

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. CR-63-2016
	:	CR-64-2016
JESSE FRANKLIN SNYDER,	:	CR-65-2016
	:	CR-66-2016
Defendant	:	CR-67-2016

Cynthia A. Dyrda-Hatton, Esquire Counsel for the Commonwealth
Assistant District Attorney

Paul J. Levy, Esquire Counsel for the Defendant
First Assistant Public Defender

MEMORANDUM OPINION

Serfass, J. - July 18, 2018

Defendant, Jesse Franklin Snyder, (hereinafter "Defendant") brings before this Court five separate suppression motions, one in each of the above-referenced cases, seeking to suppress the blood which was drawn from him at Gnaden Huetten Memorial Hospital as well as the toxicology reports analyzing that blood prepared by NMS Laboratory. For the reasons that follow, we find that Defendant's consent to the warrantless blood draws at issue in these cases was involuntary, and we will grant the suppression motions accordingly.

I. FACTUAL AND PROCEDURAL HISTORY

A. CR-65-2016 - October 11, 2015

On October 11, 2015, Corporal Shawn Noonan of the Pennsylvania State Police was on routine patrol duty in an unmarked police vehicle which was stopped at the intersection of Jamestown Street and State Route 209 in Mahoning Township, Carbon County, Pennsylvania, when he observed a brown GMC van with an inoperable left brake light. Corporal Noonan conducted a traffic stop of the vehicle in the parking lot of the Dollar General Store on North First Street in Lehighton Borough. The operator identified himself as Defendant and there was one passenger in the vehicle who was identified as Erica Kates. When Defendant was unable to produce a valid driver's license, Corporal Noonan verified that the license was suspended for a DUI-related offense. At that point, Corporal Noonan directed Defendant to exit the vehicle for purposes of performing field sobriety tests. Corporal Noonan observed that Defendant had body tremors, dilated pupils and rapid speech. He was jittery and made rapid movements. Defendant performed the horizontal gaze nystagmus test, the modified Romberg balance test and the lack of convergence test. In response to Corporal Noonan's question as to whether there was anything in his system, Defendant stated that he had taken "Perc 30" the previous night. He was placed under arrest, handcuffed and transported to Gaden Huetten Memorial Hospital. At the hospital, Corporal Noonan read the

PennDOT DL-26 form to Defendant advising him of his implied consent and O'Connell warnings. Defendant then consented to the blood draw and the sample was forwarded to NMS Laboratory for analysis. The toxicology report indicated positive results for amphetamines, methamphetamines and oxycodone 3.

Defendant was charged with the following offenses in this matter:

Count 1: DUI: Controlled Substance - Schedule 2 or 3 - 1st Offense - (M)

Count 2: DUI: Controlled Substance - Impaired Ability - 1st Offense - (M)

Count 3: BAC .02 or Greater - 2nd Offense - (M3)

Count 4: No Rear Lights - (S)

B. CR-66-2016 - October 13, 2015

On October 13, 2015, at approximately 7:25 p.m., Corporal Noonan and Trooper Brian Shandra were on routine patrol in Lehighton Borough operating an unmarked police vehicle traveling on North Street between First and Second Streets when they observed a brown GMC van with an inoperable left brake light on North Street near the intersection with First Street. When the troopers turned their vehicle to conduct a traffic stop, the van accelerated at a high rate of speed and turned down an alley. The van continued at a high rate of speed failing to obey traffic signals, nearly striking a vehicle, and failing to wait for traffic to proceed

before crossing several intersections. Eventually, the vehicle pulled into a parking lot adjacent to North Center Alley near the intersection with North Second Street. As Trooper Shandra approached the vehicle, the operator exited and was identified as Defendant. He had a slow, low raspy voice, constricted pupils and droopy eyelids. Defendant admitted to taking prescription painkillers. No field sobriety tests were administered. According to Corporal Noonan, Defendant's droopy eyelids, slow, low raspy speech and constricted pupils are indicators of someone actively under the influence of a narcotic analgesic. Defendant was arrested for DUI and transported to Gaden Huetten Memorial Hospital for a blood draw. Corporal Noonan read the DL-26 form to Defendant and he consented to the blood test. The toxicology report from NMS Laboratory indicated the presence of amphetamines, methamphetamines and oxycodone. In this case, Defendant was charged with the following offenses:

