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In the Supreme Court of Pennsylvania

Middle District

Docket No. 27 MAP 2021

Commonwealth of Pennsylvania,

Appellant

v.

Akim Sharif Jones-Williams,

Appellee

Brief for Appellee

Commonwealth appeal from the order of the Superior Court dated August 11, 2020, reconsideration denied October 14, 2020, at No. 1428 MDA 2017, that reversed an order denying suppression of evidence, and vacated the judgment of sentence of April 5, 2017, of the York County Court of Common Pleas, Criminal Division, CP-67-CR-0002824-2015.

Respectfully submitted,

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Relevant Procedural History

By way of Criminal Complaint, Lieutenant Lutz of the Newberry Township Police Department charged Jones-Williams with several offenses for events that occurred on July 5, 2014. On October 26, 2015, Jones-Williams filed an Omnibus Pre-Trial Motion (OPTM) in relevant part challenging the warrantless search of his blood. A hearing was held on December 21, 2015. At the conclusion of the hearing, the trial court ordered briefs to be filed by both parties. Briefs were filed by the Commonwealth and Defense on January 29, 2016.

In Jones-Williams' Brief, he continued to argue that the blood sample obtained from him and all subsequent testing must be suppressed as the officers failed to obtain a warrant in violation of the United States and Pennsylvania Constitutions. He further argued that Section 3755 of the Motor Vehicle Code was unconstitutional and that exigent circumstances did not exist. The Commonwealth argued in their Memorandum, that the implied consent statutes were constitutional and provide a valid exception to the warrant requirement. RR 292a-295a. Significantly, the Commonwealth's memorandum expressly disavowed that it was making a claim that there were exigent circumstances in this case. RR 292a.

The Defense filed a Supplemental Brief on February 29, 2016. This filing further argued how the exigent circumstances exception to the warrant requirement did not apply and that 75 Pa. C.S. §3755 was unconstitutional. The Commonwealth filed a Supplemental Memorandum on April 20, 2016. In this Supplemental Memorandum the Commonwealth responded to the additional cases that were provided in the Supplemental Brief focusing solely on the constitutionality of Section 3755 of the Motor Vehicle Code. On April 27, 2016, the trial court denied the OPTM. The trial court acted cautiously with the constitutionality of Section 3755 as they presumed this legislation to be constitutional and felt this was more appropriate for the appellate courts. RR 331a-332a. The trial court also found exigency given the officers duties at the scene of the crash.

This matter then proceeded to trial on January 9, 2017, and concluded on January 13, 2017. Jones-Williams was found guilty of Homicide by Vehicle While DUI[1]; Homicide by Vehicle[2]; Endangering the Welfare of Children[3]; Recklessly Endangering Another Person[4]; DUI: Controlled Substance (Schedule 1)[5]; DUI: Controlled Substance

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[1] 75 Pa. C.S. §3735(a)
[2] 75 Pa. C.S. §3732
[3] 18 Pa. C.S. §4304(a)(1)
[4] 18 Pa. C.S. §2705
[5] 75 Pa. C.S. §3802(d)(1)(i)

(Schedule 1 – Metabolite)[6]; Careless Driving[7]; Aggravated Assault by Vehicle While DUI[8]; and Aggravated Assault by Vehicle[9]. Jones-Williams was found not guilty of DUI: Controlled Substance (Impaired Ability)[10] and the Commonwealth withdrew Careless Driving – Unintentional Death[11].

On April 5, 2017, Jones-Williams was sentenced to serve 4-8 years imprisonment and 12 consecutive months of probation. Following the filing of two Post-Sentence Motions and a hearing on said motions, an order was entered on September 11, 2017, denying these matters by operation of law. Subsequently, Jones-Williams filed two concise statements with the trial court and on April 13, 2018, the trial court issued its Opinion Pursuant to Pa.R.A.P. 1925(a). Notably, in the trial court's 1925(a) opinion, Judge Bortner concluded that the Superior Court had the authority to decide if 75 Pa.C.S. §3755 was to remain constitutional, but also urged the Superior Court to find that it was not. RR 446a, 461a. Moreover, the trial court

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[6] 75 Pa. C.S. §3802(d)(1)(iii)
[7] 75 Pa. C.S. §3714(a)
[8] 75 Pa. C.S. §3735.1(a)
[9] 75 Pa. C.S. §3732.1(a)
[10] 75 Pa. C.S. §3802(d)(2)
[11] 75 Pa.C.S. §3714(b)

acknowledged that upon further review of the record they had erred in finding exigent circumstances. RR 441-442a.

