

[J-96-2011]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 14 WAP 2011
	:	
Appellant	:	Appeal from the Order of the Superior Court
	:	entered May 11, 2010 at No. 860 WDA
	:	2009, affirming the Order of the Court of
v.	:	Common Pleas of Forest County dated April
	:	24, 2009 at CP-27-CR-0000095-2007.
	:	
JOHN M. MARCONI,	:	996 A.2d 1070 (Pa. Super. 2010)
	:	
Appellee	:	ARGUED: October 19, 2011

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: JANUARY 22, 2013

I agree with the majority that sheriffs and deputies are not authorized to initiate the checkpoints themselves, but there is nothing in our governing case law or statutes precluding sheriffs from assisting when police are running DUI checkpoints. Where the sheriffs are acting in aid of police and under their supervision, the law enforcement status of the sheriffs allows them to participate in a checkpoint; it does not extend to the unilateral initiation of the checkpoint, however. Thus, this checkpoint was invalid and any evidence gathered therefrom properly suppressed.

I would attribute no improper motive to the sheriff here. The absence of a significant police presence in parts of our Commonwealth such as Forest County makes it inviting for the sheriff to consider filling the void. Our decisions call sheriffs “police” for one purpose and not for another; it is no wonder the sheriff’s authority is difficult to

comprehensively articulate.¹ However, the law simply does not extend the sheriff's authority to the extent presented here.

¹ The majority opinion does not address our recent decision in Allegheny County Deputy Sheriffs' Association v. Pennsylvania Labor Relations Board, 41 A.3d 839 (Pa. 2012), where we held deputy sheriffs of second class counties are police officers for purposes of Act 111 bargaining rights. Id., at 843. I dissented in Allegheny County, noting the Court should “avoid dicta that may prove inapplicable down the road” for these very reasons. Id., at 851 (Eakin, J., dissenting) (agreeing with Chief Justice Castille that “deputy sheriffs of second class counties are not ‘policemen’ for purposes of Act 111 collective bargaining,” but noting there is “no reason to speak to incorporation of the independently-elected sheriff into our court system”). The present case may not be affected by Allegheny County, but it reinforces the problem of making general categorizations of the sheriff — the actual responsibilities of the sheriff in Forest County may be quite distinct from the role of the sheriff in Allegheny or Philadelphia Counties, and putting generalized labels on that role too often leads to confusion, not enlightenment.