

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
Appellant :
: :
v. :
: :
DHRUV PATEL : No. 682 MDA 2017

Appeal from the Order Entered March 21, 2017
In the Court of Common Pleas of Berks County
Criminal Division at No(s): CP-06-CR-0001435-2016

BEFORE: PANELLA, J., SHOGAN, J., and FITZGERALD*, J.

JUDGMENT ORDER BY PANELLA, J.

FILED DECEMBER 08, 2017

The Commonwealth of Pennsylvania appeals from an order suppressing the results of a blood test administered after Appellee, Dhruv Patel, was arrested for suspicion of driving under the influence. The Commonwealth argues ***Birchfield v. North Dakota***, 136 S.Ct. 2160 (2016), does not invalidate Pennsylvania’s doctrine of implied consent when the defendant is charged with driving under the influence of narcotics.¹ However, the Commonwealth concedes that ***Commonwealth v. Ennels***,

¹ The factual record before the suppression court consisted entirely of a six sentence stipulation of facts and the DL-26 (Chemical Testing Warnings) form signed by Patel. Neither of these documents reference the narcotics which were revealed in the blood test.


* Former Justice specially assigned to the Superior Court.

167 A.3d 716 (Pa. Super. 2017), controls the outcome in this case. **See** Appellant's Brief, at 4. The Commonwealth indicates that it desired to preserve the issue while its petition for reargument *en banc* in **Ennels** was pending.

That petition was denied, and **Ennels** thus stands as controlling precedent in this case. **See Sorber v. American Motorists Ins. Co.**, 680 A.2d 881, 882 (Pa. Super. 1996). As the Commonwealth recognizes, **Ennels** rejected the argument it raises in this appeal. We therefore conclude that no relief is due.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive, flowing style with a horizontal line underneath.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/10/2017