Count 1: DUI: Controlled Substance - Schedule 2 or 3 - 2nd Offense - (M1)

Count 2: DUI: Controlled Substance - Impaired Ability - 2nd Offense - (M1)

Count 3: BAC .02 or Greater - 2nd Offense - (M2)

Count 4: Careless Driving - (S)

Count 5: No Rear Lights - (S)

C. CR-67-2016 - November 6, 2015

On November 6, 2015, at approximately 9:00 p.m., Corporal Noonan was on patrol duty in the Borough of Lehighton operating an unmarked police vehicle on First Street when he observed a brown GMC van with inoperable brake lights traveling on First Street. A traffic stop was initiated on South First Street near the intersection with Bankway. The operator of the van was identified as Defendant who admitted that he had taken prescription medication earlier. Corporal Noonan observed that Defendant had constricted pupils and slow, low raspy speech. His eyes had little or no reaction to light and displayed eyelid tremors and ptosis which are common symptoms of an individual who is under the influence of a narcotic analgesic. As Defendant exited the van, his movements were lethargic. He was arrested for DUI and transported to Gnaden Huetten Memorial Hospital for a blood draw where Corporal Noonan read him the PennDOT DL-26 form. Defendant then consented to the blood draw and the sample was sent to NMS Laboratory for analysis. The results indicated 55 nanograms per milliliter of oxycodone and Defendant was charged with:

Count 1: DUI: Controlled Substance - Impaired Ability - 3rd Offense - (M1)

Count 2: BAC .02 or Higher - 3rd Offense - (M1)

Count 3: No Rear Lights - (S)

D. CR-64-2016 - November 20, 2015

On November 20, 2015, at approximately 2:30 p.m., Corporal Noonan was traveling to the Lehigh State Police Barracks in an unmarked patrol vehicle. As he was driving through the Borough of Lehigh, Trooper Noonan observed a brown GMC van operated by Defendant sitting at a traffic light on North Street near the intersection with First Street. A traffic stop was conducted on First Street at the North Street intersection. An unidentified passenger jumped out of the van and ran from the scene. As Defendant exited the van, Corporal Noonan observed that he appeared disheveled. Standard field sobriety tests were administered. Eyelid, neck and body tremors were observed. Defendant's eyes showed a lack of convergence and his pupils were extremely dilated. Based upon his training, education and experience, Corporal Noonan concluded that Defendant was incapable of driving safely and that he was under the influence of a controlled substance. Defendant was arrested for DUI, handcuffed, placed in the police cruiser and transported to Lehigh Valley Memorial Hospital. At the hospital, Corporal Noonan read Defendant the PennDOT DL-26 form and he agreed to a blood draw. The sample was forwarded to NMS Laboratory and the analysis thereof found amphetamine, methamphetamine and oxycodone in Defendant's blood. Defendant was subsequently charged with:

Count 1: DUI: Controlled Substance - Schedule 2 or 3 - 4th Offense - (M1)

Count 2: DUI: Controlled Substance - Impaired Ability - 4th & Subsequent Offense - (M1)

Count 3: BAC .02 or Greater - 2nd Offense - (M3)

E. CR-63-2016 - December 1, 2015

On December 1, 2015, at approximately 12:28 a.m., Officer Bruce Broyles of the Lehighton Police Department was on patrol in a marked police vehicle when he observed Defendant operating a GMC van pulling out of the Sunoco gas station parking lot onto State Route 443 in Lehighton Borough. Officer Broyles recognized Defendant and knew that he was operating the van with a suspended driver's license. A vehicle stop was initiated in the parking lot of the Coin Laundry-Sunoco station. When Officer Broyles approached the van, Defendant acknowledged that he was not supposed to be driving. At that time, the officer observed Defendant's constricted pupils, glassed-over blood shot eyes and slurred speech. Defendant exited the van and Officer Broyles administered the modified Romberg balance test and the lack of convergence test during which he observed Defendant to have leg tremors and powder in his nostrils. Defendant told Officer Broyles that he had snorted cocaine earlier and consented to a search of his van. That search produced several bundles of heroin, a marijuana grinder, a blackjack, an electronic scale, rubber bands, straws and empty wax

bags. Defendant was taken into custody and transported to Gnaden Huetten Memorial Hospital where Officer Broyles read him the PennDOT DL-26 form. He was cooperative and consented to the blood test. The samples were sent to NMS Laboratory for analysis and the results of that analysis indicated 22 nanograms per milliliter of morphine free. Defendant was charged with:

