J-A21032-13

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
ROBERTO R. LAUREANO,	:	
	:	
Appellee	:	No. 2714 EDA 2012

Appeal from the Order Entered August 31, 2012,
In the Court of Common Pleas of Bucks County,
Criminal Division, at No. CP-09-CR-0000087-2012.

BEFORE: SHOGAN, WECHT and COLVILLE,* JJ.

MEMORANDUM BY SHOGAN, J.: **FILED JULY 22, 2014**

The Commonwealth appeals from the order of the trial court, which granted the post-trial motion for extraordinary relief filed by Appellee, Roberto R. Laureano, suppressed the results of Appellee's chemical blood test, and vacated Appellee's conviction of driving under the influence of a controlled substance ("DUI"). This case returns to this Court on remand from our Supreme Court for further consideration in light of its opinion in ***Commonwealth v. Smith***, 77 A.3d 562 (Pa. 2013). After careful review, we reverse the order of the trial court, reinstate the conviction, and remand for sentencing.

The trial court summarized the history of this case as follows:

> The instant case arises from a motor vehicle accident on October 20, 2011. The accident happened in the area of 2200

*Judge Colville did not participate in the consideration or decision of this case.

Street Road, Bensalem, PA. N.T. 05/15/2012, 10. It is a four lane highway with a center turning lane as well. N.T. 05/12/2012, 10-11. It was in the middle of a block with no traffic light or pedestrian crossing. N.T. 05/12/2012, 11. When police arrived on [the] scene it was obvious a pedestrian in a motorized wheelchair had been struck by a vehicle and [was] seriously injured and/or probably dying. N.T. 05/12/2012, 12. [Appellee] identified himself to police as the person driving the vehicle that had struck the pedestrian. N.T. 05/12/2012, 13. [Appellee] was standing next to the unconscious pedestrian. *Id*.

Officer Jennifer Stahl ("Officer Stahl") of the Bensalem Township Police Department ("Bensalem Police"), who was the first officer to arrive at the scene testified that she asked [Appellee] to stay on the sidewalk and not move. N.T. 05/12/2012, 37. However, she did say [Appellee] was not in custody. N.T. 05/12/2012, 18-19. Officer Stahl asked [Appellee] for his driver's license, vehicle registration and auto insurance information. N.T. 05/12/2012, 33. Further, she returned the registration and insurance information but kept possession of the license. *Id*. Officer Stahl did not observe any indications of intoxication. N.T. 05/12/2012, 21. Officer Stahl did not suspect [Appellee] of any motor vehicle code violations. N.T. 05/12/2012, 31-32. The videotape of the dashboard camera from Officer Stahl's police car, which is part of the record, makes it clear that officer Stahl's initial concern at the scene was to preserve the scene and arrange for emergency medical care of the dying pedestrian.

Corporal Brian Oliverio ("Cpl. Oliverio") of the Bensalem Police, who also arrive[d] at the scene and assisted in the investigation, testified it is standard Police Department procedure to request a blood draw in every case involving a fatality or near-fatality. N.T. 05/12/2012, 67. The reason for the blood draw is to further any possible criminal investigation. N.T. 05/12/2012, 68. Cpl. Oliverio further testified that part of the standard procedure is to inform the suspect that there is no reason for them to ask for a blood test and to tell them it could be used in a criminal investigation. N.T. 05/12/2012, 69-71. He further indicated that it is also procedure to get the suspect to sign a voluntary consent form before [the] test is administered. N.T. 05/12/2012, 21.

> Officer Stahl explained to [Appellee] that due to the severity of the accident they would like him to take a blood test. N.T. 05/12/2012, 22. [Appellee] was told this is standard procedure. N.T. 05/12/2012, 23. Officer Stahl asked [Appellee] if he would consent to a blood draw. N.T. 05/12/2012, 22. [Appellee] agreed to give blood. N.T. 05/12/2012, 29. However, the consent form was not read or shown to him and he was not asked to sign a consent form. N.T. 05/12/2012, 22, 39. Nor was [Appellee] informed that the results of any test could be used against him in a criminal proceeding. N.T. 05/12/2012, 30-31. [Appellee] was later placed in a police car and taken to the hospital for a blood draw. [Appellee] was not handcuffed while in the police car. N.T. 05/12/2012, 52.

Trial Court Opinion, 11/2/12, at 1-2.

Appellee's blood test results were positive for metabolites of marijuana. On February 2, 2012, Appellee was charged with DUI. Appellee's pretrial motion to suppress the blood test results was denied on May 12, 2012. A stipulated waiver trial followed the denial of the suppression motion. At the conclusion of the trial, Appellee was convicted of DUI.

