

Adams County Legal Journal


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IN THIS ISSUE

COMMONWEALTH OF PENNSYLVANIA VS.
DANNIE L. STEPHENSON



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Trust Officer

Karen Arthur
Senior Trust Officer

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NOTICE

NOTICE IS HEREBY GIVEN that JUSTIN CRAIG NELL, ESQUIRE, intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 8th day of December, 2016, and that he intends to practice law with the Nell Law Office, County of Adams, 130 West King Street, East Berlin, Pennsylvania.

11/11, 11/18, 11/23

NOTICE

NOTICE IS HEREBY GIVEN that Adam D. Boyer, intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on December 8, 2016, and that he intends to practice law as an Associate in the office of Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, Pennsylvania.

11/11, 11/18, 11/23

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on the 4th day of November, 2016, the Petition of Gabriela Kay Davidheiser, an adult individual, was filed in the Court of Common Pleas of Adams County, Pennsylvania, praying for a decree to change the name of petitioner to Gabriela Kay Cranga.

The court has affixed the 13th day of January, 2017, at 10:30 a.m., in Courtroom No. 4 of the Adams County Courthouse as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of said petition should not be granted.

Bernard A. Yannetti, Esq.
Hartman & Yannetti
126 Baltimore Street
Gettysburg, PA 17325
Attorney for Petitioner

11/18

PUBLIC NOTICE TO
UNKNOWN FATHER

A Petition has been filed asking the Court to put an end to all rights you have to your child, Jakob Charles Good. The Court has set a hearing to consider ending your rights to your child.

That hearing will be held in Courtroom No. 4, Third Floor, Adams County Courthouse, 117 Baltimore Street, Gettysburg, Pennsylvania 17325, on December 12, 2016 at 1:00 p.m. You have the right to be present at the termination hearing. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the Court without you being present. You have the right to be represented at the hearing by a lawyer and it is your responsibility to take steps to obtain a lawyer if you desire to do so. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Court Administration
Adams County Courthouse
117 Baltimore Street, Fourth Floor
Gettysburg, PA 17325
Telephone (717) 337-9846

James T. Yingst, Esquire
Attorney I.D. No. 34358 PA
40 York Street
Hanover, PA 17331
(717) 632-5315
(717) 637-5682 (f)
jamesy@gnyh.com
Attorney for Petitioner

11/18

NONPROFIT ARTICLES OF
INCORPORATION

NOTICE IS HEREBY GIVEN that Nonprofit Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on November 4, 2016, for the purpose of obtaining a Certificate of Incorporation under the provisions of the Nonprofit Corporation Law of 1988. The name of the proposed nonprofit corporation is Mustang Heights Homeowners Association, Inc.

The purpose for which it will be organized is: To be a unit owners' association which provides for the management, maintenance and care of the residential community project located in Penn Township, York County, Pennsylvania, known as Mustang Heights, A Planned Community.

McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17101

11/18

COMMONWEALTH OF PENNSYLVANIA VS.
DANNIE L. STEPHENSON

1. In a suppression hearing, the Commonwealth has the burden to establish by a preponderance of the evidence the admissibility of those items the accused seeks to preclude.

2. The administration of a blood test is a search within the meaning of the Fourth Amendment if it is performed by an agent of the government.

3. The United States Supreme Court has explicitly held the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. Conversely, absent an exception to the warrant requirement, a blood test conducted without a warrant, incident to a lawful drunk-driving arrest, violates the Fourth Amendment.

4. The exclusionary rule originated to deter unlawful police practices by depriving law enforcement officials of the benefits derived from using unlawfully obtained information.

5. Pennsylvania has explicitly held Leon's good faith exception to the exclusionary rule inapplicable because of the strong privacy rights guaranteed by the Pennsylvania Constitution.

6. Pennsylvania does not have a separate refusal statute. However, 75 Pa.C.S.A. § 1547(b) allows the Commonwealth to impose criminal penalties, such as a mandatory sentencing enhancement, on a person who refuses to undergo a chemical test.

7. Post-Birchfield, the sentencing enhancements contained in 75 Pa.C.S.A. § 3804(c), and the reference to the criminal penalties in 75 Pa.C.S.A. § 1547(b)(2)(ii), are facially unconstitutional.