Count 1: Make Repairs/Sell/Etc Offens Weap - (M1)

Count 2: Intentional Possession of Controlled Substance By Per Not Registered (M)

Count 3: Use/Possession of Drug Paraphernalia - (M)

Count 4: DUI: Controlled Substance - Schedule 2 or 3 - 4th Offense - (M1)

Count 5: DUI: Controlled Substance - Metabolite - 4th Offense - (M1)

Count 6: DUI: Controlled Substance - Impaired Ability - 4th & Subsequent Offense - (M1)

Count 7: Driving While Operating Privilege is Suspended or Revoked - (S)

F. Defendant's testimony concerning the blood tests

On July 27, 2017, Defendant filed a "Suppression Motion" in each of the above-referenced cases averring that the Commonwealth's search and seizure of his blood was unconstitutional because his consent to the blood draw was involuntary pursuant to the Fourth Amendment of the United States

Constitution as interpreted by the United States Supreme Court in Birchfield v. North Dakota, 136 S.Ct. 2160 (2016). Defendant therefore seeks to suppress his blood and the toxicological analysis thereof prepared by NMS Laboratory.

At the consolidated hearing held before the undersigned on all five suppression motions, Defendant testified relative to his belief, following the reading of the PennDOT DL-26 form, that if he did not consent to the blood draws, he would receive a harsher criminal penalty. Specifically, Defendant testified that "...from what I understood is if I didn't give them my blood work or take the test right there that my charges were going to be extended, like I was going to get a harder penalty, a harsher penalty because of not wanting to take the blood work." He added on cross-examination, "Once the form was read to me again, that's when I took the blood work. I didn't take no blood work prior to that, no nothing. It wasn't taken until the form was read to me and when he read the form to me, after that's when I made my decision to take the blood work because of the simple fact that I'm not going to get a higher charge or a higher penalty for not taking something."

DISCUSSION

The sole issue before this Court is whether Defendant's consent to the blood draws was voluntary or coerced by the threat of enhanced criminal penalties as set forth in the PennDOT DL-26 form.

The Fourth Amendment of the United States Constitution prohibits the government from performing unreasonable searches and seizures. U.S. Const. amend. IV; Pa. Const. art. I, §8. A blood draw is considered a search pursuant to the Fourth Amendment and Article I, Section 8 of the Pennsylvania Constitution. Birchfield v. North Dakota, 136 S.Ct. 2160, 2173 (2016); Commonwealth v. Smith, 77 A.3d 562, 566 (Pa. 2013).

Generally, a search and/or seizure is deemed unreasonable unless a valid search warrant is obtained from an independent judicial officer based on a sufficient showing of probable cause. Commonwealth v. Gary, 91 A.3d 102, 107 (Pa. 2014). However, a warrantless search or seizure may still be constitutional if an established exception applies. Commonwealth v. Evans, 153 A.3d 323, 327 (Pa.Super. 2016). The exception at issue here is actual or implied consent.

Once a motion to suppress evidence has been filed, it is the Commonwealth's burden to prove, by a preponderance of the evidence, that the challenged evidence was not obtained in violation of the defendant's rights. Commonwealth v. Wallace, 42 A.3d 1040, 1047-48 (Pa. 2012); see also Pa. R.Crim.P. 581(H). "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 - is not the result of duress or coercion, express or implied, or a will overborne - under the totality of

the circumstances.” Commonwealth v. Ennels, 167 A.3d 716, 723 (Pa.Super. 2017) (quoting Commonwealth v. Smith, 77 A.3d 562, 573 (Pa. 2013)). “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.” Id. “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.” Id.

