IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	**No. CR 380-2017**
	:	
JOSEPH FLORENCIO,	:	
	:	
Defendant	:	

Seth Miller, Esquire — Counsel for Commonwealth
Assistant District Attorney

Brian J. Collins, Esquire — Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - December 30, 2022

Before this Court is a Motion to Suppress Evidence and Petition for Writ of Habeas Corpus filed by Defendant, Joseph Florencio (hereinafter "Florencio" or "Defendant"). Defendant seeks to suppress all evidence in this case from the search and seizure, including any statements he may have made and the Police Officer's observations. Defendant also argues that the charge filed against him should be dismissed, as the evidence cannot establish a *prima facie* case against him. For the reasons stated within this Opinion, upon consideration of Defendant's "OMNIBUS PRE-TRIAL MOTION," after a hearing held thereon, and after consideration of the Defendant's brief lodged in support thereof,[1] Defendant's Motion is **GRANTED**.

[1] The Commonwealth neglected to lodge a brief in opposition to this motion.

FACTUAL AND PROCEDURAL BACKGROUND

On February 14, 2017 at approximately 2:21 a.m., Officer Jacob Dinklelacker (hereinafter "Officer Dinklelacker") and Officer "FNU"[2] Chica (hereinafter "Officer Chica") of the Kidder Township Police Department were on patrol in the area of a WAWA gas station[3] on State Route 940 in White Haven, Carbon County, Pennsylvania, when they observed a green vehicle backed into a parking spot at the convenience store. A male was seen sitting in the driver seat of that vehicle who appeared to have his head on the steering wheel with the vehicle running[4] and the windows down.

Officer Dinklelacker testified that because of the driver's head being on the steering wheel, it was not only necessary to conduct a "welfare check" on him but also to further investigate the situation because the WAWA in question is known to have drunk drivers in its parking lot at 2:30 a.m., as that is about the time when bars in the area close and patrons are leaving. The Officers parked their patrol car, and both Officer Dinklelacker and Officer Chica approached the vehicle, one Officer on each side.[5] The

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[2] First name unknown.

[3] Officer Dinklelacker testified that the parking lot was very busy on the night in question.

[4] During the hearing on that motion, Officer Dinklelacker acknowledged that he placed in the Affidavit of Probable Cause that the car was running, however, during testimony Officer Dinklelacker stated he could not remember if it was or was not running.

[5] Officer Dinklelacker testified at the hearing on the present motion. He was unable to remember: who was driving the patrol car, if the patrol car had the emergency lights activated, which officer approached the driver's side window, if the vehicle was running, if the keys were in the ignition, if the car had its lights on, where the Officers parked the patrol vehicle, if the Officer's used a flashlight when they approached the driver and looked into the vehicle,

Officers asked the driver "[w]hat he was doing?" After some observations and upon speaking with the driver the Officers suspected the driver to be under the influence of alcohol because Officer Dinklelacker could smell a strong odor of alcoholic beverage and he could see that the driver's eyes were bloodshot and glossy.

Florencio informed the Officers that he was using the WIFI and eating food from the gas station. Defendant handed Officer Dinklelacker his Identification Card, and Officer Chica requested the Defendant to exit the vehicle. The driver was identified as Defendant, Joseph Florencio. The Defendant was not wearing shoes and had a difficult time keeping his balance. Officer Chica was holding Defendant up so he would not fall over. Officer Dinklelacker returned to Defendant's vehicle and informed him that Defendant had an outstanding warrant in Luzerne County. The Officer's did not conduct field sobriety tests and the Defendant refused to be taken for a blood test. Officers arrested Florencio for DUI and because he had an outstanding warrant in Luzerne County.

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and if Defendant was eating when they approached him. Additionally, the Officer never asked the Defendant how he got to the parking lot of WAWA's nor did he testify that he checked to see if the engine compartment (hood area) was warm, signifying that the vehicle may have recently been operated.

Defendant was charged with one count of Driving Under the Influence General Impairment, Incapable of Driving Safely.[6] 75 Pa.C.S.A. §§ 3802(A)(1).

