

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

COMMONWEALTH OF PENNSYLVANIA, :

v. :

No. CR-005-2019

CHRISTOPHER JACINTHE-HACKETT, :

Defendant :

Robert S. Frycklund, Esquire  
Assistant District Attorney

Counsel for the Commonwealth

Bradley W. Weidenbaum, Esquire

Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - November 25, 2020

Christopher Jacinthe-Hackett (hereinafter "the Defendant") is charged with Driving Under the Influence: Controlled Substance-Impaired Ability- 1<sup>st</sup> Offense (75 Pa. C.S.A. § 3802(d)(2)); Driving Under the Influence: Controlled Substance- Schedule I- 1<sup>st</sup> Offense (75 Pa. C.S.A. § 3802(d)(1)(i)); Possession of Marijuana (35 P.S. § 780-113(a)(31)); Use/Possession of Drug Paraphernalia (35 P.S. § 780-113(a)(32)); and No Headlights (75 Pa. C.S.A. § 4303(a)). The Defendant's counsel has filed an "Omnibus Pre-Trial Motion" based on several challenges to the traffic stop and seizure of the Defendant as well as the voluntariness of the Defendant's consent to the search of his vehicle and to a chemical test of his blood. Based upon the evidence presented at a hearing before the

undersigned and the post-hearing briefs submitted by counsel, and for the reasons which follow, we will deny the Defendant's motion.

**FACTUAL AND PROCEDURAL BACKGROUND**

On October 10, 2018, at approximately 3:35 a.m., Patrolman Bruce Broyles (hereinafter "Officer Broyles") of the Lehighton Borough Police Department, was on patrol in full uniform and in a white-colored unmarked police vehicle. While on patrol, Officer Broyles observed a light in color sedan travelling northbound on Bankway Street in Lehighton, Pennsylvania in Carbon County. The vehicle was observed to possess a non-illuminated driver's side headlight (Criminal Complaint). After observing the headlight violation, Officer Broyles turned his unit around to initiate a traffic stop and he observed the sedan make a "wide and aggressive left turn" into a private driveway, where the traffic stop took place (N.T., p. 5).

Officer Broyles confronted the driver, who identified himself as the Defendant. The Defendant had already exited the vehicle at the time of the confrontation. Officer Broyles then asked the Defendant for his driver's license, which the Defendant had to retrieve from inside his vehicle. Officer Broyles testified that the Defendant was "hostile during the exchange" and wanted him to "hurry up and move along" (N.T., p. 5-6).

During the encounter with the Defendant, Officer Broyles detected the odor of marijuana. He also observed the Defendant to

have bloodshot eyes, droopy eyelids, slow speech, and slow mannerisms (N.T., p. 6).

Officer Broyles requested the assistance of a backup officer due to the Defendant's hostility. Officer Frank Buonaiuto of the Franklin Township Police Department arrived on scene at approximately 4:00 a.m. (N.T., p. 19). Officer Broyles asked Officer Buonaiuto to speak with the Defendant for the purpose of determining if he also detected the odor of marijuana. Officer Buonaiuto reported back to Officer Broyles that he detected the odor of marijuana while speaking with the Defendant and that he believed that the odor was emanating from the Defendant's vehicle.

The officers then detained the Defendant and placed him in the back of the police vehicle. Officer Broyles asked the Defendant whether there was any marijuana inside of his vehicle. The Defendant told the officers to check the vehicle. A search of the Defendant's vehicle revealed a small baggie of marijuana and two (2) joints or blunts in either the cup holder or the center console. (N.T., pp. 7 and 21).

The Defendant was then transported to the Lehighon Borough Police Department, where Officer Broyles, who was ARIDE certified at the time of the incident, administered field sobriety tests to the Defendant in an interview room (N.T., pp. 4 and 9). The Defendant was asked to pull down his eyelids, which revealed marked reddening of the conjunctiva. He was also asked to stick out his

tongue, which revealed dry mouth, a green tongue, and raised taste buds. Officer Broyles knew these symptoms to be signs of impairment and continued administering the tests to the Defendant.

