[J-49-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 154 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1233 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004, at No. 3416-03.
DOUGLAS MISTLER,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 155 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1235 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3417-03.
JOANNA OLIVER,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 156 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1238 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3199-03.
PATRICK LUDDY,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 157 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1239 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3284-03.
STACEY GILLESPIE,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 158 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1240 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3413-03.
KALI WARREN,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 159 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1249 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3405-03.
PAUL MUDD,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 160 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1250 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 4108-03.
HILLARY KOZAK,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

COMMONWEALTH OF PENNSYLVANIA,	:	No. 161 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered January 27, 2005 at No.
	:	1251 EDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Chester
	:	County, Criminal Division, entered April
	:	28, 2004 at No. 3315-03.
ELISE STERBINSKY,	:	
	:	
Appellee	:	
	:	ARGUED: April 5, 2006

OPINION

MADAME JUSTICE NEWMAN **DECIDED: December 27, 2006**

Today we are asked by the Chester County District Attorney's Office ("the Commonwealth") to review the propriety of the determinations of the Court of Common Pleas of Chester County ("suppression court") and the Superior Court, both of which held that all evidence obtained as a result of the detentions in question is inadmissible. For the reasons set forth infra, we hold that the suppression of the evidence was proper. Accordingly, we affirm, albeit on different grounds, the Order of the Superior Court.

FACTS AND PROCEDURAL HISTORY

We recite the facts as stated by the suppression court:

> On April 3, 2003, following an undercover operation, Pennsylvania State Liquor Control Enforcement Officers ([ ] "LCE [officers]") and the West Chester Police ([ ]"WCP") issued under-age drinking citations to a group of students who were attending a party at Sigma Pi fraternity. On this night, Sigma Pi fraternity . . . opened their fraternity house to the public for a party by selling tickets for admission. The tickets were required to be presented before a person could gain entry to the party, and allowed students to purchase alcoholic beverages once inside the fraternity house. The undercover LCE officers, who were dressed in plain clothing, obtained their tickets from the West Chester Police Department a few days before the party. The Department had obtained them from a student. The LCE officers were able to enter the party with relative ease. Upon entry, the LCE officers presented their tickets to a person seated behind a table who then checked the tickets against a list. The person seated behind the desk then marked the officers' hands, and allowed them to enter the party. The LCE officers then made their way to the basement

> of the fraternity house where they observed a makeshift bar where people who appeared to be students were being served and were consuming alcoholic beverages. From their observations, the LCE officers generally gathered that many of the students, who seemed youthful in appearance, were under the age of 21. The LCE officers had not procured a search warrant before entering the fraternity house.
>
> As the crowd in the basement began to multiply, the LCE officers believed it was necessary, for safety purposes, to call in the detail of the WCP. The WCP were uniformed police officers, and they did not procure a search warrant before entering the fraternity house. When the WCP arrived, the LCE officers stopped the party and began to "card" each student by checking their drivers' licenses for identification. Based on their ages, LCE officers divided the students into two groups: those that were over the age of 21, and those that were under the age of 21. Those who were over the age of 21 were told that they were free to leave, and the under 21s were further detained. Upon detention of the students under the age of 21, the WCP and the LCE officers administered PBTs,[1] and began to question students concerning whether or not they had been drinking. Based on the PBT information, students' admissions that they had been drinking, and LCE officers' observations, LCE officers issued under-age drinking citations to 56 students.

Commonwealth v. Mistler, Nos. 3284 et al. M.D. 2003, at 2-3 (C.P. Pa. Chester Feb. 6, 2004) (hereinafter "Feb. Supp. ct. Op.").

On July 11, 2003, District Justice Mark A. Bruno held an initial suppression hearing and conducted summary trials, subsequently finding all of the defendants guilty of underage drinking. Feb. Supp. ct. Op. at 3. The twenty-four students then filed Summary Appeals to the suppression court. After granting a Motion to Consolidate, the suppression

[1] "PBT" is a Preliminary Breath Test."

court held a suppression hearing on October 22, 2003, id., and issued an Opinion on February 6, 2004, holding, *inter alia*, that on the record presented, further evidence of a "particularized connection" between the crime charged and the people detained was required, id. at 11. Because of this conclusion, the suppression court granted the Motion to Suppress. (Reproduced Record ("R.R.") at 259a).

