NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
SAMUEL W. KAUFFMAN	:	
Appellant	:	No. 2 EDA 2024

Appeal from the Judgment of Sentence Entered November 17, 2023
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0000653-2022

BEFORE: STABILE, J., MURRAY, J., and LANE, J.

MEMORANDUM BY MURRAY, J.: **FILED AUGUST 27, 2024**

Samuel W. Kauffman (Appellant) appeals from the judgment of sentence imposed following his non-jury convictions of driving under the influence (DUI) of a controlled substance, homicide by vehicle while DUI (homicide DUI), simple assault, and recklessly endangering another person (REAP).[1] Appellant challenges the trial court's denial of his pretrial suppression motion. After careful consideration, we affirm.

In denying Appellant's suppression motion, the trial court issued the following findings of fact:

> 1. On May 22, 2020, at around 11:00 a.m., Pennsylvania State Trooper Derek Paquette was traveling southbound on I-95 with a person in custody in his vehicle[,] when he noticed a plume of smoke [emit] from a stopped vehicle on I-95 North at the Washington Avenue exit in Philadelphia.

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[1] 75 Pa.C.S.A. §§ 3802(d)(1), 3735(a)(1)(ii); 18 Pa.C.S.A. §§ 2701, 2705.

2. When Trooper Paquette stopped his vehicle and approached the scene, he observed a black Ford F250 truck, driven by the [Appellant], [wrecked] on top of a silver Toyota Corolla, driven by the decedent.

3. Although Trooper Paquette could not see the driver of the Toyota Corolla due to the airbags being deployed, it appeared that the driver was killed upon impact.

4. After multiple Pennsylvania State Troopers arrived, including Trooper John Waida, Trooper Paquette left the scene to finish transporting the person in his custody.

5. After [Appellant] exited the Ford F250, Trooper Waida observed [Appellant] speaking with Pennsylvania State [Police] Corporal Gonzalez.[2]

6. According to Trooper Waida, [Appellant] appeared confused and disheveled, had pinpoint pupils and glassy eyes, was sweating profusely, and complained about being thirsty[. Appellant] did not smell like alcohol or drugs. No field sobriety tests were performed at any point.

7. Based on his observations, Trooper Waida believed [Appellant] was under the influence of drugs.

8. At the scene, [Appellant] was told multiple times that he was not under arrest and Corporal Gonzalez asked [Appellant] if he would consent to a blood draw.

9. After [Appellant] agreed to have his blood drawn, Trooper Waida escorted [Appellant] to his police vehicle, placed him in the backseat and transported him to Thomas Jefferson University Hospital.

10. [Appellant] was never placed in handcuffs at any time following the collision.

11. At Jefferson Hospital, Trooper Waida read [Appellant] the [the Department of Transportation's chemical testing warning

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[2] Corporal Gonzalez's first name is not in the record.

> form, DL-26B,] verbatim. While the DL-26B form states that "You are under arrest …," before reading the DL-26B form, Trooper Waida once again informed [Appellant] that he was not under arrest at that time. [Appellant] again agreed to having his blood drawn and signed the DL-26B form.
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> 12. The DL-26B form was read to and signed by [Appellant] at 12:04 p.m. and [Appellant's] blood was drawn at 12:10 p.m.
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> 13. Once [Appellant's] blood draw was complete, Trooper Waida left[. Appellant] remained at Jefferson Hospital to receive medical care.

Suppression Court Opinion, 3/7/23, at 1-3 (footnote added). The blood test revealed Appellant had recently used methamphetamine and Xanax.

On January 27, 2021, Appellant was arrested and charged with the above-described charges. On September 29, 2022, Appellant filed a motion to suppress his blood test results. The trial court conducted a suppression hearing on March 7, 2023, and issued its findings of fact and conclusions of law that same day. The trial court denied Appellant's suppression motion.

On September 8, 2023, Appellant proceeded to a stipulated waiver trial, after which the trial court convicted Appellant of the above-described charges. The trial court deferred sentencing pending, *inter alia*, the completion of a pre-sentence investigation report. On November 17, 2023, for his conviction of homicide DUI, the trial court sentenced Appellant to seven to fourteen years in prison. The trial court imposed concurrent sentences of six to twelve years

for Appellant's convictions of simple assault and REAP.[3] Appellant timely filed a notice of appeal. Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant presents the following issue for our review:

> Whether the trial court erred in failing to suppress evidence of [Appellant's] blood test results[,] where his blood was taken without either a warrant or voluntary consent[?]

Appellant's Brief at 2.

Appellant challenges the denial of his pre-trial suppression motion. Our standard of review

> 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. We are bound by the suppression court's factual findings so long as they are supported by the record; our standard of review on questions of law is *de novo*….