The Defendant performed the modified Romberg balance test, where he was asked to estimate thirty (30) seconds, which he did in thirty-three (33) seconds. Officer Broyles also observed the Defendant experiencing eyelid and body tremors during the test.

The Defendant also performed the horizontal gaze nystagmus test, during which two (2) indicators of impairment were observed. Three (3) indicators of impairment were observed during the walk-and-turn test. No indicators of impairment were observed during the one-leg-stand test (Criminal Complaint).

The Defendant was then transported to St. Luke's Lehighton Hospital for a chemical test of his blood. Officer Broyles read the DL-26B form to the Defendant, which he refused to sign. However, the Defendant responded with "let's do it." The results of the test revealed that the Defendant's blood contained Delta-9 THC, marijuana, and the metabolites of marijuana (N.T. p. 10). As a result of these events, the Defendant was charged with the above-listed offenses.

#### ISSUES

A. Did Officer Broyles have probable cause to initiate a traffic stop of the Defendant's vehicle?

B. Did probable cause exist to detain the Defendant for suspicion of Driving Under the Influence?

C. Was the Defendant's consent to the search of his vehicle voluntarily given or did probable cause exist to search the vehicle?

D. Was the Defendant's consent to a chemical test of his blood voluntarily given?

### DISCUSSION

Through his pre-trial motion, the Defendant challenges several aspects of his arrest. First, he argues that the headlight of his vehicle was, in fact, in working order. Second, he argues that there was "little, or no evidence submitted at the Omnibus hearing that Hackett was driving while impaired" (Defendant's Brief, p.6). Third, the Defendant asserts that he did not give the officers consent to search his vehicle, nor did they have probable cause to do so. Lastly, the Defendant argues that his consent to the blood draw was unlawfully obtained and was coerced.

**A. Officer Broyles conducted a valid traffic stop of the Defendant's vehicle based on probable cause of a violation of the Pennsylvania Motor Vehicle Code.**

During the hearing on this matter, Officer Broyles testified that he "observed a vehicle travelling northbound that had a headlight that was not illuminated that was on Bankway Street."

Officer Broyles then immediately turned his car around to initiate a traffic stop of that vehicle (N.T., pp. 4-5).

Section 6308 of the Pennsylvania Motor Vehicle Code provides that:

Whenever a police officer... has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal for the purpose of checking a vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of the title.

The Pennsylvania Superior Court explained the requisite standard to conduct a traffic stop in Commonwealth v. Salter. The officer in Salter conducted a stop of a motor vehicle that he had observed to have a non-illuminated license plate lamp. After conducting the stop, the officer observed signs that the defendant was intoxicated. Commonwealth v. Salter, 121 A.3d 987, 990 (Pa. Super. 2015).

The Pennsylvania Superior Court held that an officer needs either probable cause or simply reasonable suspicion to stop a vehicle depending on the suspected violation of the Motor Vehicle Code. "[W]hen considering whether reasonable suspicion or probable cause is required constitutionally to make a vehicle stop, the nature of the violation has to be considered. If it is not necessary to stop the vehicle to establish that a violation of the

Vehicle Code has occurred, an officer must possess probable cause to stop the vehicle. Where a violation is suspected, but a stop is necessary to further investigate whether a violation has occurred, an officer need only possess reasonable suspicion to make the stop." Id. at 993.

If the standard for the vehicle stop is probable cause then "it is encumbent [sic] upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code." Id. at 992 (citing Commonwealth v. Gleason, 785 A.2d 983, 989 (Pa. 2001)). The Pennsylvania Superior Court determined that the officer in Salter had met this burden simply by stating that the defendant's license plate lamp was not illuminated. Id. at 993-994.

