

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
	:	<b>CR-111-2024</b>
	:	
<b>vs.</b>	:	
	:	<b>MOTION TO SUPPRESS</b>
<b>TIMOTHY ROCHELL CARAWAY, JR.,</b>	:	
<b>Defendant</b>	:	

**OPINION**

This matter is before the Court on Defendant’s Motion to Suppress filed on April 7, 2024. A hearing was held on June 25, 2024, at which time the Defendant was present and represented by Alyssa Fenoy, Esquire, and Lindsay Sweeley, Esquire, appeared on behalf of the Commonwealth.

Timothy Caraway (“Defendant”) was charged on January 15, 2024, with one count of Firearms Not to be Carried Without a License (F3)<sup>1</sup>, one count of Possession of a Controlled Substance (Marijuana) (M)<sup>2</sup>, one count of Possession of Drug Paraphernalia (M)<sup>3</sup>. The Defendant waived his right to a preliminary hearing on January 24, 2024, and waived his arraignment scheduled for March 4, 2024. The instant Motion to Suppress alleges the investigatory stop was not supported by reasonable suspicion and requests that the Court suppress all evidence seized and statements made as a result of the illegal stop and detention.

At the hearing on the Motion to Suppress, the Commonwealth called Officer Robert

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1 18 Pa.C.S. 6106(a)(1)  
2 35 P.S. §780-113(a)(16)  
3 35 P.S. §780-113(a)(32)

Mausteller (“Mausteller”) of the Lycoming Regional Police Department. Mausteller testified that on January 25, 2024, he was on patrol when he observed a running vehicle sitting in the parking lot of Cowden’s Market at 3725 Lycoming Creek Road at approximately 12:55 a.m. The vehicle was backed in to the front of the store. Mausteller testified, although he was not actively responding to a report of a suspicious vehicle, there had been complaints made as recently as the previous day about people sleeping in the parking lot so he pulled his patrol vehicle in the lot and parked on the north side near the 3731 Lycoming Creek Road entrance. Mausteller indicated the vehicle was pointing east and he parked his patrol vehicle pointing south toward the vehicle, but not blocking it. Mausteller testified that it was very cold at that time, approximately 9 degrees, and he could smell an extremely strong odor of raw marijuana as soon as he stepped out of his vehicle, which was approximately 15 feet from the Defendant’s. Mausteller approached the driver’s side of the vehicle to see if anyone was inside and to obtain the registration information. Mausteller called for backup and Officer Neeper (“Neeper”) from the Lycoming Regional Police Department responded and parked next to his patrol vehicle. Mausteller observed two people inside the vehicle, and at least one of them was sleeping. Mausteller and Neeper made contact with the occupants by knocking on the window. Mausteller testified that the driver, identified as Sierra Collier, advised that they were from North Carolina and were driving back there from Rochester, New York, and pulled into the parking lot to sleep when they got tired. Mausteller asked for the license of Ms. Collier and her passenger, who was identified as Timothy Caraway, the Defendant.

Mausteller testified that after he ran the licenses and returned them, he inquired

about the marijuana he smelled. Specifically, he asked whether they had medical marijuana cards and when Ms. Collier and the Defendant advised they did not, Mausteller asked if marijuana was legal in their state. Mausteller testified that Ms. Collier and the Defendant advised that it was not and at that time he asked for consent to search the vehicle, explaining that he had enough probable cause to apply for a search warrant and impound the car if she did not consent. Ms. Collier filled out the consent form and Mausteller testified that he had her step out of the vehicle and told them that he wanted them to sit in the back of the patrol vehicle to stay warm. Collier was patted down and placed in the back of Neeper's patrol vehicle with the window down and Mausteller explained that she could terminate her consent to search the vehicle at any time. Mausteller testified that he repeated the process with the Defendant but put him in the back of his patrol vehicle. Prior to patting him down, and while he was still seated in the vehicle, Mausteller asked the Defendant if he had any weapons on him. Mausteller further testified that the Defendant asked "if he could be honest with him" and stated that he had a gun in his front pocket. Mausteller told the Defendant to put his hands above his head and that he would remove it from his pocket. While he was speaking with the Defendant, Neeper was near his own patrol vehicle with Ms. Collier. Mausteller testified that he placed the gun on the hood of the car and asked the Defendant where he got it, to which the Defendant replied that it "was his gun but not his gun" and that he "bought it off Facebook Marketplace." Mausteller testified that he informed the Defendant at that time that, due to the gun in his possession, the Defendant was going to be detained in the back of his patrol vehicle and was no longer free to leave. The Defendant was read his Miranda rights after the search of the vehicle was conducted.

