IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE	:	**CASE NO. 0302013855**
Vs.	:	
CASHAR W. SHOCKLEY	:	Submitted October 14, 2003
Defendant	:	Decided February 10, 2004

Edward C. Gill, Esquire, appearing for Defendant below, Appellee.
Carole E. L. Davis, Esquire, Deputy Attorney General, appearing for the State, Appellant.

APPEAL FROM JUSTICE OF THE PEACE COURT NO. 14

This is an appeal by the State from a Justice of the Peace Court Order granting Defendant's Motion to Suppress all evidence acquired subsequent to a stop of a motor vehicle due to a lack of reasonable articulable suspicion to make the stop. The State appealed the Court's decision on May 7, 2003.

FACTS

The Defendant was charged with Driving Under The Influence and No License in Possession. At 8:30 pm. on February 13, 2003, the Defendant was driving his vehicle westbound on CR 20 in Sussex County. A Delaware State Trooper observed the Defendant's car for approximately one and one half miles. During this period of observation, the Trooper saw the vehicle swerving within its lane of travel on several occasions. The car then crossed over the shoulder line for three or four seconds and

then swerved back to the center of the lane. At one point the vehicle moved across the centerline by six inches when another vehicle was traveling eastbound toward the Defendant. When the eastbound vehicle was approximately one hundred feet away from the Defendant's car, the Defendant swerved back into his lane. The eastbound vehicle moved towards the right shoulder of its lane to avoid the Defendant's car. No collision occurred. The Trooper activated his emergency lights and pulled the vehicle over. During the Trooper's testimony he stated on several occasions that it was the near-collision and crossing the centerline prompted him to stop the Defendant.

DISCUSSION

This is an appeal by the State to the Court of Common Pleas from a decision from the Justice of the Peace suppressing evidence. In reviewing a Justice of the Peace decision, the standard of review to be applied is *de novo* for legal determinations and clearly erroneous for factual findings. State v. Arnold, 2001 WL 985101 at *2 (Del.Supr. Ct.). There have been no disputes regarding the facts of this case. The State alleges that the lower court erred in its application of Delaware law to those facts. Therefore, the standard of review is *de novo*.

The Justice of the Peace Court granted the Defendant's Motion to Suppress on the grounds that the State failed to produce evidence that the Trooper had probable cause or reasonable articulable suspicion to support the seizure of the Defendant. Probable cause to stop a vehicle is established when a crime is committed in the officer's presence. *Eskridge v. Voshell*, 593 A.2d 589 (Del. 1991); *State v. Barton*, 2003 WL 22853535 (Del. Super. Ct.). "Once an officer can point to a motor vehicle

violation, all other motives for the stop become irrelevant." *Webb v. State*, Del.Supr., No.332, 1997, Berger, J. (1998).

Testimony of the officer

In the case at bar, the Trooper testified to a string of events that he witnessed regarding Defendant's driving. If any of these observations constituted a violation of the motor vehicle law, probable cause could be established because the violations were committed in the officer's presence. If the observed driving did not constitute an offense then the reasonable articulable suspicion analysis is required. *Barton*. The testimony was that the Defendant's car moved in a jerking manner within the boundaries of his lane of travel on four occasions. The officer then observed the vehicle cross the shoulder line on two occasions by several feet for approximately three to four seconds and that no turn signal was used.

Next, the officer testified that Defendant's vehicle moved six inches over the centerline when a car was coming toward the Defendant's vehicle in an eastbound direction. According to the officer, when the eastbound vehicle was approximately 100 feet away, "the defendant's vehicle had to swerve quickly back into his lane of travel to avoid a collision." The officer further recalled the oncoming vehicle "swerving a little to its right onto the shoulder" in order to avoid a collision with the Defendant's car. The officer stated that at this point he had no choice but to stop the vehicle due to the near collision.

Analysis

In traffic cases reasonable articulable suspicion is routinely determined almost entirely through the arresting officer's testimony. The officer must convey to the Court his observations of the events that gave him reasonable articulable suspicion to believe criminal activity is or is about to occur prior to seizing a Defendant. The reasonableness of a stop, however, is not dependant upon the subjective thoughts of the officer. State v. Enos, 2003 WL 549212 (Del. Super. Ct.); State v. Karg, 2001 Wl 660014 (Del. Super. Ct.); State v. Niffenegger, Del Com. Pl., Case No. 0207017106, Beauregard, J. (May 6, 2003). Rather the standard is objective and so easily met that any traffic violation, even one independent from the officer's subjective reason for making the stop, is enough to constitute reasonable articulable suspicion. *State v. Caldwell,* 1999 WL 1240828 at *4 (Del. Super. Ct.); *Karg,* 2001 WL 660014 at *2. The officer is not even required to charge the motorist with the violation that in fact established reasonable articulable suspicion. It is not sufficient for seizure, however, for an officer to rely on "subjective impressions or hunches." *Woody v. State,* 765 A.2d 1257, 1263 (Del. 2001) *citing United States v. Sokolow,* 490 U.S. 1, 7 (1989).