On September 28, 2018, Jones-Williams filed his Brief with the Superior Court and the Commonwealth filed their Brief on February 4, 2019. Oral argument was held on May 7, 2019. On August 11, 2020, the Superior Court issued its opinion vacating Jones-Williams' judgment of sentence, reversing the trial court's order denying suppression, and remanding the case for a new trial. On August 24, 2020, the Commonwealth filed a Petition for Reargument with the Superior Court. This motion was subsequently denied on October 14, 2020. The Commonwealth then petitioned this Court for *allocator* on November 13, 2020. *Allocatur* was granted on April 28, 2021. The Commonwealth filed their brief with this Court on July 7, 2021.

Relevant Testimony from Suppression Hearing on December 21, 2015

At the time of this incident, Keith Farren was employed as a police officer with the Newberry Township Police Department for 20 years. RR 172a-173a. On July 5, 2014, he responded to the location of the accident and was directed by Lieutenant Lutz to go to the York Hospital. RR 173a-175a. He was to conduct an interview and be

present while a "legal"[12] blood draw was obtained. RR 175a. This blood draw was to be done pursuant to Pennsylvania's implied consent laws. RR 174a-175a, 177a, 184a, 202a (N.T.M.S. 56-57, 59, 66, 84). The only information Officer Farren had at the time was the gentleman's first name – Akim; that he was believed to be the driver; and an odor of marijuana was observed around him. RR 174a-175a (N.T.M.S. 56-57.

Officer Farren went to the York Hospital and found Akim in a trauma room. RR 176a. Akim was in and out of consciousness so an interview could not be done. RR 176a. He was laying in the hospital bed and his arms were restrained. RR 176a. His eyes would be closed but he would thrash about every couple minutes. RR 176a. He was non-responsive when the officer tried to talk to him. RR 176a-177a.

Although Officer Farren was not able to communicate the implied consent form to Jones-Williams, he still requested that blood be obtained for toxicology investigation purposes. RR 177a. Since blood had already been drawn, Officer Farren responded up to the laboratory to make the request for the blood there. RR 177a. The blood was possessed by the hospital in their laboratory area. RR 177a-178a.

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[12] A "legal" blood draw in the context of this brief refers to a blood draw obtained pursuant to the Pennsylvania Implied Consent laws, i.e. 75 Pa. C.S. §1547 and 75 Pa. C.S. §3755.

Officer Farren then filled out forms to have the blood sent to NMS Labs. RR 177a-178a. The hospital also required the officer to express to them that he was requesting the blood pursuant to a police investigation. RR 178a. As part of the form for NMS, Officer Farren checked the box for drug impaired driving/DRE toxicology, which included marijuana testing. RR 179a.

Officer Farren was never told by Lieutenant Lutz to seek a search warrant for Jones-Williams' blood. RR 182a-183a (N.T.M.S. 64, 65). In Officer Farren's 20 years of experience he had obtained a couple hundred search warrants and was familiar with how to get one. RR 183a. Even though the search warrant would have been requested after 6:00 p.m., it was still possible to get one. RR 183a. Officer Farren also testified that Jones-Williams did not consent to a legal blood draw. RR 185a.

On July 5, 2014, Lieutenant Lutz, the lead investigator of this particular investigation, received phone calls regarding a fatal train crash at Slonneker's Landing. RR 186a-188a (N.T.M.S. 68-70). On scene he was given information about the train sounding its horns, the estimated speed of the Outlander, observations of a white Caucasian in the passenger seat, and observations from emergency personnel concerning the odor of marijuana. RR 193a-194a. Based on all of this information he requested Officer Farren to go to the hospital to request a legal blood draw and to

interview Jones-Williams. RR 191a; RR 196a-197a. Lieutenant Lutz did not ask Officer Farren to obtain a search warrant prior to obtaining a legal blood draw, but he could have. RR 201a. Officer Farren told him later that an interview could not be done, but a legal blood draw was. RR 198a-199a. As part of Lieutenant Lutz's investigation he received a toxicology report from NMS Labs that confirmed that two gray vials were collected on July 5, 2014 at 1756 hours. RR 70a-71a. This was the date of the incident. The specimens were received by NMS Labs three days later on July 8, 2014. RR 71a. Testing occurred some time later.

