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1 FOR PUBLICATION

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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

) TRAFFIC CASE NO. 14-02029

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Plaintiff,

) ORDER GRANTING DEFENDANT'S
) MOTION TO SUPPRESS EVIDENCE

8

v.

) DUE TO UNLAWFUL TRAFFIC STOP
) WHERE VEHICLE MOMENTARILY
) LEFT DESIGNATED LANE TO AVOID
) COLLISION WITH DOG ON WET ROAD

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HANK JR. PUA ARURANG,

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Defendant.

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I. INTRODUCTION

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The Court held an evidentiary hearing on November 26, 2014 at 9:00 a.m. in Courtroom 220A on two motions to suppress, including Defendant's Motion to Suppress Evidence due to an unlawful traffic stop. Defendant Hank Jr. Pua Arurang was present and represented by Assistant Public Defenders Eden Schwartz and Michael Sato. The Commonwealth was represented by Assistant Attorneys General Clayton Graef and Emily Cohen.

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Defendant filed this motion on October 23, 2014, alleging that the police officer who pulled him over lacked probable cause for the traffic stop. Defendant Arurang was pulled over around 4:00 a.m. on June 28, 2014, shortly after he made a right turn from Beach Road onto the road next to the public library that goes towards the 360 Building. Defendant Arurang submitted an affidavit stating that, although he slightly swerved after making the right turn, he only did so to avoid a puddle and a dog drinking water from the puddle. Defendant Arurang argues that under these circumstances, Officer Daniel Smith did not have probable cause to make a traffic stop. Defendant Arurang

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1 supplied persuasive case law from several other jurisdictions holding that temporarily leaving the
2 designated lane alone does not amount to probable cause for a traffic stop.

3 The Commonwealth filed an opposition to this motion on October 31, 2014, arguing that the
4 officer had probable cause because he witnessed a technical violation of the Commonwealth
5 Vehicle Code. The Commonwealth argues that under 9 CMC § 5301(c),¹ the statute that Defendant
6 Arurang was cited for violating, crossing the lane marking is a traffic offense and there is no safety
7 exception. The Commonwealth argued that in all of the cases cited by Defendant, the statute at
8 issue included conditional language, for example, mandating that a driver stay in one lane “to the
9 extent practicable.”

10 On November 26, 2014, the Court heard testimony from Defendant Arurang, Officer Daniel
11 Smith, and one of Defendant Arurang’s passengers. The Court raised the issue that the subsection
12 of the code section cited, 9 CMC § 5301(c), did not appear to be applicable to the facts of this case,
13 and heard arguments from the parties on that issue. During the hearing, the Court allowed
14 Defendant Arurang to submit a reply brief that his attorney had drafted, but forgotten to file.
15 Following the hearing, the Court granted leave for the Commonwealth to file a post-hearing brief to
16 address any issues raised in Defendant’s reply brief.

17 The Commonwealth submitted such a response on November 28, 2014. The Commonwealth
18 argued that the officer need not cite the correct statute as long as the officer had probable cause
19 under any statute for the traffic stop. The Commonwealth also argued that the Court should look

21 ¹ 9 CMC § 5301(c) states:

22 It is unlawful to operate any vehicle or bicycle upon any highway which has been divided into two or
23 more lanes by means of intermittent barriers or by means of a dividing section of not less than two
24 feet in width either unpaved or delineated by curbs, lines or other markings on the lanes except to the
right of the barrier or dividing section. It is also unlawful to operate any vehicle over, upon, or cross
any dividing section, or to make any left turn or semicircular or U-turn on any such divided highway,
except through an opening in the barrier designed and intended by proper authorities for the use of
vehicles or through a plainly marked opening in the dividing section.

1 only and specifically to the statute section cited by the officer to determine whether it includes a
2 safety exception.

3 Based on the evidence presented at the hearing, the filings, arguments of counsel, and
4 applicable law, the Court grants Defendant's motion to suppress evidence. The Court finds that
5 there was no probable cause for a traffic stop under the facts of this case, where Defendant's car
6 only momentarily touched the lane line, there was no oncoming traffic or other safety concern, and
7 the Defendant did so to avoid a puddle and a dog, in effect, avoiding an accident and damage to the
8 vehicle.

9 **II. FINDINGS OF FACT**

10 During the hearing, the Court heard testimony from Officer Daniel Smith, Defendant
11 Arurang, and John Leous, Jr., a passenger in Defendant Arurang's truck on the night of the traffic
12 stop. Based on the evidence presented, the Court makes the following findings of fact.

