

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

ROBERT LEE MYERS

Appellant

No. 518 MDA 2013

Appeal from the Judgment of Sentence February 19, 2013  
In the Court of Common Pleas of Cumberland County  
Criminal Division at No(s): CP-21-CR-0000178-2012

BEFORE: LAZARUS, J., OTT, J., and JENKINS, J.

MEMORANDUM BY OTT, J.:

**FILED APRIL 29, 2014**

Robert Lee Myers appeals from the judgment of sentence imposed on him in the Court of Common Pleas of Cumberland County following his conviction in a non-jury trial on charges of driving under the influence (DUI): general impairment, third or subsequent offense; DUI: highest rate, third or subsequent offense; and driving while operating privileges suspended or revoked.<sup>1</sup> Myers was sentenced to an aggregate term of 14 to 60 months' incarceration.

In this timely appeal, Myers claims the trial court erred in failing to suppress evidence obtained after the traffic stop where the police officer did not possess the requisite reasonable suspicion to stop his vehicle without

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<sup>1</sup> 75 Pa.C.S. §§ 3802(a)(1), 3802(c), and 1543(b)(1), respectively.

having witnessed a violation of the motor vehicle code. After a thorough review of the submissions by the parties, the certified record, and relevant law, we affirm.

Our scope and standard of review from the denial of a suppression motion are well settled:

An appellate court's standard of review in addressing a challenge to a trial court's denial of a suppression motion is limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. [Because] the prosecution prevailed in the suppression court, we may consider only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

***Commonwealth v. Smith***, 85 A.3d 530, 534 (Pa. Super. 2014) (citation omitted).

With this standard in mind, we repeat the factual history as set forth by the trial court.

On October 23, 2012, at approximately 1:00 A.M., Sergeant Todd Lindsay, who has been an officer with Silver Spring Township since July of 2000 with over 100 DUI arrests, was on patrol in an unmarked police cruiser. Sergeant Lindsay was leaving Mechanicsburg heading towards Carlisle on Trindle Road. He was traveling behind [Myers'] vehicle. Sergeant Lindsay flashed his high beams to get an oncoming vehicle to dim its head lights. After Sergeant Lindsay flashed his high beams, [Myers'] vehicle pulled to the side of the road. Sergeant Lindsay passed [Myers'] vehicle and continued on Trindle Road toward

Carlisle. Shortly thereafter, Sergeant Lindsay executed a U-turn and proceeded back towards Mechanicsburg.

Sergeant Lindsay passed [Myers'] vehicle on his way back which was proceeding at a speed of twenty to twenty-five miles per hour. Sergeant Lindsay found this odd given the posted speed limit of forty-five miles per hour and the lack of adverse conditions. Sergeant Lindsay again executed a U-turn to investigate the matter. Thereafter, he observed [Myers'] vehicle executing a U-turn to travel in the opposite direction. Sergeant Lindsay turned around to follow [Myers'] vehicle. As he did so, however, he observed [Myers'] vehicle executing another U-turn. Sergeant Lindsay pulled off the road on to the eastbound shoulder to observe [Myers'] vehicle. He saw [Myers'] vehicle begin to travel toward him and then pull off the road onto the westbound shoulder.

After seeing [Myers'] vehicle parked on the westbound shoulder, Sergeant Lindsay pulled his unmarked patrol cruiser alongside [Myers'] vehicle and parked on the eastbound shoulder. He activated his rear emergency lights to identify himself as a police officer. He rolled down his window and yelled across the road, something to the effect of, "Can I help you?" [Myers], who was driving, responded by rolling his window down, to which Sergeant Lindsay again asked, "Is everything okay?" [Myers] said he was looking for an address. [Myers'] speech was really slow, thick, and slurred. [Myers] said he was going back to Carlisle and pulled away. Given the slow, thick, and slurred nature of [Myers'] speech, and irregularly slow driving, Sergeant Lindsay decided to follow [Myers] vehicle to make sure everything was in order.