Commonwealth v. Yandamuri, 159 A.3d 503, 516 (Pa. 2017) (citations omitted).

Appellant argues that the police "unreasonably searched [Appellant] when they unlawfully obtained his consent for blood testing." Appellant's Brief at 8. Appellant claims his consent to blood testing was not voluntarily tendered. ***Id.*** Appellant compares this case to the circumstances presented in ***Commonwealth v. Danforth***, 576 A.2d 1013 (Pa. 1990), ***overruled in***

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[3] For sentencing purposes, Appellant's conviction of DUI merged with his conviction of homicide DUI.

part by Commonwealth v. Smith, 77 A.3d 562, 574 (Pa. 2013) . According to Appellant, the officers in ***Danforth*** asked for the defendant's consent to blood testing following a severe motor vehicle accident. ***Id.*** at 10. Appellant claims that similar to his situation, the defendant in ***Danforth*** was not advised of her ***Miranda***[4] rights, or informed that she may be giving police evidence against her interests. ***Id.*** In that case, Appellant argues, the Supreme Court deemed the consent involuntary, because the defendant had no notice of the criminal investigative purpose of the blood test. ***Id.*** at 10-11.

Appellant disputes the trial court's application of this Court's unpublished decision in ***Commonwealth v. Gump***, 253 A.3d 290 (Pa. Super. 2021) (unpublished memorandum).[5] Appellant's Brief at 13. In ***Gump***, Appellant argues, this Court determined that under the totality of the circumstances, Appellant was not under arrest at the time of his consent. ***Id.*** at 11. Appellant points out that in ***Gump***, the state troopers believed the defendant was "high as a kite." ***Id.*** at 14. Further, Appellant asserts, "the police asked the defendant in ***Gump*** to sign a consent form **when** they requested his consent for a blood draw." ***Id.*** (emphasis in original). By contrast, in Appellant's case, "police asked [Appellant] to sign a consent form **after** they had requested his consent." ***Id.*** (emphasis in original). Appellant

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[4] ***See Miranda v. Arizona***, 384 U.S. 436 (1966).

[5] As ***Gump*** is a non-precedential decision, we may only consider it for its persuasive value. ***See*** Pa.R.A.P. 126(b).

asserts his consent was involuntary, because police failed to inform him that testing was part of the police investigation. ***Id.*** at 11-12.

Appellant argues this case is similar to the facts presented in ***Commonwealth v. Krenzel***, 209 A.3d 1024 (Pa. Super. 2019). Appellant's Brief at 14. According to Appellant, in ***Krenzel***, police had effected a traffic stop of the defendant, during which time the officers conducted field sobriety tests. ***Id.*** at 15. Appellant claims that the ***Krenzel*** Court ruled that "officers were statutorily obligated to provide warnings before requesting consent for a blood draw because the defendant was in custody when the police asked for her consent." ***Id.*** Appellant contends, "while [Appellant] does not assert that he was in custody when Corporal Gonzalez requested consent for a blood draw, the facts of [t]his matter are more like ***Krenzel*** than ***Gump***." ***Id.***

Appellant claims his consent was not voluntary, "because the troopers used stealth, deceit, and misrepresentation to obtain it." ***Id.*** at 12. According to Appellant,

> [a]t the scene, troopers repeatedly told [Appellant] he was not under arrest, providing him with a false sense of security from prosecution. [The troopers] testified they believed [Appellant] operated his vehicle while impaired. Trooper Waida revealed the reason [Appellant's] arrest was not immediate: [Appellant] was not arrested because the criminal homicide investigation was ongoing; the police needed the evidence from chemical testing. And if the troopers had arrested him, his full panoply of constitutional rights would have attached. So, to improve their chances of obtaining the evidence they wanted, the police employed unlawfully coercive tactics, negating [Appellant's] consent.

Id.

As this Court has recognized,

> [t]he Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protect citizens from unreasonable searches and seizures. A search conducted without a warrant is deemed to be unreasonable and therefore constitutionally impermissible, unless an established exception applies….

Commonwealth v. Kurtz, 172 A.3d 1153, 1159 (Pa. Super. 2017) (internal citations and quotation marks omitted).

An established exception to the warrant requirement is for "consent, voluntarily given." ***Commonwealth v. Strickler***, 757 A.2d 884, 888 (Pa. 2000); ***see also id.*** at 888-89 (where, as here, "the underlying encounter is found to be lawful, voluntariness becomes the exclusive focus.").

> 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.

