



Legal Update

October 2019

The SJC held that the officer was justified in stopping a motor vehicle that crossed over the fog line.

Commonwealth v. Larose, 483 Mass. 323 (2019): An officer stopped the defendant's vehicle after observing the vehicle cross the right-side fog line "one time for two to three seconds." A video recording taken from the officer's dashboard camera showed the right-side tires of the defendant's motor vehicle cross over the right-side fog line, straddle the northbound travel lane and the narrow road shoulder for a few seconds, and return to entirely within the bounds of the northbound travel lane. This stop led to the defendant's arrest for operating a motor vehicle while under the influence of intoxicating liquor G. L. c. 90, § 24 and a marked lanes violation in accordance with G. L. c. 89, § 4A (§ 4A), a civil motor vehicle infraction punishable by a fine.

The defendant moved to suppress evidence gathered from the stop, arguing that there was no probable cause to stop the vehicle for a lane violation and that there was no reasonable suspicion of criminal activity. The district court judge allowed the motion and found that "crossing a fog line one time for a few seconds does not constitute a marked lane

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violation,” and therefore the stop of the defendant's motor vehicle was not lawful. The motion judge reasoned that a fog line does not serve to divide lanes and there was no indication that the defendant's crossing the fog line was unsafe. The issue before the SJC on appeal was whether the defendant, in briefly crossing the right-side fog line, violated G.L. c. 89, § 4A.

Conclusion: The SJC held that where the defendant failed to operate his motor vehicle entirely within his lane of travel when he crossed over the fog line, the observing police officer had sufficient reason to stop the defendant for a marked lanes violation under G.L. c. 89, § 4A.

The SJC has consistently held that a stop is reasonable where an officer has observed a traffic infraction and believes that a driver may have violated an applicable motor vehicle law. *Commonwealth v. Buckley*, 478 Mass. 861, 864 (2018). Here, the SJC first examined the language of § 4A. According to the SJC’s interpretation, § 4A provides two separate directives that drivers must follow:

- First, drivers must operate entirely within a single lane, which means that drivers must maintain their lanes and avoid drifting or swerving into an adjoining lane or the shoulder;
- Second, drivers must not move from their respective travel lanes without first ascertaining whether it is safe to do so.

Essentially, a driver may violate the statute either by failing to maintain the driver's intended lane of travel or by failing to ascertain the safety of a movement from that lane before executing that movement. After carefully analyzing the statutory language and considering the intent of the legislature, the SJC concluded that a driver may violate § 4A by either failing to maintain his or her lane or failing to assess the safety of a movement from his or her lane regardless of whether a particular movement created a safety issue. An officer has discretion as to when to stop drivers for such possible violations.

Furthermore, the SJC concluded the plain language contained within 700 Code Mass. Regs. § 7.02 (2016) specifies that a fog line does not merely alert drivers to the edge of the travel lane. The fog line marks the right-hand edge of the travel lane and serves to separate the travel lane from the road shoulder. The SJC’s conclusion that police are permitted to stop vehicles for marked lanes violations serves a significant government interest of ensuring public safety and adherence to Massachusetts’ motor vehicle laws.

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