LEGAL DISCUSSION

As part of his Omnibus Pre-trial Motion, Defendant has filed a Suppression Motion challenging his seizure, arguing that Officer Dinklelacker and Officer Chica's seizure of him lacked reasonable suspicion or probable cause to believe that criminal activity was afoot. Alternatively, the Defendant argued that the Commonwealth did not satisfy the burden of presenting "specific, objective, and articulable facts" as required for the public servant exception[7] to the warrant requirement to apply. Additionally, Florencio

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[6] The Information filed by the Commonwealth in this matter reads as follows:

> "The Attorney for the Commonwealth of Pennsylvania by this Information changes that in the County of Carbon, Pennsylvania, Joseph William Florencio. . . .
>
> On or about February 14, 2017, did unlawfully drive and/or operate a motor vehicle or have actual physical control of the movement of a vehicle upon a highway or trafficway within this Commonwealth, namely **Snyder Avenue, in Lansford,** Carbon County, Pennsylvania, after imbibing a sufficient amount of alcohol such that the actor was rendered incapable of safe driving.
>
> This violation did not result in an accident resulting in bodily injury, serious bodily injury or death of any person or damage to a vehicle or other property subject to the penalties contained in 75 Pa.C.S. 3804(b).
>
> This violation did result in the actor's refusal to submit to chemical testing subject to the penalties contained in 75 Pa.C.S. 3804(c)." (emphasis ours).

[7] Officer Dinklelacker testified that he felt he was entitled to investigate this matter without a warrant based upon the Public Servant Exception, even though he also testified he felt he needed to investigate this vehicle and its occupant because of the hour and the fact that WAWA is located near bars that had just closed; in other words, looking for possible drunk drivers.

argues that the evidence presented by the Commonwealth fails to establish a *prima facie* case against him.

I. THE COMMONWEALTH'S BURDEN WHEN DECIDING SUPPRESSION OF EVIDENCE MOTIONS.

Rule 581(H) of the Pennsylvania Rules of Criminal Procedure ("Rule 581(H)") provides in pertinent part that "[t]he Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of defendant's rights." *See* Pa.R.Crim.P. 581(H). With respect to all motions to suppress, the Commonwealth bears the burden of production. *See* Pa.R.Crim.P. 581(H), Comment citing *Commonwealth ex rel. Butler v. Rundle*, 239 A.2d 426 (Pa. 1968). The Commonwealth also bears the burden of persuasion. *See Id.* citing *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S.Ct. 1602, 1630 (1966). The Commonwealth must satisfy its burden of proof in a suppression hearing by a preponderance of the evidence. *See Id.* citing *Commonwealth ex rel. Butler v. Rundle, supra.*

II. CONSTITUTIONALITY OF THE ENCOUNTER.

A. Three Levels of Encounter between Law Enforcement and Private Citizens.

Three levels of encounter between law enforcement and the public are constitutionally recognized: a "mere encounter," an "investigative detention," and a "custodial detention."

> The first [category] is a "mere encounter," sometimes referred to as a consensual encounter which need not be supported by any level of suspicions that

> the citizen is or has been engaged in criminal activity. This interaction carries no official compulsion for the citizen to stop or respond to the officer. A "mere encounter" does not constitute a seizure, as the citizen is free to choose whether to engage with the officer and comply with any requests made or, conversely, to ignore the officer and continue on his or her way.
>
> The second [category], known as an "investigative detention," is a temporary detention of a citizen. This interaction constitutes a seizure of a person, and must be supported by a reasonable suspicion that criminal activity is afoot.
>
> The final category is a "custodial detention" which is the functional equivalent of an arrest and must be supported by probable cause.[8]

Commonwealth v. Anderson, 276 A.2d 282, 293 (Pa. Super. Ct. 2022) (quoting *Commonwealth v. Adams*, 205 A.3d 1195, 1199-1200 (Pa. 2019). *See also Commonwealth v. Parker*, 161 A.3d 357, 362 (Pa. Super. Ct. 2017) (quoting *Commonwealth v. Gutierrez*, 36 A.3d 1104, 1107 (Pa. Super. Ct. 2012)).