13 The Court found all three witnesses to be generally credible. There were some discrepancies
14 in their recollection of road conditions that night, but overall, the witnesses all described the same
15 events. Concerning the condition of the road, the Court finds that the accounts of Defendant
16 Arurang and Mr. Leous to be more credible than Officer Smith's account. The Court takes judicial
17 notice that there had been rainy weather for several days leading up to the night of the traffic stop.
18 The Court also notes that Officer Smith himself testified that he did not do field sobriety tests
19 because of the condition of the road, and that Exhibit 1, a photograph of the scene of the incident,
20 shows a shoulder area where water could pool. Additionally, the Court notes that Officer Smith's
21 recollection of the night was not as clear as Defendant Arurang's in other ways, including the
22 number of people in the car, and a later-occurring conversation. *See Commonwealth v. Arurang,*
23 *Traffic No. 14-02029 (NMI Super. Ct. Dec. 1, 2014) (Order Granting Defendant's Motion to*
24 *Suppress Breathalyzer Evidence based on Violation of 9 CMC § 7106 at 2).* Officer Smith testified

1 that his focus was only on the vehicle and that he was not looking for and did not notice a dog or a
2 puddle. Thus, the Court finds that the account of Defendant Arurang and Mr. Leous to be more
3 credible concerning the wet road, the existence of a puddle, and the presence of a dog drinking from
4 the puddle.

5 On June 28, 2014, around 4:00 a.m., both Defendant Arurang and Officer Smith were
6 driving north on Beach Road. Defendant Arurang and his two passengers were driving home, to the
7 barracks near the 360 Building. Defendant Arurang was in the inner lane, and Officer Smith was in
8 the outer lane. Defendant Arurang passed Officer Smith's vehicle, signaled and then changed lanes,
9 into the outer lane. Shortly thereafter, Defendant Arurang signaled and made a right turn, heading
10 east, onto the road that goes to the 360 Building. The road that Defendant Arurang turned onto has
11 three lanes at the intersection, the eastbound lane, and two west-facing lanes: a right turn lane and a
12 left turn lane. The lane marking between the eastbound and west-facing lanes is marked by
13 reflectors, and the turn lanes are marked by faint paint.

14 The road was wet that night, and it was misting lightly, so that the Defendant Arurang could
15 see the moisture on the windshield but did not need to use windshield wipers. As Defendant
16 Arurang made the right turn, he saw a puddle that extended a few feet into the right side of the road,
17 and a dog drinking from the puddle. There was no oncoming traffic, so he moved left, and his tires
18 touched the lane line between the eastbound lane and the left turn lane. He heard the sound of the
19 reflectors that designate the lane and moved back into the right lane after passing the puddle and
20 dog. His vehicle was over the line for a few seconds.

21 While Defendant Arurang's vehicle was over the line, Officer Smith passed through the
22 intersection, still heading north, and observed Defendant's truck driving on the lane line for a few
23 seconds. Based on this observation alone, Officer Smith decided to initiate a traffic stop.

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1 **III. DISCUSSION**

2 Unreasonable searches and seizures by the government are prohibited under the Fourth
3 Amendment of the United States Constitution and article 1, section 3 of the Commonwealth
4 Constitution. Generally, “the decision to stop an automobile is reasonable where the police have
5 probable cause to believe that a traffic violation has occurred.” *Whren v. United States*, 517 U.S.
6 806, 810 (1996). The issue of probable cause for a traffic stop has not been considered by the
7 CNMI Supreme Court.²

8 In this case, the issue is whether driving on a lane line for a few seconds, to avoid a puddle
9 and a dog, violates the Commonwealth Vehicle Code. The Commonwealth urges the Court to take
10 the position that under 9 CMC § 5301(a) or (c), leaving the boundaries of the right-hand lane is a
11 violation of the law regardless of whether staying in the right-hand lane is practical or safe. The
12 Commonwealth distinguishes the particular wording in 9 CMC § 5301(a) and (c) from statutes at
13 issue in case law from other jurisdictions, where the courts found that momentary crossing of
14 highway lines does not violate state law.

