NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
RICHARD CARL GORDON, III	:	
Appellant	:	No. 543 MDA 2021

Appeal from the Judgment of Sentence Entered November 17, 2020
In the Court of Common Pleas of Lancaster County Criminal Division at
No(s): CP-36-CR-0006017-2019

BEFORE: DUBOW, J., McLAUGHLIN, J., and McCAFFERY, J.

MEMORANDUM BY McCAFFERY, J.: **FILED: JUNE 22, 2022**

This appeal returns to this panel after remand for a responsive trial court opinion. Richard Carl Gordon, III (Appellant), appeals from the judgment of sentence entered in the Lancaster County Court of Common Pleas following his two non-jury convictions of driving under the influence of marijuana (any amount of marijuana and any amount of metabolites) and one conviction of failing to stop at a red signal.[1] On appeal, Appellant argues Subsection 3802(d)(1) of the Vehicle Code, which criminalizes driving with any amount of marijuana or marijuana metabolites, conflicts with the Medical Marijuana Act[2] (MMA), which permits the lawful use of medical marijuana. Appellant also contends the trial court erred in denying his motion to suppress evidence

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[1] 75 Pa.C.S. §§ 3802(d)(1)(i), (iii), 3112(a)(3)(i).

[2] 35 P.S. §§ 10231.101 to 10231.210.

obtained following his warrantless arrest and alleged involuntary consent to a blood draw. We affirm.

Appellant was charged with DUI/marijuana under Subsections 3802(d)(1)(i) (any amount of Schedule I controlled substance) and (d)(1)(iii) (any amount of metabolite of controlled substance), and (d)(2) (impaired ability),[3] as well as failure to stop at red signal. He filed a pretrial motion to suppress, challenging his warrantless arrest and consent to the blood draw, as well as a motion to dismiss alleging a violation of the MMA. The trial court held a hearing on August 14, 2020, where the Commonwealth presented the following evidence.

Manheim Township Police Officer Christian Garcia testified that on August 18, 2019, "just before 6:00 p.m.[,]" he responded to the scene of a two vehicle accident in Manheim Township, Pennsylvania. N.T. Motion to Suppress H'rg, 8/14/20, at 5, 14. A witness told Officer Garcia that she "was directly behind [Appellant's] vehicle [and] saw the light was red [as Appellant] proceeded through it . . . causing the crash[.]" ***Id.*** at 6. Officer Garcia saw that Appellant had suffered a broken leg and "had blood all over his head[,]" and asked "if he recalled what happened[,]" to which Appellant responded he could not. ***Id.*** at 7, 15-16. After Appellant was placed on a stretcher, Officer Garcia asked Appellant for his driver's license, registration, and proof of insurance. ***Id.*** at 7, 16. Appellant directed Officer Garcia to his wallet inside

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[3] 75 Pa.C.S. § 3802(d)(2).

the vehicle. ***Id.*** at 7. Officer Garcia retrieved his license and observed "[t]here was a medical marijuana card behind it."[4] ***Id.*** Appellant was then transported to the hospital. ***Id.*** at 7-8.

At the hospital, Officer Garcia again spoke with Appellant and observed that his eyes were "a little hazy[and] glassy[.]" N.T. at 9. Officer Garcia asked Appellant if he used marijuana that day and Appellant "stated he . . . used medical marijuana[ ] earlier in the morning . . . around [10] or 10:30."[5] ***Id.*** at 8, 20-21. Officer Garcia again asked Appellant about his marijuana usage that day "to see if [Appellant] would tell [him] any different stories." ***Id.*** at 9. Appellant repeated that he used marijuana earlier in the day. ***See id.*** However, Appellant's fiancée told Officer Garcia "that [Appellant] smoked before . . . leaving work [to go] home" that day. ***Id.*** at 11, 22-24, 28, 30.