The Commonwealth appealed the grant of suppression. In a published opinion, the Superior Court affirmed the suppression court, Commonwealth v. Mistler, 869 A.2d 497 (Pa. Super. 2005), and subsequently denied a request of the Commonwealth for reargument *en banc*. The Commonwealth then sought Allowance of Appeal to this Court, which we granted by Order dated December 28, 2005.

DISCUSSION

When reviewing the propriety of a suppression order, an appellate court is required to determine whether the record supports the suppression court's factual findings and whether the inferences and legal conclusions drawn by the suppression court from those findings are appropriate. Commonwealth v. Davis, 421 A.2d 179 (Pa. 1980). Because the students prevailed in the suppression court, we may consider only the evidence of the defense and so much of the evidence for the Commonwealth as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the suppression court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error. Commonwealth v. Bomar, 826 A.2d 831, 842 (Pa. 2003) (citations omitted). However, where the appeal of the determination of the suppression court turns on allegations of legal error, "[t]he suppression court's conclusions of law . . . are not binding on an appellate court, whose duty it is to determine if the

suppression court properly applied the law to the facts." Commonwealth v. Nester, 709 A.2d 879, 881 (Pa. 1998). As a result, the conclusions of law of the suppression and Superior courts are subject to plenary review. Commonwealth v. Morley, 681 A.2d 1254 (Pa. 1996).

In granting suppression, both the suppression court and the Superior Court relied extensively on the Superior Court's prior decision in Commonwealth v. Wood, 833 A.2d 740 (Pa. Super. 2003), aff'd, 862 A.2d 589 (Pa. 2004). In Wood:

> Pennsylvania State Trooper Taylor was assigned as a liquor enforcement officer and had been in that assignment for approximately a year and a half at the time of the incident . . . . On February 27, 2001, Trooper Taylor, along with other officers, was working an assigned detail for the Mardi Gras celebration on South Street in Philadelphia. The officers were on South Street as a result of their sergeant having received reports from the Philadelphia Police Department Vice Unit that there was a good chance [the officers] would be finding a lot of underage drinking because it's a well-known party on South Street during Mardi Gras. Along with several other officers from the State Liquor Control Department, Trooper Taylor entered the "Name That Bar" on South Street.

Id. at 743. Once inside the bar, Trooper Taylor and the other officers, relying on their "experience," and based solely on whether a bar patron "looked to be under the age of 21," asked the bar patrons for identification, a process known as carding. Id. After finding several underage patrons, the officers separated all those under twenty-one years of age in a different area of the bar, and those individuals were not free to leave that area. Id. at 743-44. Any patron over the age of twenty-one was ordered to leave the bar. Id. at 744. Trooper Taylor testified that the officers first would determine a particular patron's age and next would ascertain whether or not they had been drinking alcohol. Id.

Once the officers identified Colleen Wood ("Wood") as being seventeen years old, and only after she was segregated along with the other patrons who were "youthful in appearance," Trooper Taylor overheard Wood declare that although she had not been drinking in that bar, she had been drinking that evening. Id. It was based upon this declaration alone that Wood was "set aside" to "get in line and be cited for underage drinking." Id. Trooper Taylor offered no testimony that she or anybody else had observed Wood purchasing, attempting to purchase, consuming, or possessing any alcoholic beverages in the "Name That Bar." Id. Wood's confession of prior consumption of alcohol arose only after she had been detained for investigation, without any observed suspicious or criminal conduct on her part and her detention was based solely on her appearance. Id.