15 By contrast, the Defendant argues that all sections of the Vehicle Code should be read with
16 the object of safety in mind. Defendant argues that under 9 CMC § 5301(a), staying on the right
17 half of the road is conditioned on the road being of sufficient width, and that Defendant’s conduct
18 also falls within the scope of 9 CMC § 5304(a), which conditions staying in one lane on
19 considerations of safety and practicality.

20 Officer Smith cited Defendant Arurang for a violation of 9 CMC § 5301(c), which reads:

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22 ² The CNMI Superior Court has published at least two orders denying motions to suppress based on a lack of probable
23 cause, finding that there was probable cause for a traffic stop where the defendant was driving at a high rate of speed
24 and was then recorded driving 20 mph over the posted speed limit, and where the defendant was speeding and then
came to a complete stop in the lane to ask the police officer, who was parked on the side of the road, whether the officer
was all right. *See Commonwealth v. Chariton*, 3 CR 511, 513 (NMI Super. Ct. Oct. 7, 1988); and *Commonwealth v.*
Kaipat, Traffic No. 91-0560 (NMI Super. Ct. July 5, 1991) (Decision Re Motion to Suppress at 2-3).

1 It is unlawful to operate any vehicle or bicycle upon any highway which has been
2 divided into two or more lanes by means of intermittent barriers or by means of a
3 dividing section of not less than two feet in width either unpaved or delineated by
4 curbs, lines or other markings on the lanes except to the right of the barrier or
5 dividing section. It is also unlawful to operate any vehicle over, upon, or cross any
dividing section, or to make any left turn or semicircular or U-turn on any such
divided highway, except through an opening in the barrier designed and intended by
proper authorities for the use of vehicles or through a plainly marked opening in the
dividing section.

6 Subsection (a), by comparison, reads: "Upon all highways of sufficient width a vehicle or bicycle
7 shall be operated upon the right half of the roadway," but lists several exceptions including one-way
8 roads, during the course of lawful passing, and situations where the right half of the road is closed.
9 9 CMC § 5301(a). Subsection (b) mandates that the director establish regulations governing
10 highway markings that indicate a vehicle may not drive to the left of the marking, but that drivers
11 may still turn left across those markings.³ 9 CMC § 5301(b).

12 Read in context, it is apparent that subsection (c) applies specifically to divided highways,
13 where traffic travelling in different directions is separated by some sort of divider that is more
14 substantial than a lane marking. The portion of the road where Defendant Arurang crossed the lane
15 line was not a divided highway in that sense, because there was no physical barrier, or greater-than-
16 two-foot divider that separated the lanes. *See* 9 CMC § 5301(c). Thus 9 CMC § 5301(c) is
17 inapplicable to the facts of this case.

18 However, as noted by the Commonwealth, so long as a specific statute was violated,
19 probable cause exists, even if the officer cited the wrong statute. *See Edgerly v. City & County of*

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21 ³ 9 CMC § 5301(b) states in full:

22 The director shall by regulation determine a distinctive highway marking to indicate no driving over
23 that marking. The director may, either by that marking or by signs and markings, designate any
24 portion of a highway where the volume of traffic or the vertical or other curvature of the highway
renders it hazardous to drive on the left of the marking or signs and markings. When the markings or
signs and markings are in place, the operator of a vehicle may not operate along the highway to the
left thereof. This does not prevent turning to the left across any such markings at any intersection or
private driveway.

1 *San Francisco*, 495 F.3d 645, 652 (9th Cir. 2007) (withdrawn) (citing *Devenpeck v. Alford*, 543
2 U.S. 146, 156 (2004)). The Commonwealth argues that Defendant’s driving violated 9 CMC
3 § 5301(a), which mandates that “[u]pon all highways of sufficient width a vehicle shall be operated
4 upon the right half of the roadway.”

5 The Court finds that the evidence presented at the suppression hearing did not establish
6 probable cause that there was a violation of 9 CMC § 5301(a). 9 CMC § 5301(a) places a condition
7 on the mandate that a vehicle stay on the right side of the highway, and that is that a vehicle must
8 stay on the right half so long as the highway is of “sufficient width.” Here, there was evidence
9 presented that due to the puddle and dog in Defendant’s lane, there was not sufficient space for him
10 to stay in the marked lane.

