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

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

DISSENTING OPINION

MR. JUSTICE CASTILLE **DECIDED: December 27, 2006**

I respectfully dissent from the Majority Opinion's holding that the Fourth Amendment was violated when Liquor Control Enforcement (LCE) officers, who lawfully gained admission to a college fraternity party after purchasing tickets to it, detained dozens of individuals observed consuming beer who, not surprisingly, appeared to be under legal age. The Majority limits its evaluation of this unique factual paradigm to the rubric of suspicionless search cases, failing to address the Commonwealth's alternative claim that the officers had sufficient reasonable suspicion to detain the group, as well as its contention that the trial court failed to identify a violation of the Fourth Amendment in granting appellees' motion to suppress. The fact that the Majority finds no prior case analogous to the instant one is unsurprising, but I am dismayed by the Majority's disinclination to look beyond the existing framework of suspicionless search cases to weigh the reasonableness of the officers' actions within the confines of the Fourth Amendment. I would hold that, in the limited circumstance presented here, there is nothing unreasonable in permitting officers, who lawfully entered a college fraternity house and saw what they reasonably believed to be underage drinking, to detain partygoers for purposes of determining the partygoers' age and sobriety, which was the least intrusive method of confirming or dispelling their strong, indeed overwhelming suspicion that a number of the underage individuals were committing a criminal offense.

The U.S. Supreme Court has explained that the cornerstone of the Fourth Amendment is reasonableness. Commonwealth v. Revere, 888 A.2d 694, 707 (Pa. 2005) (citing Illinois v. McArthur, 531 U.S. 326, 330, 121 S.Ct. 946, 949 (2001); Ohio v. Robinette, 519 U.S. 33, 39, 117 S.Ct. 417, 421 (1996)). To determine the reasonableness of a seizure, this Court has utilized a three-pronged balancing test, weighing: (1) the gravity of

the public concerns fulfilled by the seizure; (2) the degree to which the public interest is advanced by the seizure; and (3) the severity of the intrusion upon individual liberty. Commonwealth v. Beaman, 880 A.2d 578, 582 (Pa. 2005). A valid seizure under this standard is one supported by reasonable suspicion, based on objective facts, that indicates an individual is participating in criminal activity. Id. Of course, we have held that individualized suspicion is not an "irreducible component" of reasonable suspicion, particularly where the searches or seizures are designed to aid the government in addressing circumstances that stretch the typical demands of law enforcement. Id.

The Majority first declares, without providing any explanation, that the liberty interest at stake here was "significant" because the students who entered this fraternity house, which was operating as a commercial business on the night of the party, supposedly had a "reasonable expectation" that they could "leave at will." Majority slip op. at 13. In my view, the Majority surely is mistaken. First, when an individual is on a property used for commercial purposes, or merely present in a home with the consent of the homeowner, that individual has far less of a privacy interest, if any, than while in one's own home. See Minnesota v. Carter, 525 U.S. 83, 90, 119 S.Ct. 469, 473 (1998) ("[A]n overnight guest in a home may claim the protection of the Fourth Amendment, but one who is merely present with the consent of the householder may not."); New York v. Burger, 482 U.S. 691, 700, 107 S.Ct. 2636, 2643 (Pa. 1987) (an individual's expectation of privacy on commercial premises is less than a similar expectation in a person's home). Second, the alleged "expectation" assumed by the Majority has to be diminished by the reality of the situation. No person committing a crime in a place held open to the public can harbor a "reasonable expectation" that authorities will allow him to "leave at will." Any person at this fraternity-keg party who was underage knew he was committing a crime and could have no expectation of immunity from discovery or consequence. Even those few students who were of-age needed only to consult their senses to know that they were in a place, and a

circumstance, where police discovery of the unlawful activity might impede their ability to "leave at will."