In that case, the Superior Court concluded that the police lacked a reasonable suspicion to detain Wood. It noted that the police "did not observe [Wood] drinking alcoholic beverages. Nor did they observe her possessing, purchasing, or attempting to purchase alcoholic beverages. The individualized observation of suspicious conduct of the particular person detained . . . [was] totally lacking." Id. at 748. The Superior Court therefore held that the suspicion was unreasonable, and the detention resulting therefrom was unlawful. Because the detention was unlawful, the statement of Wood was acquired unlawfully and was inadmissible.

In the instant case, the suppression court relied on Wood when it concluded that the requisite reasonable suspicion existed in order to subject the students to an investigative

detention.[2] Specifically, it noted that "it was when defendants were divided into the under 21 group that the encounter rose to the level of an investigative detention." Feb. Supp. ct. Op. at 11. The suppression court then questioned whether the LCE officers' general observations of the conduct of the students in the basement were sufficient to support a finding of reasonable articulable suspicion in order to justify the investigative detention of each particular student. Relying on Wood, the suppression court concluded that the observations were insufficient to support an investigative detention as to any particular student because the officers lacked evidence of a particularized connection between the illegal activity and each individual student. The Superior Court approved of this reasoning when it affirmed the Order of the suppression court.

However, the present matter cannot be resolved merely by relying on Wood, because the instant case presents a question that was not at issue in Wood. Today, we must determine the constitutionality of the detention of a large group of people regardless of individualized suspicion.[3]

The parties do not dispute that the students were detained when held at the fraternity house during the investigation. Thus, we are not faced with determining whether

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[2] An investigative detention must be supported by reasonable suspicion and 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." Feb. Supp. ct. Op. at 10-11 (citing Commonwealth v. Strickler, 757 A.2d 884, 889 (Pa. 2000)).

[3] The Superior Court in Wood acknowledged that, given the particular facts and circumstances of that case, it was not required to address the question presently before this Court. Commonwealth v. Wood, 833 A.2d 740, 744 (Pa. Super. 2003).

a seizure occurred,[4] but rather whether the seizure that did occur was justified under the Fourth Amendment to the United States Constitution[5] and Article 1, Section 8 of the Pennsylvania Constitution.[6]

"In order to determine the reasonableness of a particular search or seizure a balancing analysis is utilized, wherein the intrusion on the individual of a particular law enforcement practice is balanced against the government's promotion of legitimate interests." Commonwealth v. Blouse, 611 A.2d 1177, 1178 (Pa. 1992) (citing Brown v.

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[4] The United States Supreme Court has noted that "[w]henever an officer restrains the freedom of a person to walk away, he has seized that person." Tennessee v. Garner, 471 U.S. 1, 7 (1985). Certainly, there can be no dispute that the ability of the students to leave the fraternity was impeded and that therefore they were seized.

[5] The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

[6] Article 1, Section 8 states:

> The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Pa. CONST. art. 1 § 8.

Texas, 443 U.S. 47 (1979)). A primary concern when balancing opposing interests is protecting the individual from arbitrary invasions resulting from the broad discretion of the officers. The reasonableness of a seizure that is less intrusive than a traditional arrest depends upon the weighing of three factors: (1) "the severity of the interference with individual liberty;" (2) "the degree to which the seizure advances the public interest;" and (3) "the gravity of the public concerns served by the seizure[.]" Id. at 50-51; see also Commonwealth v. Beaman, 880 A.2d 578, 582 (Pa. 2005).

In addition to the reasonableness of the search and seizure, the Fourth Amendment generally requires the presence of individualized suspicion to justify a seizure. City of Indianapolis v. Edmond, 531 U.S. 32, 37 (2000); Beaman, 880 A.2d at 582. The courts of this Commonwealth and federal courts have recognized limited circumstances where the general rule does not apply. In these cases, the courts have approved of "certain regimes of suspicionless searches where the program was designed to serve 'special needs, beyond the normal need for law enforcement.'" City of Indianapolis, 531 U.S. at 37; accord Commonwealth v. Cass, 709 A.2d 350, 355-56 (Pa. 1998). The inquiry in those cases that lacked individualized suspicion "focuses on whether the search itself is reasonable considering the governmental interest in conducting the search when balanced against the level of intrusion occasioned by the search." Id. at 356.