8. For police officers to rely on the exigent circumstance exception they must show an urgent need for the evidence such that they cannot wait for a search warrant.

9. When the situation is a warrantless blood draw, a case by case totality of the circumstances analysis is appropriate. However, the evanescent nature of alcohol is no longer sufficient by itself to provide police officers with an exigent circumstance.

10. Therefore, in a routine DUI stop where the only exigency is evanescent blood evidence, the Commonwealth will have a difficult time establishing an exigent circumstance.

11. In regard to the cases currently pending before this Court, the Commonwealth cannot retrospectively argue an exigency existed at the time of the blood draw.

12. The stain of an unconstitutional search may be erased when an individual has validly consented to the search. Pennsylvania courts have employed an objective, totality of the circumstances approach in deciding whether an individual provided the necessary consent to search. In order for consent to be valid, it must be unequivocal, specific, and voluntary. The appellant must have intentionally relinquished or abandoned a known right or privilege.

13. 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.

14. Defendant was read the DL-26 Form, which told him that if he refused the blood draw he would receive harsher criminal penalties than if he consented. Under the required objective standard, a reasonable person would have consented to the search because a refusal would have automatically meant a harsher punishment. With

no real choice, the criminal penalties coerced Defendant into consenting to what was otherwise an unconstitutional search. This Court finds the threat of the now unconstitutional criminal penalties for refusal amounted to coercion.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CRIMINAL, CP-01-CR-430-2016,
COMMONWEALTH OF PENNSYLVANIA VS. DANNIE L.
STEPHENSON.

Daniel S. Topper, Esq., Attorney for Commonwealth

Kristin L. Rice, Esq., Attorney for Appellant

Campbell, J., October 4, 2016

OPINION ON DEFENDANT'S OMNIBUS PRE-TRIAL
MOTION FOR SUPPRESSION OF EVIDENCE

Presently before this Court is Defendant Dannie L. Stephenson's Omnibus PreTrial Motion filed July 12, 2016, seeking suppression of evidence. This Court held a suppression hearing on August 15, 2016. The issue before the Court is whether Defendant voluntarily consented to a blood draw pursuant to Pennsylvania's Implied Consent Law, **75 Pa. C.S.A. § 1547**, following Defendant's arrest for DUI. Based upon the following findings of fact and conclusions of law, the Court will grant Defendant's Motion to Suppress.

FINDINGS OF FACT

1. Trooper Megan Frazer is a member of the Pennsylvania State Police Department. She has been a state trooper for three and a half years.
2. On January 13, 2014, Trooper Frazer was dispatched to the scene of a two vehicle crash on State Route 30 near Fleshman Mill Rd. and Mount Pleasant Rd.
3. When Trooper Frazer arrived at the scene, she observed a van flipped over onto its side.
4. Trooper Frazer made contact with the driver of the van, Defendant Dannie Stephenson. Defendant was sitting on the curb when Trooper Frazer arrived.
5. Trooper Frazer told Defendant to stand up, and she then observed classic signs of intoxication described as swaying back and forth, blood shot eyes, and a strong odor of alcohol coming from Defendant's body and breath.
6. Trooper Frazer requested that Defendant perform field sobriety tests, which Defendant attempted and failed.
7. Upon failing the field sobriety tests, Defendant purportedly said, "Just take me."
8. Trooper Frazer handcuffed Defendant and placed him under arrest on suspicion of driving under the influence.
9. Trooper Frazer transported Defendant in her patrol vehicle to Gettysburg Hospital to have Defendant's blood drawn.
10. While at the hospital, Trooper Frazer read Defendant the DL-26

Form, which states: "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."

11. Defendant signed the DL-26 Form, and a sample of Defendant's blood was taken.

CONCLUSIONS OF LAW

1. Trooper Frazer placed Defendant under arrest for driving under the influence, prior to transporting Defendant to Gettysburg Hospital.
2. Defendant's consent to provide a blood sample was not voluntary.

