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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	NO. 194 CR 2019
	:	
DAVID J. DERBY, JR.,	:	
Defendant	:	

Criminal Law - Motion to Suppress - Encounter with a Stopped Motorist – Mere Encounter or Investigative Detention - Public Servant Exception to the Warrant Requirement - Vehicle Code Violation - Right to View Driver's License – Basis of Reasonable Suspicion Sufficient to Support Detention – Use of Information Acquired During Detention to Support a New Basis for Detention - Presence of Firearm in Motor Vehicle – Existence of Outstanding Arrest Warrant as Providing *Prima Facie* Probable Cause to Arrest - Search of Vehicle Incident to Arrest of Occupant - Protective Search of Motor Vehicle for Officer Safety

1. Whether a defendant is entitled to suppress evidence discovered during an encounter with police is dependent on the nature of the encounter and whether the circumstances justify an encounter of that nature.
2. Three levels of encounter between law enforcement and a private citizen are constitutionally recognized: a "mere encounter," an "investigative detention," and an arrest.
3. A "mere encounter" or request for information requires no level of suspicion by the police, but carries with it no official compulsion to stop or respond.
4. 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. An "investigative detention" may ordinarily continue only so long as is necessary to confirm or dispel the suspicion giving rise to the detention.
5. An arrest or "custodial detention" must be supported by probable cause.
6. In distinguishing between the existence of a "mere encounter" or an "investigative detention," the determinative factor is whether the individual with whom law enforcement is interacting has been "seized." "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." "In evaluating those circumstances, the crucial inquiry is whether the officer, by means of physical force or a show of authority, has restrained a citizen's freedom of movement."
7. When an officer approaches an individual and talks to that person without any assertion of authority other than his presence as a police officer, then what has transpired is a mere encounter. Police questioning or a request for identification

will not convert a mere encounter into an investigative detention unless the officer engages in conduct significantly beyond that accepted in social intercourse. The psychological pressure an individual may naturally experience when approached by a police officer is viewed legally as inherent part of such an encounter and will not, by itself, convert a mere encounter into an investigative detention.

8. A police officer's illumination with his vehicle's headlights of the driver's side of a vehicle parked in the private parking lot of a commercial establishment at night after business hours and inquiry of the driver as to why he is there, followed by the officer's request for the driver's identification, did not escalate what was a mere encounter into an investigative detention.

9. Where a police officer is able to point to specific, objective, and articulable facts which lead him to reasonably believe that an individual is in need of assistance; where such belief is independent from the detection, investigation and acquisition of criminal evidence; and where the officer's interaction with the individual is consistent with the purpose of providing assistance, a brief period of detention to determine whether assistance is required is justified under the public servant exception to the warrant requirement. Once assistance has been provided or the peril mitigated, further police action will be judged under traditional Fourth Amendment jurisprudence.

10. In responding to a report from a business that an individual was either asleep or passed out inside a vehicle parked in the business' parking lot after hours; that when an employee attempted to wake the person up, the individual opened his eyes briefly, but was otherwise unresponsive; and that the business was concerned for the person's well-being, the responding officer acted within the public servant exception to the warrant requirement when he illuminated the driver's side of the motor vehicle with his patrol car's headlights, knocked on the driver's side window to wake up the driver, advised the driver of the report he had received, asked the driver why he was there, and requested the driver to produce his driver's license for identification.

11. A police officer who has a reasonable belief that a provision of the Motor Vehicle Code has been or is being violated is entitled to request the driver of the vehicle to produce his driver's license, the vehicle's registration, and proof of insurance. The right to request this information exists regardless of whether the violation observed is a minor offense, such as excessive tinting of the vehicle's side windows as occurred here.

12. A "reasonable 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. In assessing whether a reasonable suspicion exists, a police officer is "entitled to view individuals' conduct in light of the 'possibilities' that criminal activity may be afoot, and indisputably may draw 'certain common sense conclusions about human behavior.'"

