

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,

v.

SPENCER SEATON,

Defendant.

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Case No. 1708017073

Submitted: January 26, 2018
Decided: January 30, 2018

*Upon Consideration of Defendant's Motion to Suppress –
Motion **GRANTED.***

OPINION

William L. Rasis, Esquire, Deputy Attorney General, Delaware Department of Justice, Wilmington, Delaware, Attorney for the State of Delaware.

Michael W. Modica, Esquire, Wilmington, Delaware, Attorney for the Defendant.

STRETT, J.

This 30th day of January, 2018, having considered Defendant's Motion to Suppress, the State's Reply, a Suppression Hearing, and oral argument, Defendant's Motion to Suppress is **GRANTED**.

Factual and Procedural Background

On August 23, 2017, at approximately 9:45 p.m., Trooper Duane Freeman while driving a marked police vehicle, entered Route 40 westbound, a divided roadway. The westbound side of Route 40 had either two or three lanes divided by broken lines near Wellington Road. Immediately upon driving in the right lane, the officer observed a vehicle approximately three car lengths ahead of him also in the right lane. The lanes did not have solid lines.

The vehicle was proceeding at an appropriate rate of speed and was not being driven erratically. There were no other cars on the road. Trooper Freeman watched as the vehicle's right directional signal was turned on. Shortly thereafter, the vehicle drifted approximately twelve (12) inches into the left lane for two (2) seconds and then immediately returned completely to the right lane. The vehicle then made a right turn into the right turn lane and exited off of Route 40. The officer had observed the vehicle for approximately two minutes as it travelled for less than a mile. Based on that sole observation, Trooper Freeman signaled for the vehicle to pull over as it cleared the exit.

Upon stopping the vehicle, Trooper Freeman observed that the driver, Spencer Seaton (“Defendant”), had glassy eyes, a strong odor of alcohol, and slurred speech. Trooper Freeman asked Defendant to step out of the car and the Defendant complied without incident.

Trooper Freeman performed a pat down search of Defendant’s person. Defendant admitted that he had marijuana in his pocket and had smoked marijuana and used alcohol that evening.

Trooper Freeman then attempted to administer the Horizontal Gaze Nystagmus test and the Walk and Turn test. Defendant could not perform either of the field tests. Defendant, while wearing dentures, eventually took a Portable Breath Test (“PBT”) which registered a blood alcohol level of 0.139%. Trooper Freeman then arrested Defendant for driving under the influence.

On October 16, 2017, a Delaware grand jury returned a three-count indictment against Defendant for driving a vehicle while under the influence, failing to maintain lane in violation of 21 *Del. C.* § 4122(1), and no proof of insurance.

On December 15, 2017, Defendant filed a Motion to Suppress all evidence. On December 20, 2017, the State filed the State’s Reply to Defendant’s Motion to Suppress. On January 26, 2018, the Court held a Suppression Hearing.

At the hearing, the State presented the testimony of Trooper Freeman and also entered the motor vehicle video recording (“MVR”) of the events leading up to,

during, and after Defendant's traffic stop. The Defendant did not present any testimony and did not enter any exhibits into evidence.

Parties' Contentions

In his Superior Court Criminal Rule 41(f) Motion to Suppress, Defendant argues that "there was insufficient reasonable suspicion to stop his vehicle for an alleged lane violation"¹ and that "[t]he stop, detention, administration of field coordination tests, administration of breath test, and arrest [] violated his state and federal constitutional rights against unreasonable search and seizures"² because "a single entry into another lane followed by a correction does not constitute a violation of Section 4122(1)."³

The State responded that Trooper Freeman had reasonable suspicion to conduct a traffic stop because "Defendant's vehicle moved to the left and slightly entered the left lane before moving back to the right lane, then into the right turn lane."⁴ The State added that "[t]he fact that [D]efendant had his right turn signal on and eventually made a right turn indicate[s] that he did not ascertain that movement into the left lane could be made with safety."⁵

Standard of Review

¹ Def.'s Mot. at ¶ 4.

² Def.'s Mot. at ¶ 14.

³ Def.'s Mot. at ¶ 11.

⁴ State's Reply at 4.

