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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
	:	
vs.	:	**No. CR 206-2016**
	:	
JOHN P. HARGETT,	:	
	:	
Defendant	:	

Michael S. Greek, Esquire	Counsel for Commonwealth Assistant District Attorney
Matthew J. Rapa, Esquire	Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - May 4 , 2017

Before this Court is a Motion to Suppress filed by Defendant, John P. Hargett. Defendant seeks to suppress any police observations made following the traffic stop that was instigated upon him, any inculpatory statements he may have made throughout the duration of that stop, the blood drawn from him at Lehighton Hospital, and the toxicology report analyzing that blood. Upon consideration of Defendant's "SUPPRESSION MOTION," after a hearing held thereon, and after reviewing Defendant's Brief in Support,[1] for the reasons stated within this Opinion, Defendant's Petition will be **DENIED.**

[1] The Commonwealth did not file a Brief in Opposition.

FACTUAL AND PROCEDURAL BACKGROUND

On June 6, 2015 at approximately 11:56 p.m., Troopers Kempinski and Sofranko were on duty in a marked patrol vehicle. They received a call from the Carbon County Communication Center regarding a dark colored sports car with New York registration plates driving in the area of Route 248 West and Lizard Creek Road. The vehicle was reported to have been traveling at a slow rate of speed in the passing lane with its hazard lights on, and the operator was waving for cars to go around. As the troopers were driving on Dinky Road, they encountered a vehicle matching the description from the call approaching from the opposite direction. The troopers turned their cruiser around, pursued the vehicle for a short distance, and initiated a traffic stop. Both troopers testified that upon following the vehicle, they noted it had a loud exhaust.[2]

When they approached the vehicle on foot and the driver rolled down the windows, Trooper Sofranko immediately detected a strong odor of marijuana. Trooper Kempinski was unable to smell anything because he was suffering from allergies. They questioned the driver, who was identified as John Patrick Hargett, Defendant in this case. The troopers stated to Defendant that they had received a report he had been driving "all over the road and stuff like

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[2] 12/20/16 Suppression Hearing.

that." Defendant responded "I keep stopping to try to get service on my navigation, it keeps cutting off." The troopers asked Defendant if he had been drinking or taking any drugs, including marijuana, to which Defendant responded no. The troopers could see in plain view a prescription bottle, and they asked Defendant what it was and when he had taken it last. Defendant stated it was OxyContin and he had last taken it six hours earlier.

The troopers had Defendant exit his vehicle and they continued to question him about whether he had used drugs. Defendant eventually admitted he had smoked marijuana earlier, sometime around ten o' clock that morning. The troopers repeatedly insisted that Defendant be honest with them, because they could smell marijuana coming from his vehicle. Defendant thereafter related that a joint was in the ash tray and gave consent for the troopers to retrieve it. The troopers searched for the joint but were unable to find one. They again asked Defendant if he was positive he had not smoked marijuana more recently, and deceitfully indicated a breathalyzer would be able to tell them whether he had smoked within the last couple of hours. Defendant maintained he had not smoked since earlier that day.

Throughout the encounter, Defendant was visibly anxious, hyper, and fidgety, constantly grabbing at and adjusting his clothing. The troopers testified that Defendant had glassy,

bloodshot eyes and was sweating profusely.[3] They subjected him to field sobriety tests,[4] after which they concluded he was impaired and unable to drive safely. The troopers then placed Defendant under arrest and transported him to Lehighton Hospital for a blood draw. During transport, the troopers explained to Defendant he was being taken to the hospital for the purpose of having his blood drawn, and they testified that while in the cruiser he verbally consented to a blood draw.[5] After arriving at the hospital, Defendant was read the DL-26 form warnings[6] and again consented to a blood draw. His blood was drawn at approximately 1:00 a.m. The results indicated Defendant's blood contained Amphetamine 5.9 ng/mL, Methamphetamine 20 ng/mL, Delta-9 THC 1.1 ng/mL, Delta-9 Carboxy THC 23 ng/mL, Codeine - Free 6.4 ng/mL, Morphine - Free 110 ng/mL, 6-Monoacetylmorphine - Free 3.7 ng/mL, and Oxycodone - Free 97 ng/mL.

Defendant never testified at the suppression hearing.

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[3] 12/20/16 Suppression Hearing.

[4] Among the tests administered were the nine step walk-and-turn, the one-legged stand, and the horizontal gaze nystagmus test.