13. If during a legitimate encounter between police and an individual, whether determined to be a "mere encounter" or an "investigative detention," police learn

of additional information which gives rise to an additional suspicion that criminal activity has occurred or is occurring, detention to further investigate this new suspicion may also be permissible. For this reason, when the arresting officer observed in plain view from a lawful vantage point an open bottle of beer in a cup holder near the center console of Defendant's vehicle while Defendant was reaching for his driver's license, the officer was permitted to consider this additional information, together with the information he had received preceding his arrival at the store parking lot and his observations made on scene, in determining whether a reasonable suspicion existed that Defendant was driving under the influence of an alcoholic beverage.

14. If while conducting a background check through use of a driver's license, the police learn that an active warrant exists for the driver's arrest as appears in an N.C.I.C. Report, such information by itself will support a finding of probable cause for the police officer to make an on-the-spot arrest.

15. Criminal activity may not be inferred from an individual's possession of a concealed firearm in public, nor does the mere presence of a firearm in a motor vehicle raise a reasonable suspicion to justify a search of the vehicle.

16. A protective search of a vehicle's passenger compartment for officer safety is permitted when police have reasonable suspicion that an individual who is believed to be "dangerous," whether or not under arrest, might access the vehicle to "gain immediate control of weapons." A search on this basis is not permitted if the individual believed to be dangerous has previously been arrested, handcuffed and secured in the rear of a patrol car and, therefore, has no access to the vehicle to be searched.

17. No search warrant is required to conduct a search of a motor vehicle parked in a business parking lot with the driver present where probable cause exists to believe the motor vehicle contains evidence of criminal activity. No exigency beyond the inherent mobility of the vehicle is required.

18. A warrantless search of a motor vehicle incident to a recent occupant's arrest is permissible if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. A warrantless search on this basis will not be sustained if the subject of the arrest has previously been handcuffed and secured in the rear of a patrol car and, consequently, has no means of gaining access to the vehicle, or if there is no factual basis to support a reasonable belief that evidence of the offense for which the occupant was arrested might be found in the vehicle.

19. Absent an exception to the warrant requirement, a police officer's search of a motor vehicle without a warrant and without reasonable suspicion or probable cause to believe that a crime was being committed or that evidence of a crime would be found in the vehicle requires suppression of any evidence seized, here a small bag of methamphetamine discovered by an officer after Defendant was placed under arrest and had no means of accessing the vehicle.

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Michael S. Greek, Esquire — Counsel for Commonwealth
Assistant District Attorney

Brian J. Collins, Esquire — Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. – December 30, 2019

Defendant challenges the warrantless entry by police on November 19, 2018 into his motor vehicle and seizure of a small cloth bag containing methamphetamine as being without probable cause or exigent circumstances, and qualifying as neither a search incident to arrest or a protective sweep.

PROCEDURAL AND FACTUAL BACKGROUND

On November 19, 2018, at approximately 9:18 P.M., Patrolman Corey Frey of the Mahoning Township Police Department responded to a call from an employee of Tractor Supply of a male, either asleep or passed out, inside a vehicle parked in the store parking lot. When the employee attempted to wake this person up by knocking on the vehicle's window, the individual opened his eyes briefly, but was otherwise unresponsive. (pp.5, 17).[1] The employee was concerned for the person's well-being. (p.5).

Upon Officer Frey's arrival at the store, one vehicle was present in the parking lot - a grey colored Jeep – parked in the row closest to Route 443. (pp.5, 17). Officer Frey pulled his marked patrol car perpendicular to the Jeep with his headlights illuminating the driver's side. (pp.5, 17-18, 31). Officer Frey did not activate his overhead lights. (pp.18, 31-32).

As he walked up to the Jeep, heavy window tinting prevented Officer Frey from seeing inside the vehicle. (pp.5, 15-16). With the use of his flashlight, Officer Frey was able to observe a male, either asleep or passed out, in the driver's seat. (pp.5, 18). The male was the sole occupant of the vehicle.

