

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-11,597

VS :

PHILIP WAYNE ZEAFLA :

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress. Defendant has been charged with Driving Under the Influence of Alcohol under 75 Pa.C.S.A. § 3731(a)(4). The Commonwealth presented the testimony of Matt McCormick, a patrol officer with the Old Lycoming Police Department. McCormick testified that on August 9, 2000, at 12:55 a.m., he received a report of a possible DUI. The report included the color, make, and model of the vehicle, a Purple Ford Thunderbird. The reporter stated that the vehicle was travelling to Green's Market. McCormick responded to the parking lot of Green's Market, where he immediately saw the Thunderbird. The Thunderbird was unoccupied at the time McCormick approached the vehicle. Inside the driver's window, McCormick could see, in plain view, a six-pack of beer. One of the cans was opened.

Moments later, the Defendant exited the Market and approached the vehicle. McCormick asked the Defendant whether he had been operating the vehicle. The Defendant answered that he had not been operating the vehicle, he stated that his friend had been driving. When a second individual approached them, McCormick asked him if he had been operating the vehicle. The individual responded that he had not. As McCormick conversed with the second individual, he noticed the Defendant attempting to make hand gestures to the second individual.

McCormick then turned back to the Defendant and asked again whether he had been operating the vehicle. The Defendant admitted that he had been operating the vehicle. McCormick asked the Defendant why he had initially lied. Defendant stated that he had lied because he did not want to get a DUI. In this conversation with the Defendant, McCormick detected an odor of alcohol on the Defendant's breath.

Trooper Hurst, of the Pennsylvania State Police, testified that he arrived moments later. Hurst asked the Defendant whether he had been drinking. Hurst testified that the Defendant stated that what he was doing was wrong, and that he should not be arrested for DUI. Hurst requested that the Defendant perform Field Sobriety tests. Defendant failed the sobriety tests. Defendant was then arrested for driving under the influence.

Defendant alleges that the evidence obtained and statements made should be suppressed. In support of his argument, Defendant argues that there was not probable cause for his arrest. Defendant additionally argues that any statements made should be suppressed because he was not given Miranda Warnings. The Court disagrees. "Interaction" between citizens and police officers, is varied and requires different levels of justification depending upon the nature of the interaction and whether or not the citizen is detained. Such interaction may be classified as a "mere encounter," an "investigative detention," or a "custodial detention."

A "mere encounter" can be any formal or informal interaction between an officer and a citizen, but will normally be an inquiry by the officer of a citizen. The hallmark of this interaction is that it "carries no official compulsion to stop or respond."

[Commonwealth v. DeHart](#), 745 A.2d 633, (2000), *citing* [Commonwealth v. Allen](#), 452

Pa.Super. 200, 681 A.2d 778, 782 (1996) (citing [Florida v. Royer](#), 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) ). Instantly, the Court would find that the initial approach of the Defendant's car in the parking lot, and subsequent question of the Defendant of whether he was the driver of the vehicle was not improper in a mere encounter. The Court therefore denies Defendant's motion to suppress any evidence obtained as a result of the initial encounter.

Upon seeing the beer—including an open container—in the Defendant's vehicle, smelling the alcohol on the Defendant's breath, and receiving conflicting accounts with regard to who was driving the vehicle, the officer developed the reasonable suspicion of unlawful activity necessary to raise the level of the interaction to an "investigative detention." An "investigative detention" by implication, carries an official compulsion to stop and respond, but the detention is temporary, unless it results in the formation of probable cause for arrest, and does not possess the coercive conditions consistent with a formal arrest. Since this interaction has elements of official compulsion it requires "reasonable suspicion" of unlawful activity. [DeHart](#), *supra*. The administration of field sobriety tests were proper under an investigative detention. The Court therefore denies Defendant's motion to suppress any evidence obtained as a result of the field sobriety tests.

The addition of the failure of the field sobriety tests to the beer, open container, and odor of alcohol on the Defendant's breath was sufficient to establish probable cause to arrest the Defendant. See [Commonwealth v. Hamme](#), 400 Pa.Super. 537, 583 A.2d 1245 (1990) (detection of odor of alcohol on breath and failure of field sobriety test was sufficient to establish probable cause for arrest after valid traffic stop). The Court

therefore denies Defendant's motion to suppress the evidence obtained after his arrest, including the results of the blood alcohol test.

Defendant last alleges that any statements made by him should be suppressed as they were made without the benefit of a *Miranda* warning. The Court rejects this argument. *Miranda* warnings need be given only when one is subjected to custodial interrogation. [Miranda v. Arizona](#), 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966); [Berkemer v. McCarty](#), 468 U.S. 420, 428-29, 104 S.Ct. 3138, 3144, 82 L.Ed.2d 317 (1984). In order to determine whether the responses made by Defendant before he received his *Miranda* warnings should be suppressed, we must first determine whether the Defendant was in custody at the time the statements were made. In the instant case, the Court finds that the statements made by the Defendant were not elicited while the Defendant was in custody. The statements testified to by Officer McCormick – with regard to whether the Defendant was the driver of the vehicle – were made in response to routine questions associated with a “mere encounter.” Similarly, the statements made as testified to by Trooper Hurst were the result of questioning associated with an “investigative detention” and the administration of field sobriety testing. It was not until after the failure of the field sobriety tests that the Defendant was informed that he was being arrested for driving under the influence. Since the Defendant was not in custody at the time that the statements were made, there was no violation of *Miranda* in not giving warnings to the Defendant. The Court therefore rejects Defendant's argument to suppress any statements made.

ORDER

AND NOW, this \_\_\_\_\_day of April, 2001, based upon the foregoing opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is DENIED.

BY THE COURT,

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Nancy L. Butts, Judge

xc: Diane Turner, Esquire  
G. Scott Gardner, Esquire  
CA  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Gary Weber, Esquire