11 In addition to 9 CMC § 5301, 9 CMC § 5304(a) applies to the facts of this case. Section
12 5304(a) applies to “any highway [that] has been divided into three or more clearly marked lanes for
13 traffic” and mandates that “[a] vehicle shall be operated as nearly as practical entirely within a
14 single lane and may not be moved from the lane until the operator has first ascertained that the
15 movement can be made safely.” 9 CMC § 5304(a). The location at issue in this case involves three
16 lanes. Although Defendant Arurang did not stay in one lane, he did not violate 9 CMC § 5304(a)
17 because he stayed in his lane “as nearly as practical” and did not move in an unsafe manner. He
18 moved across the lane line only after he had observed a safety concern, the dog drinking from a
19 puddle. 9 CMC § 5304(a) clearly conditions staying in one lane on the safety and practicability of
20 doing so.

21 Courts of many other jurisdictions have found that merely momentarily leaving the
22 prescribed lane does not establish probable cause that a traffic violation occurred. Instead, it is
23 generally recognized that “if failure to follow a perfect vector down the highway or keeping one’s
24 eyes on the road were sufficient reasons to suspect a person of driving while impaired, a substantial

1 portion of the public would be subject each day to an invasion of their privacy.” *United States v.*
2 *Lyons*, 7 F.3d 973, 976 (10th Cir. 1993). In *Commonwealth v. Garcia*, the Pennsylvania Superior
3 Court found that straddling the line on the shoulder of the road twice, each time in response to
4 oncoming traffic, did not support a finding of probable cause.⁴ 2004 P.A. Super. 372 ¶ 12.
5 Similarly, in *Rowe v. State* the Court of Appeals of Maryland found that drifting momentarily over
6 the line onto the shoulder of the road, where there was no other safety concern, did not amount to a
7 violation of the traffic code, thus did not support a traffic stop.⁵ 363 Md. 424, 436-39, 441 (Ct. App.
8 2001) (citing cases from many other jurisdictions with similar statutory interpretation and
9 outcomes); *see also State v. Stack*, 2008 Ohio 2134 ¶ 18 (Ohio Ct. App. 2008) (“swerv[ing]” to
10 avoid puddles not enough for probable cause); *United States v. Gregory*, 79 F.3d 973, 978-79 (10th
11 Cir. 1996) (one incident of vehicle crossing into emergency lane not a violation of Utah traffic
12 code); *and United States v. Freeman*, 209 F.3d 464, 466 (6th Cir. 2000) (motor home “weaving”
13 into emergency lane once not a violation of Tennessee traffic code).

14 At core, the Court heeds 9 CMC § 1104(e), which directs the Court to construe the
15 provisions of the Vehicle Code “according to the plain meaning of their terms, with a view to effect
16 its object and to promote justice.” The object of the Vehicle Code is to promote safety on the
17 roadways of the Commonwealth. *See* Governor’s Signing Statement, P.L. 3-61. These roadways,
18 as Officer Smith testified, are often riddled with obstacles, such as potholes, puddles and stray
19 animals. And the avoidance of such obstacles should be considered, both in determining the
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21 ⁴ The Commonwealth distinguishes *Garcia* from this case by attempting to distinguish Commonwealth statutes from
22 the Pennsylvania statute. The Pennsylvania statute at issue in *Garcia*, 75 Pa. C.S. § 3309(1), states in pertinent part, “A
23 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.” This is nearly identical to 9 CMC
§ 5304(a).

24 ⁵ The traffic statute at issue in *Rowe*, Md. Transp. Code Ann. § 21-309(b) states, “A vehicle shall be driven as nearly as
practicable entirely within a single lane and may not be moved from that lane or moved from a shoulder or bikeway into
a lane until the driver has determined that it is safe to do so.” This is substantively identical to 9 CMC § 5304(a).

1 sufficiency of the width of the road under 9 CMC § 5301(a), and in determining whether it is
2 practical and safe to stay in one lane under 9 CMC § 5304(a). As such, the Court finds that
3 considering the specific facts of this case—where in the absence of oncoming traffic, Defendant
4 Arurang moved out of his lane to avoid hitting a dog and driving through a puddle—there was no
5 probable cause to initiate a traffic stop.

6 **IV. CONCLUSION**

7 Accordingly, because there was no probable cause that a traffic violation had occurred, the
8 traffic stop in this case was unlawful under the Fourth Amendment of the United States
9 Constitution and article 1, section 3 of the Commonwealth Constitution. Thus, Defendant’s Motion
10 to Suppress Evidence is granted.

11 **IT IS SO ORDERED** this rd 2 day of December, 2014.

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16 JOSEPH N. CAMACHO
17 Associate Judge
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