[5] 12/20/16 Suppression Hearing.

[6] Included in these warnings is the following passage: "If you refuse to submit to the chemical test, your operating privilege will be suspended for at least 12 months. If you previously refused a chemical test or were previously convicted of driving under the influence, you will be suspended for up to 18 months. In addition, if you refuse to submit to the chemical test, and you are convicted of violating Section 3802(a)(1) (relating to impaired driving) of the Vehicle Code, then, because of your refusal, you will be subject to more severe penalties set forth in Section 3804(c) (relating to penalties) of the Vehicle Code. **These are the same penalties that would be imposed if you were convicted of driving with the highest rate of alcohol, which include a minimum of 72 consecutive hours in jail** and a minimum fine of $1,000.00, up to a maximum of five years in jail and a maximum fine of $10,000."

Defendant has been charged with three different counts of Driving Under the Influence of Alcohol or Controlled Substance-Controlled Substances, as well as two summary offenses for a loud exhaust system and improper sun screening on his vehicle's windows.[7]

DISCUSSION

Defendant has filed a Suppression Motion arguing that Troopers Kempinski and Sofranko did not possess the requisite reasonable suspicion to instigate a vehicle stop upon him. Further, Defendant argues that he was subjected to a custodial interrogation without being advised of his Miranda rights, which elicited potentially incriminating statements from him. Lastly, Defendant argues that his consent to the blood draw was not voluntary under *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016).

I. CONSTITUTIONALITY OF THE VEHICLE STOP

In a motion to suppress evidence, it is the Commonwealth's burden to establish that the evidence in question was not obtained in violation of the defendant's rights. *Commonwealth v. Ryan*, 407 A.2d 1345, 1348 (Pa. Super. Ct. 1979). "The Fourth Amendment of the United States Constitution and Article I, Section VIII of the Pennsylvania Constitution guarantee individuals freedom from

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[7] 75 Pa.C.S.A. §§ 3802(d)(1)(i)-(ii), (d)(2), 4523(a), 4524(e)(1).

unreasonable searches and seizures." *Commonwealth v. El*, 933 A.2d 657, 660 (Pa. Super. Ct. 2007).

In the case *sub judice*, the evidence is not entirely clear as to what precisely the motivation was behind the stopping of Defendant's vehicle. The singular relevant statement either trooper made to this effect was when Trooper Kempinski testified they only made the stop, based on the information they had received from the Communication Center, to make sure the driver was "okay."[8] In this context, "okay" is a vague adjective with more than one interpretation. What has been established, and is not contested by either side, is that the Communication Center relayed a report that Defendant had been driving in the passing lane of Route 248 with his hazard lights flashing and he was waving for cars to go around him. What is unclear is whether the troopers viewed this as cause to believe Defendant was in distress and may have required assistance, or whether they simply thought this manner of driving was violative of the Motor Vehicle Code. Whatever the case, it must have been one or the other, and accordingly the Court shall address both scenarios.

A. Rendering Aid to Motorists

Police officers have a duty to render aid and assistance to those they believe are in need of help. When an officer is trying

[8] 12/20/16 Suppression Hearing.

to determine what is going on in a given circumstance and whether a motorist might need assistance, the triggering of emergency lights and the initiation of an interaction with a driver is a mere encounter that does not necessarily shift to an investigatory detention. *Commonwealth v. Kendall*, 976 A.2d 503, 505 (Pa. Super. Ct. 2009). The test for determining when this shift has occurred is whether "a reasonable person in [the driver's] position would have understood [the officer's] arrival as an act of official assistance, and not as the start of an investigative detention." *Commonwealth v. Conte*, 931 A.2d 690, 693 (Pa. Super. Ct. 2007). More specifically, the focal point of this analysis "must be whether, considering the circumstances surrounding the incident, a reasonable person innocent of any crime would have thought he was being restrained had he been in the defendant's shoes." *Commonwealth v. Collins*, 950 A.2d 1041, 1047 (Pa. Super. Ct. 2008).

