

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
ASHLEY BROOKE SMITH	:	No. 1646 WDA 2025

Appeal from the Suppression Order Entered December 4, 2025
In the Court of Common Pleas of Westmoreland County Criminal Division
at No(s): CP-65-CR-0003501-2024

BEFORE: STABILE, J., DUBOW, J., and STEVENS, P.J.E.*

MEMORANDUM BY DUBOW, J.:

FILED: August 26, 2026

The Commonwealth of Pennsylvania appeals from the December 4, 2025 order granting the motion filed by Appellee, Ashely Brooke Smith, to suppress evidence seized from her as a result of a traffic stop. After careful review, we affirm.

The relevant facts, as gleaned from the notes of testimony from the suppression hearings, are as follows. On March 24, 2024, at approximately 2:40 AM, Pennsylvania State Police Trooper Trent Thomas was patrolling in the area of State Route 119 with Trooper Steve Papuga in a marked vehicle equipped with a mobile video recorder ("MVR"). Trooper Thomas also wore a body camera. Both devices were operational.

* Former Justice specially assigned to the Superior Court.

Trooper Thomas observed Appellee, who was driving a black Jeep Cherokee, near the ramp to Route 119 South in Youngwood, Westmoreland County. He saw Appellee's tires touch the fog line as she used the exit ramp to enter Route 119 South, prompting him to activate his MVR and begin following Appellee.¹ Trooper Thomas then observed Appellee touch the fog line again on an on-ramp while executing a right-hand turn. He continued following Appellee for approximately five to six miles along Route 119 South. During that time, Trooper Thomas observed nothing of note: no fog line contact, no lane violation, no speed violation, no irregularity of any kind. Appellee maintained lawful speed through multiple speed zones, properly signaled, and stayed within her lane.

After following Appellee for more than five miles, near the intersection of Route 119 and Route 31, Trooper Thomas observed Appellee contact the fog line again on two instances, roughly 10 seconds apart, and lasting for "two, three seconds." N.T. Supp. Hr'g, 12/2/25, at 22, 36. Of the four total fog line contacts, two involved merely touching the line and two involved crossing it by "the width of a tire." *Id.* at 9.

From this behavior and based on his experience, Trooper Thomas surmised that Appellee was either driving distractedly or driving under the influence. Therefore, Trooper Thomas initiated a traffic stop of Appellee's vehicle for "failing to maintain its lane and also drifting within its lane back

¹ Trooper Thomas testified that he activates his MVR "once I identify a vehicle that I'm probably going to stop." N.T. Supp. Hr'g, 12/2/25, at 7.

and forth between the fog line and dashed line.” N.T. Supp. Hr’g, 5/27/25, at 18; **see also** N.T. Supp. Hr’g, 12/2/25, at 28 (where Trooper Thomas explained that he pulled Appellee over because of “four violations of crossing the fog line and the - - also swerving back and forth in its lane.”). At the time of the stop, Trooper Thomas informed Appellee that he pulled her over for “crossing the fog line and crossing over the dash line in the center of the lane.”² N.T. Supp. Hr’g, 12/2/25, at 30. Trooper Thomas observed that Appellee had a stamp on her hand he recognized as from a bar located inside a nearby casino, slurred speech, and appeared lethargic, and a strong odor of alcohol was emanating from the vehicle. Trooper Thomas conducted field sobriety, ARIDE, and preliminary breath tests, all of which indicated Appellee was intoxicated.

Following the traffic stop, the Commonwealth charged Appellee with violating 75 Pa.C.S. § 3309(1)—Driving on Roadways Laned for Traffic—and numerous DUI offenses.³

On March 12, 2025, Appellee filed a motion to suppress evidence in which she claimed that Trooper Thomas lacked probable cause or reasonable suspicion to conduct the traffic stop.

² At the suppression hearing, he admitted on cross-examination, however, that he never observed, and did not testify on direct examination, that Appellant crossed over the dash line in the center of the lane. ***Id.*** at 30-31.

³ 75 Pa.C.S §§ 3802(a)(1), (b), (d)(1), (d)(2), and (d)(3).

The trial court held suppression hearings over three days at which Trooper Thomas testified in accordance with the above facts. Trooper Thomas also testified that, in addition to touching and crossing the fog line, he observed Appellee drift within her own lane of travel. When asked why he waited so long to initiate the traffic stop, Trooper Thomas testified: "I just wanted to feel more confident about stopping the vehicle for driving under the influence of alcohol." N.T. Supp. Hr'g, 5/27/25, at 33-34. Trooper Thomas testified that the MVR recorded every instance that he observed Appellee cross or touch the fog line. He further testified that, during the entire time he followed Appellee, he was "physically able to observe the vehicle moving back and forth" within her lane of travel. ***Id.*** at 32. He explained that Appellees was drifting, *i.e.*, "going center to the lane, left of the lane, right of the lane, continuously, back and forth while also crossing the fog line." N.T. Supp. Hr'g, 8/21/25, at 12.