Prior to sentencing, Appellee filed a post-trial motion requesting, among other things, reconsideration of the motion to suppress the blood test results. The trial court held a hearing on August 27, 2012. Subsequently, the trial court granted Appellee's motion, reversed its previous order denying the motion to suppress, granted the motion to suppress, and vacated Appellee's conviction. The Commonwealth then brought a timely appeal.[1]

[1] Under Pa.R.A.P. 311(d), in criminal cases the Commonwealth has a right to appeal interlocutory orders if the Commonwealth certifies that the orders will

On September 17, 2013, this Court affirmed the order of the trial court in an unpublished memorandum decision. ***Commonwealth v. Laureano***, 2714 EDA 2012, 87 A.3d 384 (Pa. Super. 2013) (unpublished memorandum). The Commonwealth filed with our Supreme Court a petition for allowance of appeal. On April 29, 2014, our Supreme Court granted the Commonwealth's petition, vacated this Court's decision, and remanded to this Court for reconsideration in light of ***Smith***. ***Commonwealth v. Laureano***, ___ A.3d ___, 1045 MAL 2013 (Pa. 2014).[2] Because our

---

terminate or substantially handicap the prosecution. ***Commonwealth v. Flamer***, 53 A.3d 82, 86 n.2 (Pa. Super. 2012). Specifically, Rule 311(d) provides as follows:

> In a criminal case, under the circumstances provided by law, the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will terminate or substantially handicap the prosecution.

Pa.R.A.P. 311(d). Here, the record reflects that the Commonwealth has filed a certification pursuant to Pa.R.A.P. 311(d) indicating that the trial court's order prohibiting the introduction of evidence will substantially handicap the prosecution of the case. Notice of Appeal, 9/21/12. Therefore, pursuant to Pa.R.A.P. 311(d), this Court has jurisdiction to hear this appeal from the trial court's interlocutory order, even though the order did not terminate the prosecution.

[2] The complete text of our Supreme Court's order provides as follows:

> AND NOW, this 29th day of April, 2014, the petition for Allowance of Appeal is GRANTED, the Superior Court's decision is VACATED and the matter is REMANDED for reconsideration in light of Commonwealth v. Smith, 77 A.3d 562 (Pa. 2013).

Supreme Court Order, 1045 MAL 2013, 4/29/14, at 1.

Supreme Court's order granted allowance of appeal only for reconsideration of our decision in light of ***Smith***, we confine our discussion to that issue.

Our standard of review is as follows:

> When the Commonwealth appeals from a suppression order, we . . . consider only the evidence from the defendant's witnesses together with the evidence of the prosecution that, when read in the context of the entire record, remains uncontradicted. **The suppression court's findings of fact bind an appellate court if the record supports those findings.** The suppression court's conclusions of law, however, 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, 880-881 (Pa. 1998) (internal citations omitted) (emphasis added). The issue of voluntariness is a question of law. ***Id***. at 881.

Initially, we keep in mind several principles. The withdrawal of blood is a search subject to the protections of the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. ***Commonwealth v. Kohl***, 615 A.2d 308, 312, 315 (Pa. 1992). To require a person to undergo a blood test, police must generally have probable cause to believe the person has been driving under the influence of a controlled substance. ***Id***. at 313, 315-316; ***Commonwealth v. Thur***, 906 A.2d 552, 567 (Pa. Super. 2006). However, it has long been established that absent probable cause, the withdrawal of blood may be justified by showing the consent of the person in question. ***See Schneckloth v. Bustamonte***, 412 U.S. 218, 219 (1973) (reiterating that it is "well settled that one of the

specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent").

In ***Commonwealth v. Smith***, 77 A.3d 562 (Pa. 2013), our Supreme Court reversed a decision of this Court that vacated multiple convictions related to a fatal motor vehicle accident, including several counts of DUI and one count of homicide by vehicle. Our Supreme Court observed that this Court had "held that [the police] failure to inform [Smith] of the criminal consequences of the blood test had the effect of misleading or coercing [Smith], rendering his consent unknowing and invalid." ***Id***. at 567. However, in reaching its decision to reverse this Court's determination, our Supreme Court stated the following:

> "[T]his Court has been clear that **no one fact or circumstance can be talismanic in the evaluation of the validity of a person's consent**. Accordingly, to the extent the Superior Court held that police officers must explicitly inform drivers consenting to blood testing that the results of the test may be used against them in criminal prosecutions in order for the consent to be valid, it went too far."

Id. at 572 (emphasis added).

In ***Smith***, our Supreme Court went on to explain the validity of consent to a blood test following an accident as follows:

> In determining the validity of a given consent, the Commonwealth bears the burden of establishing that a consent is the product of an essentially free and unconstrained choice - not the result of duress or coercion, express or implied, or a will overborne - under the totality of the circumstances. **The standard for measuring the scope of a person's consent is based on an objective evaluation of what a reasonable**

> **person would have understood by the exchange between the officer and the person who gave the consent. Such evaluation includes an objective examination of the maturity, sophistication and mental or emotional state of the defendant....** Gauging the scope of a defendant's consent is an inherent and necessary part of the process of determining, on the totality of the circumstances presented, whether the consent is objectively valid, or instead the product of coercion, deceit, or misrepresentation. ***See Commonwealth v. Cleckley***, 558 Pa. 517, 738 A.2d 427, 433 (Pa. 1999) ("one's knowledge of his or her right to refuse consent remains a factor in determining the validity of consent . . ." and whether the consent was the "result of duress or coercion.")