In this case, had the troopers instigated the stop while Defendant was driving slowly with his hazards on, it seems that a reasonable person in Defendant's shoes would have understood the troopers' action to be an offer of assistance rather than one of restraint or detention. However, given the fact that at the time the stop took place Defendant was then driving on a different road, was no longer driving slowly with his hazards on, and that it had been some minutes since he had engaged in that behavior, a reasonable person would have thought he was being subjected to an

investigative detention. This is further evidenced by the fact that upon speaking with Defendant, one of the first things the troopers said to him, apart from asking for his license, registration, and proof of insurance, was "The reason we're pulling you over, we got a call about your vehicle all over the road and stuff like that." This statement is accusatory in tone, and a reasonable person in that situation would have been under the impression he had committed a wrongdoing. Therefore, this interaction crossed the threshold beyond a mere encounter into an investigatory detention, which would require some level of suspicion or cause.

B. Reasonable Suspicion for Vehicle Code Violations

The question next turns to whether the troopers had sufficient grounds to stop Defendant for a Motor Vehicle Code infraction.

> As provided for by statute, anytime a police officer has "reasonable suspicion" to believe a violation of the Motor Vehicle Code is occurring or has occurred, the officer may initiate an investigatory vehicle stop. Incident to this stop, an officer may check the vehicle's registration, the driver's license and obtain any information necessary to enforce provisions of the motor vehicle code. Additionally, police may request both drivers and their passengers to alight from a lawfully stopped car as a matter of right.

Commonwealth v. Mack, 953 A.2d 587, 589 (Pa. Super. Ct. 2008) (internal citations omitted).

> [T]o establish grounds for reasonable suspicion, the officer must articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude, in light of his experience, that criminal activity was

> afoot and that the person he stopped was involved in that activity. The question of whether reasonable suspicion existed at the time [the officer conducted the stop] must be answered by examining the totality of the circumstances to determine whether the officer who initiated the stop had a particularized and objective basis for suspecting the individual stopped. Therefore, the fundamental inquiry of a reviewing court must be an objective one, namely, whether the facts available to the officer at the moment of the [stop] warrant a [person] of reasonable caution in the belief that the action taken was appropriate.

Commonwealth v. Postie, 110 A.3d 1034, 1039-40 (Pa. Super. Ct. 2015) (quoting *Commonwealth v. Muhammed*, 992 A.2d 897, 900-01 (Pa. Super. Ct. 2010)).

Defendant argues that, under the facts of this particular case, the proper standard to measure whether the stop was justified was not reasonable suspicion, but rather probable cause.[9] Defendant relies upon *Commonwealth v. Chase*, 960 A.2d 108 (Pa. 2008) and *Commonwealth v. Sands*, 887 A.2d 261 (Pa. Super. Ct. 2005) to support this assertion. This Court does not agree that the heightened standard of probable cause was applicable when Troopers Kempinski and Sofranko stopped Defendant's vehicle.

> If reasonable suspicion exists, but a stop cannot further the purpose behind allowing the stop, the "investigative" goal as it were, it cannot be a valid stop. Put another way, if the officer has a legitimate expectation of investigatory results, the existence of reasonable suspicion will allow the stop—if the officer has no such expectations of learning additional relevant information concerning the suspected criminal activity, the stop cannot be constitutionally permitted on the basis of mere suspicion.

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[9] Def.'s Br. at 6.

Chase at 115.

Defendant relies on *Sands* for guidance as to what sorts of vehicle infractions would and would not appropriately spur a legitimate expectation of investigatory results:

> [I]t is hard to imagine that an officer following a vehicle whose driver is suspected of driving at an unsafe speed would discover anything further from a stop and investigation. Similarly, if an officer who observes a driver run a red light or drive the wrong way on a one-way street, the officer either does or does not have probable cause to believe there has been a violation of the Vehicle Code. A subsequent stop of the vehicle is not likely to yield any more evidence to aid in the officer's determination.

Sands at 270.

At the suppression hearing, there was an exhaustive back and forth between both troopers, the Commonwealth, and defense counsel regarding the inconsistent descriptions of the manner in which Defendant was reported to have been operating his vehicle. During testimony, both troopers waffled on whether the Communication Center used the word "erratic," yet this description was not included in the probable cause affidavit. Whatever the case, this Court finds the semantic nitpicking unnecessary. Erratic or not, it cannot be gainsaid that driving in the passing lane of a highway at a slow rate of speed with hazard lights on late at night is "unsafe." Thus, proceeding with this analysis under that conclusion, what remains to be determined is whether Defendant's particular brand of unsafe driving would have inspired in the

troopers a legitimate expectation of investigatory results. Additionally, even though the troopers did not personally witness Defendant's unsafe driving, there is little doubt that it occurred. Upon hearing "The reason we're pulling you over, we got a call about your vehicle all over the road and stuff like that," Defendant immediately responded "I keep stopping to try to get service on my navigation, it keeps cutting off. This is the last time I ever try to depend on my phone, I'll tell you that much." This response confirms that Defendant knew precisely what behavior had prompted the stop, regardless of the inaccuracy of Trooper Kempinski's statement that Defendant was "all over the road."