A. Statement of Preservation of Issues

Jones-Williams' appeal issues concerning the exigency exception to the warrant requirement as well as the constitutionality of 75 Pa. C.S. §3755 were preserved by the filing of his OPTM on October 26, 2015, the filing of his Brief in Support on January 29, 2016, as well as the filing of his Supplemental Brief on February 29, 2016. The suppression issues were made final by the trial courts April 27, 2016, order denying the OPTM. These issues were further addressed in Jones-Williams' Concise Statement that was filed with the trial court on October 5, 2017, and in his Supplement to his Concise Statement that was filed on October 6, 2017.

IV. Statement of Questions Involved

1. Whether the Superior Court issued a decision in conflict with and failed to properly apply and follow the binding legal precedent of the United States Supreme Court and this Court, in holding that 75 Pa.C.S. §3755 does not independently support implied consent on the part of a driver suspected or arrested for DUI, rendering the implied-consent statute unconstitutional?

Suggested answer in the Negative.

2. Whether the Superior Court issued a decision in conflict with and failed to properly apply and follow the binding legal precedent of the United States Supreme Court in *Mitchell v. Wisconsin,* __ U.S. __, 139 S.Ct. 2525 (2019), by finding that exigent circumstances did not exist to support a warrantless request to test Defendant's blood?

Suggested answer in the Negative.

V. Summary of the Argument

This appeal involves the constitutionality of 75 Pa. C.S. §3755 as well as the applicability of the exigent circumstances exception to the warrant requirement as provided by the United States and Pennsylvania Constitutions. Section 3755 of the Motor Vehicle Code, "clearly, palpably, and plainly violates constitutional rights." *See Commonwealth v. Morgan,* 913 A.2d 906, 911 (Pa.Super. 2006). This is especially so given the longstanding principles of the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution as well as the decisions in *Birchfield v. North Dakota,* 136 S.Ct. 2160 (2016), *Missouri v. McNeely,* 569 U.S. 141 (2013) and *Commonwealth v. Myers,* 164 A.3d 1162 (Pa. 2017). All of these cases hold that a warrant is required to obtain blood from a DUI suspect unless an exception to the warrant requirement applies. In *Myers,* a majority of this Court held that only actual consent and not an implied consent statute, would constitutionally suffice to justify a warrantless search of an unconscious DUI suspect. The presumption that when the legislature enacted 75 Pa.C.S. §3755 they did so with the intent that it was valid and constitutional has been overcome. The Superior Court was correct in holding that, "Section 1547(a) and its counterpart, Section 3755(a), no longer independently support implied consent on the part of a driver suspected of or arrested for a DUI violation and, in turn, dispense with the need to

obtain a warrant." *Commonwealth v. Jones-Williams,* 237 A.3d 528, 542 (Pa.Super. 2020).

The Commonwealth claims now on appeal, for the first time, that exigent circumstances afforded the officers the ability to obtain the previously drawn blood of Jones-Williams without a warrant, pursuant to *Mitchell v. Wisconsin,* 139 S.Ct. 2525 (2019). The Commonwealth explicitly disavowed any reliance on the exigency exception during the suppression proceedings in the lower court. Therefore, this issue is waived. It was the Commonwealth's burden at the suppression hearing to raise all claims that the defendant's constitutional rights were not being infringed. *See Commonwealth v. Enimpah,* 106 A.3d 695, 701 (Pa. 2014). Nothing was presented concerning the exigent circumstances exception to the warrant requirement as the Commonwealth relied solely on the validity of 75 Pa.C.S. §3755 as an exception to the warrant requirement. Indeed, this Court can *sua sponte* find that an issue is waived and should do so here. *E.g., Commonwealth v. Drake,* 414 A.2d 1023, 1025 (Pa. 1980); *Commonwealth v. Triplett,* 381 A.2d 877, 881 n. 10 (Pa. 1977).