Upon knocking on the driver's side window, the male awoke, placed his keys in the ignition, and lowered the window. (p.6). Officer Frey advised the male about the complaint he had received and the concerns of the people inside the business. (pp.18-19). No odor of marijuana, or of any other controlled substance, or of alcohol, was detected coming from the vehicle or from the occupant at this time or at any other time by Officer Frey. (p.19). When asked why he was there, the male told Officer Frey that he had arrived at the store approximately an hour and a half earlier, about 7:45 P.M., to return an item but must have fallen asleep after his arrival and before returning the item. (p.7). In response to Officer Frey's request for his driver's license, the male provided a driver's license which identified him as the defendant, David J. Derby, Jr. (pp.7-8, 19). As the Defendant was reaching for his license, Officer Frey observed an open bottle of Miller High Life beer in the cup holder of the center console of the vehicle with what appeared to be beer inside. (pp.7, 19-20).

Without commenting on what he had observed, Officer Frey returned to his patrol car with Defendant's driver's license in hand to run a check on Defendant's identification through the Communication Center. Defendant remained in his vehicle. (pp.8, 21).[2] During this background check, Officer Frey learned that Defendant was wanted on a warrant out of Delaware County. (p.8). At this point, Officer Frey returned to Defendant's vehicle, told Defendant of the beer bottle he had observed, and requested Defendant step out of the vehicle in order that he could take possession of the bottle. (pp.8-9). After Defendant had exited the vehicle, Officer Frey also told Defendant of the warrant for his arrest, handcuffed the Defendant, and locked him in the back of the patrol car. (pp.9, 24).

Officer Frey next entered Defendant's vehicle to retrieve the beer bottle. (pp.10, 24-35). As he did so, he noticed the beer bottle was no longer in the center console but was now standing upright on the driver's seat near the seat belt buckle. (p.25). When he reached for the bottle, he also saw in plain view an unholstered pistol on the front passenger seat. (pp.10-11, 23, 27). Officer Frey took a picture of the beer bottle and smelled the contents - which smelled like beer - before discarding the bottle and its contents. (pp.12, 26). The pistol was removed by Officer Frey and secured in his vehicle. (pp.11-12, 27-28).

As Officer Frey was awaiting confirmation from the originating department on the warrant - to see if Defendant was still wanted and if they wanted to extradite - he made a perimeter walk around the vehicle and discovered that the date of the inspection sticker was altered - from January 2018 to December 2018 - and that the VIN number on the inspection sticker did not match the actual VIN number for the vehicle. (pp.9-10,

12, 21). After receiving confirmation of the warrant and their desire to extradite, Officer Frey did a further search inside the vehicle. (pp.28-29). During this search he noticed for the first time a small, brown cloth bag with a drawstring at one end, similar to a carrying case for eyeglasses, lying on the front passenger seat. (pp.12, 14, 30). A purple straw was partially protruding from the bag. (pp.12, 14). After manipulating the bag in an attempt to identify what was inside, and concluding the bag did not contain eyeglasses or a weapon, Officer Frey opened the bag and found a plastic baggie containing suspected methamphetamine, which was later confirmed with field testing at the police station. (pp.12-13, 16, 30-31). Defendant was subsequently transported to the police station and Mirandized, following which Defendant advised he did not want to make a statement. (p.15).

On November 20, 2018, Defendant was charged with Possession of a Controlled Substance,[3] Possession of Drug Paraphernalia,[4] Obstruction of Side Windows,[5] and Operating a Vehicle Without a Valid Inspection.[6] An Omnibus Pretrial Motion in the Nature of a Motion to Suppress was filed on April 4, 2019. In this Motion, Defendant challenged the legitimacy of the search of his vehicle; the seizure of the beer bottle, pistol and cloth bag; and any statements made by him to the police. A hearing on the Motion was held on June 14, 2019, at which Officer Frey was the only witness to testify.