Officer Garcia asked Appellant "for a blood draw" and read him the blood draw consent form (DL-26 form) "verbatim[.]" N.T. at 9-10. The blood draw was taken "around 8:11 p.m." ***Id.*** at 27. While reading Appellant the DL-26 form, Officer Garcia observed Appellant was "very upset" about his injuries and "upset" with him "because [he] questioned him over and over again about the marijuana." ***Id.*** at 11. Nevertheless, Officer Garcia believed that

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[4] Officer Garcia also testified that he first noticed Appellant's medical marijuana card when they were at the hospital. N.T. at 18, 29.

[5] Officer Garcia also testified that he first asked, at the scene of the accident, if Appellant had smoked marijuana that day. N.T. at 11, 20-21, 29.

Appellant understood their conversation and that Appellant was not confused. ***Id.*** at 12.

Appellant did not testify, but presented the testimony of an expert witness, Doctor Jimmie Valentine, an expert in pharmacology. N.T. at 31. Doctor Valentine reviewed, *inter alia*, Appellant's blood test, which revealed marijuana and marijuana metabolites in his blood. ***Id.*** at 31, 33. Appellant's blood test results were "consistent" with his "smok[ing marijuana] at 10:00 a.m. the morning of" the accident. ***Id.*** at 34-35. Doctor Valentine thus confirmed Appellant "had a metabolite of marijuana in his system" while operating a motor vehicle. ***Id.*** at 56.

At the conclusion of the hearing, the trial court denied the suppression motion. On November 17, 2020, Appellant proceeded to a stipulated non-jury trial, and was convicted of DUI/marijuana under Sections 3802(d)(1)(i) and (d)(1)(iii), for having any amount of marijuana or metabolites in his blood, and the summary traffic offense.[6] The trial court sentenced Appellant to an aggregate term of 5 years' probation, 90 days' house arrest, and other DUI-related restrictions.

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[6] The Commonwealth *nolle prossed* Appellant's DUI charge under Subsection (d)(2).

Appellant filed a timely post-sentence motion, which was denied by operation of law on March 31, 2021.[7] This timely appeal followed. On May 3rd, the trial court ordered Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal within 21 days, or by May 24th. Appellant filed a counseled untimely Rule 1925(b) statement on June 7th. The trial court issued an opinion on June 4th, stating that due to Appellant's "failure to file a timely concise statement, [it] will be requesting that the appeal be dismissed[.]" Trial Ct. Op., 6/4/21, at 1. The court also stated it would not be filing a responsive opinion. ***See id.***

In a prior memorandum issued January 18, 2022, this panel agreed that Appellant's counsel filed an untimely Rule 1925(b) statement. We thus concluded counsel provided *per se* ineffective assistance pursuant to Subsection (c)(3), for which Appellant was entitled to immediate relief. Accordingly, we remanded for the trial court to file an opinion addressing the

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[7] Pursuant to Pennsylvania Rule of Criminal Procedure 720, a trial court has 120 days to rule upon a post-sentence motion, or the motion is deemed denied by operation of law. Pa.R.Crim.P. 720(B)(3)(a). Here, the 120-day period expired on March 17, 2021. However, Rule 702(B)(3)(c) requires the clerk of courts, at the expiration of the 120-day period, to enter on the docket and serve on the parties an order deeming the motion denied by operation of law. Pa.R.Crim.P. 720(B)(3)(c). In the present case, the clerk of courts did not enter a timely order denying Appellant's post-sentence motion, but instead filed on March 31st. Appellant filed a timely notice of appeal within 30 days of that order. "[W]here the clerk of courts does not enter an order indicating that the post-sentence motion is denied by operation of law and notify the defendant of same, a breakdown in the court system has occurred and we will not find an appeal untimely under these circumstances." ***Commonwealth v. Perry***, 820 A.2d 734, 735 (Pa. Super. 2003).

