

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**MARK E. LUCAS,
Defendant**

:
:
:
:
:
:

**CR: 1534-2011
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress Evidence on January 18, 2012. A hearing on the motion was held April 10, 2012.

Background

On September 30, 2011, Trooper Edward Dammer (Dammer) of the Pennsylvania State Police was on routine patrol when he observed Mark Lucas (Defendant) operating a white sedan. At approximately 12:55 AM, Dammer observed Defendant pull his white sedan and park at the back of a closed business off Lycoming Creek Road, where many commercial sized trailers were parked. Dammer pulled his vehicle twenty (20) to thirty (30) feet from the Defendant's car and observed the Defendant exit the vehicle. Dammer observed that the Defendant's walk was staggered. Dammer then, from his unmarked patrol vehicle, asked the Defendant where he lived. Defendant responded that he lived close by and pointed to a nearby house. During this brief conversation, Dammer noticed that Defendant had slurred speech and was making exaggerated motions. Dammer exited his vehicle, asked the Defendant to "hold on," and approached the defendant. Dammer could detect the strong odor of alcohol coming from the Defendant when he approached. Dammer then asked the Defendant to perform field sobriety tests, which Defendant

failed. Defendant was then taken into custody. Dammer found during a pat down two marijuana pipes and a bag of processed marijuana. Defendant was then transported to Williamsport Hospital's DUI Processing Center where he gave blood.

Motion to Suppress

Defendant argues that any evidence seized from Defendant after he was stopped by Dammer should be suppressed as a violation of his rights under Article I Section 8 of the Pennsylvania Constitution and under the Fourth Amendment of the United States Constitution. The Pennsylvania Courts have defined three forms of police-citizen interaction: (1) mere encounter; (2) investigative detention; and (3) custodial detention. A mere encounter between police and a citizen "need not be supported by any level of suspicion, and carries no official compulsion on the part of the citizen to stop or to respond." Commonwealth v. Ellis, 541 Pa. 285, 293-94, 662 A.2d 1043, 1047 (Pa. 1995). If a police action becomes too intrusive, a mere encounter may escalate to an investigatory detention or seizure. Commonwealth v. Boswell, 554 Pa. 275, 721 A.2d 336, 339-40 (Pa. 1998). For the determination of whether a mere encounter has risen to an investigatory detention, the Court must determine whether police have conducted a seizure of the person involved. Commonwealth v. Mendenhall, 552 Pa. 484, 715 A.2d 1117, 1119 (Pa. 1998).

To decide whether a seizure has occurred, we apply the following objective test: a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter. In applying this test, it is necessary to examine the nature of the encounter. Circumstances to consider include, but are not limited to, the following: the number of officers present during the interaction; whether the officer informs the citizen they are suspected of criminal activity; the officer's demeanor and tone of voice; the location and timing of the interaction; the visible presence of weapons on the officer; and the questions asked.

Otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.

Commonwealth v. Beasley, 2000 Pa. Super. 315, 761 A.2d 621, 625-26 (Pa. Super. 2000).

In Moore, an officer saw a man standing inside the doorway of an abandoned property. The officer approached and asked the man to step out. Commonwealth v. Moore, 2010 Pa. Super. 236, 11 A.3d 538, 540-41 (Pa. Super 2010). While the officer spoke with the man he noticed a large lump in his mouth that was constantly moving around. The officer determined that it was narcotic packaging in his mouth. The Superior Court determined that this was a mere encounter because there was no indication that the officer wanted to do anything but talk, the man voluntarily exited the vacant structure when asked, and there was no evidence of a threatening, coercive, or intimidating manner. See also In the Interest of D.M., 566 Pa. 445, 781 A.2d 1161 (Pa. 2001) (finding a mere encounter when an officer saw a person that matched the description of a man with a gun and told him to “come over” because at the time it was unclear whether police intended to do anything other than talk); Commonwealth v. Martin, 705 A.2d 887 (Pa. Super. 1997) (determining a mere encounter when an officer approached someone and asked if they would “step outside,” and indicated they wanted to talk to them).

In this case, a reasonable person in Defendant’s position would have been free to terminate the encounter. Dammer parked his patrol vehicle twenty (20) to thirty (30) feet behind the Defendant’s vehicle. The patrol vehicle did not block Defendant’s vehicle from moving or leaving. Defendant’s vehicle did not violate any traffic regulations. The vehicle, however, was parked in a parking lot that people did not regularly park in at night. Therefore, Dammer was trying to determine why a vehicle would be parked at this location and did not observe anything that would lead him to believe that illegal activity was occurring. After Defendant exited his

vehicle, Dammer noticed that Defendant had a staggered walk. Dammer then asked Defendant where he lived. There is no suggestion that Dammer acted in a coercive manner or spoke forcefully to Defendant. Dammer noticed that Defendant's voice was slurred and that he used exaggerated motions when he spoke.

After Defendant answered, Dammer asked Defendant to "hold on" as he approached the Defendant. This is similar to Moore, in that the Defendant voluntarily waited for Dammer to approach and voluntarily spoke with him. The Court finds no indication that Dammer was threatening, coercive, or intimidating to the Defendant. Dammer did not tell Defendant that he was required to wait for the officer to approach or that he was required to talk. Also, Dammer did not physically block the Defendant from leaving. Dammer at this point was still unclear whether he intended to do anything besides talk to the Defendant. Once Dammer approached the Defendant he smelled a strong odor of alcohol.

Further, Dammer came upon the Defendant in a strange situation where he parked his car in a parking lot not normally used at night. Dammer acted pursuant to his duty to protect and serve the community in approaching Defendant to find out what he was doing there. See Commonwealth v. Collins, 2008 Pa. Super. 124, 950 A.2d 1041, 1047-48 (Pa. Super. 2008) (finding that a reasonable person would interpret an officer stopping to check on a vehicle parked after dark, at a location mostly used during the day, as an act of official assistance, not an investigative detention). Thus, based on the totality of the circumstances, a reasonable person in Defendant's situation would have interpreted Dammer's conduct as an act of official assistance, not an investigative detention.

ORDER

AND NOW, this ____ day of May, 2012, based upon the foregoing Opinion, the Court finds that the interaction between Defendant and police was a mere encounter and legal. Therefore, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Peter Campana, Esq.
Eileen Dgien, Dep. CA
Gary Weber