Delaware uses a two-prong test to determine whether a stop by a police officer is reasonable. "First, the Courts must look at the totality of the circumstances, including objective observations and consideration of the modes or patterns of operation of certain kinds of lawbreakers. Second, the Courts must consider the inferences and deductions that a trained officer could make which might well elude an untrained person." *State v. Pierce,* Del. Super. Ct., Cr. A. No. 02-06-0445 thru 0447, at 5,

Bradley J. (Jan. 31, 2003)(ORAL DECISION); *see also Jones v. State,* 745 A.2d 856, 861 (Del. 1999) *citing United States v. Cortez,* 449 U.S. 411, 417-18 (1981); *Woody v. State,* 765 A.2d 1257, 1263 (Del. 2001). In *Jones v. State,* the Supreme Court of Delaware stated:

> A determination of 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.

745 A.2d 856, 861 (Del. 1999) *citing United States v. Cortez,* 449 U.S. 411, 417-418 (1981); *Quarles v. State,* 696 A.2d 1334, 1337, *cert. Denied,* 522 U.S. 938 (1997). Thus in order to meet the totality of the circumstances evaluation, it is not only necessary to know the objective observations of a trained police officer, but it is also necessary to know the officer's subjective interpretation of those facts.

In this case, the officer testified as to what he observed, but failed to specify the exact motor vehicle violation he believed was being committed. Applying the two-prong test articulated in *Pierce,* the Court first must look at the totality of the circumstances. In this case, the officer made several objective observations. First, the car was swerving within its lane of travel on four occasions. Second, the car crossed the fog line twice. Third, the car crossed the centerline partially into the opposite lane causing an approaching car to swerve towards the shoulder to avoid a collision. Lastly, the Defendant's car swerved abruptly back into his lane to avoid the oncoming car. The officer stated that he attempted to stop the Defendant after he crossed the centerline and near collision. (Tr. at p. 12). On redirect the officer testified that he stopped the

Defendant when he noticed the Defendant's vehicle had to swerve to avoid a collision. (Tr. at p. 22). Applying the totality of the circumstances test, it is certainly reasonable for an officer to suspect that a number of violations have just occurred in his presence.

The second part of the two-prong test requires the Court to consider what inferences or deductions a trained officer could make regarding these observations. The officer testified that after witnessing the aforementioned occurrences he felt that he had to pull the Defendant over. Here, the State has easily met its burden. It is certainly reasonable for a trained officer to deduce from these observations of the "near collision" that the Defendant just committed a traffic violation.

The Defendant argues that the facts of this case are so similar to the facts in *Pierce* that this Court must find the officer lacked reasonable articulable suspicion. The Court in *Pierce* held that the arresting officer lacked reasonable articulable suspicion to pull over the driver of a moped that was swerving on the road because the officer never explained his reason for pulling the Defendant over. *Id.* The Court noted that the officer "did not testify, based on his training and experience, how or why these facts supported his suspicion, assuming that he had such a suspicion, that the Defendant was driving under the influence of alcohol." *Id.* The Court granted Defendant's motion to suppress because the officer "did not testify as to why he stopped the Defendant" and "why the things he did observe led him to suspect that the Defendant was involved in criminal activity." *Id.* at 9.

The case at bar is distinguishable from *Pierce*, however, because the observations the police officer testified to in that case were not violations of the law.

The officer's testimony amounted to a number of observations of lawful acts. Therefore, without statements from the officer that he believed, based on his training and experience, that this string of lawful events was indicative of a crime, no reasonable articulable suspicion could exist. Here, the officer described a traffic violation when he testified that Defendant crossed the centerline into the oncoming lane and nearly caused an accident. When reviewing all of the observations made by the officer collectively, it is apparent that the officer could have reasonably suspected or believed that several violations were committed. The State argued that a violation of 21 Del.C. §4114, Driving on the Right side of the Roadway[1] occurred. At the very least, the officer had reasonable articulable suspicion to stop the Defendant for this offense. Reasonable articulable suspicion for Careless Driving due to a near collision was reasonable, as well as obvious from the conduct observed and testified to. Unlike *Pierce*, this officer testified to observations that allow the Court to objectively evaluate the officer's decision to pull the Defendant over and decide whether that decision was reasonable. In *State v. Karg,* the Court surmised from the officer's testimony regarding his objective observations that he witnessed multiple traffic violations. 2001 WL 660014(Del. Super. Ct.). Similarly in *Lamborn v. Division of Motor Vehicles,* the Court affirmed the DMV's finding that the officer had reasonable articulable suspicion to stop a vehicle for erratic driving which could have amounted to reckless or careless driving or driving under the influence even though the officer did not testify that he

[1] 21 Del.C. §4114. Driving on right side of Roadway

(a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway…

believed those statutes were violated. 1993 WL 189485 (Del. Super. Ct.). In the case sub judice, the officer's testimony places sufficient evidence on the record of suspected criminal conduct prior to the point at which the officer stopped the Defendant.

Therefore, I hold that the officer's testimony regarding his objective observations conveyed to the Court was adequate to establish reasonable articulable suspicion for the officer to believe that a several traffic violations were committed. The stop by the officer was therefore justified. The Justice of the Peace Court's decision to suppress the evidence acquired subsequent to the stop is reversed and the case is remanded for further proceedings consistent with this ruling.

IT IS SO ORDERED, this _____ day of February 2004.

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Judge Rosemary B. Beauregard