issues raised in Appellant's untimely statement. ***See*** Pa.R.A.P. 1925(c)(3) (when counsel fails to file a timely 1925(b) statement, this Court is "convinced that counsel has been *per se* ineffective," and the trial court did not file an opinion we may remand for the filing of an opinion by the judge); ***Commonwealth v. Thompson***, 39 A.3d 335, 340-41 (Pa. Super. 2012) (when counsel is *per se* ineffective, this Court may remand to the trial court for an opinion responsive to an untimely 1925(b) statement). The trial court filed an opinion on February 3, 2022, and we now consider the issues Appellant has raised on appeal:

> 1. Did the [t]rial [c]ourt err in convicting [Appellant] because § 3802(d)(1) punishes medical marijuana patients solely for consuming medical marijuana, contrary to the provisions of the Medical Marijuana Act?
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> 2. Did the [t]rial [c]ourt err in denying [Appellant's] Omnibus Pre-Trial Motion because Officer Garcia did not have probable cause to arrest [Appellant] pursuant to § 3802?
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> 3. Did the [t]rial [c]ourt err in denying [Appellant's] Omnibus Pre-Trial Motion because [Appellant] did not voluntarily, knowingly, nor intelligently consent to a chemical blood test?

Appellant's Brief at 6.

In his first claim on appeal, Appellant argues Subsection 3802(d)(1) of the DUI/marijuana statute conflicts with the MMA, and violates the Fourteenth Amendment's Equal Protection Clause. Appellant's Brief at 15, 24. Preliminarily, we note the relevant provisions of the DUI statute:

> **(d) Controlled substances. —** An individual may not drive, operate or be in actual physical control of the movement of a vehicle under any of the following circumstances:

> (1) There is in the individual's blood **any** amount of a:
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> (i) Schedule I controlled substance, as defined in the . . . Controlled Substance, Drug, Device and Cosmetic Act [(CSA)];
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> (ii) Schedule II or Schedule III controlled substance, as defined in [the CSA], which has not been medically prescribed for the individual; or
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> (iii) metabolite of a substance under subparagraph (i) or (ii).
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> (2) The individual is under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

75 Pa.C.S. § 3802(d)(1)(i)-(iii), (2) (emphasis added). Under Section 3802(d)(1), proof of actual impairment is not required for conviction. ***Commonwealth v. Etchison***, 916 A.2d 1169, 1174 (Pa. Super. 2007), *distinguished on other grounds by* ***Commonwealth v. Griffith***, 32 A.3d 1231 (Pa. 2011). Marijuana is a Schedule I controlled substance under the CSA. 35 P.S. § 780-104(1)(iv). ***See also Commonwealth v. Dabney***, ___ A.3d ___, ___, 2022 WL 1417357 at *4 (Pa. Super. 2022) (finding medical marijuana remains a Schedule I controlled substance for purposes of 75 Pa.C.S.A. § 3802(d)(1)); ***Commonwealth v. Jezzi***, 208 A.3d 1105, 1114 (Pa. Super. 2019) (holding the MMA did not intend to remove marijuana from the list of Schedule I substances).

Meanwhile, Section 10231.303(a) of the MMA provides that, subject to conditions, use of medical marijuana is lawful: "Notwithstanding any provision of law to the contrary, use or possession of medical marijuana as set forth in

this act is lawful within this Commonwealth." 35 P.S. § 10231.303(a). Medical marijuana patients will not be subject to "arrest, prosecution or penalty in any manner, or denied any right or privilege . . . solely for lawful use of medical marijuana . . . or for any other action taken in accordance with this act[.]" 35 P.S. § 10231.2103(a)(1).

Appellant first avers Subsections 3802(d)(1)(i) and (ii), of the DUI/marijuana statute, create a "*per se* rule" that permits a DUI conviction whenever an individual's blood contains marijuana or a marijuana metabolite. Appellant's Brief at 15. Appellant then claims these subsections conflict with the MMA, which allows, and grants immunity for, the use of medical marijuana. ***Id.*** In other words, Appellant contends, the Commonwealth may attain a conviction under Subsection 3802(d)(1) by "simply [showing] there was any amount of marijuana metabolites[,]" which is in contravention of the MMA, which "grants immunity to all medical marijuana patients" and "forbids prosecution . . . solely for medical marijuana use." ***Id.*** at 21, 23. Appellant contends this Court should enforce the "immunity provision" of the MMA, which "statutorily grants immunity to all medical marijuana patients." ***Id.*** at 19, 23. In support of his arguments, Appellant cites, *inter alia*, ***Gass v. 52nd Judicial District, Lebanon County***, 232 A.3d 706, 715 (Pa. 2020) (when an individual has a valid medical marijuana card and legally uses marijuana in compliance with the MMA, they are entitled to "the immunity accorded by [the

