NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellant v. CERAE GRACIOUS JONES	: : : : : : : : :	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 53 MDA 2026

Appeal from the Order Entered December 8, 2025
In the Court of Common Pleas of Dauphin County Criminal Division at
No(s): CP-22-CR-0001308-2024

BEFORE: PANELLA, P.J.E., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY SULLIVAN, J.: **FILED: NOVEMBER 16, 2026**

The Commonwealth appeals from the order granting Cerae Gracious Jones's ("Jones") motion to suppress, finding the police lacked probable cause to stop her motor vehicle.[1] After careful review, we affirm.

We take the underlying facts and procedural history in this matter from our review of the certified record. While on routine patrol, shortly after midnight, on August 8, 2023, Pennsylvania State Trooper Ahmed Usman ("Trooper Usman") observed a white Acura, driven by Jones. ***See*** N.T., 8/21/25, at 5-6. Trooper Usman saw the Acura "touch" the yellow center line. ***Id***. at 6. Trooper Usman followed the vehicle and noted three other instances where the vehicle touched but did not cross the double yellow line. ***See id***.

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[1] The Commonwealth is permitted to appeal as of right from an order that does not end the entire case where, as here, it certifies that the order "will terminate or substantially handicap the prosecution." Pa.R.A.P. 311(d).

at 6, 10-11, 14-16. Trooper Usman also noticed the vehicle "swaying" within the lane. ***Id***. at 6. Trooper Usman captured the incident on his motor vehicle recorder.[2] ***See id***. at 5.

Trooper Usman activated his lights and siren; Jones then ran a red light before pulling into a gas station and stopping. ***See id***. at 6. When Trooper Usman approached Jones, he smelled "a strong odor of marijuana." ***Id***. Trooper Usman also noted Jones's eyes were watery and bloodshot and her eyelids "were tremoring." ***Id***. at 7. Trooper Usman ascertained Jones's driving privileges were suspended; she also did not perform well on field sobriety tests. ***See id***. at 7-8.

The Commonwealth charged Jones with three counts of driving under the influence ("DUI"), disregard of traffic lanes, failing to stop at a red signal, driving while operating privileges were suspended, and careless driving.[3] ***See*** Information, 6/12/24, at 1-2. Jones subsequently filed an omnibus pre-trial motion to suppress arguing Trooper Usman lacked probable cause to stop her motor vehicle. ***See*** Omnibus Pre-Trial Motion, 7/2/23, at 1-3. The trial court held a suppression hearing.

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[2] Although the video was played at the suppression hearing, it is not included in the certified record. We remind the Commonwealth it was its responsibility to ensure that the certified record contains all evidence necessary to ensure that this Court can review its claims. ***See Commonwealth v. B.D.G.***, 959 A.2d 362, 372 (Pa. Super. 2008); Pa.R.A.P. 1926; Pa.R.A.P. 1931.

[3] 75 Pa.C.S.A. §§ 3802(d)(1)(i), (d)(iii), (d)(2), 3309(1), 3112(a)(3)(i); 1543(a); 3714(a).

At the hearing, Trooper Usman, the only witness, testified several times that, while Jones touched the center line, she did not cross it, there was no opposing traffic, and he pulled Jones over solely for alleged violations of 75 Pa.C.S.A. § 3309(1) ("Section 3309), not for possible DUI. ***See*** N.T., 8/21/25, at 6 (Jones's vehicle touched the center line four times); 11 (Jones's driver-side tire touched the center line and Trooper Usman initiated the traffic stop for a violation of Section 3309); 12 (Trooper Usman testifying he initiated the traffic stop for a violation of Section 3309 because she "touched" the center line several times, and that he did not initiate the traffic stop for suspected DUI); 13 (reiterating that Jones "touched" the center line); 14 (Jones never crossed the center line and there was no opposing traffic); 15 (Jones touched the center but never had the full tire on the center line); 16 (the final time, Jones did not touch the center line but the line of a turning lane); 18 (Trooper Usman did not suspect a DUI at the time he stopped Jones and was unaware her driving privileges had been suspended). Moreover, the Commonwealth conceded Trooper Usman was required to show probable cause for the motor vehicle stop because it was for a violation of Section 3309, not for DUI. ***See id***. at 21-22. The Commonwealth also admitted there was no case law supporting that there was probable cause to stop a driver for a violation of Section 3309 when the driver had not crossed the yellow line. ***See id***. at 22-23.

The trial court granted Jones's motion to suppress. ***See*** Memorandum Opinion and Order, at 1-2 (unnumbered). The instant, timely appeal followed.[4]

On appeal, the Commonwealth raises a single issue for our review:

> A. Whether the trial court erred in concluding that no probable cause existed to stop [Jones's] vehicle where:
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> (1) [Jones's] vehicle swayed within its lane of travel for approximately one minute; and
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> (2) [Jones's] left tires touched and moved off of the painted line demarcating the leftmost boundary of [her] lane four times in approximately 52 seconds[?]

