

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JAMES C. BAILEY, JR.,	:	
	:	
Appellant	:	No. 856 WDA 2012

Appeal from the Judgment of Sentence April 25, 2012
 In the Court of Common Pleas of Allegheny County
 Criminal Division No(s): CP-02-SA-0002800-2011

BEFORE: STEVENS, P.J., MUNDY, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: Filed: February 25, 2013

Appellant, James C. Bailey, Jr., appeals from the judgment of sentence of sixty days' intermediate punishment imposed after the trial judge, sitting in a trial *de novo*, convicted him of driving while operating privilege is suspended.¹ We affirm.

On September 9, 2011, at 4:45 a.m., Officer James Robinson of the Shaler Township Police Department stopped a vehicle being operated by Appellant. The officer testified that he followed and then stopped the vehicle for suspicion of driving under the influence of alcohol or a controlled

* Former Justice specially assigned to the Superior Court.

¹ 75 Pa.C.S. § 1543.

substance. After stopping the vehicle, the officer approached Appellant and asked for his license, insurance, and registration. Appellant provided his paperwork for insurance and registration, but told the officer that his license was suspended. Appellant was not impaired. A subsequent PennDOT records search confirmed that Appellant's license was suspended, and Appellant was charged by summons for driving while operating privilege is suspended or revoked. 75 Pa.C.S. § 1543.

On April 3, 2011, a magisterial district judge found Appellant guilty and sentenced him to ninety days' imprisonment. Appellant filed a notice of appeal in the Allegheny County Court of Common Pleas, and a trial *de novo* was held on April 25, 2012. The trial court found Appellant guilty and sentenced him to sixty days' intermediate punishment with house arrest and work release. This appeal followed.²

Appellant, in the brief submitted in this appeal, presents the following question for our review: "Did the officer possess reasonable suspicion when he pulled over [Appellant's] vehicle?" Appellant's Brief at 4. Appellant contends that the trial court "erred in failing to grant suppression where the motor vehicle stop was not support by reasonable suspicion," and, therefore, that the judgment of sentence must be "reversed as the conviction cannot stand absent the unlawful seizure." *Id.* at 15.

² Appellant timely filed a notice of appeal and complied with the trial court's order to file statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).

As a preliminary matter, we find no indication in the record that Appellant sought to suppress the evidence obtained as a result of the traffic stop prior to the *trial de novo*.³ Moreover, Appellant did not object to the testimony of the Officer Robinson at trial. Appellant instead challenged the constitutionality of the traffic stop for the first time in closing arguments. **See** N.T., 4/25/12, at 9. Consequently, the Commonwealth did not present evidence in support of the legality of the traffic stop during its case-in-chief, and the only evidence relevant to a suppression claim was adduced through the cross-examination of the officer by Appellant.

We could conclude that Appellant, by failing to provide notice of his intent to seek suppression of evidence, did not preserve this issue on appeal. Pa.R.A.P. 302(a). **Cf.** Pa.R.Crim.P. 581(B); **Commonwealth v. Baumhammers**, 960 A.2d 59, 76 (Pa. 2008) (“a defendant waives the ground of suppressibility as a basis for opposition to the Commonwealth’s introduction of evidence when he or she fails to file a suppression motion pursuant to our rules of criminal procedure”). However, while a defendant may file a formal suppression motion in a summary appeal, the filing of formal suppression motions is permissive, not mandatory. **See Commonwealth v. Lutes**, 793 A.2d 949, 960 n.7 (Pa. Super. 2002). Moreover, the trial court is under no obligation to hold a separate hearing on

³ Additionally, Appellant, in the brief submitted in this Court, did not provide a statement of the place in the record where the issue was preserved. Pa.R.A.P. 2117(c), 2119(e).

a request to suppress evidence. *See Commonwealth v. Breslin*, 732 A.2d 629, 633 n.3 (Pa. Super. 1999); *Commonwealth v. Nicely*, 988 A.2d 799, 806 (Pa. Cmwlth. 2010).

Here, the Commonwealth has not objected to the lack of notice or opportunity to develop its case with respect to the suppression claim, or to the decision of the trial court to consider Appellant's suppression arguments based solely on the evidence elicited by the defense. Moreover, Appellant preserved this issue his Rule 1925(b) statement, and the trial court addressed the merits of the claim. Therefore, we proceed to consider the issue presented in this appeal.

Our standard for reviewing an order denying a motion to suppress is well settled.

We are limited to determining whether the lower court's factual findings are supported by the record and whether the legal conclusions drawn therefrom are correct. We may consider the evidence of the witnesses offered by the Commonwealth, as verdict winner, and only so much of the evidence presented by [the] defense that is not contradicted when examined in the context of the record as a whole. We are bound by facts supported by the record and may reverse only if the legal conclusions reached by the court were erroneous.

Commonwealth v. Hughes, 908 A.2d 924, 927 (Pa. Super. 2006) (citation omitted).

Appellant argues here that Officer Robinson lacked reasonable suspicion to conduct a traffic stop because his failures to maintain a single lane of traffic "can only be considered momentarily erratic." Appellant's

Brief, p. 13. However, the trial court found that the officer observed Appellant's vehicle cross the fog line three times, and, in each instance, approximately half of the vehicle travelled across the line. T.C.O., 6/15/2012, at 3. That finding is supported in the record and is binding on this Court. **See Hughes**, 908 A.2d at 927. Moreover, having reviewed Appellant's legal arguments in light of the record, we find no error in the conclusion of the trial court that the officer possessed reasonable suspicion to conduct a traffic stop in order to investigate the possibility that Appellant was driving under the influence. **See Commonwealth v. Angel**, 946 A.2d 115, 118 (Pa. Super. 2008) (reasonable suspicion to stop vehicle where state trooper observed it cross fog line twice then take an exit ramp without using a turn signal).

Judgment of sentence affirmed.