MMA,]" specifically they will not be prosecuted "solely for lawful use" of the substance).[8] ***Id.*** at 19.

Appellant also alleges that "marijuana metabolites can continue [to] appear in a user's [blood test results] for more than a month[.]"[9] Appellant's Brief at 16, *citing* ***Etchison***, 916 A.2d at 1177 (Bender, J. concur. & diss. opin.). To this end, he reasons, Subsection 3802(d)(1) effectively bars a medical marijuana patient, even if they are not impaired, from ever driving. Appellant's Brief at 18, 23.

Appellant further argues Subsection 3802(d)(1) violates the Fourteenth Amendment's Equal Protection Clause because it "classifies similarly situated people" — those who consume medical marijuana — differently. Appellant's Brief at 25. Appellant acknowledges "[t]he Commonwealth has a compelling interest in keeping the roadways safe by prosecuting impaired drivers." ***Id.*** at 26. However, Appellant points out that while Subsection 3802(d)**(2)** does prohibit driving while impaired by marijuana, Subsection 3801(d)**(1)** — under which Appellant was convicted — has no such "impairment" element. Thus,

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[8] Appellant also relies on ***People v. Koons***, 832 N.W.2d 724 (Mich. 2013) (stating provisions of the Michigan medical marijuana act allows a registered patient to drive while "indications of marijuana in his or her system but is not otherwise under the influence of marijuana"). Appellant's Brief at 19, 22. However, ***Koons*** is not binding upon this Court, and we decline to find it persuasive. ***See Commonwealth v. Arthur***, 62 A.3d 424, 429 (Pa. Super. 2013) ("[D]ecisions of sister states are not binding precedent on this Court[, but] may be persuasive authority[.]").

[9] Appellant raised this argument at the suppression hearing. N.T. at 62-63.

Appellant reasons, Subsection 3802(d)(1)'s "*per se* rule" "is not rationally related to" the Commonwealth's interest in safe roadways. ***Id.*** We conclude no relief is due.

Appellant's first claim is one of statutory interpretation, for which our standard of review is well-settled:

> Statutory interpretation is a question of law, therefore our standard of review is *de novo*, and our scope of review is plenary. ***Commonwealth v. Hall***, 80 A.3d 1204, 1211 (Pa. 2013). "In all matters involving statutory interpretation, we apply the Statutory Construction Act, 1 Pa.C.S. § 1501 ***et seq.***, which provides that the object of interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." ***Commonwealth v. McCoy***, 962 A.2d 1160, 1166 (Pa. 2009) (citation omitted).
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> Generally, a statute's plain language provides the best indication of legislative intent. ***Id.*** We will only look beyond the plain language of the statute when words are unclear or ambiguous, or the plain meaning would lead to "a result that is absurd, impossible of execution or unreasonable." 1 Pa.C.S. § 1922(1). Therefore, when ascertaining the meaning of a statute, if the language is clear, we give the words their plain and ordinary meaning. ***Hall***, 80 A.3d at 1211.

Dabney, 2022 WL 1417357 at *3, *citing* ***Commonwealth v. Torres-Kuilan***, 156 A.3d 1229, 1231 (Pa. Super. 2017) (citation omitted).