Sergeant Lindsay saw [Myers'] vehicle traveling at about thirty-five to forty miles per hour below the speed limit. He saw that [Myers'] vehicle veered toward the shoulder of the road in response to oncoming traffic even though that traffic stayed in their own lane. [Myers] had difficulty traveling in a straight line. Sergeant Lindsay saw [Myers'] vehicle veer back and forth from the shoulder to the center of the road. There was nothing on the roadway that would necessitate such evasive action. [Myers] continued to have trouble maintaining the car in its lane of travel. Based on all of the above, Sergeant Lindsay suspected that [Myers] was driving under the influence of alcohol. He

activated his emergency lights and conducted a traffic stop of [Myers'] vehicle.

An odor of alcoholic beverage came from [Myers'] vehicle and, again, Sergeant Lindsay noticed [Myers'] speech was slurred and thick. When asked about his drivers' license, [Myers] explained that it was suspended due to a previous DUI. [Myers] failed field sobriety tests administered to him. A subsequent blood alcohol test showed an alcohol content of 0.256 percent.

Trial Court Opinion, 6/17/2013, at 1-5 (citations omitted).

There are two standards, depending upon circumstances, which are applied to traffic stops in the Commonwealth of Pennsylvania. Which standard applies depends upon whether the basis of the traffic stop was an "investigable" offense.

Traffic stops based on a reasonable suspicion: either of criminal activity or a violation of the Motor Vehicle Code under the authority of Section 6308(b) must serve a stated investigatory purpose. [**Commonwealth v. Chase**, 960 A.2d [108] at 116 [(Pa. Super. 2008)]]. In effect, the language of Section 6308(b)—"to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title"—is conceptually equivalent with the underlying purpose of a **Terry v. Ohio**, 88 S.Ct. 1868 (1968)] stop. **Id.** (quoting 75 Pa.C.S. § 6308(b)).

Mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation. In such an instance, "it is incumbent [sic] upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, *which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code.*" [**Commonwealth v. Gleason**, 785 A.2d [983] at 989 [(Pa. Super. 2001)] (citation omitted). **See also Chase**, 960 A.2d at 116 (reaffirming **Gleason's** probable cause standard for non-investigative detentions of suspected Vehicle Code violations).

***Commonwealth v. Feczko***, 10 A.3d 1285, 1291 (Pa. Super. 2010) (*en banc*).

Here, Sergeant Lindsay admitted that he did not witness any specific motor vehicle code infraction before he stopped Myers. **See** N.T. Suppression, 7/30/2012, at 16. Rather, given Myers' peculiar driving, he suspected he was driving under the influence. Driving under the influence is an investigable offense, **see generally *Commonwealth v. Sands***, 887 A.2d 261 (Pa. Super. 2005), and therefore the Commonwealth is required to prove the police officer possessed a reasonable suspicion of DUI to justify a traffic stop.

Instantly, Sergeant Lindsay witnessed the Myers' vehicle travel consistently under the posted speed limit for no discernable reason, veer away from oncoming traffic that posed no danger, swerve repeatedly within his lane of travel for no discernable reason, and make multiple U-turns. When Sergeant Lindsay spoke with Myers, Myers' speech was slurred, slow and thick. After the first conversation between Myers and Sergeant Lindsay ended and Myers pulled away, he continued to drive in the above mentioned peculiar manner. The suppression court determined these articulated reasons gave rise to the reasonable suspicion that Myers was operating his vehicle while intoxicated. This, in turn, supported Sergeant Lindsay's traffic stop of Myers, allowing him to investigate further.

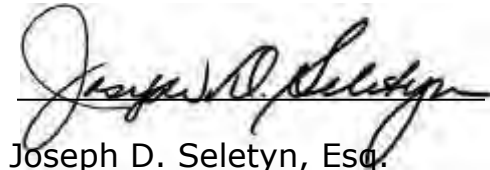
We agree with the trial court that the facts presented instantly compare favorably to the facts developed in ***Commonwealth v. Sands***,

**supra.** In **Sands**, a police officer, in the early morning hours, saw a car drift multiple times across the fog line without any circumstances such as curves or obstruction to explain the weaving. In light of the officer's experience, who had made between 40 and 50 DUI arrests, and the articulable observations, the officer possessed a reasonable suspicion that Sands was driving under the influence.

Based upon the foregoing, we hold that the trial court's factual determinations are supported by the record and the legal conclusions drawn therefrom are free of legal error. Accordingly, Myers' motion to suppress was properly denied by the trial court.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/29/2014