In his brief, Defendant likens his unsafe driving to the examples outlined in the *Sands* passage, *supra*.[10] However, *Sands* itself revolved around conducting a stop based upon the reasonable suspicion that the driver was operating a vehicle under the influence of alcohol. 887 A.2d at 270. As previously noted, Trooper Kempinski stated they made the stop to make sure the driver was "okay," but did not elaborate on what he meant by that, exactly. However, based upon the accusatory statement of Defendant being "all over the road," it is logical to conclude the troopers were under the impression Defendant was not "okay" in the sense that he was suspected to be impaired, rather than that he was in distress.

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[10] Def.'s Br. at 4-6.

The *Sands* court specifically states that, unlike basic traffic violations, suspected impairment always causes a legitimate expectation of investigatory results: "[A] suspected violation for DUI is in fact a scenario where further investigation almost invariably leads to the most incriminating type of evidence, *i.e.*, strong odor of alcohol, slurred speech, and blood shot eyes. This type of evidence can only be obtained by a stop and investigation." 887 A.2d at 270. Moreover, the constitutional reasonableness of a traffic stop does not depend upon the actual motivations of the officers involved, so long as they can articulate specific facts that would have given rise to a reasonable suspicion that the operator was driving under the influence. *Chase*, 960 A.2d at 120; *see also Sands*, 887 A.2d at 272. Therefore, it becomes immaterial what the actual subjective thoughts of the troopers were in this case. All that is relevant is whether the specific facts present would have given the troopers reasonable suspicion that Defendant was driving under the influence.

Based upon the available evidence, it is apparent that it was late at night and Defendant had inexplicably been driving in an unsafe manner on Route 248 West by traveling in the passing lane with his hazard lights on and waving cars to go around him. And though it is unknown how slowly Defendant was driving, it was apparently slow enough to prompt a concerned citizen to report it

to the police.[11] This Court finds that these facts taken together were enough to inspire reasonable suspicion in the troopers that Defendant was driving under the influence, and that they therefore had a legitimate expectation of investigatory results when they conducted a vehicle stop upon Defendant.[12] Because the troopers had reasonable suspicion and probable cause was not required to stop Defendant's vehicle, the vehicle stop in this case was constitutional.

II. VOLUNTARINESS OF DEFENDANT'S STATEMENTS

Testimonial statements invoke the protections afforded by *Miranda*. *Commonwealth v. Rishel*, 582 A.2d 662, 664 (Pa. Super. Ct. 1990); *see also Miranda v. Arizona*, 384 U.S. 436 (1966). A law enforcement officer must administer *Miranda* warnings prior to custodial interrogation. *Commonwealth v. Johnson*, 541 A.2d 332, 336 (Pa. Super. Ct. 1988).

> The test for determining whether a suspect is being subjected to custodial interrogation so as to necessitate *Miranda* warnings is whether he is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation.

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[11] Though not completely analogous to this case, the Superior Court in *Commonwealth v. Lana*, 832 A.2d 527, 528 (Pa. Super. Ct. 2003) suggests that were a defendant's vehicle speed to impede traffic, or were a defendant to be traveling 5 to 10 miles per hour in a 60-mile-per-hour zone, those facts could be grounds to suspect DUI.

[12] It should be noted that both troopers testified that Defendant's vehicle had an impermissibly loud exhaust, and that this also served as cause for them to stop Defendant. The evidence suggests, however, the suspected exhaust violation was a mere afterthought for the troopers, rather than their primary motivation.

Commonwealth v. Busch, 713 A.2d 97, 100 (Pa. Super. Ct. 1998) (citation omitted).