With respect to a claim that two statutes conflict with each other, this Court has stated:

> When evaluating the interplay of several statutory provisions, we recognize that statutes that relate to the same class of persons are *in pari materia* and should be construed together, if possible, as one statute. When two statutes appear to conflict, they shall be construed so that effect may be given to both, if possible. When the conflict between the provisions cannot be reconciled, the special provisions shall prevail and shall be construed as an

> exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail. Finally, if there is a conflict among statutes enacted by different General Assemblies, the statute latest in date of final enactment shall prevail.

Commonwealth v. Flaherty, 89 A.3d 286, 290 (Pa. Super. 2014) (citation omitted).

Regarding Appellant's argument that the MMA and Section 3802(d)(1) conflict, the trial court points out the DUI statute "does not provide an exception" for medical marijuana. Trial Ct. Op. 2/3/22, at 3. Though Appellant "may not agree with the [DUI statute], the statute is clear that, even for medical use, such use is prohibited [while driving] under all circumstances." ***Id.*** at 3-4. We agree.

As stated above, Section 10231.2103(a) of the MMA provides that a patient shall not be "subject to arrest, prosecution or penalty in any manner . . . **solely for lawful use of medical marijuana**[,] manufacture or sale or dispensing of medical marijuana, or" any other action permitted by the MMA. 35 P.S. § 10231.2103(a)(1) (emphasis added). Throughout his argument, Appellant repeatedly asserts that Section 3802(d)(1) of the DUI/marijuana statute criminalizes the mere use of medical marijuana. ***See, e.g.*** Appellant's Brief at 16 ("[Subsection 3802(d)(1)'s] *per se* rule punishes medical marijuana patients for **solely** using medical marijuana as prescribed.") (emphasis in original), 17 ("[Appellant] was convicted solely for having metabolites of medical marijuana in his system."). However, it is clear Subsection 3802(d)(1)'s proscriptions are not so narrow. Instead, Subsection

3802(d)(1) prohibits the act of **driving** a motor vehicle when a person has any marijuana or metabolite in their blood. ***See*** 75 Pa.C.S. § 3801(d)(1)(i), (iii). Thus, Section 3802(d)(1) does not conflict with the MMA's immunity provision, as it does not criminalize "solely [the] lawful use of medical marijuana." ***See*** 35 P.S. § 10231.2103(a)(1); 75 Pa.C.S. § 3801(d)(1)(i), (iii).

We further consider Section 3810 of the Vehicle Code, which Appellant does not address. That statute provides, "The fact that a person charged with [DUI] is or has been legally entitled to use alcohol or controlled substances is not a defense to a charge of [DUI]." 75 Pa.C.S. § 3810. Section 3810 does not conflict with any MMA provision, as the MMA is silent regarding DUI. In other words, prosecution under Subsection 3802(d)(1) does not offend the MMA, as there is no MMA provision that a person will be immune from DUI prosecution if using medical marijuana.

We acknowledge Appellant's point that medical marijuana patients may seldom be permitted to drive under Subsection 3802(d)(1), even when not impaired, because they may have metabolites in their blood long after consumption. However, this resultant consequence, alone, does not render the terms of Subsection 3802(d)(1) and the MMA in conflict. While we understand that this statutory interpretation may lead to harsh consequences for patients with a valid medical marijuana prescription, we observe that the law drives this decision **—** not the facts. We disagree with Appellant that this particular issue is best left to the courts, rather than the General Assembly.

See Appellant's Brief at 17. For the foregoing reasons, we reject Appellant's claim that the two statutes' provisions are in conflict.

Furthermore, we reject Appellant's reliance on ***Gass***, 232 A.3d 706. In ***Gass***, individuals, who were on probation, argued the probation conditions prohibiting marijuana ingestion were in conflict with Section 10231.2103(a), the immunity provision of the MMA. ***Id.*** at 709. Our Supreme Court ultimately held that when an individual on probation has a valid medical marijuana card, and ingests marijuana within the confines and restraints of the MMA, they are entitled to the immunity provision of the MMA. ***Id.***