Like the officer in Commonwealth v. Salter, Officer Broyles articulated in his testimony that he had personally observed an unilluminated headlight on the Defendant's vehicle, which would constitute a violation of the Pennsylvania Motor Vehicle Code. Additionally, the Defendant is charged with the offense of "No Headlights" (75 Pa. C.S.A. § 4303(a)). Therefore, Officer Broyles had probable cause to conduct a stop of the Defendant's vehicle based on his observation of the non-illuminated headlight.

**B. Officer Broyles possessed probable cause to detain the Defendant for Suspicion of Driving Under the Influence based on the totality of the circumstances.**

Officer Broyles testified that he had observed the Defendant to have bloodshot eyes, droopy eyelids, slow speech, and slow mannerisms. Additionally, both Officer Broyles and Officer Buonaiuto detected the odor of marijuana emanating from the Defendant's vehicle and person.

"Probable cause is made out when 'the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime.'" Commonwealth v. Thompson, 985 A.2d 928, 935 (Pa. 2009) (citing Commonwealth v. Rodriguez, 585 A.2d 988, 990 (1991)). "The question we ask is not whether the officer's belief was 'correct or more likely true than false.'" Id. at 931 (citing Texas v. Brown, 460 U.S. 730, 742 (1983)). "'Rather, we require only a 'probability, and not a prima facie showing, of criminal activity.'" Id. (citing Illinois v. Gates, 462 U.S. 213, (1983)). "In determining whether probable cause exists, we apply a totality of the circumstances test." Id. (citing Commonwealth v. Clark, 735 A.2d 1248, 1252 (1999) (relying on Gates, *supra*))."



As to the weight of evidence observed in light of an officer's training and experience in relation to probable cause, the court in Commonwealth v. Thompson held that "'a police officer's experience may fairly be regarded as a relevant factor in determining probable cause.'" Thompson, 985 A.2d at 935 (citing Justice Saylor's concurrence in Commonwealth v. Dunlap, 941 A.2d 674, 679 (Pa. Super. 2004)). However, "a court cannot simply conclude that probable cause existed based upon nothing more than the number of years an officer has spent on the force. Rather, the officer must demonstrate a nexus between his experience and the search, arrest, or seizure of evidence." Dunlap, 941 A.2d at 676. Indeed, a factor becomes relevant only because it has some connection to the issue at hand. The very foundation of the Gates totality test is the recognition that all relevant factors go into the probable cause mix." Thompson, 985 A.2d at 935.

In this case, Officer Broyles noticed that the Defendant had bloodshot eyes, droopy eyelids, spoke with slow speech, had slow mannerisms, and smelled of marijuana. Officer Broyles was an ARIDE certified officer at the time of the Defendant's arrest and recognized the Defendant's conditions and behaviors to be signs of impairment. Officer Broyles immediately requested the assistance of Officer Buonaiuto, who confirmed that the odor of marijuana was present. The Defendant was then placed in the back of Officer Broyles' patrol vehicle. By that point, the totality of the

circumstances demonstrate that the Defendant had been operating the vehicle while under the influence of marijuana based on the facts known to both officers. Therefore, Officer Broyles had probable cause to detain the Defendant for suspicion of Driving Under the Influence.

**C. The Defendant voluntarily consented to the search of his vehicle by Officer Broyles and Officer Buonaiuto.**

According to Officer Broyles, the Defendant was asked whether there was any marijuana inside of the vehicle. In response, the Defendant told the officers to "check it" (N.T., p. 7). Officer Buonaiuto agreed that the Defendant told the officers to "go ahead and look" in the vehicle before they began to search it (N.T., p. 25).

We find that the Defendant's words constitute consent to a search of his vehicle. Therefore, we turn to the issue of whether the Defendant's consent was voluntarily given.

"A search conducted without a warrant is deemed to be unreasonable and therefore constitutionally impermissible, unless an established exception applies." Commonwealth v. Kemp, 961 A.3d 1247, 1260 (Pa. Super. 2008) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973)). One such exception is consent, voluntarily given. Id.