⁵ State's Reply at 5.

On a motion to suppress, the defendant bears the burden of establishing that the challenged search or seizure violated his rights under the United States Constitution, the Delaware Constitution, or the Delaware Code.⁶ If the defendant establishes a basis for the motion, the State must then prove, by a preponderance of the evidence,⁷ that the actions of its agents were in accordance with constitutional protections.⁸ As the trier of fact at a suppression hearing, the judge determines the credibility of witnesses.⁹

Discussion

The Fourth Amendment of the United States Constitution¹⁰ and Article I, § 6 of the Delaware Constitution¹¹ protects individuals from unreasonable searches and seizures.

When a police officer conducts a traffic stop of a vehicle, the occupants and the vehicle are seized¹² under the Fourth Amendment and the stop “is subject to

⁶ *State v. Dollard*, 788 A.2d 1283, 1286 (Del. Super. 2011).

⁷ *Id.* (“The burden of proof on a motion to suppress is proof by a preponderance of the evidence”).

⁸ *State v. Babb*, 2012 WL 2152080, at *2 (Del. Super. June 13, 2012).

⁹ *State v. Brinkley*, 2013 WL 1225869, at *2 (Del. Super. Feb. 19, 2013).

¹⁰ See U.S. CONST., amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”). See also *West v. State*, 143 A.3d 712, 715-16 (Del. 2016) (“The essential purpose of Fourth Amendment proscriptions is to impose a standard of reasonableness upon the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions”) (internal quotations omitted).

¹¹ See Del. Const., art. I, § 6 (“The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures”).

¹² *State v. Clay*, 2002 WL 1162300, at *2 (“The Court agrees that the defendant was detained at the point where the officer pulled in behind him and activated his police lights. A detention occurs when the officer, by means of physical force or show of authority, has in some way restrained the

constitutional limitations.”¹³ The State is required to prove that “the stop and any subsequent police investigation were reasonable in the circumstances.”¹⁴ A stop is reasonable when it is supported by probable cause to believe that a traffic code violation has occurred or that there is reasonable articulable suspicion that criminal activity is afoot.¹⁵ Probable cause exists “as long as the officer is making the traffic stop based on a violation of the traffic code that he has observed.”¹⁶ Reasonable suspicion “must be evaluated in the context of the totality of the circumstances as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer's subjective interpretation of those facts.”¹⁷

liberty of an individual. The focus is on whether a reasonable person in the defendant's place would have believed that he was not free to ignore a police presence and go about his business”).

¹³ *Caldwell v. State*, 780 A.2d 1037, 1045 – 46 (Del. 2001). *See also Tann v. State*, 21 A.3d 23, 26 (Del. 2011) (citing *Caldwell v. State*, 780 A.2d at 1045).

¹⁴ *Caldwell*, 780 A.2d at 1046.

¹⁵ *State v. Rickards*, 2 A.3d 147, 151 (Del. Super. 2010), *aff'd*, 2011 WL 153643 (Del. Jan. 12, 2011). *See also* 11 Del. C. § 1902(a) (“A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination”); *McDonald v. State*, 947 A.2d 1073, 1077 (Del. 2008) (“As a general matter, the decision to stop an automobile is reasonable when the police have probable cause to believe that a traffic violation has occurred”) (internal quotation marks omitted) (quoting *Whren v. United States*, 517 U.S. 806, 810 (1996)).

¹⁶ *Rickards*, 2 A.3d at 152. *See also State v. Blank*, 2001 WL 755932, at *1 (Del. Super. June 26, 2001) (“On this issue, Delaware Courts require that a peace officer develop, prior to stopping a motor vehicle, a reasonable and articulable suspicion that the person has committed or is about to commit a crime. On review, courts must ‘examine the totality of the circumstances surrounding the situation as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances . . .”).

¹⁷ *Jones v. State*, 745 A.2d 856, 861 (Del. 1999); *Downs v. State*, 570 A.2d 1142, 1145 (Del. 1990) (“Police have the authority to forcibly stop and detain a person if they have a reasonable suspicion that a vehicle or its occupants are subject to seizure for violation of law”); *West*, 143 A.3d at 716

The State argues that Trooper Freeman had reasonable suspicion to stop Defendant because Defendant violated 21 *Del. C.* § 4122(1), which states, in pertinent part, that:

Whenever any roadway has been divided into 2 or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply:
(1) 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.