This Court recently addressed ***Gass*** and a claim similar to Appellant's in ***Dabney***. In ***Dabney***, the appellant argued he could not be convicted for DUI/marijuana under Subsection 3802(d)(1) because marijuana was not a Schedule I controlled substance, and that a contrary interpretation would render Subsection 3802(d)(1) in conflict with the MMA. ***Dabney***, 2022 WL 1417357 at **5-6. This Court rejected the first argument, holding marijuana was a Schedule I controlled substance. ***Id.*** at 6. This Court also determined that "no conflict exists between the MMA and the Vehicle Code" and that "the MMA, CSA, and Vehicle Code can be read in harmony." ***Id.*** at 6. While the "MMA takes precedence over the CSA[, it] does not take precedence over laws **not** specified in 35 P.S. § 10231.2101." ***Id.*** (emphasis in original). The MMA does not mention or address the DUI statute.

The facts here are more similar to those of ***Dabney*** rather than ***Gass***. Appellant was not prosecuted and convicted solely for his legal use of medical

marijuana, but instead "for **driving** after such use." ***See Dabney***, 2022 WL 1417357 at *6 (emphasis in original).

Appellant's claim, that Section 3802(d)(1) violates the Equal Protection Clause, fails for the same reasons. We note:

> The essence of the constitutional principle of equal protection under the law is that like persons in like circumstances will be treated similarly.
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> > However, the principle does not absolutely prohibit the Commonwealth from classifying individuals for the purpose of receiving different treatment, . . . and does not require equal treatment of people having different needs. Indeed, the Commonwealth may create legislative classifications so long as the classifications rest upon some ground of difference which justifies the classification and [have] a fair and substantial relationship to the object of the legislation.
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> Thus, the Equal Protection Clause does not confer uniform protection to all persons under any circumstances or "obligate the government to treat all persons identically."

Jezzi, 208 A.3d at 1112 (citations and some quotation marks omitted). Generally, a constitutional challenge involving criminal statutes, "which create different groups of offenders or various sentencing categories . . .," is considered a classification which is "neither suspect nor sensitive or" concerns fundamental or important rights. Such classifications are valid as long as they are rationally related to a legitimate governmental interest. ***Id.*** (citation omitted). "[U]nder the rational basis test, if any state of facts can be envisioned to sustain the classification, Equal Protection is satisfied." ***Id.***

Appellant's Equal Protections issue is premised on his mistaken claim that similarly-situated medical marijuana users are treated differently under

Subsection 3802(d)(1) and the MMA. While the MMA permits individuals to **use** medical marijuana within specified conditions, Section 3802(d)(1) prohibits individuals who have marijuana or metabolites in their blood — regardless of whether medical marijuana was lawfully consumed under the MMA — from **driving**. For these reasons, we reject Appellant's claim that the DUI/marijuana statute is in conflict with the MMA.

In his second claim, Appellant argues the trial court erred when it denied his motion to suppress his chemical blood test results, because Officer Garcia did not have probable cause to effectuate arrest. Appellant's Brief at 28. Appellant claims at the time of arrest, Officer Garcia only knew the following: (1) Appellant's "eyes [appeared] to have a hint [sic] of irritation to the blood vessels;" (2) he "was involved in an accident;" (3) he was a medical marijuana patient, and (4) he "admitted to vaping his medical marijuana eight hours prior to the accident." ***Id.*** at 30. Appellant insists that his fiancée's statement, that he smoked marijuana "upon leaving his job[,] is irrelevant [to] Officer Garcia's probable cause determination" because Officer Garcia had already told Appellant he was going to read him the DL-26 form before learning this information. ***Id.*** at 31. We conclude no relief is due.

Our standard or review is well settled:

> [An appellate court] is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as

> a whole. Where the suppression court's factual findings are supported by the record, [the appellate court is] bound by [those] findings and may reverse only if the court's legal conclusions are erroneous. Where . . . the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to [ ] plenary review.