When deciding whether whether a mere encounter has progressed to the level of an investigatory detention, the Court must make a determination, as a matter of law, whether the police conducted a seizure of the person involved. "A person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 555, (1980) (plurality). The United

[8] The third category denominated "custodial detention" is not at issue in the case *sub judice* and therefore the Court declines to expand upon it here.

States Supreme Court has established an objective test to determine if a seizure has occurred, often referred to as the "free to leave test," which requires the court to determine whether, taking into account all of the circumstances surrounding the encounter, the police would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business. *Comm. v. Adams*, 205 A.3d 1195, 1199-1200 (Pa. 2019). Whenever a police officer accosts an individual and restrains his freedom to walk away, he has seized that person. *Id.* (citations, brackets, and some quotation marks omitted).

Additionally, when considering whether a seizure has occurred, or whether a reasonable person would feel free to leave, courts may examine the following:

> [T]he number of officers present during the interaction; whether the officer informs the citizens 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. Beasly, 761 A.2d 621, 624-25 (Pa. Super. Ct. 2000) (citation omitted). Also, with respect to the show of authority needed for a detention, there must be circumstances present that show some level of coercion, beyond the officer's mere employment, that conveys a demand for compliance or threat of tangible consequences from refusal. *Commonwealth v. Luczki*, 212 A.3d 530,

544 (Pa. Super. Ct. 2019) *see Commonwealth v. Jones*, 266 A.3d 1090, 1094-95 (Pa. Super. Ct. 2021). Finally, whether a defendant is entitled to the suppression of evidence discovered during an encounter is dependent on the nature of the encounter and whether the circumstances justified an encounter of that nature.

In the case *sub judice*, it is clear that Officer Dinklelacker's and Officer Chica's initial contact with the Defendant, equates to more than a mere encounter. Officer Dinklelacker testified that his encounter with Defendant transpired for **two** reasons. First, to make sure the Defendant was not in need of medical attention and second, to investigate a possible driving under the influence scenario based upon these facts: 1) Defendant's head being on the steering wheel; 2) the hour of the morning; and 3) the close proximity of WAWA to the just closed nearby bars. Further, Officer Dinklelacker referred to his encounter with Defendant as being an investigative detention but qualified it as a public servant exception to the warrant requirement.

B. Community Caretaker Exception to the Warrant Requirement.

The public servant exception is a subset of the community caretaking doctrine,[9] and requires that the "officer's actions be

[9] "The community caretaking doctrine has been characterized as encompassing three specific exceptions: the emergency aid exception; the automobile impoundment/inventory exception; and the public servant exception, also

motivated by a desire to render aid or assistance, rather than the investigation of criminal activity." *Livingstone*, 174 A.3d at 627. (emphasis ours). For the exception to apply,

> the officer must point to specific, objective, and articulable facts which would reasonably suggest to an experienced officer that assistance was needed; **the police action must be independent from the detection, investigation, and acquisition of criminal evidence;** and, based on a consideration of the surrounding circumstances, the action taken by police must be tailored to rendering assistance or mitigating the peril. Once assistance has been provided or the peril mitigated, further police action will be evaluated under traditional Fourth Amendment jurisprudence. (emphasis ours).

Commonwealth v. Livingstone, 174 A.3d at 637. "[S]o long as a police officer is able to point to **specific, objective, and articulable facts** which, standing alone, reasonably would suggest that his assistance is necessary, a coinciding subjective law enforcement concern by the officer will not negate the validity of that search under the public servant exception to the community caretaking doctrine." *Livingstone*, 174 A.3d at 637. (emphasis ours).