The State asserts that the issue was “whether movement can be made with safety” and that Trooper Freeman had no way to know if Defendant ascertained that movement could be made with safety. The State’s written response added that “[i]n fact, the [MVR] shows that Trooper Freeman’s vehicle was in the left lane and approaching Defendant’s vehicle on the left when Defendant’s vehicle drifted slightly into the left lane”.¹⁸

The Defendant argues that Defendant’s vehicle “barely” went over the line, was a brief occurrence, and was immediately corrected.

(“A seizure is reasonable when a law enforcement officer conducts a brief investigatory traffic stop based on reasonable and articulable suspicion of criminal activity. Reasonable and articulable suspicion of criminal activity includes not just traffic offenses, but criminal activity such as drunk driving”).

¹⁸ State’s Reply at 5.

Upon review of the MVR, the video shows that there were no vehicles near Defendant's vehicle at any time.¹⁹ Moreover, there was no danger or risk of unsafe movement at the time that Defendant drifted into the left.

Defendant was not speeding or driving in an irregular manner, there were no vehicles alongside Defendant's vehicle, there were no vehicles between Trooper Freeman's vehicle and Defendant's vehicle, Trooper Freeman's vehicle was at least three car lengths behind Defendant's vehicle when Defendant moved into the left lane, and the officer had "no issue" with the way Defendant made the right turn. Furthermore, the State conceded during oral argument that Defendant's vehicle drifted over and back in approximately two seconds in time, traveled only a foot or less over the line, and speculated that there might have been a safety hazard if there had been a car nearby. The Court finds that Defendant's digression was minimal and did not constitute probable cause for a traffic stop or reasonable suspicion for a seizure.

This Court has declined to find reasonable suspicion for a § 4122(1) violation where the lane movement in question was minimal. In *State v. Clay*, a case involving a vehicle crossing a double yellow line, this Court stated that "an act of briefly

¹⁹ The video contradicts the impression given in the State's Reply which stated, "the [MVR] shows that Trooper Freeman's vehicle was in the left lane and approaching Defendant's vehicle on the left when Defendant's vehicle drifted slightly into the left lane." Moreover, the State failed to substantiate or provide a nexus between a right turn signal and failure to ascertain safety on the left.

drifting across the centerline which is immediately corrected, in and of itself, is [not] a violation of [§ 4122(1)], [n]or could [it] create a reasonable suspicion that a motorist was driving under the influence.”²⁰ In *State v. Blank*, this Court affirmed a Court of Common Pleas decision to grant a motion to suppress where the *Blank* trooper, Trooper Shatley, testified only about lane movement and did not “touch upon the issue of § 4122’s safe harbor for a person who first determines that a lane change can be made safely before initiating the maneuver.”²¹ Because the evidence was silent on the safety harbor element of § 4122(1), the *Blank* Court found that Trooper Shatley did not have reasonable suspicion to make a traffic stop.

Here, Trooper Freeman testified that “the only basis for the stop” was that Defendant veered into the left lane on a roadway that did not have solid lines.²² Speed was not a factor. Absent any testimony or video evidence concerning any other basis

²⁰ 2002 WL 1162300, at *2 (Del. Super. May 28, 2002) (“During the time he was behind the defendant’s vehicle, he did not observe any irregular driving, other than the fact that on one occasion the left wheels of the vehicle crossed the double yellow line in the center of the road. The vehicle, however, immediately corrected itself back to its lane of travel”) (reasonable suspicion found on other grounds).

²¹ *State v. Blank*, 2001 WL 755932, at * 2 (“Thus, Trooper Shatley, in order to justify the traffic stop, was required to demonstrate through his testimony (by the articulation of factual circumstances prior to the stop) that he possessed a reasonable suspicion that Defendant crossed the lane lines without first ascertaining whether it was safe to do so”) (“Consequently, the lower court’s determination that Trooper Shatley’s testimony failed to establish that Defendant’s driving created a reasonable and articulable suspicion that Defendant had violated Section 4122 was the product of an orderly and logical deductive process”) (internal quotations omitted).