Commonwealth v. Jones, 121 A.3d 524, 526-27 (Pa. Super. 2015) (citation omitted). In reviewing a suppression ruling, our scope of review is limited to the factual findings and legal conclusions of the suppression court. ***Interest of L.J.***, 79 A.3d 1073, 1080 (Pa. 2013).

To effectuate arrest after a suspected DUI, an officer must have probable cause, which exists

> when the facts and circumstances within the police officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested. Probable cause justifying a warrantless arrest is determined by the totality of the circumstances.
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> > It is the facts and circumstances within the personal knowledge of the police officer that frames the determination of the existence of probable cause.

Commonwealth v. Salter, 121 A.3d 987, 996-97 (Pa. Super. 2015) (citations omitted). An officer may rely on information from a third party to establish reasonable suspicion or probable cause, "including 'tips' from citizens." ***See Commonwealth v. Barber***, 889 A.2d 587, 593-94 (Pa. Super. 2005) (third party information can establish reasonable suspicion and probable cause when the information is reliable, which can be established if

the informer is known to the officer and the provided information is specific enough to support the finding under the totality of the circumstances).

Under the present facts, we agree with the trial court's determination that Officer Garcia had probable cause to arrest Appellant for DUI. The trial court relied on the following information in its conclusion: (1) "Officer Garcia spoke with an eyewitness who observed Appellant drive through a red-light signal, causing the crash[;]" (2) Appellant admitted to smoking marijuana earlier that day; and (3) at the hospital, Officer Garcia observed that Appellant's eyes were "a little hazy[,] glassy[,] and bloodshot[,]" which Officer Garcia knew from experience was "indicia of an individual smoking marijuana." Trial Ct. Op. 2/3/22, at 7-8 (internal quotation marks omitted). Especially pertinent was Appellant's admission to smoking marijuana **that same day**. ***See*** 75 Pa.C.S. § 3802(d)(1)(i), (iii) (an individual may not drive or operate a vehicle while they have **any amount** of a Schedule I controlled substance, or a metabolite thereof, as defined in the CSA in their blood). As the trial court's determinations are supported by the record before us and we agree with its legal conclusions, no relief is due. ***See Jones***, 121 A.3d at 526-27.

In his final claim, Appellant argues the trial court erred in not suppressing his chemical blood test because he did not voluntarily, knowingly, or intelligently give consent. Appellant's Brief at 34. Appellant insists that due to his multiple injuries from the vehicle accident, he "was under the influence of potent painkillers" when Officer Garcia read him the DL-26 form.

Id. at 35. He also asserts he was "berated by police for over an hour and [a] half about taking a blood test and whether he smoked medical marijuana prior to the accident." ***Id.*** No relief is due.

In determining whether an individual gave voluntary consent to a blood test, we note:

> [T]he 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.

Commonwealth v. Venable, 200 A.3d 490, 497 (Pa. Super. 2018) (citation omitted).

Our review is limited to the record established at the suppression hearing. ***Interest of L.J.***, 79 A.3d at 1080. Appellant asserts he was "under the influence of potent painkillers" when Officer Garcia read him the DL-26 form, a fact not established at the hearing. ***See*** Appellant's Brief at 35, 37-38. We agree with the trial court's conclusion that, based on the totality of the circumstances, Appellant gave voluntary consent to the blood test. Trial Ct. Op. 2/3/22, at 8. While Officer Garcia acknowledged he questioned Appellant more than once about his marijuana usage that day, this testimony

did not establish, and Appellant offered no evidence suggesting, that Officer Garcia "berated Appellant" while he was "trapped" in a hospital bed. Appellant's Brief at 35, 37; ***see*** N.T. at 9. Additionally, the trial court found that at the hospital, "Appellant was able to respond to [Officer Garcia's] questions, he was able to understand what the Officer was saying, and he did not seem confused[.]" Trial Ct. Op. 2/3/22, at 10. The record supports the trial court's determination that Appellant gave voluntary and knowing consent. As such, we do not disturb this finding on appeal. ***See Jones***, 121 A.3d at 526-27.

Judgment of sentence affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 06/22/2022