Defendant's Motion to Suppress alleges that Mausteller's "only reason for conducting a stop was because he observed a vehicle parked and running at a closed business of 3725 Lycoming Creek Road" and that no reasonable suspicion of criminal activity existed for him to begin investigating the car. The Commonwealth contends that the initial interaction was a mere encounter which did not require suspicion that criminal activity was afoot. There are three types of encounters between law enforcement officials and private citizens. A "mere encounter" need not be supported by any level of suspicion but carries no official compulsion to stop or respond. *Commonwealth v. Hemingway*, 192 A.3d 126, 129 (Pa. Super. 2018) (citations omitted). An "investigative detention" must be supported by reasonable suspicion and subjects the suspect to a stop and a period of detention, but it does not have the coercive conditions that would constitute an arrest. *Id.* The courts determine whether reasonable suspicion exists by examining the totality of the circumstances. *Id.* An arrest, or "custodial detention," must be supported by probable cause. *Id.* To determine whether a mere encounter rises to the level of an investigatory detention, we must discern whether, as a matter of law, the police conducted a seizure of the person involved. *Commonwealth v. Reppert*, 814 A.2d 1196, 1201 (Pa. Super. 2002). (citation omitted). To decide whether a seizure has occurred, a court must consider all the circumstances surrounding the encounter to determine whether the demeanor and conduct of the police would have communicated to a reasonable person that he or she was not free to decline the officer's request or otherwise terminate the encounter. *Id.*

As noted, a mere encounter is a "request for information" and need not be supported by any level of suspicion, and accordingly, carries no official compulsion to stop and

respond. *Hemingway*, 192 A.3d at 129. This is not a case of Mausteller conducting a traffic stop. Instead, he testified that he observed a vehicle that was parked but running in the lot of a closed business where there had been previously reported complaints about people sleeping at the business. Mausteller testified that the lights and siren of his patrol vehicle were not on at the initial contact and he parked in a way that did not block the vehicle from accessing the street should Ms. Collier, the driver, wish to leave. As Defendant was the passenger, he was under no obligation to wait while Mausteller ran the registration and could have exited the vehicle and left at that time. Mausteller testified that his initial conversation with the occupants of the vehicle was very casual and easy-going, asking where they were coming from and explaining that they were parked at a closed business which had previously made complaints about people sleeping in cars on the lot. He requested their licenses and, after running them, immediately returned them. Mausteller's testimony indicated that immediately upon exiting his patrol vehicle he smelled a strong odor of marijuana. Based upon this, asked the Defendant and Ms. Collier for basic information regarding their right to possess the controlled substance.

Given the totality of the circumstances, the Court finds, despite Defendant's argument to the contrary, that the initial interaction between Mausteller and the Defendant was a mere encounter which did not need to be supported by any level of reasonable suspicion. A reasonable person in Defendant's position would be free to terminate the encounter. Although facts that typify a mere encounter were present during Mausteller's initial interaction, the level of intrusion into a person's liberty may change during the course of the encounter. *Commonwealth v. Collins*, 950 A.2d 1041, 1047 (Pa. Super. 2008)

(quoting *Commonwealth v. Blair*, 860 A.2d 567, 572 (Pa. Super. 2004)). The Court notes Mausteller's testimony regarding his immediate observation of the smell of marijuana as he approached the vehicle. When Defendant informed Mausteller that possession of marijuana was not legal in his home state of North Carolina and that he did not have a medical marijuana card, Mausteller then had reasonable suspicion that there was criminal activity afoot. As the Defendant was the passenger of the vehicle, he had no authority of Ms. Collier's consent of the search of the vehicle. As the circumstances of the encounter gave rise to reasonable suspicion that the Defendant was engaged in illegal activity, Mausteller requested he step out of the vehicle and inquired whether he had weapons on him prior to initiating the pat down. At that time, Defendant disclosed the possession of a gun on in his pocket.

The Court finds that the initial interaction between Mausteller and the Defendant was a mere encounter, which did not need to be supported by any level of reasonable suspicion. During the course of the interaction, which the Defendant was initially free to leave or ignore Mausteller's request for information, the facts and circumstances ripened the encounter into an investigative detention when Mausteller asked the Defendant to step out of the vehicle. Based upon Mausteller's observation of the smell of marijuana and the Defendant's admission that he lacked the legal right to possess it, the investigative detention was supported by reasonable suspicion that criminal activity was afoot. Therefore, the evidence seized and statements made as a result of the stop shall not be suppressed.

Accordingly, the Court will enter the following Order.

**ORDER**

**AND NOW**, this **22<sup>nd</sup>** day of **July, 2024**, upon consideration of Defendant's Motion to Suppress, the argument of counsel on June 25, 2024, and for the reasons set forth above, the Motion to Suppress is **DENIED**.

By the Court,

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Ryan M. Tira, Judge

RMT/jel

CC: DA – Lindsay Sweeley, Esq.  
PD – Alyssa Fenoy, Esq.  
Gary Weber, Esq.  
Jennifer E. Linn, Esquire