The United States Supreme Court has permitted suspicionless searches in the areas of: (1) drug tests, see, e.g., Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995) (holding that random drug testing of student-athletes was constitutional); Nat'l Treasury Employees v. Von Raab, 489 U.S. 656 (1989) (deeming constitutional drug tests for United States Customs Service employees seeking transfer or promotion to certain positions); Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602 (1989) (upholding drug and alcohol tests for

railway employees involved in train accidents or found to be in violation of particular safety regulations); (2) certain administrative purposes, see, e.g., N.Y. v. Burger, 482 U.S. 691, 702-04 (1987) (noting the constitutionality of warrantless administrative inspection of premises of "closely regulated" business); Camara v. Mun. Court of City and County of S. F., 387 U.S. 523, 534-39 (1967) (upholding an administrative inspection to ensure compliance with city housing code); (3) border patrol checkpoints, see e.g., United States v. Martinez-Fuerte, 428 U.S. 543 (1976); and (4) sobriety checkpoints, see, e.g., Mich. Dep't of State Police v. Sitz, 496 U.S. 444 (1990).

Similarly, this Court has upheld such suspicionless searches and seizures in the following contexts: (1) vehicle checkpoints, see, e.g., Blouse, 611 A.2d at 1179 (holding that suspicionless vehicle stops at fixed checkpoints to detect and remove unlicensed drivers and dangerous automobiles from the road are constitutional); (2) weapons and drugs searches at public schools, see, e.g., In re F.B., 726 A.2d 361, 368 (Pa. 1999) (deeming constitutional suspicionless point-of-entry search for weapons at public school); Cass, 709 A.2d at 365 (finding that suspicionless canine-sniff drug search of student lockers at public school does not violate Article 1, Section 8 of the Pennsylvania Constitution); but see Theodore v. Del. Valley Sch. Dist., 836 A.2d 76, 91 (Pa. 2003) (invalidating, under the state Constitution, the random drug testing of extracurricular participants and student drivers, where the record contained no evidence that a drug problem existed at the school or that the targeted group was particularly prone to drug use).

Having identified the framework necessary for our analysis, we now turn to a consideration of whether the search at issue satisfies its requirements. The Commonwealth argues that, upon balancing these three factors, it is clear that such a general search is legal and that suppression should be denied. We disagree.

As to the first prong, the interference with individual liberty was significant. Students who paid to attend the party entered the fraternity house with the reasonable expectation that they would be able to leave at will. Nevertheless, that reasonable expectation was frustrated when the LCE officers detained students under the age of twenty-one.

Next, we must assess the degree to which the seizure advanced the public interest. Certainly, the public has an interest in deterring underage consumption of alcohol. This is evident by, *inter alia*, the Pennsylvania statute outlawing such behavior. 18 Pa.C.S § 6308. Yet we see no evidence, and the Commonwealth has presented none, that the methods employed in this case are more effective in reducing underage drinking than a myriad of other available options.

Finally, we must address the gravity of the public concern served by the seizure. The United States Supreme Court has held that it would not deem the "general interest in crime control" as a justifiable reason for a regime of suspicionless stops; it has not condoned suspicionless searches where the program is aimed at uncovering evidence of ordinary criminal wrongdoing. City of Indianapolis, 531 U.S. at 42. In the instant case, we can identify no factor that elevates the level of public concern regarding underage drinking beyond that of "a general interest in crime control." The Commonwealth, in its efforts to justify the seizure, presents no evidence that prosecution of underage drinkers qualifies as one of the few areas of criminal wrongdoing for which a regime of suspicionless stops should be deemed constitutional.