Should this Learned Court not find that the Commonwealth waived its exigent circumstances claim, then this Court should find that the mandates of the Fourth Amendment of the United States Constitution as well as Article I, Section 8 of the

Pennsylvania Constitution required the police officers in this case to obtain a warrant prior to requesting Jones-Williams' blood. The Commonwealth's reliance on *Mitchell v. Wisconsin,* 139 S.Ct. 2525 (2019), to support its claim that exigent circumstances existed in this case is misplaced. Significantly, *Mitchell,* did not adopt a *per se* constitutional rule of exigent circumstances for all unconscious DUI suspects. In fact, *McNeely* had previously rejected the theory that the exigent circumstances doctrine provided a blanket justification for warrantless BAC testing. Moreover, this matter is more akin to *Commonwealth v. Shaw,* 770 A.2d 295 (Pa. 2001), where a police officer obtained a hospital report confirming a patient's blood alcohol content without a warrant. *Id.* at 296. This warrantless search was held to violate the privacy rights guaranteed by Article I, Section 8. *Id.*

Here, the Commonwealth's witnesses clearly testified that there was time to obtain a warrant. RR 183a-184a, RR 201a (N.T.S.M. 65-66, 83). Further, when Officer Farren arrived at the hospital he attempted to read Jones-Williams the implied consent form to obtain a blood draw. When this was not possible he was notified that blood had previously been drawn so he went to the laboratory of the hospital where they possessed the blood. It was at this time that the officer requested the blood be sent to NMS Labs pursuant to Pennsylvania's implied consent laws.

As the Superior Court noted, it was Officer Farren's request to test Jones-Williams' blood sample that triggered the relevant constitutional question at issue. *Jones-Williams,* 237 A.3d at 546. There were no Fourth Amendment or Article I, Section 8 protections that were triggered by hospital personnel in conducting a blood draw as there was no evidence that police had directed the hospital to do so. *Id.* Indeed, as the Superior Court recognized, as soon as Jones-Williams' blood had been drawn by hospital personnel, this "literally stopped the clock on any concern that the further passage of time could result in dissipation of evidence." *Id.* at 554. Moreover, the withdrawal of blood "ceased all metabolic activity that might influence a toxicological assessment of the sample." *Id.*

For these reasons, Officer Farren was required to obtain a warrant as he had ample time to do so without significantly undermining the efficacy of the search. *See McNeely* 569 U.S. at 152.

VI. Argument

A. The Superior Court issued a decision in support and properly applied and followed the binding legal precedent of the United States Supreme Court and this Court, in holding that 75 Pa.C.S. §3755(a) does not independently support implied consent on the part of a driver suspected or arrested for DUI, rendering the implied-consent statute unconstitutional.

Section 3755 of the motor vehicle code clearly, palpably and plainly violates the warrant requirement of the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. This statute became effective on February 1, 2004, at a time when there was no successful challenge to the implied consent laws. Although there is a presumption that when the legislature enacted this statute they did so with the intent that it was valid and constitutional, it cannot be overlooked that with the recent decisions by the United States Supreme Court and Pennsylvania's Supreme Court, this presumption has now been overcome. *See Birchfield v. North Dakota,* 136 S. Ct. 2160 (2016), *Missouri v. McNeely,* 569 U.S. 141 (2013), and *Commonwealth v. Myers,* 164 A.3d 1162 (Pa. 2017). As such, we ask this Court to uphold the Superior Court's ruling that found that Section 1547(a) and its counterpart, Section 3755(a), do not provide a valid exception to the warrant requirement and cannot take the place of voluntary consent.

In this case, although Jones-Williams was in and out of consciousness, he still maintained the right to be free from illegal searches and seizures as protected under the Federal and State Constitutions. These protections are solidified through the Fourth Amendment of the United States Constitution and Article I, Section 8, of the Pennsylvania Constitution. Of concern with Section 3755 of the Motor Vehicle Code as it applies to this case and any other matter involving similar circumstances, is the absence of any need for a warrant to obtain blood. In relevant part, 75 Pa. C.S. §3755 provides as follows:

> §3755. Reports by emergency room personnel:
>
> **(a) General rule.--**If, as a result of a motor vehicle accident, the person who drove, operated or was in actual physical control of the movement of any involved motor vehicle requires medical treatment in an emergency room of a hospital and if probable cause exists to believe a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) was involved, the emergency room physician or his designee shall promptly take blood samples from those persons and transmit them within 24 hours for testing to the Department of Health or a clinical laboratory licensed and approved by the Department of Health and specifically designated for this purpose.

The constitutional question that arises from this statue is, whether the Commonwealth can lawfully obtain or retrieve the contents of a blood draw from a motorist

who has been involved in an accident where probable cause exists without a warrant?

