

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

SCOTT E. CIPRIANI

Defendant

:
:
:
:
:
:
:

**05-11, 403
CRIMINAL DIVISION**

ORDER AND OPINION

Before this Honorable Court, is the Defendant's November 15, 2005 Motion to Suppress. After carefully considering the Defendant's Motion and the testimony presented at the December 19, 2005 hearing on this matter, the Court hereby DENIES the Defendant's Motion to Suppress.

I. Background

On July 30, 2005, Old Lycoming Township Police Officer Matthew McCormick responded to a dispatch regarding a "vehicle rollover accident" on Beauty's Run Road in Lycoming Township. Officer McCormick was the first to arrive on the scene, but because the location was within the jurisdiction of the Pennsylvania State Police, his response was merely an attempt to secure the scene and assure that any victims were assisted. Upon arriving at the accident scene, Officer McCormick encountered the driver of the overturned vehicle, the Defendant, Scott E. Cipriani. Officer McCormick offered to let the Defendant sit in his cruiser until further assistance arrived. Officer McCormick noted that the Defendant appeared to be bleeding from his right ear and, there was an odor of alcohol emanating from his person. At no time during Officer McCormick's interaction with the Defendant did he inquire, pursue, or interrogate the Defendant as to the nature of the accident.

Within minutes of Officer McCormick's arrival at the scene, EMS arrived and assessed the Defendant for injuries. During this assessment, State Police Trooper Angela Roher arrived at the scene and, after Officer McCormick informed her that he detected an odor of alcohol emanating from the Defendant, she questioned the Defendant regarding the accident. The Defendant's response to Trooper Roher's inquiry regarding the accident was "two deer and me." The Defendant also admitted to consuming alcohol earlier that day. During her interaction with the Defendant, Trooper Roher noted that the Defendant had blood shot eyes, slurred speech and an odor of alcohol emanating from his person. As a result of her observations, Trooper Roher asked the Defendant to perform two field sobriety tests. The Defendant failed the tests and was promptly arrested by Trooper Roher.

II. Discussion

The Defendant raises two issues in his Motion to Suppress. First, the Defendant contends that, because Officer McCormick was outside of his jurisdiction and did not have probable cause to detain him, any evidence obtained as a result of that detention is inadmissible "fruit of the poisonous tree." Second, the Defendant argues that Trooper Roher did not have probable cause to arrest him.

First, we must determine whether Officer McCormick "detained" the Defendant because, if we find the Defendant was not detained, the jurisdictional and probable cause issues are moot.

A. Did Officer McCormick detain the Defendant and, if so, was that detention impermissible for lack of jurisdictional authority and/or lack of probable cause?

Pennsylvania courts, following the lead of the United States Supreme Court, have recognized three tiers of police-citizen interaction. The first tier is a "mere encounter" or request for information. *Commonwealth v. Ellis*, 541 Pa. 285, 293-94, 662 A.2d 1043, 1047 (1995),

citing *Florida v. Bostick*, 501 U.S. 429 (1991). No level of suspicion is required for law enforcement to initiate this type of encounter and, the citizen is under no duty to stop and/or respond. *Id.* The second tier is an “investigative detention” or “*Terry* stop.” *Ellis*, at 294, citing *Berkemer v. McCarty*, 468 U.S. 420 (1984). Reasonable suspicion must predicate this type of encounter and, the citizen is required to cooperate; however, this encounter is not equivalent to an arrest. *Id.* The third tier is a “custodial detention” or arrest which, must be supported by probable cause. *Ellis*, at 294, citing *Commonwealth v. Rodeiguez*, 532 Pa. 62, 614 A.2d 1378 (1992).

The Pennsylvania Supreme Court has established a test to distinguish a tier one “mere encounters” from tier two and tier three encounters: “whether, considering all the facts and circumstances evidencing the exercise of force (including the demeanor of the police officer, the manner of expression used by the officer in addressing the citizen, and the content of the interrogatories or statements), a reasonable man would have thought he was being restrained.” *Commonwealth v. Mendenhall*, 552 Pa. 484, 488, 715 A.2d 1117, 1120 (1998), citing *Commonwealth v. Jones*, 474 Pa. 364, 373, 378 A.2d 835, 840 (1995) and *U.S. v. Mendenhall*, 446 U.S. 544, 554 (1980); i.e., if, objectively viewed, a reasonable man, based on the totality of the circumstances, with due consideration given to the reasonable impression conveyed to the person interrogated rather than the strictly subjective view of the officers or the person being seized, did not feel free to leave, then the encounter is something more than a tier one “mere encounter.” *Commonwealth v. Gwynn*, 555 Pa. 86, 98, 723 A.2d 143, 148 (1998), citing *Commonwealth v. Edmiston*, 535 Pa. 210, 643 A.2d 1078 (1993).

In the instant case, Officer McCormick’s interaction with the Defendant was limited to asking him about his obvious ear injury and offering him a seat in his cruiser in an attempt to

ensure his safety. There is no indication that Officer McCormick exhibited any force or, used language to that effect, during his interaction with the Defendant. Therefore, the Court finds that, in light of all the facts and circumstances surrounding the encounter between the Defendant and Officer McCormick, a reasonable man would not have thought he was being restrained; therefore, the encounter between the Defendant and Officer McCormick amounts to nothing more than a tier one “mere encounter.”

Because the Court does not find that Officer McCormick detained the Defendant, the jurisdictional and probable cause issues raised by the Defendant are moot.

B. Did Trooper Roher have sufficient probable cause to arrest the Defendant?

“Probable cause exists where the arresting officer has knowledge of sufficient facts and circumstances to warrant a prudent person to believe that a driver has been driving under the influence of alcohol.” *Commonwealth v. Smith*, 382 Pa. Super. 288, 296, 555 A.2d 185, 189 (1989). Pennsylvania courts have held that an odor of alcohol emanating from one’s person, *Commonwealth v. Hipp*, 380 Pa. Super. 345, 551 A.2d 1086 (1988) and *Commonwealth v. Haynos*, 363 Pa. Super. 1, 525 A.2d 394 (1987), glassy eyes, *Smith*, and slurred speech, *Commonwealth v. Butler*, 2004 Pa. Super 294, 856 A.2d 131 (2004), constitute “sufficient facts and circumstances” to warrant a belief that a driver is under the influence of alcohol.

At the December 19, 2005 hearing on this matter, Trooper Roher testified that, when she questioned the Defendant regarding the accident, she observed he had blood shot eyes, slurred speech, and an odor of alcohol emanating from his person. Trooper Roher also testified that, she administered two field sobriety tests with the Defendant based on the aforementioned observations; the Defendant failed both tests.

The Court recognizes that, prior to interacting with the Defendant, Officer McCormick informed Trooper Roher that he smelled alcohol on the Defendant's person; however, the Court finds that this information did not influence Trooper Roher's independent observations of the Defendant. Therefore, the Court finds that Trooper Roher's observations, coupled with the Defendant's failure of two field sobriety tests, were not improperly influenced by Officer McCormick's statement and, established sufficient probable cause for Trooper Roher to arrest the Defendant for driving under the influence of alcohol.

ORDER

AND NOW, this _____ day of January 2006, for the reasons set forth above, the Court **DENIES** the Defendant's Motion to Suppress.

By the Court,

Nancy L. Butts, Judge J.

cc. James R. Protasio, Esq.
George E. Lepley, Esq.
Robert W. Ferrell, ADA
Judges
Law Clerk
Gary L. Weber, Esq.