We find that the decision of the Pennsylvania Superior Court in Ennels, supra, is controlling in the matters now before us. As in Ennels, the arresting officer in each of these cases read the DL-26 form to Defendant after which he consented to a warrantless blood draw. Ennels makes clear that implied consent to a blood test cannot lawfully be based on the threat of enhanced criminal penalties for the refusal to submit to such a test. Id. at 724. If Defendant had validly consented to the blood tests before being informed that he faced enhanced criminal penalties for failure to do so, then his consent would not be tainted by the warnings and the blood test results, along with the toxicology reports, would be admissible. However, the facts in each of these cases clearly demonstrate that Defendant did not consent until after the arresting officer had informed him that he would face enhanced

criminal penalties if he refused to consent. Moreover, Defendant specifically testified at the suppression hearing that he consented to the "blood work" following the reading of the DL-26 form because he did not want to receive a harsher criminal penalty for refusing to take the tests.

Pursuant to the Superior Court's recent decision in Commonwealth v. Johnson, -- A.3d --, 2018 Pa.Super. 133 (May 21, 2018), the critical inquiry following Birchfield is whether the officer conveyed the threat of enhanced criminal penalties at the time of the arrest when seeking a warrantless blood-draw. In each of the instant cases, either Corporal Noonan or Officer Broyles informed Defendant of his rights by reading him the DL-26 form which advised him that his refusal to submit to the testing would, if convicted, subject him to more severe criminal penalties. Specifically, Defendant, due to his refusal if convicted, would have been incarcerated for a minimum of seventy-two (72) hours and a minimum fine of one thousand dollars (\$1,000.00) and could face a maximum of five (5) years in prison and a maximum fine of ten thousand dollars (\$10,000.00).

Therefore, because Defendant's consent to the blood draws was given under the implied intimidation or duress of more severe

criminal penalties, we are constrained to grant the instant suppression motions and enter the following¹

¹ The Commonwealth first argue that Birchfield is inapplicable to these cases because Defendant has not been charged with drunk driving but with driving under the influence of a controlled substance. However, we find that this argument has been addressed and rejected by our Superior Court's decision in Commonwealth v. Ennels, 167 A.3d 716 (Pa.Super. 2017), holding that "no matter the substance suspected of affecting a particular DUI arrestee, Birchfield requires that a blood test be authorized either by a warrant (or case-specific exigency), or by individual consent not based on the pain of criminal consequences." Ennels, 167 A.3d at 721-22. "Birchfield makes plain that the police may not threaten enhanced punishment for refusing a blood test in order to obtain consent; whether that enhanced punishment is (or can be) ultimately imposed is irrelevant to the question of whether consent was valid." Id. at 724.

The Commonwealth also argues, based upon this Court's holding in Commonwealth v. Alba, Carbon County Court of Common Pleas Case No. 745-CR-2016 (Omnibus Pretrial Motion Transcript September 7, 2017), that the blood draw and toxicology report should not be suppressed. In Alba, President Judge Nanovic stated that "the Court . . . understands Birchfield to say that a consent cannot be pressured by a threat of enhanced penalties." Id. at 161. The defendant gave consent to a blood test "not based on anything that the trooper had advised Mr. Alba, but based upon Mr. Alba's preconceived beliefs and notions of what the consequences would be if he would refuse a blood test." Id. at 162. However, in the case at bar, Defendant testified that he consented to the blood draws based entirely upon what Corporal Noonan and Officer Broyles told him regarding enhanced criminal penalties for refusing the blood test. Therefore, Alba is clearly distinguishable and inapposite here.

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Assistant District Attorney

Paul J. Levy, Esquire Counsel for the Defendant
First Assistant Public Defender

ORDER OF COURT

AND NOW, to wit, this 18th day of July, 2018, upon consideration of the suppression motions filed in each of the above-referenced matters and following a consolidated hearing thereon, and in accordance with our Memorandum Opinion bearing even date herewith, it is **ORDERED and DECREED** that the aforesaid motions are **GRANTED** and that the following evidence is hereby suppressed:

1. The blood drawn from Defendant at Gnaden Huetten Memorial Hospital on October 11, 2015, October 13, 2015, November 6, 2015, November 20, 2015 and December 1, 2015; and

2. The toxicology reports analyzing those blood samples prepared by NMS Laboratory.

IT IS FURTHER ORDERED and DECREED that these matters are scheduled for pre-trial conferences at 9:00 a.m. on August 16,

2018 in the office of the District Attorney on the second floor of the Carbon County Courthouse at Jim Thorpe, Pennsylvania.

BY THE COURT:

Steven R. Serfass, J.