LEGAL STANDARD

In a suppression hearing, the Commonwealth has the burden to establish by a preponderance of the evidence the admissibility of those items the accused seeks to preclude. *Commonwealth v. Ruey*, 892 A.2d 802, 807 (Pa. 2006).

The Fourth Amendment of the United States Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."¹ The Fourth Amendment is applicable to the states through the Fourteenth Amendment of the U.S. Constitution. *Commonwealth v. Kohl*, 615 A.2d 308,311 (Pa. 1992). Pennsylvania's Constitution specifically guarantees citizens the right to be "secure in their persons . . . from unreasonable searches and seizures."² A search or

¹ U.S. Const. amend. IV.

² Pa. Const. art. I, § 8.

seizure is reasonable only if "it is conducted pursuant to a search warrant issued by a magistrate upon a showing of probable cause." *Kohl*, 615 A.2d at 313. When police obtain evidence in violation of an individual's Fourth Amendment rights, the Commonwealth is precluded from using that evidence at trial. *Commonwealth v. Pratt*, 930 A.2d 561, 563 (Pa. Super. 2007).

"The taking of a blood sample or the administration of a breath test is a search." *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2173 (2016). *See also Commonwealth v. Ellis*, 608 A.2d 1090, 1092 (Pa. Super. 1992) (citing *Commonwealth v. Hipp*, 551 A.2d 1086 (Pa. 1988)) ("The administration of a blood test is a search within the meaning of the Fourth Amendment if it is performed by an agent of the government."). In the current case, the police officer requested Defendant to provide a blood sample after arresting him for a DUI offense. Since Defendant's blood was taken at the request of law enforcement, the blood draw was a search and must comply with both the Fourth amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution to be admissible at trial.

The United States Supreme Court has explicitly held "the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving."³ *Birchfield*, 136 S. Ct. at 2184. Conversely, absent an exception to the warrant requirement, a blood test conducted without a warrant, "incident to a lawful drunk-driving arrest[.]" violates the Fourth Amendment.⁴ *Id.* at 2185 n. 8.

DISCUSSION: EXCLUSIONARY RULE

"The exclusionary rule originated to deter unlawful police practices by depriving law enforcement officials of the benefits derived from using unlawfully obtained information." *Commonwealth v. Brown*, 368 A.2d 626,630 (Pa. 1976) (citing *Mapp v. Ohio*, 367 U.S. 643 (1961)). The Commonwealth argues the exclusionary rule is inapplicable to the current case because the police officer was acting

³ The Court found breath tests did not offend the Fourth Amendment since "breath tests are significantly less intrusive than blood tests and in most cases amply serve law enforcement interests " *Id.* at 2185.

⁴ As compared to a breath test, blood tests entail a significant bodily intrusion, as well as implicate serious concerns regarding an individual's privacy rights. *Id.* at 2178.

in accordance with a then valid statute.⁵ See Commonwealth's Supplemental Brief/Response to Motions Pursuant to *Birchfield v. North Dakota* and *Beylund v. Levi*, Director, North Dakota Department of Transportation at 1, 3-7. In making this argument the Commonwealth relies heavily on *Illinois v. Krull*, 480 U.S. 340, 345-46, 360 (1987), which found the police officer acted "in objective good faith, on a statute that appeared legitimately to allow a warrantless administrative search" and reversed the lower court's holding that the evidence had to be suppressed. However, the Supreme Court resolved the case using *United States v. Leon's*⁶ analysis of the exclusionary rule and the desire to deter police misconduct. See *Krull*, 480 U.S. at 349-60.

Prior to *Birchfield*, police officers were not required to obtain a search warrant before asking a defendant to submit to a blood test. Instantly, since police officers were acting in compliance with the statute as it was then enacted, and not in bad faith, *Leon's* aim of deterring police misconduct is inapplicable in the current case.

Furthermore, Pennsylvania has explicitly held *Leon's* good faith exception to the exclusionary rule inapplicable because of the strong privacy rights guaranteed by the Pennsylvania Constitution. See *Commonwealth v. Edmunds*, 586 A.2d 887, 897-99, 905 (Pa. 1991). As *Birchfield* mentioned, a blood draw implicates significant privacy concerns.⁷ Pennsylvania places a greater emphasis on an individual's privacy rights and less on police deterrence; thus, extending the good faith exception to the exclusionary rule in this instance fails to further the aims of Article 1, Section 8 of the Pennsylvania Constitution.