The usual traffic stop constitutes an investigative rather than a custodial detention, unless, under the totality of the circumstances, the conditions and duration of the detention become the functional equivalent of arrest. *Commonwealth v. Haupt*, 567 A.2d 1074, 1078 (Pa. Super. Ct. 1989). "An ordinary traffic stop becomes 'custodial' when the stop involves coercive conditions, including, but not limited to, the suspect being forced into a patrol car and transported from the scene or being physically restrained." *Commonwealth v. Mannion*, 725 A.2d 196, 202 (Pa. Super. Ct. 1999). Factors relevant to determining whether a detention has become custodial include: "the basis for the detention; its length; its location; whether the suspect was transported against his or her will, how far, and why; whether restraints were used; whether the law enforcement officer showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions." *Commonwealth v. Williams*, 941 A.2d 14, 31 (Pa. Super. Ct. 2008) (citation omitted).

First, it should be noted that any incriminating statement Defendant may have made in this case occurred prior to his arrest and transport to the hospital, at which point he was undoubtedly in custody. It is also unquestioned that Defendant was being interrogated throughout the duration of the stop. The relevant

inquiry therefore becomes whether Defendant was in "custody" prior to being handcuffed and ushered into the patrol vehicle, or if he was merely being subjected to an investigative detention during that time. This Court believes it was the latter.

In this case, the traffic stop lasted roughly thirty minutes, which is a reasonable amount of time and not excessively lengthy given the circumstances. Defendant argues that being stopped on a "dark rural road" contributed to his belief that he was in custody,[13] but that fact is inconsequential, as it was Defendant who placed himself there, not the troopers. Also of no import is the fact that the troopers were fully uniformed and armed in a marked Pennsylvania State Police patrol unit, as virtually every traffic stop that occurs involves uniformed officers in patrol vehicles. There was no point before actually being handcuffed that Defendant was restrained, nor did the troopers show, threaten, or use force when they were questioning him. It is true that the troopers repeatedly stated to Defendant that he should be honest with them, but the pressure to speak truthfully is inherent in every interaction with police—reminding Defendant of that fact does not in itself cause the line of questioning to become so coercive as to be the functional equivalent of an arrest. Finally, Trooper Sofranko admittedly employed a degree of trickery when he

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[13] Def.'s Br. at 13.

stated to Defendant that a breathalyzer test would be able to tell him whether Defendant had smoked marijuana within the past couple of hours. However, at that point in time Defendant had already admitted to smoking marijuana earlier in the day, at roughly ten o' clock that morning. Defendant never wavered in this conviction, even in the face of Trooper Sofranko's ploy. This staunch adherence to the ten o' clock timeline demonstrates that Trooper Sofranko's dishonesty was ineffective in achieving the goal of prompting Defendant to confess to smoking marijuana more recently, which clearly shows that Defendant's will was not overcome by coercion.

In light of these facts, this Court does not find that Defendant was subjected to a custodial interrogation. Therefore, *Miranda* warnings were not mandatory before Defendant was arrested, and any statements he made during the course of the stop were voluntarily given.

III. VOLUNTARINESS OF DEFENDANT'S CONSENT TO THE BLOOD DRAW

Every citizen is entitled to freedom from unreasonable searches and seizures. U.S. CONST. amend. IV; PA. CONST. art. I, § 8. A blood draw is considered a search within the purview of the Fourth Amendment of the United States Constitution, as well as 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). Absent a warrant exception, the Fourth Amendment does not permit warrantless blood tests

incident to arrests for impaired driving. *Birchfield* at 2184. "One of the standard exceptions to the warrant requirement is consent, either actual or implied." *Commonwealth v. March*, 154 A.3d 803, 808 (Pa. Super. Ct. 2017). However, "motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense." *Birchfield* at 2186. Under *Birchfield*, "a state may not 'impose criminal penalties on the refusal to submit to [a warrantless blood] test.'" Therefore, the Pennsylvania DL-26 warnings are rendered partially inaccurate, and a defendant's consent must be evaluated by the trial court based upon the totality of the circumstances in light of that inaccuracy. *Commonwealth v. Evans*, 153 A.3d 323, 331 (Pa. Super. Ct. 2016).

The burden is on the Commonwealth to prove that a defendant voluntarily consented to a warrantless search. *Commonwealth v. Acosta*, 815 A.2d 1078, 1083 (Pa. Super. Ct. 2003). To establish voluntariness, the Commonwealth must prove that the consent was "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." *Commonwealth v. Mack*, 796 A.2d 967, 970 (Pa. 2002) (quoting *Commonwealth v. Strickler*, 757 A.2d 884, 901 (Pa. 2000)). Factors pertinent to a determination of whether consent to search was voluntarily given include:

> 1) the presence or absence of police excesses; 2) whether there was physical contact; 3) whether police directed the citizen's movements; 4) police demeanor and manner of expression; 5) the location of the interdiction; 6) the content of the questions and statements; 7) the existence and character of the initial investigative detention, including its degree of coerciveness; 8) whether the person has been told that he is free to leave; and 9) whether the citizen has been informed that he is not required to consent to the search.

