

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1318-2012  
 :  
 vs. : Opinion and Order re:  
 : Defendant's Omnibus Pretrial Motion/  
 TREVOR A. KENDALL, : Motion to Suppress  
 Defendant :  
 :

**OPINION AND ORDER**

This matter came before the Court on March 7, 2013 for a hearing and argument on Defendant's Omnibus Pretrial Motion/Motion to Suppress. The relevant facts follow.

At approximately 2:45 a.m. on May 10, 2012, Officer Kurt Hockman of the Montoursville Police Department was travelling on Loyalsock Avenue when he saw a white Toyota Scion driving in large, aimless circles in the portion of the Wal-Mart parking lot that is closest to the entrance to Wendy's. The vehicle had dark tinted windows, which made it impossible for Officer Hockman to see the driver or occupants. As Officer Hockman drove down the access road toward the parking lot, the vehicle pulled into a parking stall and stopped. Officer Hockman pulled into the parking lot within six feet of the vehicle, but at a slight angle such that the front of his vehicle was facing the front, driver's side of the Scion.

The driver of the Scion, who was later identified as Defendant, exited his vehicle and walked over to Officer Hockman. Officer Hockman asked Defendant, who was now standing about two to three feet away from him, what he was doing. Defendant said that he was teaching his buddy how to drive a standard (manual transmission) vehicle. Officer Hockman noticed that Defendant's eyes were red and glassy, his speech was slurred, and

there was an odor of an alcoholic beverage emanating from Defendant's person. Officer Hockman backed up a little bit to position his in-car video camera, then he exited his vehicle to investigate, because he reasonably believed Defendant had been driving under the influence of alcohol (DUI). As Officer Hockman got closer to Defendant, the odor of alcohol got stronger.

Defendant was arrested and charged with two counts of DUI and a summary traffic offense due to the window tint or sun screening on the vehicle.

Defendant filed an omnibus pretrial motion/motion to suppress on February 7, 2013, in which he alleged that Officer Hockman did not have probable cause to make contact with Defendant, because there was nothing inappropriate, unlawful, or dangerous about the manner in which Defendant was driving his vehicle; therefore, all the information and evidence gathered by Officer Hockman was obtained in violation of Defendant's rights under the Pennsylvania Constitution and the United States Constitution. The Court finds Officer Hockman did not need probable cause to have contact with Defendant.

There are 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, 662 A.2d 1043, 1047 (1995)(citations and footnote omitted).

The Court finds that Officer Hockman's initial interaction with Defendant was a mere encounter. Officer Hockman did not turn on his emergency lights or sirens. Defendant merely pulled into a parking stall in the Wal-Mart parking lot as Officer Hockman was driving on the access road toward the parking lot. When Officer Hockman pulled into the parking lot and parked about six feet away from Defendant's vehicle, he did not block Defendant's vehicle from leaving the parking lot. Officer Hockman also did not call Defendant over to his vehicle or direct or control his movements in any way. Instead, Defendant voluntarily exited his vehicle and approached Officer Hockman. Since Officer Hockman clearly did not stop Defendant or his vehicle, Officer Hockman's initial contact with Defendant was a mere encounter that did not need to be supported by any level of suspicion.

Officer Hockman's observations during the mere encounter gave him probable cause to believe Defendant was driving while he was under the influence of alcohol. Defendant's speech was slurred, his eyes were red and glassy, and there was an odor of alcohol emanating from Defendant's person. When these observations are coupled with Officer Hockman's previous observations of the vehicle being driven in large, aimless circles in the parking lot and of Defendant emerging from the driver's side of the vehicle, a reasonable police officer would have probable cause to arrest Defendant for DUI and request that he submit to a blood alcohol test.

**ORDER**

**AND NOW**, this \_\_\_\_ day of March 2013, the Court DENIES Defendant's omnibus pretrial motion/motion to suppress.

By The Court,

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Marc F. Lovecchio, Judge

cc: Anthony Ciuca, Esquire (ADA)  
George Lepley, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work file