Nothing in this Court's analysis is meant to suggest or imply that law enforcement officers acted inappropriately in securing blood tests pursuant to the implied consent statutes. To the contrary, law enforcement officers were diligently fulfilling their duty to follow and apply the law. However, the *Birchfield* decision has redefined the parameters within which blood tests may be obtained.

⁵ Prior to *Birchfield*, under Pa. C.S.A. § 1547(a), a police officer was not required to obtain a search warrant before asking an individual suspected of committing a DUI offense to submit to a chemical test. By driving on a Pennsylvania roadway an individual was considered to have impliedly consented to the test. § 1547(a).

⁶ 468 U.S. 897 (1984).

⁷ *Birchfield*, 136 S. Ct. at 2178.

DISCUSSION: EXIGENT CIRCUMSTANCES

Directly relevant to this case is *Birchfield*'s analysis and holding on implied consent laws.⁸ The United States Supreme Court found the criminal penalties imposed by the implied consent laws vitiated a person's ability to consent to a blood draw, thus violating the Fourth Amendment. *Birchfield*, 136 S. Ct. at 2186. The Court explained "[i]t is another matter, however, for a State not only to insist upon an intrusive blood test, but also to impose criminal penalties on the refusal to submit to such a test. There must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads." *Id.* at 2185. While the Court struck down the criminal penalties, the Court explained its opinion should not "be read to cast doubt [on the civil penalties and evidentiary consequences]" for declining the blood test. *Id.* Finally, in situations such as those of Petitioner Beylund where "consent [to a blood test] was voluntary on the erroneous assumption that the State could permissibly compel both blood and breath tests[.]" the Court has left state courts with the task of determining if the defendant's consent to the blood test was actually voluntary. *Id.* at 2186.

Unlike North Dakota and Minnesota, Pennsylvania does not have a separate refusal statute. However, **75 Pa.C.S.A. § 1547(b)** allows the Commonwealth to impose criminal penalties, such as a mandatory sentencing enhancement, on a person who refuses to undergo a chemical test.⁹ In essence, a person charged under the general impairment subsection of the DUI statute who refuses the chemical test receives the same punishment as a person found guilty of DUI highest blood alcohol level.¹⁰ The statute also provides for civil penalties such as a license suspension and presentation of evidence at trial of the Defendant's refusal.¹¹ The aforementioned civil and

⁸ Both North Dakota's and Minnesota's statutes made refusing to submit to a BAC test a criminal offense. *Id.* at 2170-72.

⁹ [I]f the person refuses to submit to chemical testing, upon conviction or plea for violating section 3802(a)(1), the person will be subject to the penalties provided in section 3804(c) (relating to penalties)." **§ 1547(b)(2)(ii)**.

¹⁰ *Id.* at § 1547(b)(2)(ii). Punishment for the highest offense ranges from at least "72 consecutive hours" of jail time all the way to a maximum sentence "of not less than five years in jail." *Id.* at § 3803, § 3804(c)(1)(i), (2)(i), (3)(i).

¹¹ *Id.* at § 1547(b)(1), (b.1), (c), (e). Since *Birchfield* upholds the use of these consequences and the Defendant does not challenge them, this Court will not address them further.

criminal penalties, contained in the Pennsylvania Department of Transportation's DL 26 form,¹² must be provided by a police officer to each defendant arrested for a DUI offense.¹³

Post-*Birchfield*, the sentencing enhancements contained in **75 Pa. C.S.A. § 3804(c)**, and the reference to the criminal penalties in **75 Pa. C.S.A. § 1547(b)(2)(ii)**, are facially unconstitutional. Now, when police officers arrest an individual for a DUI offense, they must procure a search warrant before a defendant's blood is drawn, unless the individual voluntarily consents or an exigent circumstance is present.