It is clear to this Court that there is a critical distinction between the types of crimes and public concerns where detentions lacking individualized suspicion are allowed and the

crime at issue in the instant matter. Where this Court and the United States Supreme Court have permitted generalized, suspicionless searches, they have consistently noted that those searches served a paramount public interest. For example, this Court has found that roadblocks to identify and apprehend drunk drivers support an interest of grave importance to the Commonwealth. Commonwealth v. Tarbert, 535 A.2d 1035, 1042-43 (Pa. 1987); Blouse, 611 A.2d at 1179-80. We have also noted that "drunk drivers pose a serious danger in the cost to human life. Drunk Drivers also escalate economic costs state-wide in property damage and increased insurance premiums." Cass, 709 A.2d at 361. In the context of searches of schoolchildren, we have highlighted that "it is exceedingly important to understand that first and foremost, the citizens of this Commonwealth entrust the safety and welfare of their children to school officials each time a student crosses the threshold of the school building." In re F.B., 726 A.2d at 367; see also Vernonia, 515 U.S. at 653; but see Theodore, 836 A.2d at 96 (noting that absent sufficient proof of a drug problem in the school district, a suspicionless search is unconstitutional).

Given the absence of such a paramount public interest in the instant case, we believe that the suspicionless stop *sub judice* violated both the Fourth Amendment to the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution.[7] The conduct of the LCE officers and the WCP does not comport with constitutional requirements as it failed to address an area of paramount importance. Rather, the actions of the officers were geared toward general crime control and the discovery of ordinary criminal wrongdoing, which the United States Supreme Court has deemed insufficient to justify a

[7] Cases decided pursuant to Article 1, Section 8 of the Pennsylvania Constitution have recognized a strong notion of privacy, which is greater than that of the Fourth Amendment. See Theodore, 836 A.2d at 88. Thus, where we conclude that a search violates the Fourth Amendment to the United States Constitution, such a search perforce violates Article 1, Section 8.

suspicionless stop. City of Indianapolis, 531 U.S. at 42. Such acts, absent a cause of heightened importance to the citizenry of the Commonwealth, cannot support a suspicionless detention.

Further, we take this opportunity to note our disagreement with the Superior Court's reliance on the suggestion of the suppression court that the citations issued to the students could have been used as evidence to support the very detention during which these citations were given. The suppression court in the instant matter noted that, according to the reasoning in Wood, the Commonwealth had the burden of proving that each particular student was present at the fraternity house and had given some indicia that he or she had been drinking. Commonwealth v. Mistler, Nos. 3284, 4108, 3119, 3416, 3417, 3405, 3413, 3315 M.D. 2003, at 5 (C.P. Chester May 28, 2004) (hereinafter "May Supp. ct. Op."). It noted that it "would have considered it sufficient to prove identification if the Commonwealth had presented evidence . . . that each [student] had been identified as one of those detained at the fraternity house . . . because he or she was under the age of 21." Id. Specifically, the suppression court suggested that it would have been reasonable for the Commonwealth to demonstrate that the officers used a driver's license or other identification to prepare the citation issued to the particular student. Noting that the Commonwealth failed to present any such evidence, the suppression court concluded that the Commonwealth failed to prove that the person stopped was involved in the activity of underage drinking, as required by Wood. Id. at 6.

It is axiomatic that the fruits of a search or seizure cannot be used to justify that very seizure. Commonwealth v. Hunt, 421 A.2d 684, 687-88 (Pa. Super. 1980) (citing Sibron v. New York, 392 U.S. 40 (1968)). Because the citations in the instant case were not issued, and the information therein was not obtained, until after the detention was commenced, the

citations cannot be considered as justification for that very detention. To the extent that the suppression and Superior Court Opinions below expound a contrary view, we reject that view and hold that it does not comport with prior decisions of this Court.

CONCLUSION

Therefore, although we disagree with the reasoning of the Superior Court, we agree with the result that it reached in holding that the evidence obtained as a result of the detentions in question was inadmissible. The Order of the Superior Court affirming the Order of the suppression court is therefore affirmed.

Mr. Chief Justice Cappy and Mr. Justice Baer join the opinion.

Madame Justice Baldwin files a concurring opinion.

Mr. Justice Castille files a dissenting opinion in which Mr. Justice Saylor joins.

Mr. Justice Eakin files a dissenting opinion in which Mr. Justice Castille joins.