Trooper Thomas testified that, prior to interacting with Appellee, he did not know that she had been in a bar. He also confirmed that there was no other traffic on the highway when he observed the fog line violations, Appellee's vehicle did not pose a hazard to traffic, and there were no other fog line or lane violations between the first two he observed while leaving

Youngwood and the last two, which occurred more than six minutes and six miles later.⁴

The court admitted as evidence the MVR footage, Trooper Thomas's body camera recording, and screenshots of each violation captured from the MVR and time stamped.⁵ Trooper Papuga appeared in court to testify; ultimately, however, he did not testify, because the parties stipulated that his testimony would be the same as that of Trooper Thomas.

After watching the recordings, the court noted on the record that it only saw Appellee "cross[] the line" once; "the other three times, it's just hard to - - it's just hard to see. It looks like she might touch them a few times, but there's no - -[.] N.T. Supp. Hr'g, 5/27/25, at 38. The court also stated that, with respect to Appellee drifting within her lane of travel, the court was "just not seeing it in the video." ***Id.*** at 40. At the conclusion of the hearing, the court deferred its ruling pending an additional, *in camera*, review of the video evidence.

⁴ During the final hearing on December 2, 2025, the Commonwealth conceded Trooper Thomas lacked probable cause for a traffic stop based solely on a Section 3309 violation. Thus, the sole question for the court was whether Trooper Thomas had reasonable suspicion to believe Appellee was driving under the influence of drugs or alcohol.

⁵ Trooper Thomas testified that he captured the screenshots after using technology not available inside the courtroom to zoom in because the fog line violations are "not easy to see on the MVR when it is fully zoomed out" as it was when played for the court at the May 27, 2025 hearing. N.T. Supp. Hr'g, 8/21/25, at 11.

On December 4, 2025, the suppression court granted Appellee's motion to suppress. This timely appeal by the Commonwealth followed. Both the Commonwealth and the suppression court complied with Pa.R.A.P. 1925.

The Commonwealth raises the following issue for appellate review: "Whether the suppression court erred when it granted [Appellee's] omnibus pretrial motion?" Commonwealth's Br. at 5 (unnecessary capitalization omitted).

Our review of a grant of a suppression motion is limited to determining "whether the record supports the trial court's factual findings and whether the legal conclusions drawn from those facts are correct." **Commonweath v. Carmenates**, 266 A.3d 1117, at 1122-23 (Pa. Super. 2021) (*en banc*) (citation omitted). "We may only consider evidence presented at the suppression hearing." **Id.** at 1123 (citation omitted). Additionally, "[b]ecause the defendant prevailed on this issue before the suppression court, we consider only the defendant's evidence and so much of the Commonwealth's evidence as remains uncontradicted when read in the context of the suppression record as a whole." **Id.** (citation omitted).

This Court is highly deferential to the suppression court's factual findings and credibility determinations. **Commonwealth v. Batista**, 219 A.3d 1199, 1206 (Pa. Super. 2019). "It is within the suppression court's sole province as factfinder to pass on the credibility of witnesses and the weight to be given to their testimony. The suppression court is free to believe all, some or none of the evidence presented at the suppression hearing." **Commonwealth v.**

Elmobdy, 823 A.2d 180, 183 (Pa. Super. 2003) (internal citations omitted). If the record supports the suppression court's findings, we may not substitute our own findings. **Batista**, 219 A.3d at 1206. However, we give no such deference to the suppression court's legal conclusions and, instead, review them *de novo*. **Id.**

Once a defendant files a motion to suppress, "it is the Commonwealth's burden to prove, by a preponderance of the evidence, that the challenged evidence was not obtained in violation of the defendant's rights." **Commonwealth v. Wallace**, 42 A.3d 1040, 1047–48 (Pa. 2012) (citation omitted); **see also** Pa.R.Crim.P. 581(H).

The Commonwealth asserts that the suppression court applied the wrong legal standard when determining whether the traffic stop initiated by Trooper Thomas was legal. In particular, the Commonwealth claims that the court erroneously found that "Trooper Thomas did not have probable cause to stop the vehicle for lane violations. The appropriate standard to be applied when an officer suspects a DUI violation is occurring is reasonable suspicion, not probable cause." Commonwealth's Br. at 16. The Commonwealth also claims that the court further erred by finding that Trooper Thomas "failed to articulate something more than inchoate suspicion that [] Appellee was operating her vehicle while under the influence[]" based on the fact that Appellee's "vehicle was not a hazard or safety concern." **Id.** The Commonwealth argues that Pennsylvania law does not require that a safety concern exist in order for an officer to possess reasonable suspicion to initiate

a traffic stop for DUI. ***Id.*** at 17. Finally, the Commonwealth contends that, notwithstanding the limited view offered to the court in the Commonwealth's video evidence, Trooper Thomas's uncontroverted testimony that he observed Appellee cross the fog line twice and touch the fog line twice, "drift continuously back and forth within the lane for five or six miles at 2:40 AM, the time bars are closing in the area, in an area where he has had more than fifty DUIs in approximately five years" supports a conclusion that Appellant was driving under the influence. ***Id.*** at 22-23.