Commonwealth v. Kemp, 961 A.2d 1247, 1261 (Pa. Super. Ct. 2008) (citation omitted).

It should be noted that this present case, much like President Judge Nanovic's case in *Commonwealth v. Banavage*, 509-2014 (C.P. Carbon 2017), involves a defendant who was read the DL-26 warnings but was ultimately charged with DUI: Controlled Substances, not alcohol. As Judge Nanovic explained in *Banavage*, in cases of DUI for controlled substances, the DL-26 warnings are confusing insofar as they state that if the defendant refuses to have his or her blood drawn and s/he is later convicted for violating Section 3802(a)(1) of the Vehicle Code (relating to general impairment via alcohol), s/he will be subject to the enhanced criminal penalties set forth in Section 3804(c), which are the same penalties applied to motorists convicted of driving with the highest rate of alcohol. *Id.* at 9-10. Because these sections of the Vehicle Code are inapplicable to persons who are charged with driving under the influence of controlled substances, the DL-26 warnings become misleading. The question here, then, is whether Defendant was misled when he was read the warnings at the hospital. *See*

Commonwealth v. Wright, 190 A.2d 709, 711 (Pa. 1963) (consent for a search "may not be gained through stealth, deceit or misrepresentation, and that if such exists this is tantamount to coercion").

The evidence before the Court makes clear that from the commencement of the vehicle stop, Defendant was suspected to have imbibed in marijuana, as Trooper Sofranko immediately detected an odor of burnt marijuana emanating from Defendant's vehicle. Additionally, in plain view was a prescription bottle Defendant indicated contained OxyContin, which he had taken six hours earlier. It appears there was never a question regarding alcohol consumption in this case, as Defendant denied drinking any alcohol. Plus, despite having Defendant blow into a breathalyzer, the troopers never provided any testimony that Defendant had registered any amount of alcohol. On the way to the hospital, the troopers explained to Defendant they were taking him to have his blood drawn, and they testified that he verbally consented to the blood draw while he was being transported.[14] Ultimately, the toxicology report indicated there was no alcohol in Defendant's blood. It seems to this Court that the misleading DL-26 warnings were, in the end, not influential on Defendant's decision to consent to the blood draw. Judging by Defendant's own statements

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[14] 12/20/16 Suppression Hearing.

during the vehicle stop that he had never been to Pennsylvania before, it is very unlikely he would have been able to appreciate the legal minutiae of the particular DUI statutes referenced in the DL-26 warnings.

Turning to the other factors surrounding Defendant's consent, the available evidence does not suggest Defendant's acquiescence to the blood draw was involuntary. Defendant was not under duress; the troopers acted in a professional manner, they did not use excessive force or act in a threatening way; the request for consent was made at the hospital, where the troopers merely read the DL-26 warnings verbatim; Defendant was specifically told that he would not be going to jail or spending the night in jail; and Defendant initially consented to the blood draw on the way to the hospital, then consented again at the hospital after presumably having time to ruminate about whether he really wanted to have his blood drawn. There is no evidence[15] that indicates Defendant consented for fear that he would be subjected to increased criminal penalties were he to refuse.[16] These facts taken together form a totality of the circumstances that demonstrates to this Court that Defendant voluntarily consented to having his blood drawn.

Accordingly, the Court enters the following order:

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[15] Defendant did not testify.

[16] Even had Defendant testified in a manner suggesting his consent was not otherwise voluntary under *Banavage* and the language of the DL-26 warnings, this scenario is not governed by a mandate to suppress the evidence.

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

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JOHN P. HARGETT	:	
	:	
Defendant	:	

Michael S. Greek, Esquire — Counsel for Commonwealth
Assistant District Attorney

Matthew J. Rapa, Esquire — Counsel for Defendant

ORDER OF COURT

AND NOW, this 4th day of May, 2017, upon consideration of Defendant's Suppression Motion and accompanying brief in support thereof, and after a hearing held on this matter, it is hereby **ORDERED** and **DECREED** that Defendant's Suppression Motion is **DENIED.**

BY THE COURT:

Joseph J. Matika, J.