Commonwealth v. Smith, 77 A.3d 562, 573 (Pa. 2013) (internal citations and quotation marks omitted). A non-exhaustive list of relevant factors for the voluntariness of consent includes

> 1) the defendant's custodial status; 2) the use of duress or coercive tactics by law enforcement personnel; 3) the defendant's

> knowledge of his right to refuse to consent; 4) the defendant's education and intelligence; 5) the defendant's belief that no incriminating evidence will be found; and 6) the extent and level of the defendant's cooperation with the law enforcement personnel.

Commonwealth v. Gillespie, 821 A.2d 1221, 1225 (Pa. 2003) (citation omitted).

Appellant relies on our decision in ***Danforth*** to support his claim that he did not voluntarily consent to the blood test. However, upon review, we conclude ***Danforth*** in inapplicable. In ***Danforth***, this Court determined the defendant's consent for a blood test was not voluntary:

> [The defendant] had no notice of the criminal investigative purpose of the blood test. She was not given a … warning [under ***Miranda***] or told that the results of the blood test could be used against her in a criminal proceeding, **nor did she sign a consent form**. Although it was a police officer, rather than a member of the hospital staff, who requested that [the defendant] submit to the test, this fact is not sufficient to establish that [the defendant] had notice that the investigation was criminal in nature. [The defendant] had summoned the police to the scene of the accident. Despite [the defendant's] reluctance to seek medical care, the officer encouraged her to go to the hospital for treatment of her facial injuries, and then followed her to the hospital to obtain a blood sample. Before requesting the sample, the officer assured [the defendant] that she was not under arrest and that for furtherance of his accident investigation, he would like to obtain a blood sample. [The defendant] had no reason to believe that the investigation was any different from a routine accident investigation. Given these facts, we must conclude that [the defendant] was not put on notice of the possible criminal ramifications of the blood test.

Danforth, 576 A.2d at 1023.

However, our Supreme Court subsequently rejected our reasoning in ***Danforth***, to the extent this Court imposed a "knowledge" prong to the consent analysis:

> [B]oth the United States Supreme Court and [the Pennsylvania Supreme] Court have opined that the government need not separately prove the knowing nature of a consent during a suppression hearing; rather, evidence of the knowledge of the consenting party is encompassed within the analysis of the voluntariness requirement. ***See Schneckloth*** [***v. Bustamonte***], 412 U.S. [218,] 248 [(1973)]; ***Commonwealth v. Strickler***, 757 A.2d [884,] 901 [(Pa. 2000)] (each [case recognizing], in the context of an asserted (and rejected) requirement that police officers must inform the consenting party of the right to refuse to consent, that the government is not required to demonstrate the consenting party's knowledge of that right to refuse; instead, the traditional examinations of the coercive nature of the interaction and the maturity, intelligence, and education of the consenting party will assist in the determination of the scope, and therefore voluntariness, of the consent). No party, however, recognizes this nuance, assumedly because of the Superior Court's reliance on ***Danforth*** … [and its] employment of a "knowing" requirement.
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> … [**G**]**iven we do not view the law as requiring a separate "knowledge" prong of a consent analysis** to dispose of this genre of cases, we do not give our judicial imprimatur to any language from ***Danforth*** … to that effect.

Smith, 77 A.3d at 574 n.13 (emphasis added).

The ***Smith*** Court ultimately concluded the defendant had validly consented to the blood test:

> Objectively considering the totality of the circumstances, we find that the trial court correctly found that [the police] did not use deceit, misrepresentation, or coercion in seeking [the defendant'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 [the defendant] was a college graduate, was not injured, and was explicitly informed of his right to refuse the test. [The defendant] further understood that the test was [conducted]

> 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, [the defendant] 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, [the police] validly obtained from [the defendant] his consent for the blood alcohol test.

Id. at 573-74.

In ***Krenzel***, upon which Appellant also relies,

> [the defendant] was pulled over by Officer Kyle Maye and Officer [Robert] Gilbert as the result of her erratic driving behavior that was called in by another motorist. Officer Maye observed [the defendant] to have glassy and bloodshot eyes, her speech was slow and soft, and her movements in the vehicle were slow and sluggish. Officer Gilbert discovered two beer bottles in the passenger side area of [the defendant's] vehicle. Officer Maye requested that [the defendant] exit the vehicle, at which time he detected the odor of alcohol. He then conducted a series of field sobriety tests, the results of which indicated that [the defendant] was under the influence of alcohol and/or controlled substances. Officer Maye asked if [the defendant] was willing to submit to a blood test. [The defendant] consented. She was then placed under arrest and transported to Chester County Hospital[,] where her blood was drawn within the appropriate two-hour limit.