DISCUSSION

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

> The first [category] is a "mere encounter" (or request for information) which need not be supported by any level of suspicions, but carries no official compulsion to stop or 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. Parker, 161 A.3d 357, 362 (Pa.Super. 2017) (quoting Commonwealth v. Gutierrez, 36 A.3d 1104, 1107 (Pa.Super. 2012)).

To determine whether a mere encounter has progressed to the level of an investigatory detention, a determination must be made, as a matter of law, as to 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, 100 S.Ct. 1870, 1877, 66 L.Ed.2d 497, 509 (1980) (plurality). "In evaluating those circumstances, the crucial inquiry is whether the officer, by means of physical force or a show of authority, has restrained a citizen's freedom of movement." Commonwealth v. Livingstone, 174 A.3d 609, 619 (Pa. 2017) (citation and quotation marks omitted). 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.

At the outset, Officer Frey's initial contact with the Defendant, if not a mere encounter (*see* Commonwealth v. Au, 42 A.3d 1002, 1008 (Pa. 2012)),[7] qualifies as an investigative detention under the public servant exception to the warrant requirement.

This exception, a subset of the community caretaking doctrine,[8] requires that the "officer's actions be motivated by a desire to render aid or assistance, rather than the investigation of criminal activity." Livingstone, 174 A.3d at 627. 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.

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.

When Officer Frey first arrived at the Tractor Supply parking lot, he was responding to a call he had received about an unresponsive individual behind the wheel of a vehicle in the business's parking lot. The information he had received reasonably led him to believe Defendant might be in distress or in need of assistance. It was with this purpose in mind, rather than the detection, investigation or acquisition of criminal evidence, that he drove to Tractor Supply. His initial contacts with the Defendant, as described earlier, were consistent with that purpose, and his request for Defendant to produce identification made after his visibility into the vehicle was obstructed by the heavy window tinting was authorized under the Vehicle Code. 75 Pa.C.S.A. § 6308(a),

(b) (Investigation by Police Officers); Commonwealth v. Rosa, 734 A.2d 412, 414 (Pa.Super. 1999), *appeal denied*, 751 A.2d 189 (Pa. 2000).[9] The open beer bottle was observed after Defendant's identification was requested, while Defendant was reaching for his driver's license; it was observed in plain view from a lawful vantage point. *See* Commonwealth v. Brown, 23 A.3d 544, 549 (Pa.Super. 2011) (*en banc*).

The situation was evolving, and at this point, the focus of Officer Frey's investigation was likely beginning to shift from responding to a possible medical emergency to evaluating whether Defendant was driving under the influence of an alcoholic beverage. *See* Commonwealth v. Harris, 176 A.3d 1009, 1020 (Pa.Super. 2017).[10] A "reasonable 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)).[11]

With Officer Frey's observation of the open beer bottle, Officer Frey had sufficient information to support a reasonable suspicion that Defendant had been or was engaging in criminal activity, *i.e.,* driving under the influence, so as to detain Defendant as long as was necessary to confirm or dispel that suspicion: Officer Frey was aware that Defendant had driven to Tractor Supply to return an item which was not returned

because Defendant, without explanation, fell asleep inside his car in the store parking lot; was aware of the strange manner in which Defendant reacted when a store employee tried to wake him; and was aware of the presence of an open bottle of beer in the console immediately adjacent to where Defendant was sitting. *See* generally Commonwealth v. Strickler, 757 A.2d 884, 889 (Pa. 2000) ("To maintain constitutional validity, an investigative detention must be supported by a reasonable and articulable suspicion that the person seized is engaged in criminal activity and may continue only so long as is necessary to confirm or dispel such suspicion [.]").