Here, the Commonwealth correctly observes that Trooper Thomas required reasonable suspicion to stop Appellee. This Court has explained that:

if an officer possesses sufficient knowledge based upon behavior suggestive of DUI, the officer may stop the vehicle upon reasonable suspicion of a Vehicle Code violation, since a stop would provide the officer the needed opportunity to investigate further if the driver was operating under the influence of alcohol or a controlled substance.

Commonwealth v. Salter, 121 A.3d 987, 993 (Pa. Super. 2015).⁶

Reasonable suspicion is a less stringent standard than the probable cause necessary to effectuate a warrantless arrest, and depends on the information possessed by police and its degree of reliability in the totality of the circumstances. In order to justify the seizure, a police officer must be able to point to specific and

⁶ This differs from situations in which an officer observes a violation of the Motor Vehicle Code and no further investigation to determine that the violation occurred is necessary. In those situations, an officer must have probable cause to initiate the traffic stop. ***Commonwealth v. Cephus***, 208 A.3d 1096, 1099 (Pa. Super. 2019); **see also *Commonwealth v. Ibrahim***, 127 A.3d 819, 823 (Pa. Super. 2015) (explaining that "[i]f it is not necessary to stop the vehicle to establish that a violation of the Vehicle Code has occurred, an officer must possess probable cause to stop the vehicle").

articulable facts leading him to suspect criminal activity is afoot. In assessing the totality of the circumstances, courts must also afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer's experience, and acknowledge that innocent facts, when considered collectively, may permit the investigative detention.

Commonwealth v. Walls, 206 A.3d 537, 541-42 (Pa. Super. 2019) (citation omitted; emphasis added).

The reasonable suspicion inquiry "is an objective one, which must be considered in light of the totality of the circumstances." ***Commonwealth v. Holmes***, 14 A.3d 89, 96 (Pa. 2011). In making this assessment, the court must ask "whether, under the particular facts of a case, an objectively reasonable police officer would have reasonably suspected criminal activity was afoot." ***Id.***

Here, contrary to the Commonwealth's claim, the suppression court applied the reasonable suspicion standard when determining whether Trooper Thomas pulled Appellee over to investigate whether she was driving under the influence. Supp. Ct. Op., 2/11/26, at 8 (where the court states: "[i]t is clear from this [c]ourt's review of the MVR and the testimony presented at the suppression hearing, that Trooper Thomas did not have reasonable suspicion that [Appellee] was driving under the influence[.]"). In addition, and again contrary to the Commonwealth's contention, the suppression court's opinion indicates that the court did not find the fact that Appellee's driving did not present a safety hazard dispositive of the issue of Trooper Thomas's reasonable suspicion. Instead, the court considered this fact as one of many

in making its determination and to distinguish the instant case from those relied upon by the Commonwealth. ***See id.*** at 6-8.

Following our review, we find that the suppression court's findings of fact are supported by the record, and it did not err in its legal conclusions. Here, the record evidence demonstrated that Appellee touched the fog line twice and crossed it twice in more than six miles of driving and those instances coincided with Appellee either making a right hand turn or using an exit ramp. The evidence also demonstrated that, in the time between the first two instance of fog line contact and the last two instances, Appellee posed no safety hazard, did not speed, did not fail to keep her vehicle in the proper lane of travel, and used her turn signals appropriately. With respect to "drifting" within the lane, the suppression court credited the MVR footage, which failed to show Appellee drifting within her lane over Trooper Thomas's testimony that he observed drifting. This Court's review of the MVR footage supports the suppression court's finding, and we defer to its weight of the evidence and credibility determinations. The suppression court found noteworthy Trooper Thomas's testimony that he waited for more than six minutes to effectuate the traffic stop because he wanted to be "confident" enough to pull Appellee over as indicative that Trooper Thomas "did not possess reasonable suspicion that [Appellee] was operating her vehicle while under the influence of drugs or alcohol; but rather was operating on a 'hunch' due to the fact that it was after 2 [AM]." ***Id.*** at 7.

Based on these facts, the court concluded that

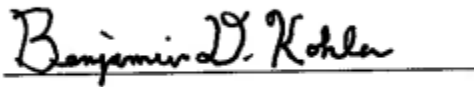
[b]ut for the fog line violations [], there was no credible evidence of any other driving irregularities which could be said to be indicative of driving while under the influence of drugs or alcohol. It appears to this [c]ourt based upon the testimony, the MVR, and the body cam footage wherein he advised [Appellee] why he pulled her over, that the reason Trooper Thomas pulled over [Appellee] was based merely on his observations of the fog line violations. As the Commonwealth has conceded, however, Trooper Thomas failed to have probable cause to initiate a traffic stop solely for the lane violations.

Id.

Upon review of the totality of the circumstances, we agree with the suppression court that Trooper Thomas only articulated an inchoate and unparticularized suspicion or hunch that Appellee was operating her vehicle while under the influence of drugs or alcohol and find, therefore, that the Commonwealth failed to establish that the stop was supported by reasonable suspicion. Accordingly, we conclude that the suppression court properly granted Appellee's motion to suppress.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 08/26/2026