²² *See Id.* (finding that reasonable suspicion for a § 4122(1) was not present where the officer followed *Blank* by a “few car lengths” and where the officer only witnessed *Blank* weaving within the center lane on two occasions and crossing the right lane by about a foot) (“In fact, the testimony clearly demonstrates that Trooper Shatley considered the lane crossing in and of itself to be prohibited conduct” which alone did not arise to reasonable suspicion).

for the stop, the State has not met its burden of showing that the Defendant failed to ascertain that movement could be made with safety in a setting where there were no other vehicles nearby and no apparent danger.²³

The Court finds that the officer's testimony was credible and recognizes that there is a balancing test between the interests of preserving public safety and the freedom to drive without unreasonable interference. Moreover, it is reasonable that briefly veering into another lane could or would attract an officer's attention.²⁴ However, this officer's sole observation was insufficient for a stop and Defendant did not create or narrowly avoid any danger. While Trooper Freeman would not have acted inappropriately had he followed Defendant further, and perhaps made additional observations, Trooper Freeman did not have reasonable suspicion or

²³ Indeed, the MVR showed that the road was dark, Defendant was observed for a short period of time, the testifying officer said that he did not know if Defendant checked to make sure that he could move to the left lane with safety, and the officer did not explain what would have evinced a driver's ascertainment regarding safety. *Contra West*, 143 A.3d at 718 (affirming the Superior Court decision to deny motion to suppress where officer followed West for three or four miles and observed West almost crash into a concrete island and swerve sharply before entering a highway) ("But what happened here is much more than weaving within the same lane. Taking a commonsense view of the facts and with the benefit of the video evidence, the weaving, coupled with the sharp swerve to avoid hitting a concrete island is easily recognized as driving behavior indicative of drunk driving"); *Bease v. State*, 884 A.2d 495, 496-97 (Del. 2005) (affirming this Court's finding of probable cause where state trooper observed a vehicle "travel from the right straight lane into the turn lane for Interstate 95, forcing multiple vehicles that were already in that lane to rapidly decelerate").

²⁴ *West*, 143 A.3d at 725, 727 (Valihura, J., concurring) ("In my view, it would be objectively reasonable for a law enforcement official in Officer Gaul's position to think that West had failed to remain within a single lane in violation of [Section] 41(1). At a minimum, the record evidence, including the video recording of the incident, indicates that West tagged the fog and center lines on multiple occasions when traveling on Route 273").

probable cause to conduct a traffic stop based only on the slight lane deviation that did not pose a safety risk.²⁵

Under the totality of the circumstances, the seizure of Defendant without reasonable suspicion violated Defendant's Fourth Amendment right against unreasonable seizures; therefore any evidence obtained from that stop, including observations made by Trooper Freeman, the field tests, and the PBT results, must be suppressed because they flow from the illegal seizure.²⁶ As such, the Court has no alternative but to grant Defendant's Motion to Suppress and will not address specific suppression arguments of evidence gathered after the stop since the stop itself was unlawful.²⁷

²⁵ *See Id.* at 718 (“We agree with other courts that if failure to follow a perfect vector down the highway or keeping one’s eyes on the road were sufficient reasons to suspect a person of driving while impaired, a substantial portion of the public would be subject each day to an invasion of their privacy”).

²⁶ *Lopez-Vazquez v. State*, 956 A.2d 1280, 1293 (Del. 2008) (“Accordingly, the evidence that was obtained following the invalid Terry stop must be suppressed as fruit of the poisonous tree. The Superior Court should have granted Lopez-Vazquez’s motion to suppress”).

²⁷ *See West*, 143 A.3d at 724 (Valihura, J., concurring) (“Therefore, in evaluating a traffic stop, a reviewing court is not permitted to consider post-seizure facts”).

Conclusion

Accordingly, for the foregoing reasons, Defendant's Motion to Suppress is
GRANTED.

IT IS SO ORDERED.



Diane Clarke Streett, Judge

Original to Prothonotary

cc: William L. Raises, Esquire, Department of Justice
Michael W. Modica, Esquire