

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-763-2012  
:   
vs. :   
:   
MATTHEW PRENTISS, :   
Defendant :

**OPINION AND ORDER**

This matter came before the court on November 21, 2012 for a hearing on the portion of Defendant Matthew Prentiss' omnibus pretrial motion which challenged the constitutionality of the police officers' continued investigation of Prentiss, including the request for blood testing, after Sergeant Dohrman decided to release Prentiss based on the preliminary breath test (PBT) results.<sup>1</sup> The relevant facts follow.

On September 2, 2011, Sgt. James Dohrman was working at a DUI checkpoint in the 1700 block of West Fourth Street in the city of Williamsport when he came in contact with a black Ford Mustang being driven by Defendant Matthew Prentiss. Sgt. Dohrman asked Prentiss for his license and registration, which Prentiss provided. Sgt. Dohrman detected an odor of alcohol coming from inside the vehicle, but did not notice any slurred speech. He asked Prentiss if he had been drinking, and Prentiss said he had one beer. Sgt. Dohrman asked Prentiss to exit his vehicle and submit to a PBT. Sgt. Dohrman took Prentiss to a processing area for the PBT, while Lieutenant Brett Williams drove Prentiss' vehicle to a parking area about 50 yards away.

Prentiss' PBT result was a .02%. Although Sgt. Dohrman did not remember

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<sup>1</sup> Defense counsel withdrew the portion of the motion challenging the validity of the DUI checkpoint. The

exactly what he said to Prentiss, he believed he told Prentiss either the PBT was a .02 or below a .08 so he would let Prentiss drive his car. Sgt. Dohrman began walking with Prentiss to the parking area, so Prentiss would know where to find his vehicle and so Lt. Williams would know that Prentiss was free to leave. Before they reached Prentiss' vehicle, however, Lt. Williams approached Sgt. Dohrman and told him that he observed drug paraphernalia (which consisted of a single, empty, thumb-sized baggie) on the back seat when he was backing Prentiss' vehicle into a parking stall.

Sgt. Dohrman told Prentiss that drug paraphernalia was found in his vehicle and asked him if there was anything else in the vehicle. Prentiss indicated that other people used the car and he did not know what was inside it. Sgt. Dohrman then asked Prentiss for consent to search the vehicle, and Prentiss orally gave permission to search.<sup>2</sup>

During the search, Sgt. Dohrman found a cigarette box between the driver's seat and the center console. He opened the box and saw a white or yellowish chalky substance, which he believed was crack cocaine. Lt. Williams discovered several small, empty baggies inside the driver's door pocket and a baggie of white powdery substance that he believed to be cocaine under the driver's seat. Neither the white substances nor the baggies were field tested.

Sgt. Dohrman escorted Prentiss back to the processing area and had Prentiss perform the walk-and-turn and one-leg stand field sobriety tests. Sgt. Dohrman only observed one clue, an improper turn on the walk-and-turn test, which was not sufficient for

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issues related to the drug recognition expert were reserved for another day.

<sup>2</sup> At some point after the police completed the search, Prentiss signed a written consent to search form, which

DUI from what Sgt. Dohrman saw. Nevertheless, Sgt. Dohrman sent Prentiss over to Officer Jeffrey Hughes, a drug recognition expert, for further testing to see if Prentiss was under the influence of drugs. At the conclusion of his evaluation, Officer Hughes formed an opinion that Prentiss was under the influence of cannabis and alcohol. Then Prentiss was transported to the DUI Center where his blood was drawn.

Ultimately, the police charged Prentiss with driving under the influence of a controlled substance (cocaine), possession of a controlled substance (cocaine), and possession of drug paraphernalia.

Prentiss raises several issues with respect to the police officers' interaction with him. First, Prentiss asserts that he was still subject to an investigatory detention when the police requested consent to search his vehicle; therefore, the police needed reasonable suspicion, which was lacking. The Court cannot agree.