Given the developing nature of the investigation, Officer Frey's holding on to Defendant's driver's license to conduct a background check was appropriate, as was his seizure of the beer bottle and check of its contents for alcohol, the former of which lawfully led to the discovery of the firearm in the front passenger seat. Brown, 23 A.3d at 549. Upon learning of the active warrant for Defendant's arrest, Officer Frey properly placed Defendant under arrest. *Cf.* Commonwealth v. Cotton, 740 A.2d 258, 264-65 (Pa.Super. 1999) ("[T]he information contained in a N.C.I.C. report is so inherently reliable that such information is, in and of itself, sufficient to form the basis of a finding of probable cause for a police officer who receives such information from an N.C.I.C. report to make an on-the-spot arrest").

Up to the point where Officer Frey secured Defendant's firearm, as well his discovery of the inspection violations as he was waiting for confirmation on the warrant, we find Officer Frey was acting within his legal authority.[12] Where we disagree and find no legal justification is with Officer Frey's second warrantless entry into and purposeful search of Defendant's vehicle at which time he discovered and seized the cloth bag

containing methamphetamine. The prerequisite for a warrantless search of a motor vehicle is probable cause - "a reasonable belief, based on the surrounding facts and totality of circumstances, that an illegal activity is occurring or evidence of a crime is present" – and no exigency beyond the inherent mobility of the vehicle is required. Livingstone, 174 A.3d at 625; Commonwealth v. Gary, 91 A.3d 102, 138 (Pa. 2014) (plurality opinion); United States v. Ross, 456 U.S. 798, 820-821, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) (holding that if there is probable cause to believe a vehicle contains evidence of criminal activity, a search of any area of the vehicle in which the evidence might be found is permissible.)[13] Yet before Officer Frey re-entered Defendant's vehicle after taking possession of the beer bottle and firearm, he was unaware of the cloth bag and he articulated no particularized and objective basis for a reasonable person to believe that the vehicle contained evidence of criminal activity. (pp.11, 14-15, 23-24, 27). *See also* Commonwealth v. Davis, 188 A.3d 454 (Pa.Super. 2018) (contrasting and comparing "reasonable suspicion" with "probable cause"; finding "reasonable suspicion" to detain the defendant but the absence of "probable cause" to search defendant's vehicle with respect to the offense of driving under the influence).

Notwithstanding the information Officer Frey had previously gathered about Defendant's behavior and his observation of an open, unfinished bottle of beer sitting beside Defendant in the center console of the vehicle, Officer Frey testified to nothing further he did or observed to support a belief that Defendant was driving under the influence and never charged Defendant with this offense. Officer Frey testified to no physical manifestations of intoxication exhibited by Defendant – such as slurred speech, a staggered gait or an odor of alcohol on Defendant's breath, no inculpatory statements

made by Defendant about earlier alcohol consumption, no field sobriety tests conducted to evaluate Defendant's coordination or ability to follow instructions, and no request made for Defendant to submit to chemical testing of his blood or breath. Critically, Officer Frey never identified any specific, objective and articulable facts or otherwise explained how a further search of Defendant's vehicle would be probative of determining whether Defendant was driving under the influence. Nor does the presence of a firearm in the vehicle justify this search. *Cf.* Commonwealth v. Hicks, 208 A.3d 916, 936 (Pa. 2019) (finding "no justification for the notion that a police officer may infer criminal activity merely from an individual's possession of a concealed firearm in public").[14]

Nor can the search of Defendant's vehicle be justified as a protective search or as a search incident to arrest, both of which require that Defendant have access to the area searched. *See* Michigan v. Long, 463 U.S. 1032, 1049, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983) (permitting an officer to search a vehicle's passenger compartment, before, or regardless of whether an arrest occurs, when he has reasonable suspicion that an individual, whether or not the arrestee, is "dangerous" and might access the vehicle to "gain immediate control of weapons"); *see also* Commonwealth v. Rosa, 732 A.2d at 414-15 (stating that courts have held "an officer has the right to conduct a weapons search of an automobile if there is a reasonable belief that the suspect is dangerous and that the suspect might gain immediate control of weapons") (citation and quotation marks omitted).