For police officers to rely on the exigent circumstance exception they must show an "urgent need" for the evidence such that they cannot wait for a search warrant. *Birchfield*, 136 S. Ct. at 2173.¹⁴ See also *Commonwealth v. Roland*, 637 A.2d 269, 271 (Pa. 1994). "[T]he Commonwealth must show by clear and convincing evidence that the circumstances surrounding the opportunity to search were truly exigent. ..." *Commonwealth v. Lee*, 972 A.2d 1, 4 (Pa. Super. 2009) (quoting *Commonwealth v. Rispo*, 487 A.2d 937, 940 (Pa. 1985)).

When the situation is a warrantless blood draw, a case-by-case totality of the circumstances analysis is appropriate. See *Missouri v. McNeely*, 133 S. Ct. 1552, 1556 (2013); *Birchfield*, 136 S. Ct. at 2174. The "likelihood that evidence will be destroyed if police take the time to obtain a warrant..." is a factor courts can consider. *Roland*, 637 A.2d at 271. However, the evanescent nature of alcohol is no longer sufficient by itself to provide police officers with an exigent circumstance. *McNeely*, 133 S. Ct. at 1556.¹⁵ The Commonwealth insinuates that **75 Pa.C.S.A. § 3802(a)(2)**'s two-hour

¹² Pennsylvania Department of Transportation, Chemical Testing Warnings and Report of Refusal to Submit to Chemical Testing as Authorized by Section 1547 of the Vehicle Code in Violation Section 3802 (March 2012).

¹³ **§ 1547(b)(2)**.

¹⁴ "The exigent circumstances exception allows a warrantless search when an emergency leaves police insufficient time to seek a warrant. It permits, for instance, the warrantless entry of private property when there is a need to provide urgent aid to those inside, when police are in hot pursuit of a fleeing suspect, and when police fear the imminent destruction of evidence." *Birchfield*, 136 S. Ct. at 2173. (internal-citations omitted).

¹⁵ The Supreme Court declined to adopt a per se rule allowing for an exigent circumstance based on "the natural metabolism of alcohol in the bloodstream." *McNeely*, 133 S. Ct. at 1556.

requirement will suffice to meet the urgency needed for an exigent circumstance.¹⁶ Interestingly, **75 Pa.C.S.A. § 3802(g)**'s "good cause" exception appears to obviate the need to show an exigent circumstance.¹⁷ Therefore, in a routine DUI stop where the only exigency is evanescent blood evidence, the Commonwealth will have a difficult time establishing an exigent circumstance. In this case the Commonwealth has presented no evidence to support an exigent circumstance.

In regards to the cases currently pending before this Court, the Commonwealth cannot retrospectively argue an exigency existed at the time of the blood draw. See *Commonwealth v. Arnold*, 932 A.2d 143, 147-48 (Pa. Super. 2007); *Commonwealth v. Demshock*, 854 A.2d 553, 557 (Pa. Super. 2004). Under these cases, an exigency must have existed at the time the search occurred. Prior to *Birchfield*, Pennsylvania's implied consent law allowed police officers to obtain warrantless blood draws from an individual arrested for a DUI offense.¹⁸ Thus, there was no need in most situations to first obtain a search warrant. The Commonwealth cannot now impart an exigency when none existed at the time the blood was drawn.

DISCUSSION: KNOWING AND VOLUNTARY CONSENT

Here, the police officer did not obtain a search warrant prior to the blood draw. As the Commonwealth has not established an exigent circumstance, the Defendant's blood test results must be suppressed

¹⁶ "An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.08% but less than 0.10% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle." § **3802(a)(2)** (emphasis added).

¹⁷ "Notwithstanding the provisions of subsection (a), (b), (c), (e) or (f), where alcohol or controlled substance concentration in an individual's blood or breath is an element of the offense, evidence of such alcohol or controlled substance concentration more than two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish that element of the offense under the following circumstances:

- (1) where the Commonwealth shows good cause explaining why the chemical test sample could not be obtained within two hours; and
- (2) where the Commonwealth establishes that the individual did not imbibe any alcohol or utilize a controlled substance between the time the individual was arrested and the time the sample was obtained."

