

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

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 v. : No. 05-00,346; 05-10,065  
 :  
 REBECCA BARRY, :

**OPINION**

**Issued Pursuant to Pa. R.A.P. 1925(a)<sup>1</sup>**

The defendant has appealed this court's order of May 6, 2005, finding her guilty of violating 18 Pa. C.S. §6308, underage drinking. The relevant facts of the case, as found by the court, are as follows.<sup>2</sup>

On August 27, 2004, at 3:40 a.m., Officer Taylor was dispatched to Matthews Blvd. to investigate a disturbance reported by two separate phone calls. Officer Taylor was met by one of the reporting parties, who told him the defendant was present at the disturbance, which apparently involved a fight. He was also told that the defendant was seen traveling in the direction of her residence.

Officer Taylor went directly to the defendant's residence. The door was answered by Tina Marrow, the defendant's mother. At the same time, Officer Taylor heard hollering and yelling coming from the back of the residence. A male fled on foot, and Officer Taylor followed him but failed to locate him. Officer Taylor returned to speak with Ms. Marrow. Ms. Marrow permitted him to enter her home and speak with the defendant. During the course of his conversation with the defendant, he observed that she exhibited signs of intoxication: glossy eyes, clumsy speech, slurred speech, and an odor of alcohol on her breath. The defendant refused to submit to a breathalyzer test. Based upon his training and experience as a police officer, Officer Taylor

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<sup>1</sup> This appeal was improperly filed to docket #05-00,346. Therefore, the court has filed this opinion to both the proper and the improper docket numbers.

<sup>2</sup> The court notes that we found the testimony of Officer Taylor highly credible.

concluded that the defendant had been consuming alcoholic beverages. Officer Taylor filed a citation at a later date.

The defendant argues the court erred in denying her motion to dismiss the charges. The motion was based upon the defendant's position that the officer needed to observe some evidence of a breach of the peace before going to the defendant's home to question her. In support of her position, the defendant cites Commonwealth v. Bullers, 637 A.2d 1326 (Pa. 1994). That case, however, addresses the question of warrantless arrests for underage drinking. The case before this court does not involve an arrest.

The evidence established that Officer Taylor's contact with the defendant and her mother was a "mere encounter," or "request for information." As stated by the Pennsylvania Supreme Court in Commonwealth v. Smith, 836 A.2d 5, 9 (Pa. 2003), such an encounter "does not need to be supported by any level of suspicion, and does not carry any official compulsion to stop or respond." In Smith, the Supreme Court held that police officers who boarded a bus and questioned passengers conducted nothing more than a mere encounter, even though the officers did not inform the passengers they were free to leave, and even though the interaction took place within the confined area of a bus. The court noted,

There was no application of force, no intimidating movement, no overwhelming show of force, no brandishing of weapons, no blocking of exits, no threat, no command, not even an authoritative tone of voice.

Id.

In the case before this court, the evidence established that Officer Taylor's visit to defendant's residence and his questioning of the defendant and her mother was nothing more than standard police questioning of citizens. Officer Taylor was investigating a reported incident of fighting, and among other things, he wanted to determine whether anyone had been hurt. The defendant's mother willingly admitted

Officer Taylor into the residence, and there was no evidence to indicate he acted in any manner that would lead either the defendant or her mother to believe they were not free to end the encounter at any time.

The defendant's second issue on appeal is that the court erred in admitting a photograph of the defendant, since it was obtained after an illegal search and seizure. As discussed above, the court rejects this argument because the incident was nothing more than an encounter; therefore, no search or seizure occurred.

The defendant's third issue on appeal is that the Commonwealth did not prove its case beyond a reasonable doubt because there was no blood test or breathalyzer test to prove alcohol consumption. It is well settled in Pennsylvania that the Commonwealth can meet its burden of proving a defendant consumed alcoholic beverages by introducing testimony of the arresting officer alone. Commonwealth v. Richardson, 452 A.2d 1379 (Pa. Super. 1982). Here, the court found Officer Taylor's testimony to be credible, and based upon his observations of the defendant and his experience, the court properly found the Commonwealth had met its burden beyond a reasonable doubt.

BY THE COURT,

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Richard A. Gray, J.

cc: Gregory Stapp, Esq.  
District Attorney  
Dana Jacques, Esq., Law Clerk  
Hon. Richard A. Gray  
Gary Weber, Esq.