Commonwealth's Brief at 4.

The Commonwealth's issue implicates the grant of a defendant's motion to suppress. When the Commonwealth appeals a suppression order, this Court considers only the evidence from the defense witnesses together with the evidence of the prosecution that when read in the context of the entire record remains uncontradicted. ***See Commonwealth v. Dales***, 820 A.2d 807, 812 (Pa. Super. 2003). A reviewing court is bound by the lower court's findings of fact if they are supported in the record but conducts plenary review to determine if the court properly applied the law to the facts. ***See Commonwealth v. Dunkins***, 263 A.3d 247, 252 (Pa. 2021); ***Dales***, 820 A.2d at 812. The credibility of witnesses and the weight to be accorded their

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[4] The Commonwealth and the trial court complied with Pa.R.A.P. 1925.

testimony is solely within the province of the suppression court. ***See Commonwealth v. Dutrieville***, 932 A.2d 240, 242 (Pa. Super. 2007). If the facts support the suppression court's findings, those findings are binding, and this Court may only reverse if the suppression court drew erroneous legal conclusions from the evidence. ***See id***.

Trooper Usman conducted a traffic stop based on a suspected violation of 75 Pa.C.S.A. § 3309(1), which provides as follows:

> Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others not inconsistent therewith shall apply:
>
> (1) Driving within single lane.--A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety.

75 Pa.C.S.A. § 3309(1).

To conduct a traffic stop based on an observed violation of Section 3309(1), a police officer must have probable cause. ***See 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." (citation omitted)).

> To determine whether probable cause exists, we must consider whether the facts and circumstances[,] which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to

> warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime.

Ibrahim. 127 A.3d at 824 (citation and quotation marks omitted); b***ut see Cephus***, 208 A.3d at 1097 (acknowledging confusion and inconsistency in this Court's decisions analyzing the validity of stops based on violations of section 3309(1)).

The suppression court concluded that Trooper Usman lacked probable cause to stop Jones's vehicle for a violation of section 3309(1), because Jones never crossed the double-yellow line. ***See*** Memorandum Opinion and Order, 12/8/25, at 1 (unnumbered).

The Commonwealth disagrees, arguing that Jones's actions in touching the yellow line four times were sufficient to establish probable cause.[5] Commonwealth's Brief at 12-17.

We have thoroughly reviewed the Commonwealth's argument and do not find it persuasive. The Commonwealth has not cited to a single case where this Court has found probable cause to stop a vehicle that merely touched the

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[5] In the alternative, the Commonwealth argues that Jones's actions provided reasonable suspicion to justify a stop for DUI, a claim not raised below. ***See*** Commonwealth's Brief at 17-18. We need not address this claim because, as cited above, Officer Usman specifically testified he did not stop Jones for suspicion of DUI. ***See*** N.T., 8/21/25, at 12, 18. Moreover, the Commonwealth conceded the stop was for an alleged violation of Section 3309, not DUI, and, therefore, the correct standard was probable cause. ***See id***. at 21-22. It is settled that an appellant cannot raise a new legal theory on appeal. ***See Commonwealth v. Dunham***, 203 A.3d 272, 276 (Pa. Super. 2019); Pa.R.Crim.P. 5810(H); Pa.R.A.P. 302(a).

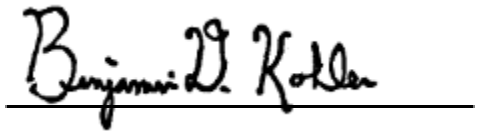
center line. ***See id***. at 13-15. Instead, in all of the cases noted by the Commonwealth, the driver not only crossed the center line multiple times but also engaged in other actions indicative of careless driving such as crossing the fog line, crossing the berm, narrowly avoided hitting opposing traffic, or nearly hit the curb and/or a utility pole. ***See id***. None of this occurred in the instant matter, and, while Trooper Usman mentioned Jones's vehicle "swayed," this issue was not developed at the suppression hearing. ***See*** N.T., 8/21/25, at 6. The evidence presented by the Commonwealth is insufficient to support a showing of probable cause. ***See Commonwealth v. Jackson***, 359 A.3d 1204 (Pa. Super. 2026) (unpublished memorandum at *3)[6] (relying on this Court's decisions in ***Commonwealth v. Freeman***, 150 A.3d 32, 36 (Pa. Super. 2016) and ***Commonwealth v. Garcia***, 859 A.2d 820, 823 (Pa. Super. 2004) and concluding probable cause exists when a driver's deviation from a single lane is unsafe based on the circumstances but not where there is a minor and/or momentary deviation from the single lane.

Order affirmed.

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[6] ***See*** Pa.R.A.P. 126(b).

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/16/2026