75 Pa.C.S.A. § 3802(g).

¹⁸ See **75 Pa.C.S.A. § 1547(a).**

as an unreasonable search and seizure in violation of Article I, Section 8 of the Pennsylvania Constitution unless the Commonwealth establishes he provided knowing and voluntary consent.¹⁹

The stain of an unconstitutional search may be erased when an individual has validly consented to the search. **See *Commonwealth v. Cleckley***, 738 A.2d 427,429 (Pa. 1999) (citing ***Commonwealth v. Slaton***, 608 A.2d 5, 8-9 (Pa. 1992)). Pennsylvania courts have employed an objective, totality of the circumstances approach in deciding whether an individual provided the necessary consent to search. ***Smith***, 77 A.3d at 573. "In order for consent to be valid, it must be 'unequivocal, specific, and voluntary.' The appellant must have intentionally relinquished or abandoned a known right or privilege." ***Commonwealth v. Dunne***, 690 A.2d 1233, 1236 (Pa. Super. 1997) (citing ***Commonwealth v. Gibson***, 638 A.2d 203, 207 (Pa. 1994)).

The ***Smith*** Court aptly stated:

In determining the validity of a given consent [to provide a blood sample], '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.

¹⁹ The Commonwealth bears the burden of establishing Defendant knowingly and voluntarily consented to the search. ***Commonwealth v. Smith***, 77 A.3d 562, 573 (Pa. 2013).

Smith, 77 A.3d at 573. (internal citations omitted).

The Pennsylvania Supreme Court has also explained:

[e]valuation of the voluntariness of a defendant's consent necessarily entails consideration of a variety of factors, factors which, of course, may vary depending on the circumstances. Accordingly, no hard and fast rule can be gleaned that would dictate what factors must be considered in each instance. We find instructive, however, the following factors considered by the Supreme Court of Appeals of West Virginia when evaluating the voluntariness of a defendant's consent: 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 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.

Cleckley, 738 A.2d at 433 n. 7 (Pa. 1999) (adopting the factors espoused by the Supreme Court of Appeals of West Virginia).

The Defendant claims, as did Petitioner Beylund in *Birchfield*, that the threat of a criminal penalty coerced him into consenting to the blood draw. At the point Defendant consented to the blood draw he was in custody. Given the inherently coercive atmosphere of custodial arrest, this factor leans against a finding of voluntariness. Defendant was also never advised he had a right to refuse consent. See *Commonwealth v. Strickler*, 757 A.2d 884, 901 (Pa. 2000). In fact, Defendant was read the DL-26 Form, which told him that if he refused the blood draw he would receive harsher criminal penalties than if he consented. Under the required objective standard, a reasonable person would have consented to the search because a refusal would have automatically meant a harsher punishment. With no real choice, the criminal penalties coerced Defendant into consenting to what was otherwise an unconstitutional search. This Court finds the threat of the now unconstitutional criminal penalties for refusal amounted to coercion.

Here, the Commonwealth suggests Defendant's statement "Just take me," was valid consent to a blood test. Such a limited statement

hardly demonstrates Defendant Here, the Commonwealth suggests Defendant's statement "Just take me," was valid consent to a blood test. Such a limited statement hardly demonstrates Defendant

Accordingly, the blood test results must be suppressed.

ORDER

AND NOW, this 16th day of August, 2016, Defendant's Omnibus Pre-Trial Motion is Granted. The blood test results are suppressed and inadmissible at trial.

NOTICE

NOTICE IS HEREBY GIVEN to all interested persons that the following matters shall be terminated after 30 days of this publication date unless a party to the proceeding requests a hearing from the appropriate Magisterial District Court, pursuant to the Adams County Rules of Judicial Administration 160.