Likewise, the search-incident-to-arrest exception to the warrant requirement of the Fourth Amendment, which is justified by interests in officer safety and evidence

preservation, does not apply to a vehicle after an arrest has been effectuated and the defendant is unable to access it.

> Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies. . . .

Arizona v. Gant, 556 U.S. 332, 351, 129 S.Ct. 1710, 173 L.Ed.2nd 485 (2009). Here, Defendant, who had previously been arrested, handcuffed and secured in the back of Officer Frey's police car, had no access to his vehicle at the time of this second search, and the evidence of record is insufficient to support a reasonable belief that evidence of the offense for which he was arrested might be found in the vehicle.

CONCLUSION

In accordance with the foregoing, Officer Frey's initial contact with the Defendant was, at a minimum, justified under the community caretaking function - even though he may contemporaneously have also been subjectively concerned secondarily with the possibility that a crime had been or was being committed - and more likely, as discussed in endnote 7, a mere encounter. This initial contact logically and legitimately led to the discovery of an open beer bottle in the center console, which in turn, when this item was retrieved, led to Officer Frey's observation of the firearm in the front passenger seat. Beyond this point, however, the Commonwealth makes no claim of any exception to the Fourth Amendment's warrant requirement to justify Officer Frey's re-entry into the vehicle after the firearm was secured, and we can ascertain none. Accordingly, Officer Frey's subsequent vehicle search and the seizure of the cloth bag

containing methamphetamine was in violation of the Fourth Amendment and must be suppressed.

BY THE COURT:

______________________________ P.J.

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[1] All page references are to the transcript of the suppression hearing held on June 14, 2019.

[2] Officer Frey acknowledged that when he took Defendant's driver's license and walked to his car while Defendant remained in the Jeep, Defendant was detained. (p.23).

[3] 35 P.S. § 780-113(a)(16).

[4] 35 P.S. § 780-113(a)(32).

[5] 75 Pa.C.S.A. § 4524(b). Given the evidence, Section 4524(e)(1) may more precisely define the offense charged. 75 Pa.C.S.A. § 4524(e)(1) (Sun screening and other materials prohibited).

[6] 75 Pa.C.S.A. § 4703(a).

[7] In Commonwealth v. Au, 42 A.3d 1002 (Pa. 2012), the arresting officer, while on routine patrol, came upon an automobile parked in a private parking lot in the early morning hours. The officer did not activate his overhead lights, but used his vehicle headlights to illuminate the passenger side of the vehicle, which he then approached, probably with a flashlight. The officer did not park his patrol car so as to make it difficult or impossible for the vehicle under investigation to depart.

Six individuals were in the vehicle. As the officer walked up, the front seat passenger rolled down the window. The officer asked what was going on and asked the front seat passenger for his identification. When this passenger opened the glove compartment to comply with the officer's request, the officer saw two baggies of marijuana in the glove compartment.

In reversing the Superior Court's affirmance of the trial court's suppression order, the Pennsylvania Supreme Court noted that a parked vehicle scenario is to be distinguished from a traffic stop, 42 A.3d at 1007 n.2; that "when an officer approaches a citizen and talks to that citizen without any assertion of authority, then what has transpired is a mere encounter," 42 A.3d at 1005 (quoting from the Superior Court's decision); and that the officer's request for identification did not escalate what was a mere encounter into an investigative detention, 42 A.3d at 1007 (citing Hiibel v. Sixth Judicial District of Nevada, 542 U.S. 177, 185, 124 S.Ct. 2451, 2458, 159 L.Ed.2d 292 (2004)).