When the Officers pulled into the WAWA parking lot, they were in full uniform, in a marked police vehicle, and on routine patrol of the area. The WAWA was busy at the time and as Officers drove by the Defendant's vehicle, they noticed his windows down and his head being on the steering wheel. After parking the patrol vehicle,

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sometimes referred to as the public safety exception." *Commonwealth v. Livingstone*, 174 A.3d 609, 626-27 (Pa. 2017).

the Officers approached Florencio's vehicle, with one Officer on each side. In testimony, Officer Dinklelacker state that the reason for the encounter was to not only determine whether or not Defendant was in need of assistance but the fact that this WAWA parking lot is notorious for drunk drivers after the bars close in the early morning. It was **necessary** to investigate this vehicle out of concern for this as well. Thus, the Officers initial contact with Defendant by his own admission was not only for with the primary purpose of rendering aid but furthered by the motivation to detect, investigate, or acquire criminal evidence that they decided to approach Defendant's vehicle.

The totality of the circumstances do not equate to a conclusion that Defendant was in distress. The Court agrees with Defendant that the present case is distinguishable from the *Commonwealth v. David J. Derby, Jr.*, No. 194CR2019 (C.P. Carbon 2019), in which the Court found the public servant exception did apply as an exception to the warrant requirement because the initial encounter between police and the Defendant, David Derby, was motivated by the need to render aid. In *Derby*, the Defendant's vehicle was parked in an empty Tractor Supply Store parking lot, the store was closing and workers noticed the car parked there. The workers approached Defendant's vehicle and knocked on the window to get Derby's attention. Derby was either asleep or unconscious and did not respond to the attempts to be awoken. The

workers then went back into the store and called the police for help, worried that the Defendant was in need of medical attention. When the police arrived, they too attempted to wake Derby until Derby finally responded. *Derby* is factually different than Florencio's case in which there were no phone calls placed to the police regarding his well-being. There were many cars and lots of movement at the WAWA that night and officers did not inquire with the store to see if anyone had informed the store of an individual needing help. The only **specific, objective, and articulable fact** that the officers can point to that would suggest their assistance was necessary is that Florencio's head was on the steering wheel, which standing alone is insufficient to suggest the seizure under the public servant exception to the community caretaking doctrine is valid. Instead, the officers entered a busy WAWA parking lot at night on routine patrol, noticed a car with the windows down, and the driver's head on the steering wheel and immediately had a hunch that the individual was under the influence.

In accordance with the foregoing, the Officer's initial contact with the Defendant did not satisfy the justification requirements under the community caretaking exception. The officers' primary focus was not at rendering aid but rather they were concerned with the possibility that a crime had been or was being committed. To claim that they were concerned for the welfare of the Defendant under the guise of a public servant exception to

the warrant requirement when they intended to investigate a crime, is a violation of the Defendant's rights not to be seized without reasonable suspicion that criminal activity was afoot when they encountered him. However, this does not end our analysis of the validity of this encounter.

C. Reasonable Suspicion that Criminal Activity is Afoot.

An additional argument of Defendant is that the police lacked reasonable suspicion to investigate Defendant while he was in his vehicle for driving under the influence if a possible medical emergency did not exist. It is emphasized that in order to establish reasonable suspicion, the officer "must be able to articulate something more than inchoate and unparticularized suspicion or hunch." *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (citation and quotation marks omitted).

"[R]easonable suspicion" sufficient to support a stop, or as in this case, to maintain a stop, is one founded on "specific and articulable facts" and "rational inferences from those facts" that warrant a belief that the individual is involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). In assessing whether a reasonable suspicion exists, a police officer is "entitled to view individuals' conduct in light of the 'probabilities' that criminal activity may be afoot, and indisputably may draw 'certain common-sense conclusions about human behavior.'" *Commonwealth v. Hicks*, 208 A.3d 916, 938 (Pa.

2019) (citing and quoting *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)).[10]

"The question of whether reasonable suspicion existed at the time [the officer conducted the stop] must be answered by examining the totality of the circumstances to determine whether the officer who initiated the stop had a **particularized and objective basis** for suspecting the individual stopped. Therefore, the fundamental inquiry of a reviewing court must be an objective one, namely, whether the facts available to the officer at the moment of the [stop] warrant a [person] of reasonable caution in the belief that the action taken was appropriate." *See Commonwealth v. Basinger*, 982 A.2d 121, 125 (Pa. Super. 2009) (internal citations and quotation marks omitted; alterations in original; emphasis ours).