Office of the Court Administrator
Adams County Courthouse
117 Baltimore Street
Gettysburg, PA 17325
717-337-9846

District Court 51-3-01

Affiant	Defendant	Docket #	Charge	Title, Section
1. East Side Auto	Kathy Forbush	NT-1282-00	Bad Check	18, 4105A
2. Bea Savage	Renee Kosinski	NT-80-04	Snow/Ice Rem.	Chap 21 242
3. Walmart	Hanna Taylor	NT-91-04	Bad Checks	18, 4105A
4. Walter Powell	Pete Lundgren	NT-687-06	Bad Checks	18, 4105A
5. William Orth	Miguel Chavez	NT-342-09	Curfew	Chap 6 302
6. Thomas Knaper	Jason Kenner	NT-657-11	Public Drun.	18, 5505
7. Trp. Weis	Jeffrey Weishaar	NT-22-13	Harassment	18, 2709 A1
8. Loyal Order of Moose	Billy Carbaugh	NT-36-13	Bad Checks	18, 4105A
9. Trp. Ross	David Beene	NT-56-13	Dis. Conduct	18, 5503 A4
10. Brian Weikert	Jamie Blank	NT-83-13	Harassment	18, 2709A1
11. Brian Weikert	Jamie Blank	NT-84-13	Dis. Conduct	18, 5503 A1
12. Brian Weikert	Henry Meyer	NT-85-13	Dis. Conduct	18, 5503 A1
13. Brian Weikert	Henry Meyer	NT-86-13	Harassment	18, 2709A1
14. Trp. Mitchell	Eileen Curley	NT-224-13	Retail Theft	18, 3929 A1
15. Lincoln Elem. School	Stephanie Carr	NT-228-13	Vio. of Comp.	24, 13-1333A1
16. Adams Cty Resc. Miss	Ryan Twigg	NT-342-13	Criminal Tres.	18, 5503 B1
17. Trp. Wolfe	John Sipe	NT-364-13	Harassment	18, 2709 A1
18. Katherine Sass	Miguel Garcia-Lopez	NT-429-13	Dis. Con. Proh	BO6 31011.A1
19. East Side Auto Sales	Takeerah Arnold	NT-451-13	Bad Check	18, 4105 A1
20. East Side Auto Sales	Takeerah Arnold	NT-452-13	Bad Check	18, 4105 A1
21. East Side Auto Sales	Amanda Yonker	NT-453-13	Bad Check	18, 4105 A1
22. East Side Auto Sales	Amanda Yonker	NT-454-13	Bad Check	18, 4105 A1
23. Aubrey Burkholder	Brick Point Construction	NT-524-13	Acc. Rubbish	LO, 5 308.1
24. Adams Rescue Mission	Jonathan Graham	NT-607-13	Bad Check	18, 4105 A1
25. Brandi Courtesis	Jeffrey Waggoner	NT-591-13	Barking	B.O. 2 2-104

District Court 51-3-02

Affiant	Defendant	Docket #	Charge	Title, Section
1. U-Store It	Pamela Miller	NT-379-99	Bad Checks	18, 4105
2. Henry	Robert Huple	NT-10-01	Crim. Trespass	18, 3502b1i
3. Sensations	Brandi S. Floyd	NT-326-01	Bad Checks	18, 4105
4. Williams	James Lee Bullock	NT-793-03	Retail Theft	18, 3926 A1
5. Faberware	Minnie Morrison	NT-305-04	Bad Checks	18, 4105 A1
6. Kennies	Lloyd Shumaker Jr.	NT-404-04	Bad Checks	18, 4105 A1
7. Christmas Tree Hill	Carol Gorse	NT-163-07	Bad Checks	18, 4105 A1
8. Spielman	Richard S. Navy Sr.	NT-93-08	Gen. Parking	LO, 68
9. Spielman	Richard S. Navy Sr.	NT-117-08	Overt. Parking	LO, 68
10. Hilyard	Joseph R. Strickland Jr.	NT-315-08	Gen. Parking	LO, 68

District Court 51-3-03

Affiant	Defendant	Docket #	Charge	Title, Section
1. Conewago Valley School	Tonya Piksusch	NT-25-13	Truancy	24, 13-1333A1
2. Conewago Valley School	Tonya Piksusch	NT-329-13	Truancy	24, 13-1333A1
3. East Berlin Library	Damien Bruno Mills	NT-771-13	Ret. Lib. Prop.	18, 6708
4. Todd Dunlap	Phillip W. Gabson	NT-788-13	Harassment	18, 2709A1