As noted in Commonwealth v. Jones, 378 A.2d 835, 840 (Pa. 1977), the pivotal inquiry in determining whether a seizure of the person has occurred is whether, in light of the totality of the circumstances, "a reasonable man, innocent of any crime, would have thought (he was being restrained) had he been in the defendant's shoes." In deciding this question, while it is true that when a police officer approaches an individual and makes a request, it is often perceived as a directive, such psychological pressure to cooperate is viewed legally as inherent in any interaction with the police and will not convert a mere encounter into an investigative detention unless the officer engages in conduct significantly beyond that accepted in social intercourse. Au, 42 A.3d at 1008. Consequently, "police questioning, by itself, is unlikely to result in a Fourth Amendment violation," absent the use of physical force or show of authority, such as the activation of overhead lights. Au, 42 A.3d at 1007 (citation and quotation marks omitted); *see also* Livingstone, 174 A.3d at 621-25 ("[W]e simply cannot pretend that a reasonable person, innocent of any crime, would not interpret the activation of emergency lights on a police vehicle as a signal that he or she is not free to leave.").

The underlying facts which existed in Au are squarely on point with those in this case and persuade us that the initial contact between Officer Frey and the Defendant was a mere encounter.

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

[9] In Commonwealth v. Rosa, the Pennsylvania Superior Court stated:

> It is well-settled that a police officer may stop a vehicle based on the reasonable belief that a provision of the Motor Vehicle Code has been or is being violated. Incident to this stop, an officer may check the vehicle's registration, the driver's license and obtain any information necessary to enforce provisions of the Motor Vehicle Code.

734 A.2d 412, 414 (Pa.Super. 1999) (citation and quotation marks omitted), *appeal denied*, 751 A.2d 189 (Pa. 2000). At the time Officer Frey requested Defendant's identification he had already observed the heavy window tinting obstructing visibility through the driver's side window and for which Defendant was later cited as a violation of 75 Pa.C.S.A. § 4524(b) (Obstruction on Side and Rear Windows). *See* Commonwealth v. Harris, 176 A.3d 1009, 1019 (Pa.Super. 2017) ("Pennsylvania law makes clear that a police officer has probable cause to stop a motor vehicle if the officer observes a traffic code violation, even if it is a minor offense."; *see also* Florida v. J.L., 529 U.S. 266, 271, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000) ("The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search."). *See also* Suppression Hearing, page 18.

[10] In Harris, the Superior Court stated:

> During a traffic stop, the officer "may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions." Berkemer v. McCarty, 468 U.S. 420, 439, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984). "[I]f there is a legitimate stop for a traffic violation ...additional suspicion may arise before the initial stop's purpose has been fulfilled; then, detention may be permissible to investigate the new suspicions." Chase, 599 Pa. 80, 960 A.2d [at] 115 n.5.

176 A.3d at 1020 (citation and quotation marks omitted).

[11] 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 at 1021 (citation and quotation marks omitted).

[12] As noted in Defendant's Brief in Support of his Omnibus Pretrial Motion, had the encounter ended at this point, the Defendant may not have had the opportunity to challenge the search, as nothing incriminating came from it with respect to the charges filed.

[13]

> Probable cause exists where the facts and circumstances within the officers' knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed. With respect to probable cause, this [C]ourt adopted a "totality of the circumstances" analysis in Commonwealth v. Gray, 509 Pa. 476, 503 A.2d 921, 926 (1985) (relying on

> Illinois v. Gates, 462 U.S. 213, [103 S.Ct. 2317, 76 L.Ed.2d 527] (1983)). The totality of the circumstances test dictates that we consider all relevant facts, when deciding whether [the officer had] probable cause.

Commonwealth v. Harris, 176 A.3d at 1023 (citation and quotation marks omitted). "The evidence required to establish probable cause must be more than a mere suspicion or a good faith belief on the part of the police officer." Commonwealth v. Davis, 188 A.3d 454, 459 (Pa.Super. 2018) (citation and quotation marks omitted).

[14] Officer Frey later determined that Defendant had a valid permit to carry a concealed firearm and did not charge Defendant with this offense. (p.28). *See* 18 Pa.C.S.A. § 6109(a) ("A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle throughout this Commonwealth.").