

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**PHILIP B. WESBURY,
Defendant**

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**CR-1839-2009
CRIMINAL DIVISION**

OPINION AND ORDER

Defendant filed a Motion to Suppress on February 10, 2010. A hearing on the Motion to Suppress was held on March 19, 2010.

Background

The Transcripts of the Preliminary Hearing held on November 11, 2009 before Magisterial District Judge James Carn reveal that on September 10, 2009 Officer Norman L. Hager, II (Hager), of the Penn College Police, was on foot patrol in the 1000 block of West Fourth Street. While on foot patrol, Hager observed a dark color Jeep pull up behind him. Hager watched the Jeep hit the curb hard twice. When the Jeep finally came to a stop, Hager observed that the Jeep was parked at an angle instead of parallel to the curb. Hager then watched the Defendant, the only individual in the Jeep, get out of the vehicle. Hager further observed that the Defendant had a wet spot down the front of his shirt like he had spilled something. Hager then walked over to the Defendant and spoke with him on the sidewalk. After Hager made contact with the Defendant, he saw that the Defendant had red glassy eyes and Hager smelled a strong alcoholic odor on Defendant's breath. Hager observed that the Defendant had impaired motor skills and the Defendant admitted to consuming alcoholic beverages prior to driving that evening. Hager requested and received the Defendant's Driver's License which showed

Defendant to be nineteen (19) years old. Hager retained the Defendant's Driver's License throughout the questioning process. Hager then continued the investigation by administering standard field sobriety tests to the Defendant. The conclusions of the tests confirmed that the Defendant was unsafe to drive as he was intoxicated. The Defendant was then placed in custody and transported to the Lycoming County DUI Center.

Discussion

The Defendant is charged with Count 1 – Driving Under the Influence of Alcohol, Highest Rate; Count 2 – Driving Under the Influence of Alcohol or Controlled Substance; Count 3 – Driving Under the Influence of Alcohol; Count 4 – Minor Prohibited from Operating with any Alcohol; Count 5 – Underage Drinking. The Defendant argues that the initial stop, subsequent interrogation and search of the Defendant's person and the required testing were conducted in violation of the Defendant's rights under Article 1 Section 8 of the Pennsylvania Constitution and the Fourth Amendment to the United States Constitution because

(a) the stop of the Defendant was done without reasonable suspicion to believe that criminal activity was afoot or that the Defendant was involved in said criminal activity

(b) the stop and interrogation of the Defendant, and the search of the Defendant's person and required testing were done without a warrant or any exception to the warrant requirement.

The Defendant contends that since the initial stop, subsequent interrogation and search of the Defendant's person and the testing were illegal, any evidence obtained from the illegal stop of the Defendant must be suppressed, including all of the Defendant's alleged statements and all evidence seized.

Courts identify three kinds of encounters between police officers and citizens: 1) a mere encounter, 2) an investigative detention, and 3) a custodial detention. Commonwealth v. Hudach, 82 Pa. D. & C.4th 261 (see Commonwealth v. Polo, 759 A.2d 372, 375 (2000)).

In determining whether the encounter is a mere encounter or an investigative detention, a court must decide, after looking at all of the circumstances surrounding the interaction between the police officer and the Defendant, if a reasonable person would believe that they were free to decline the police officer's requests and terminate the interaction.

Hudach at 264. (see Commonwealth v. Reid, 811 A.2d 530, 545 (2002) (citing United States v. Mendenhall, 100 S. Ct. 1870 (1980)). "An investigative detention occurs when a police officer temporarily detains an individual by means of physical force or a show of authority for investigative purposes." Commonwealth v. Smith 904 A.2d 30, 35 (See Commonwealth v. Ellis, 662 A.2d 1043 (1995)). The Hudach Court stated that while there is no specific criteria for an investigative detention, courts should consider the following: "the nature, length and location of the detention; whether the suspect was transported against his or her will, how far and why; whether restraints were used; whether the law enforcement officer showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions." (citing Commonwealth v. Bennett, 27 A.2d 469, 477 (Pa. Super. 2003)). The circumstances of this case show that Hager's questioning of the Defendant amounted to an investigative stop as Hager initiated the stop after observing the Defendant's behavior and appearance while the Defendant parked his vehicle, Hager asked for and retained identification from the Defendant and Hager issued sobriety tests to the Defendant.

"Where a police officer decides to stop and briefly detain a person in an investigative detention, the suspect's expectation of privacy is only minimally infringed upon; therefore, all that is required is that the officer have a reasonable suspicion that criminal activity is afoot."

Hudach at 264. (citing Commonwealth v. Epps, 608 A.2d 1095, 1096 (Pa. Super. 1992) (see Terry v. Ohio, 88 S. Ct. 1868 (1968)). “For reasonable suspicion to exist a police officer must be able to point to specific and articulable facts and reasonable inferences that can be drawn from those facts in light of that officer's experience.” Hudach at 264. (see Commonwealth v. Cook, 735 A.2d 673, 677 (1999)). Based on the facts stated above, it appears to the Court that Hager had reasonable suspicion to detain the Defendant in an investigative detention. As Hager had reasonable suspicion to detain the Defendant in an investigative detention, the stop, interrogation and search of Defendant, nor the required testing necessitated a warrant. Therefore, the Defendant’s Motion to Suppress is denied.

ORDER

AND NOW, this ____day of April, 2010, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant’s Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, P.J.

xc: DA
Michael C. Morrone, Esq.
Amanda Browning, Esq. (Law Clerk)
Gary L. Weber (LLA)