IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-612-2011**
vs.	**:**	
	:	**Opinion and Order re: Defendant's**
EDWIN A. PRECHTL,	**:**	**Omnibus Pre-trial Motion**
Defendant	**:**	

OPINION AND ORDER

This matter came before the Court on September 1, 2011 for a hearing and argument on Defendant's Omnibus Pre-trial Motion. In his motion, Defendant seeks suppression of all the evidence in this case because the police allegedly did not have any basis to initiate contact with the Defendant. The relevant facts follow.

On April 30, 2011 at approximately 2:30 a.m. Trooper Paul McGee of the Pennsylvania State Police was on patrol in the 1900 block of East Third Street when he observed a vehicle with its headlights on and its engine running parked near a bank and a pharmacy in a shopping plaza. The trooper could not see any occupants in the vehicle and he was concerned that either someone needed assistance or that criminal activity was being directed at one of the closed retail establishments. Trooper McGee drove into the parking lot, parked his patrol vehicle, and walked over to the driver's side window. He observed an individual in a reclined position in the driver's seat and knocked on the window. After a few seconds, the individual sat up and rolled down the window. Trooper McGee noticed the individual's eyes were red, he had slurred speech and a strong odor of alcohol was emanating from his person. Trooper McGee identified the individual as Defendant, Edwin Prechtl. The trooper asked Defendant to perform field sobriety tests, but Defendant declined.

The trooper arrested Defendant for DUI and transported him to the DUI

processing center. A blood sample was collected from Defendant at 3:08 a.m. which, when tested, revealed Defendant had a blood alcohol content (BAC) of .126%.

At the hearing and argument on this matter, defense counsel conceded that the trooper's initial interaction with Defendant was a mere encounter. Nevertheless, and contrary to clearly established case law, he argued that the trooper needed reasonable suspicion to approach Defendant's vehicle. In support of his position he cited Commonwealth v. Anthony, 1 A.3d 914 (Pa. Super. 2010) and posited that it was directly on point. In his argument and brief, defense counsel represented that the appellant in Anthony was an individual legally parked with his vehicle running in a public parking lot and the Superior Court reversed the conviction because the officer did not have reasonable suspicion.

Unfortunately for Defendant, defense counsel's arguments are blatant misrepresentations of the Anthony case and the law with respect to mere encounters. Indeed, the Court seriously questions if defense counsel even read Anthony let alone understood it. Contrary to his arguments at the hearing and in his brief, the Anthony case did not involve an officer approaching a legally parked car with its vehicle running in a public parking lot. Instead, the Anthony case arose out of a traffic stop of a moving vehicle because objects were hanging from the rearview mirror. The officer did not describe how the objects materially impaired or obstructed the driver's vision; rather, he was of the opinion that it was a violation for any object to hang from the rearview mirror of a vehicle. The Superior Court reversed the trial court because it is not a violation of the vehicle code or the regulations in

the administrative code to have any objects hanging from one's rearview mirror; it is only a violation if the objects materially impair or obstruct the driver's vision.

Contrary to defense counsel's inexplicable assertions that the police cannot approach an individual without at least reasonable suspicion, there are interactions which do not require any level of suspicion.

> "Fourth Amendment jurisprudence has led to the development of three categories of interactions between citizens and the police. The first of these is a "mere encounter" (or request for information) which need not be supported by any level of suspicion, but carries no official compulsion to stop or to respond. The second, an "investigative detention" must be supported by a reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or "custodial detention" must be supported by probable cause.

Commonwealth v. Ellis, 541 Pa. 285, 293-94, 662 A.2d 1043, 1047 (1995); see also Commonwealth v. Pakacki, 587 Pa. 511, 518, 901 A.2d 983, 987 (2006); Commonwealth v. Smith, 575 Pa. 203, 211, 836 A.2d 5, 10 (2003).

The case most analogous to the case at bar is Commonwealth v. Collins, 950 A.2d 1041 (Pa. Super. 2008). In Collins, a trooper was on routine patrol when he observed a vehicle parked at a scenic overlook after dark. The trooper parked next to the vehicle and approached the passenger side. The trooper asked if everyone was ok and the passenger blurted out that they were smoking marijuana. At that point, the trooper smelled burnt marijuana and noticed a bong between the seats. The passenger admitted that the bong was his and, as a result, he was charged with possession of drug paraphernalia.

The passenger filed a motion to suppress the evidence. At the hearing on the

suppression motion, the trooper testified that he always stops for vehicles parked along the roadway to see if everything is all right. Although there was nothing wrong with parking at that particular location after dark, the trooper stated on cross-examination that "his reason for approaching this particular vehicle was because it was too close to the street, he thought it was broken down, and he does not usually see vehicles parked at the overlook after dark." 950 A.2d at 1045. He also testified that "it did not appear to him that there was any outward signs of distress from the occupants of the vehicle and that he did not observe anything that led him to believe that the was something illegal going on at that particular time." Id.

The trial court granted the passenger's motion to suppress, and the Commonwealth appealed. The Superior Court reversed, finding that the interaction between the trooper and the passenger was a classic example of a mere encounter, which need not be supported by any level of suspicion. 950 A.2d at 1046-47.

As conceded by defense counsel, the interaction in the case sub judice also was a mere encounter. Trooper McGee did not activate his lights or his siren; he parked his patrol unit and simply walked up to Defendant's vehicle to see if Defendant needed assistance and to inquire what he was doing there at that hour. When Defendant rolled down his window to talk to the trooper, Trooper McGee immediately smelled a strong odor of alcohol. He also observed that Defendant's eyes were red and his speech was slurred. It was only after Trooper McGee noticed these indicia of intoxication that the encounter arose to the level of an investigative detention. Moreover, during the hearing and argument in this case, defense counsel conceded that the interaction was a mere encounter.

A final note is warranted. Defense counsel's personal attacks on Trooper McGee both during the hearing and in his brief defy understanding. They were unwarranted and nothing more than a thinly veiled attempt to mask the lack of merit in Defendant's position.

Accordingly, the following Order is entered:

O R D E R

AND NOW, this ___ day of September 2011, the Court DENIES Defendant's Omnibus Pre-trial Motion.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Jarett R. Smith, Esquire
109 North Main Street, Coudersport, PA 16915
Gary Weber, Esquire (Lycoming Reporter)