District Court 51-3-04

Affiant	Defendant	Docket #	Charge	Title, Section
1. Nikki Gundel	Ana Patricia Escobar	NT-51-13	Crim. Trespass	18, 3503b1.1i
2. Clifford Weikert	Loc Van Tran	NT-77-13	Theft of Service	18, 3926a1
3. Scott Merryman	John L. Sullivan	NT-141-13	Obj. Materials	LO, 65-4a

4.	Dustin Miller	Donald M. Logue, Jr.	NT-260-13	Lic. Required	LO, 13 202-2
5.	Scott Merryman	John L. Sullivan	NT-285-13	Inop. Vehicles	LO, 164 2*3
6.	Scott Merryman	Morgan Stanley 1x15 Real Est	NT-309-13	Obj. Materials	LO, 65-4a
7.	Jeremy Ney	Danny D. Dilts, Jr.	NT-332-13	Vio. Rules/Reg.	30, 741a
8.	Jeremy Ney	Danny D. Dilts, Jr.	NT-333-13	Vio. Rules/Reg.	30, 741a
9.	Scott Merryman	John L. Sullivan	NT-387-13	Obj. Materials	LO, 65-4a
10.	Scott Merryman	John L. Sullivan	NT-423-13	Inop. Vehicles	LO, 164 2*3
11.	Scott Merryman	John C. Coyle	NT-437-13	Weeds	LO, 65 4E
12.	Daniel Grazier	Pablo Gusman	NT-496-13	Harassment	18, 2709a1

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF MAUDE E. DEAL, a/k/a MAUDE ELIZABETH DEAL, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Elizabeth D. Deal, 314 High St., 1st Fl, Hanover, PA 17331

Attorney: Amy E.W. Ehrhart, Esq., 118 Carlisle St., Suite 202, Hanover, PA 17331

ESTATE OF FLORENCE L. DIEHL, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: John E. Watson, Sr., 6995 Old Harrisburg Road, York Springs, PA 17372

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF PHILIP D. HOFFMAN, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Abby Young, 3070 Willow Lane, Glenville, PA 17329

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF EVELYN V. WARNER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Joyce E. Arndt, 611 Moul Avenue Hanover, PA 17331

Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF MICHAEL H. WILT, SR., DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Administrators: Eric A. Wilt, 143 Fohl Street, Biglerville, PA 17307; Michael H. Wilt, Jr., 222 Ewell Avenue, Gettysburg, PA 17325

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF EDWARD L. KRANTZ, DEC'D

Late of Freedom Township, Adams County, Pennsylvania

Administratrix: Wenette J. Drum, 203 Linden Blvd., Middletown, MD 21769

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GLORIA L. WISEMAN a/k/a GLORIA LADYNE WISEMAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Mr. Bradley M. Wiseman, 125 Park Heights Boulevard, Hanover, PA 17331

Attorney: Arthur J. Becker, Jr., Esq., Becker & Strausbaugh, P.C., 544 Carlisle Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF MICHAEL J. DETTINBURN, a/k/a MICHAEL JOSEPH DETTINBURN, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executor: Joseph S. Dettinburn, 229 Racetrack Road, Hanover, PA 17331

Attorney: David C. Smith, Esq., 754 Edgegrove Road, Hanover, PA 17331

ESTATE OF JAMES W. FOX, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Administratrix: Diane Z. Fox, 30 Conewago Street, Biglerville, PA 17307

Attorney: Law Office of Keith O. Brennenman, P.C., 44 West Main Street, Mechanicsburg, PA 17055

ESTATE OF RICHARD J. MILLS, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Co-Executors: Michael J. Mills, Douglas R. Mills, Matthew E. Mills, c/o Matthew E. Mills, 2451 Hanover Road, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KENNETH BENNER SELBY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Cassandra Selby, 404 Heritage Drive, Gettysburg, PA 17325

ESTATE OF HANNAH N. TEETER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Robert G. Teeter and Samuel E. Teeter, 108 W. Middle Street, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle Street, Gettysburg, PA 17325

ESTATE OF FRANK J. WACHTER, JR., DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: PNC Wealth Management, P.O. Box 308, 4242 Carlisle Pike, Camp Hill, PA 17001-0308

Attorney: Lynn G. Peterson, Esq., Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