It was for the reasons that Defendant was sitting in his vehicle with the windows down and his head on the steering wheel that prompted the officers' contact. Again, the officers

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[10] For "reasonable suspicion" to exist

> [t]he officer must articulate specific observations which, in conjunction with reasonable inferences derived from these observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot ...In order to determine whether the police officer had reasonable suspicion, the totality of the circumstances must be considered. In making this determination, we must give due weight ...to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience. Also, the totality of the circumstances test does not limit our inquiry to an examination of only those facts that clearly indicate criminal conduct. Rather, even a combination of innocent facts, when taken together, may warrant further investigation by the police officer.

Commonwealth v. Harris, 176 A.3d 1009, 1019 (Pa. Super. Ct.) (citation and quotation marks omitted).

approached the vehicle one on both sides in full uniform, signifying the feeling of "not free to leave." The officers did not ask Defendant if he was okay or if he was in need of medical attention. The officers instead approached both sides of the car, and asked Defendant "What he was doing?" Defendant had no choice but to respond to the officers and it was upon this contact of Defendant informing the officers that he was eating and using the Wifi that the officers noticed signs of intoxication. The officers did not act with the purpose of rendering aid but rather to investigate criminal activity.

This investigative detention would be permissible if it was founded on specific and articulable facts and any rational inferences drawn from those facts to suggest the Defendant was involved in criminal activity prior to the approach. Here, the specific and articulable facts available to the officers are as follows: 1) Defendant's head was on the steering wheel; 2) the hour of the morning; and 3) the close proximity of WAWA to the just closed nearby bars. Facts 2 and 3 are merely subjective observations provided by the officers that do not equate to innocent facts that could insinuate the Defendant was involved in criminal activity. In other words, pure speculation. That leaves one objective fact, Defendant's head being on the steering wheel. That fact in and of itself, is insufficient to establish reasonable suspicion. Thus, taken as a whole, combing speculation with a

single tenuous supporting fact merely creates a hunch that the Defendant is involved in criminal activity.

CONCLUSION

In finding that the Officer's initial contact with the Defendant did not satisfy the justification requirements under the community caretaking exception and specifically the public safety exception to the warrant requirement, the Officers' primary focus, therefore, turns on their belief that criminal activity was afoot. Consequently, the specific and articulable facts provided by the Officers equate to subjective observations and a hunch which is insufficient to rise to the necessary level of reasonable suspicion that is required for an investigatory detention. Therefore, Defendant's Omnibus Pre-Trail Motion shall be **GRANTED.**[11]

Based upon the foregoing, the Court enters the following order:

[11] Notwithstanding our ruling on the motion to suppress evidence, we would have also granted the Defendant motion to quash the sole charge on the information with reads, " On or about February 14, 2017, did unlawfully drive and/or operate a motor vehicle or have actual physical control of the movement of a vehicle upon a highway or trafficway within this Commonwealth, namely **Snyder Avenue, in Lansford**, Carbon County, Pennsylvania, after imbibing a sufficient amount of alcohol such that the actor was rendered incapable of safe driving. This violation did not result in an accident resulting in bodily injury, serious bodily injury or death of any person or damage to a vehicle or other property subject to the penalties contained in 75 Pa.C.S. 3804(b)." There was not a scintilla of evidence to suggest that Florencio ever drove on **Snyder Avenue in Lansford**. (emphasis ours).

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	:	
Defendant	:	

Seth Miller, Esquire — Counsel for Commonwealth
Assistant District Attorney

Brian J. Collins, Esquire — Counsel for Defendant

ORDER OF COURT

AND NOW, this 30th day of December, 2022, upon consideration of Defendant's "OMNBIUS PRE-TRIAL MOTION," and after a hearing held thereon, and after reviewing Defendant's Brief in Support, it is hereby **ORDERED** and **DECREED** that Defendant's Omnibus Motion is **GRANTED.**

BY THE COURT:

Joseph J. Matika, J.

FILED IN OFFICE
2022 DEC 30 A 11:27
TINA L. BOYD
CARBON COUNTY
CLERK OF COURTS