Smith, 77 A.3d at 573 (some internal citations and quotation marks omitted) (emphasis added). The Court in ***Smith*** reviewed the totality of the circumstances of the case and ultimately concluded that Smith had consented to the blood testing; it provided the following analysis:

> Objectively considering the totality of the circumstances, we find that the trial court correctly found that Officer Agostino did not use deceit, misrepresentation, or coercion in seeking [Smith's] consent for the blood draw and testing, thus not invalidating the blood draw or the results therefrom on those bases. **Here, the facts reveal that [Smith] was a college graduate, was not injured, and was explicitly informed of his right to refuse the test**. **[Smith] further understood that the test was to rule out the possibility that alcohol or drugs were factors in the accident.** With all of these understandings in mind and his faculties fully about him, [Smith] willingly went to the hospital and participated in the blood draw. On the basis of the totality of the evidence, when viewed objectively, we conclude that a reasonable person's consent to this blood draw would have contemplated the potentiality of the results being used for criminal, investigative, or prosecutorial purposes. Thus, Officer Agostino validly obtained from [Smith] his consent for the blood alcohol test.

Smith, 77 A.3d at 573-574 (footnotes omitted) (emphasis added).

Our review of the record reflects that the trial court specifically found "that [Appellee] fully understood what was going on, what was being said to him, and what was being asked of him." N.T., 5/15/12, at 132.[3] Likewise, our review of the facts presented to the trial court leads to the same conclusion. It is undeniable that Appellee knew that the police were present

[3] At the conclusion of the suppression hearing, the trial court found the following:

> It's very clear that [Appellee] was treated at all times by the police officers in a if not friendly very business-like, noncoercive way. He was treated as a witness, albeit a special witness in that he was the driver of one of the vehicles. **I find that the officer's testimony has been credible. I find that [Appellee] fully understood what was going on, what was being said to him, and what was being asked of him.**
>
> It's clear from the totality of the circumstances, including the fact that at the scene [Appellee] was afraid to move around the scene, he was clearly indicate - - it was clearly indicated to him that he was free to leave from the hospital once he had volunteered or had agreed to go to the hospital or be taken to the hospital.
>
> It's also clear that the officers were busy at this scene and any delay in dealing with [Appellee] was solely because they were involved in handling all the other aspects of this serious accident.
>
> Based on what I've heard, I am not going to grant the motion to suppress evidence. While it may have been a better situation if the officer had advised the defendant of his right to refuse, the results could be used against him, it's clear to me that despite the fact that he was not advised of that, he did voluntarily go to — agree to give the blood and voluntarily went with the officer to the hospital.

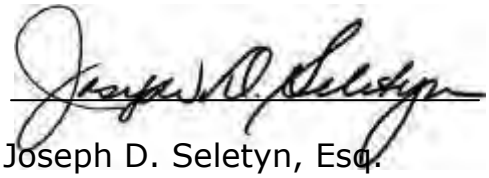
N.T., 5/15/12, at 132-133 (emphasis added).

at the accident on scene in order to investigate a vehicle crash with serious injuries to a pedestrian, and Appellee was the operator of the motor vehicle involved in the accident. N.T. 5/15/12, at 13-22. Police questioned Appellee at the scene as to the cause of the accident. ***Id***. at 18. Although Appellee did appear nervous, the police did not observe any indication that Appellee suffered impairment due to being under the influence of alcohol or drugs. ***Id***. at 18, 21. Further, the police asked Appellee if he would consent to having his blood drawn due to the severity of the accident and the nature of the injuries suffered by the pedestrian. ***Id***. at 22-23. In addition, prior to asking Appellee whether he was willing to consent to the blood draw, the police inquired whether he had taken any drugs or drank any alcohol. ***Id***. at 23.

Accordingly, we are constrained to conclude that under the totality of the circumstances, Appellee possessed the minimal awareness necessary that consent to blood testing could have some relatedness to a criminal investigation. As the Court concluded in ***Smith***, "[o]n the basis of the totality of the evidence, when viewed objectively, we conclude that a reasonable person's consent to this blood draw would have contemplated the potentiality of the results being used for criminal, investigative, or prosecutorial purposes." ***Smith***, 77 A.3d at 573. Hence, we reverse the order of the trial court, reinstate the conviction, and remand for sentencing.

Order reversed. Conviction reinstated. Case remanded for sentencing. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/22/2014