set forth in the civil text under *Court of Common Pleas Civil Rule*59(e).[2] A motion for reargument will be granted if "the Court has overlooked a controlling precedent or legal principle, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."[3]

Fernandes argues that the Court overlooked prior precedent set forth in *State v. Blank*,[4] *State v. Edwards*,[5] and *State v. Holt*.[6] Fernandes contends that the facts of these cases are analogous to the facts in the case *sub judice*. The Court disagrees.

a. State v. Blank

In *Blank*, the Superior Court reviewed the Court of Common Pleas' decision granting defendant's motion to suppress on the grounds that the officer did not have reasonable,

[1] *CCP Crim. R.* 57(b).
[2] *See Parisan v. Cohan*, 2012 WL 1066506 (Del. Com. Pl. March 29, 2012); *State v. Bifferato*, 2010 WL 3958778 (Del. Com. Pl. Aug. 17, 2010); *State v. Munzer*, 2009 WL 206088 (Del. Com. Pl. Jan. 9, 2009).
[3] *Kennedy v. Invacare Corp*., 2006 WL 488590, at *1 (Del. Super. Jan. 31, 2006).
[4] *State v. Blank*, 2001 WL 755932 (Del. Super. June 26, 2001).
[5] *State v. Edwards*, 2002 WL 32000657 (Del. Com. Pl. May 31, 2002).
[6] *State v. Holt*, Del. CCP, Cr. A. no. 95-06-0120, Trader, J. (August 23, 1995).

articulable suspicion to stop the defendant.[7] The officer observed the defendant: weaving within the center lane on two occasions; crossing the right lane line on two occasions; and, changing lanes unnecessarily.[8] The State argued that the officer had reasonable, articulable suspicion that defendant was in violation of 21 *Del. C.* § 4122.[9] The court upheld the Court of Common Pleas decision that the officer lacked reasonable articulable suspicion because § 4122 "does not outright prohibit crossing lane lines (even if for no apparent reason)," and the testimony demonstrated that the officer "considered the lane crossing in and of itself to be prohibited conduct."[10]

In the present case, the facts are subtly but crucially different from *Blank*. Fernandes' driving was significantly different than that described in *Blank*; Fernandes was not drifting between lanes, rather, she was drifting *off* the roadway. Unlike *Blank*, where the officer incorrectly considered the lane crossing to be a violation of § 4122, Officer Ripple explicitly stated that he did not have § 4122 in mind when he stopped Fernandes; rather, based on his observations, Officer Ripple was concerned that Fernandes would collide with the curb. After consideration of the factual distinctions, the Court finds that it did not overlook a controlling precedent set forth in *Blank*, and reargument is not warranted on this basis.

b. State v. Edwards

In *Edwards*, the Court of Common Pleas found that the Justice of the Peace Court did not abuse its discretion in granting the defendant's motion to suppress on the grounds that there was

[7] *Blank*, 2001 WL 755932.
[8] *Id*. at *1.
[9] *Id.* at *2. Title 21 of the Delaware Code, Section 4122 reads: [a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.
[10] *Id*.

no reasonable, articulable suspicion for the stop of defendant's vehicle.[11] The court noted that the defendant's vehicle crossed the shoulder line on three occasions; however, the court contrasted the facts with *Marousek v. Voshell*,[12] where the defendant nearly crashed his motorcycle. Importantly, the court noted "this case contains no testimony that the Defendant was observed close to losing control of his automobile."[13]

The present case is distinguishable from *Edwards* in that testimony establishes that Fernandes *was* at risk of losing control of her vehicle. Officer Ripple testified that he was concerned that Fernandes would collide with the curb, as the shoulder was particularly narrow. Furthermore, the Court notes, the *Edwards* case was limited to a determination of whether the lower court's ruling was clearly erroneous. The facts of *Edwards* do not suggest that this Court overlooked a controlling precedent or legal principle in its decision to deny Fernandes' motion to suppress.

c. State v. Holt

Finally, Fernandes argues that an unpublished decision, *State v. Holt*, is factually similar to this case. Fernandes did not provide, and the Court could not locate, a copy of that decision. However, the *Holt* decision was discussed in *Edwards*, and the minimal discussion therein leads this Court to conclude that Fernandes' reliance on *Holt* is misplaced.[14] In *Holt*, the Court of Common Pleas found that "barely going over the shoulder line and centerline" does not violate § 4122.[15] As previously discussed, the stop of Fernandes was not based on a perceived violation of § 4122. The *Holt* decision does not conflict with the decision of this Court, and does not provide Fernandes a basis for reargument.

[11] *Edwards*, 2002 WL 32000657.
[12] 1990 WL 251362 (Del. Super. Dec. 17, 1990).
[13] *Edwards*, 2002 WL 32000657, at *2.
[14] *See Id*.
[15] *Id*.

None of the arguments presented by Fernandes warrant reargument under *Rule* 59(e), because Fernandes has not established that the Court overlooked a controlling precedent or legal principle or misapprehended the law or facts in a manner that would result in a different outcome. Accordingly, Fernandes' motion for reargument is denied.

CONCLUSION

For the foregoing reasons, Defendant's Motion for Reargument is **DENIED.** The matter will be set for trial before this judicial officer.

IT IS SO ORDERED.

The Honorable Carl C. Danberg
Judge

cc: Faye Holmes, Judicial Case Processor II