

Commonwealth v O'Grady

Commonwealth of Pennsylvania v. David O'Grady, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Criminal Action No. 861-2012

HEADNOTES

*Criminal Procedure; Suppression; DUI; Vehicle Stop; Field Sobriety Tests*

1. The legality of a traffic stop depends on the reason for which the stop was initiated.
2. If a stop is non-investigatory in nature, the police officer must have probable cause of a motor vehicle code violation. If the stop is investigatory in nature, the police officer need only have reasonable suspicion of a motor vehicle code violation.
3. A momentary crossing of a marked line on a road may not necessarily give an officer probable cause of a motor vehicle code violation unless doing so creates a danger to the driver or other on that road.
4. In determining whether an officer has the requisite cause to initiate a stop, the Court must give due weight to the officer's training and experience.
5. Field sobriety tests are non-testimonial in nature and an officer is not required to read an individual his or her rights under Miranda prior to administering the tests.

Appearances:

Franklin County District Attorney  
David C. Dagle, Esq., Attorney for Defendant  
David O'Grady, Defendant

OPINION

Before Herman, J.

**Procedural History**

On February 22, 2012, Defendant, David O'Grady, was arrested by Pennsylvania State Police –Chambersburg (PSP) for driving under the influence (DUI) of alcohol. He was charged by way of criminal complaint on March 7, 2012. On July 11, 2012, Defendant filed a Motion to Suppress. A hearing on the matter was held on July 13, 2012. The Court did not order that written argument be submitted, therefore, the matter is ready for decision.

**Evidence Presented at the Hearing**

At the hearing, Trooper Thomas Karlo testified for the Commonwealth. He has been a PSP trooper for two years and has had training on how to identify possible incidents of DUI. He testified that on the night of February 22, 2012 at 10:40 p.m., he followed a blue truck for three-fourths of a mile. The truck was weaving within its lane, and closely riding the yellow center line. According to his training, Trooper Karlo believed this to be an indication of DUI. He also witnessed the truck weave outside of the center line several times. He testified that his vehicle was equipped with a Mobile Video Recorder (MVR). The Court admitted the recording (MVR) as Commonwealth's Exhibit 1.

He testified that he stopped the vehicle for suspicion of DUI and for violations of the motor vehicle code. According to his training and experience, he found riding the yellow center line, weaving within the lane, and the time of night to be indications that the driver might be DUI. The trooper testified that driving along the yellow line is much more dangerous than the white fog line because the center line places a vehicle closer to oncoming traffic. Additionally, part of the driver's vehicle entered the turning lane which was on the other side of the yellow line.

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Upon review of the MVR, the Court observed the driver favoring the left side of the road, consistent with the trooper's testimony that the driver was riding the yellow line. Immediately prior to the trooper activating his emergency lights, the truck can be seen driving on, and slightly crossing over the yellow line for several seconds. Also evident in the MVR are vehicles traveling in the opposing lane.

### Discussion

To determine whether the stop of Mr. O'Grady's vehicle was lawful, it is necessary to understand the difference the Supreme Court of Pennsylvania has recognized in *Commonwealth v. Chase*, 960 A.2d 108 (2008) between an investigative stop and a non-investigative stop. An investigative stop is one in which a police officer has suspicion of a violation or crime and stops a vehicle in order to investigate and gather further evidence. A police officer initiating an investigative stop need only have reasonable suspicion of a crime so that he may stop a vehicle to gather further evidence and determine if probable cause for an arrest exists. *Chase*, 960 A.2d at 115-16.

In contrast, a non-investigative stop requires that a police officer have probable cause of a motor vehicle violation to stop a vehicle. *Id.* at 116. This type of stop requires no further investigation for the officer to enforce the provision of the vehicle code that was violated. *Id.*

Trooper Karlo testified that he stopped the vehicle for suspicion of DUI and for motor vehicle code violations. Therefore, we will address the legality of the stop under both the probable cause standard and the reasonable suspicion standard.

We find that Trooper Karlo did have probable cause of a motor vehicle code violation, specifically, 75 Pa. Con. Stat. § 3309(1) which requires drivers to drive within a single lane and not to leave that lane unless it can be done safely. The Superior Court has recognized instances where a momentary crossing of a marked line in the road will not provide probable cause of a section 3309(1) violation; however, this exception will not apply where such a "transgression" creates a danger to the driver or other drivers on the road. *Commonwealth v. Chernosky*, 874 A.2d 123, 128 (Pa. Super. 2005); *Commonwealth v. Anderson*, 889 A.2d 596, 601 (Pa. Super. 2005). Here, the trooper observed Mr. O'Grady's vehicle riding along the line in the road for several seconds. While the vehicle was on or near the yellow line, Trooper Karlo testified that parts of the vehicle were protruding in to the other lane. At one point, the tires of the vehicle broke past the line in to the other lane. This occurred on a road and time where other vehicles were also on the road, thereby creating a danger. We find that there was probable cause of a motor vehicle violation.

Trooper Karlo also had reasonable suspicion of a DUI. The trooper testified that there were several factors that indicated to him that the driver of the vehicle may be intoxicated. He based this suspicion on his training and experience. The trooper stated that his DUI training taught him that riding on or very close to a line on the road can be an indication of impaired driving. He stated that driving under the influence is common at that particular time of night. He witnessed the vehicle weave within its lane several times. He also witnessed the vehicle briefly cross over the yellow line. See *Commonwealth v. Hughes*, 908 A.2d 924, 928 (2006) (holding that a traffic violation can be used as a factor in determining reasonable suspicion of a DUI). We must give due weight to the inferences the trooper draws from his training and experience. *Id.* at 927. While these factors, alone, would not give rise to reasonable suspicion, the totality of these factors does. Therefore, we find that the trooper had reasonable suspicion of DUI, in addition to probable cause of a motor vehicle code violation.

The defendant raises one final issue. He seeks to suppress the results of the blood test which followed his arrest. His argument is that since no Miranda warnings were given prior to administering a field sobriety test, the self-incriminating results of the field sobriety test were unlawfully obtained. If the field sobriety test results are unlawfully obtained, then no probable cause existed for the arrest. In support of this argument, he cites *Pennsylvania v. Muniz*, 496 U.S. 582 (1990). We find that this case does not specifically address the issue at hand. *Muniz* suppressed a recording of an intoxicated person's answer to a question which was specifically asked to test the mental functions of the individual – "What was the date of your sixth birthday." The Court suppressed the tape because the answer given showed the impaired mental functions and state of mind of the individual, and was therefore testimonial. The Court specifically stated that the slurring, itself, was not cause for suppression because muscle control is not testimonial in nature. Similarly, the horizontal gaze nystagmus test which was given here, tests muscle and nerve function and is not testimonial.

More specifically, the Supreme Court of Pennsylvania has held that law enforcement officers are not required to advise a person of their Miranda rights prior to the administering of field sobriety tests. *Commonwealth v. Hayes*, 674 A.2d 677 (Pa. 1996). Therefore, we find that the blood test was not unlawfully obtained.

#### Conclusion

Defendant's motion to suppress evidence based on the legality of the vehicle stop and legality of evidence seized following arrest will be denied.