After Prentiss submitted to the PBT, Sgt. Dohrman told him the results thereof and that he would be permitted to drive his car away. The only reason why Sgt. Dohrman was still in the company of Prentiss was so he could show Prentiss where his car was located and he could let Lt. Williams know that Prentiss was free to leave. Therefore, Prentiss was not the subject of an investigatory detention, but a mere encounter, and the police did not need reasonable suspicion before requesting consent to search the vehicle. See Commonwealth v. Boswell, 554 Pa. 275, 721 A.2d 336 (1998).

Prentiss also asserts the police did not have reasonable suspicion or probable cause to detain him after he passed the field sobriety tests administered by Sgt. Dohrman.

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advised Prentiss that he had a right to refuse to give consent.

Probable cause is defined in Pennsylvania law as “those facts and circumstances available at the time of the arrest which would justify a reasonable prudent man in the belief that a crime has been committed and that the individual arrested was the probable perpetrator.” Commonwealth v. Harper, 485 Pa. 572, 402 A.2d 536, 542 (1979)(citations omitted). Probable cause is present when there is reasonably trustworthy information which warrants a reasonable person in the belief that the suspect has committed or is committing a crime. Commonwealth v. Thompson, 604 Pa. 198, 985 A.2d 928, 931 (2009), quoting Commonwealth v. Rodriguez, 585 A.2d 988, 526 Pa. 268 (1991). It is a “practical, non-technical conception.” Commonwealth v. Glass, 562 Pa. 187, 754 A.2d 655, 663 (2000), citing Illinois v. Gates, 462 U.S. 213, 231-232 (1983).

Prentiss voluntarily gave consent for the police to search his vehicle. During the course of the search, the police found suspected cocaine and numerous additional empty baggies. The results of the search gave the police probable cause to believe Prentiss possessed controlled substances and drug paraphernalia. The police took Prentiss back to the processing area so they could obtain the necessary information to charge Prentiss with these offenses, as well as to determine whether Prentiss was under the influence of controlled substances. Sgt. Dohrman conducted standard field sobriety tests, which only revealed one clue. Prentiss was read his Miranda rights and he voluntarily consented to the drug recognition expert’s evaluation.

As part of the omnibus pre-trial motion, Defendant challenges the reliability and admissibility of the drug recognition evaluation (DRE) expert testimony, not only at

trial, but also as a basis for requesting blood alcohol testing in this case. The Court questions whether a Frye hearing is appropriate regarding the admissibility of DRE at a pretrial hearing to determine reasonable suspicion or probable cause to request a blood test. Moreover, from the Commonwealth's answer to Defendant's omnibus pre-trial motion, it appears that the Commonwealth might not introduce DRE testimony at trial.

The parties agreed that the issues regarding the DRE testimony would be reserved for a separate hearing. In light of the Court's concerns, the Court will schedule an argument to determine the appropriateness of a Frye hearing with respect to testimony presented at a pre-trial hearing, as well as to determine the Commonwealth's intention to utilize DRE testimony at trial. The Court will also give the parties a date for the Frye hearing, which depending on the results of the conference and argument might be cancelled.

### **ORDER**

**AND NOW**, this \_\_\_ day of January 2013, the Court DENIES the portion of Prentiss' Omnibus Pretrial Motion that challenges the legality of the police officers' interactions with him.

**An argument regarding the appropriateness of a Frye hearing regarding the use and admissibility of DRE testimony or evidence in the pretrial hearing is scheduled for February 1, 2013 at 9:00 a.m.** Counsel shall provide any relevant citations on this issue to the Court at least 3 business days prior to the argument. At the argument, the Commonwealth shall indicate whether it intends to introduce DRE evidence at trial.

**A Frye hearing is scheduled for March 25, 2013 at 1:30 p.m. in**

**Courtroom #4 of the Lycoming County Courthouse.** If the Commonwealth does not intend to use DRE testimony at trial and the Court determines that Frye does not apply to the admission of such testimony at pre-trial proceedings, the Court will cancel this hearing.

By The Court,

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Marc F. Lovecchio, Judge

cc: Anthony Cuica, Esquire (ADA)  
Robert Cronin/Nicole Spring, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file