"In connection with [the inquiry into the voluntariness of a consent given pursuant to a lawful encounter], 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.... [W]hile knowledge of the right to refuse to consent to the search is a factor to be taken into account, the Commonwealth is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent.... Additionally, although the inquiry is an objective one, the maturity, sophistication and mental or emotional state of the defendant (including age, intelligence and capacity to exercise free will), are to be taken into account[.]” Id. at 1261 (citing Commonwealth v. Strickler, 757 A.2d 884, 901-02 (Pa. 2000)).

In this case, the officers did not ask the Defendant for his consent, he simply offered them the opportunity to search his vehicle. Further, the Defendant was an adult at the time of the incident and there was no testimony given that he was intellectually incapacitated in any way. Additionally, there was no testimony that would suggest that the Defendant had been mentally or emotionally unsound or unstable during the incident. Therefore, we hold that the Defendant’s consent to the officers’ search of his vehicle was voluntary. As such, we need not address

the issue of whether the officers had probable cause to search the Defendant's vehicle.

**D. The Defendant voluntarily consented to a chemical test of his blood based and was provided with the required warnings.**

The Defendant contends that his consent to a blood draw was the result of coercion. As Officer Broyles testified, the Defendant was read the DL-26B form, but refused to sign it. The Defendant orally agreed to testing by stating "Let's do it" (N.T., p. 10).

In the case of Birchfield v. North Dakota, the Supreme Court of the United States held that "criminal penalties imposed on individuals who refuse to submit to a warrantless blood test violate the Fourth Amendment." Commonwealth v. Krenzel, 209 A.3d at 1028. In response, the Pennsylvania Department of Transportation updated the DL-26 form by removing the warnings relative to enhanced criminal penalties. Id. On July 20, 2017, Governor Tom Wolf approved amendments to 75 Pa. C.S.A. § 3804 to bring Pennsylvania into compliance with Birchfield. From that date on, "DL-26B conforms to the revised statutory law." Id.

In addition to the fact that the DL-26B form conforms to Pennsylvania and United States law, it is also worth noting that

oral consent to a chemical test of blood is valid in the state of Pennsylvania. Zerbe v. Commonwealth, 676 A.2d 294, 297 (Cmwlth. Ct. 1996).

The Defendant in this case contends that he was told that he must give blood or lose his driver's license (Defendant's Brief, p. 7). However, the testimony of Officer Broyles contradicts this argument. The DL-26B form warns the arrestee of a potential suspension of operating privilege should they refuse to give consent. However, a loss of operating privilege is not a criminal penalty and therefore does not violate the Birchfield standard. Additionally, the Defendant, who testified at the hearing on this matter, did not mention the blood draw. Therefore, there was no testimony from Officer Broyles or the Defendant that anything coercive had been said to obtain the Defendant's consent to the blood draw in this case. Therefore, we find that the Defendant's consent to the chemical test of his blood was voluntary.

#### CONCLUSION

For the reasons set forth hereinabove, the Defendant's "Omnibus Pre-Trial Motion" will be denied and we will enter the following

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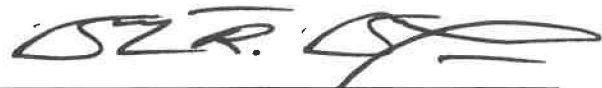
ORDER OF COURT

AND NOW, to wit, this 25<sup>th</sup> day of November, 2020, upon  
consideration of "Defendant's Omnibus Pre-Trial Motion" and  
hearing held thereon, and following our review of the post-  
hearing briefs of counsel, and in accordance with our memorandum  
opinion bearing even date herewith, it is hereby

**ORDERED and DECREED** that the Defendant's "Omnibus Pre-  
Trial Motion" is DENIED.

**IT IS FURTHER ORDERED and DECREED** that the parties  
shall appear for a pre-trial conference at 3:15 p.m. on January  
8, 2021 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.

FS-42-2020