Krenzel, 209 A.3d at 1026. The defendant subsequently claimed the blood draw constituted an unconstitutional warrantless search. ***Id.*** at 1027. According to the defendant, her consent was based on her knowledge of a prior Pennsylvania law imposing criminal penalties where a repeat offender refuses a blood test. ***Id.*** The defendant claimed her subjective belief should have been part of the totality of the circumstances considered. ***Id.***

The ***Krenzel*** Court rejected the defendant's "reliance on her subjective, erroneous misunderstanding of constitutional law, as that did not render her consent involuntary." ***Id.*** at 1029. Nevertheless, we concluded the officer's failure to inform the defendant of her right to refuse consent precluded a finding of voluntariness. ***Id.*** at 1032. We observed that in ***Commonwealth v. Myers***, 164 A.3d 1162 (Pa. 2017) (plurality), our Supreme Court recognized that

> once a police officer establishes reasonable grounds to suspect that a motorist has committed a DUI offense, that motorist "shall be deemed to have given consent to one or more chemical tests of breath or blood for the purpose of determining the alcoholic content of blood or the presence of a controlled substance." 75 Pa.C.S.A. § 1547(a). Notwithstanding this provision, **Subsection 1547(b)(1) confers upon all individuals under arrest for DUI an explicit statutory right to refuse chemical testing**, the invocation of which triggers specified consequences. ***See*** 75 Pa.C.S.A. § 1547(b)(1) ("If any person placed under arrest for DUI is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted[.]").

Krenzel, 209 A.3d at 1030 (emphasis added) (quoting ***Myers***, 164 A.3d at 1170-71).

Applying Section 1547(b)(1) and ***Myers***, the ***Krenzel*** Court concluded the defendant's consent was not voluntary:

> In determining whether [the defendant's] consent was voluntary, the trial court considered the various factors as set forth above and concluded that while [the defendant] was in custody and not specifically informed of her rights regarding consent, police did not coerce her and she fully cooperated with police, answering all questions and complying with field sobriety tests. However, there is no dispute that the police asked [the defendant] to go to the hospital for a chemical blood test and she complied without receiving a recitation of her rights under DL-26B or Section 1547

> or confirming her consent by signature. **Because** [**the officer**] **was statutorily obligated to inform** [**the defendant**] **of her right to refuse chemical testing and the consequences arising therefrom and failed to effectuate those precautions,** [**the defendant**] **did not make a knowing and conscious choice of whether to submit to the blood draw.** The choice belonged to [the defendant], not Officer Maye. **Thus, while the trial court is correct that the officers did not mislead** [**the defendant**]**, <u>the record is equally clear that they did not convey the information necessary for her to make an informed decision</u>.** As such, we find that the trial court erred as a matter of law in denying suppression.

Id. at 1031-32 (emphases added).

Instantly, the suppression court deemed Appellant's consent voluntarily tendered. Suppression Court Opinion, 3/7/23, at 5-6. The suppression court observed,

> [a]lthough Trooper Waida read the DL-26B form to him [at the hospital], [Appellant] was not under arrest at that time. Before being read the DL-26B form, [**Appellant**] **was repeatedly told that he was, in fact, not under arrest.** [**Appellant**] **was not placed in handcuffs at any time and agreed to be transported to the hospital by police to have his blood drawn.** Upon arriving at the hospital, Trooper Waida read [Appellant] the DL-26B form, out of an abundance of caution, to ensure that [Appellant] was informed about his right to refuse to consent to testing.
>
> There was no evidence presented which demonstrated that [Appellant] was confused about whether he was under arrest at the time he consented to a blood draw. A reasonable person would have understood the exchange between Trooper Waida and [Appellant] to mean that he was not under arrest. [**Appellant**] **was told repeatedly that he was not under arrest; he was not treated as if he was under arrest; he was informed about his right to refuse; he cooperated with police throughout the incident; there were no issues regarding** [**Appellant's**] **intelligence; and there** [**were**] **no allegations of duress or coercive tactics being used by the police.**

> Based on the totality of the circumstances, [Appellant] was not under arrest at the time he consented [to the blood draw]. As he was not under arrest, the police were not required to inform him of the consequences of refusing under Section 1547 by reading the DL-26B form. Even though Trooper Waida read the DL-26B form to [Appellant], it was made clear to [Appellant] that he was not under arrest. Therefore, [Appellant] knowingly and voluntarily consented to having his blood drawn for chemical testing.

Suppression Court Opinion, 3/7/23, at 5-6 (emphasis added; capitalization modified). We discern no error or abuse of the trial court's discretion. ***See id.*** The officer's failure to advise Appellant of the potential ramifications of a positive blood test does not, standing alone, render his consent involuntary. ***See Smith***, 77 A.3d at 574 n.13. Under the totality of the circumstances, the suppression court properly denied Appellant's suppression motion. Accordingly, Appellant's issue merits no relief.

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 8/27/2024