The Majority addresses the other two prongs of the test articulated in Beaman by finding that the seizure did not advance the public interest and/or that the gravity of public concern here does not rise beyond general crime control. Majority slip op. at 13-14. The practical implications of the Majority's opinion impeaches this analysis. Although the Majority makes an unsupported assertion that there are more "effective" means for LCE officers to employ to stop underage drinking, id. at 13, the Majority glaringly fails to suggest any such alternative approach, much less a more effective one.[1] Alcohol on college campuses is a reality and a concern, particularly because most college students are under the age of 21. Fraternity drinking parties or other "keg" parties present a very real danger to the health and safety of our youth, many of whom lack the sophistication and experience to realize the danger posed to themselves and others. The most effective way to combat this real-world danger is by going to the source -- here, literally, the source of the alcohol. The real choice here is between allowing a reasonable, brief detention of the partygoers at the fraternity for police to ascertain which drinkers are underage or, as the Majority would seem to require, consigning the officers to the toothless path of questioning individuals one-

[1] This Court has never determined that evidence should be suppressed based solely on the contention that there may be more efficient or effective methods by which to police criminal conduct. For instance, in Beaman, 880 A.2d at 588, this Court declined to declare sobriety checkpoints unconstitutional where statistical evidence suggested that roving patrols were more efficient at identifying drunk drivers. The defendant in Beaman had challenged the checkpoints based on statistics from Pennsylvania counties showing that less than one-percent of all drivers stopped at them were arrested for driving under the influence. Id. at 580. While this Court noted that it would be difficult to find suspicionless seizures constitutionally reasonable where they had no effect, or a *de minimus* effect, in advancing the public interest, we declined to declare roadblocks unconstitutional based on the evidence presented. Id. at 589. Here, a much higher percentage of individuals detained at the fraternity were ultimately cited for criminal activity, negating any argument that this detention had a *de minimus* effect on the conduct.

on-one, thereby permitting other unquestioned partygoers to realize the officers' identity and to flee before being cited for illegal activity. Permitting exclusion, as Judge Easterbrook recently put it, "comes at such high cost to the administration of the criminal justice system that its application might sensibly be confined to violations of the reasonableness requirement." United States v. Elder, 466 F.3d 1090, 1091 (7th Cir. 2006). I see nothing unreasonable in allowing a minimal intrusion, to confirm or dispel reasonable suspicion; indeed, to hold otherwise is, in essence, to hold that police are helpless to combat crimes that depend upon the age of the suspect.

This case lies somewhere between the realm of prior cases validating suspicionless searches, see, e.g., Vernonia School District 47J v. Acton, 515 U.S. 646, 115 S.Ct. 2386 (1995) (permitting student athletes to be randomly subjected to drug testing), United States v. Martinez-Fuerte, 428 U.S. 543, 96 S.Ct. 3074 (1976) (permitting road block near border to check for illegal aliens), and searches/seizures where individualized reasonable suspicion is present. When the LCE officers entered the fraternity party, they witnessed what all sentient Americans would expect to see: a group of youthful individuals consuming beer, the only available beverage. Even aside from the youthful appearance of the drinkers, assuming that a fair cross-section of the college student community was present, that is, individuals from every class year, the LCE officers had ample reason to believe that a fair number of the party participants were under the legal consumption age of 21. As the party swelled, however, it became a practical impossibility for the LCE officers, who were far fewer in number, to evaluate the actions of every student in the fraternity house, much less to recall at a suppression hearing months later whether they had witnessed a particular appellee drinking. The facts undeniably provided the LCE officers with probable cause to believe that widespread underage drinking was occurring at the fraternity party, but the circumstances prevented them from isolating and developing individualized suspicion for each of the fifty-six underage drinkers, interspersed between sober underage partygoers

and those 21 or older. In this instance, I see no constitutional violation in permitting a minimally intrusive, wholesale investigatory detention of the partygoers.

Finally, I cannot join the Majority Opinion because it fails to address another of the Commonwealth's arguments. The trial court granted appellees' motion to suppress because, it found, "there was no evidence whatsoever presented at the April 7, 2004 hearing to demonstrate that the [appellees] on the list were the same students who had been charged with under-age drinking on April 3, 2003. … [t]he Commonwealth gave me nothing to show that the [appellees] named in the caption to this case were the people who were present in the fraternity house that evening." Commonwealth v. Mistler, No. 3147-03, slip op. at 6 (Pa.C.C.P. May 28, 2004). In so ruling, the court cited a Superior Court decision, Commonwealth v. Wood, 833 A.2d 740 (Pa. Super. 2003). Thus, it appears, the reason for the trial court's grant of appellees' suppression motion was not based on any Fourth Amendment violation, but rather was grounded in a dispute over proof that the named defendants were the same students cited for underage drinking at the party. It is not clear to me how difficulties of proof the Commonwealth may face at trial are relevant to determining the constitutionality of the search and seizure in this case and the propriety of the grant of suppression relief. See Commonwealth v. Millner, 888 A.2d 680, 693 (Pa. 2005).

Mr. Justice Saylor joins this opinion.