Under the Fourth Amendment, SCOTUS has held time and again that, "searches and seizures without a warrant are presumptively unreasonable," subject only to specifically established exceptions. *Katz v. United States,* 389 U.S. 347, 357 (1967), *Birchfield v. North Dakota,* 136 S.Ct. 2160 (2016), *Arizona v. Hicks,* 480 U.S. 321, 327 (1987), *Commonwealth v. Roland,* 637 A.2d 269 (Pa. 1994). Relevant for this matter is the exception for exigent circumstances. SCOTUS has regarded *per se* rules for exigency with disfavor, noting that the proper inquiry for whether a situation presented an officer with exigent circumstances that excuse the procurement of a warrant is an analysis of the totality of the circumstances. *McNeely,* 569 U.S. at 156. On several occasions, SCOTUS has considered the relationship between alcohol dissipation and the exigency of the destruction of evidence for DUI violations. *See, e.g., Schmerber v. California,* 384 U.S. 757 (1966); *McNeely, supra.*

In *McNeely,* the Supreme Court considered "whether the natural metabolization of alcohol ... present[s] a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement . . . ." *Id.* at 144. The Court held "consistent with general Fourth Amendment principles . . . exigency in this context must be

determined case by case based on the totality of the circumstances." *Id.* "In those drunk driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates they do so." *Id.* at 152. The Court answered the state's concerns regarding a state's ability to obtain warrants in an efficient and timely fashion when it said: "[w]ell over a majority of States allow police officers or prosecutors to apply for search warrants remotely through various means. . . ." *Id.* at 154. In furtherance of this, the Court noted that although the same Court upheld a warrantless blood draw of a suspect accused of DUI in *Schmerber,* modernity and technology have eased the pressure to conform to a "now or never" attitude regarding blood draws. *Id.* at 158-159. Thus, where a police officer can obtain a warrant to conduct a blood draw without affecting the efficiacy of the investigation, he is required to do so. *Id.* at 152. Here, Pennsylvania implicates the same streamlined process the court referred to. *See* Pa.R.Crim.P. 203(A), (C) (sections A & C allow the use of "advanced communication technology" for the submission of search warrants).

In 2016, the United States Supreme Court held in *Birchfield v. North Dakota,* 136 S.Ct. 2160 (2016), that a DUI suspect does not have to consent, implied or otherwise, to a chemical testing of his or her blood, absent a warrant, and that the threat

of increased punishment for a refusal is unreasonable and unduly coercive. In the context of reviewing whether implied consent validated Birchfield's refusal conviction, the Court noted, "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. Again, focused on the implied-consent exception, the Court held, "we conclude that motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense." *Id.* at 2186. The Court explained:

> There is no indication in the record or briefing that a breath test would have failed to satisfy the State's interests in acquiring evidence to enforce its drunk-driving laws against Birchfield. And North Dakota has not presented any case-specific information to suggest that the exigent circumstances exception would have justified a warrantless search. Cf. *McNeely,* 569 U.S., at __ - __, 133 S.Ct. 1552. Unable to see any other basis on which to justify a warrantless test of Birchfield's blood, we conclude that Birchfield was threatened with an unlawful search and that the judgment affirming his conviction must be reversed.

Id.

Moreover, SCOTUS has already suggested that so-called "implied consent" laws passed by the States are a misnomer – that is, that they are not a substitute for free and voluntary consent required under this Court's precedents. ("[O]ur decisions have not rested on the idea that these laws do what their popular name might seem

to suggest – that is, create actual consent to all the searches they authorize.") *Mitchell v. Wisconsin,* 139 S.Ct. 2525, 2533 (2019).

This Court has held that results from an independent medical test cannot be obtained by police without a warrant and where no exigent circumstances are present. *Commonwealth v. Shaw*, 770 A.2d 295 (Pa. 2001). In *Shaw,* as here, blood was drawn by hospital personnel for independent medical purposes. The Commonwealth argued below that *Shaw* did not apply to the facts in this case as *Shaw* involved the warrantless seizure of medical blood test results for medical purposes from the defendant's medical file and this did not occur here. *Shaw* is applicable. Jones-Williams' blood was drawn prior to police arrival. It is unknown for what purpose. The warrantless intrusion is even greater here than in *Shaw* where reports of hospital testing were obtained by police. In the instant case, police obtained the defendant's vials of blood from the hospital and subjected them to forensic testing for criminal investigation purposes.

This Court's decision in *Commonwealth v. Myers,* 164 A.3d 1162 (Pa. 2017), two opinions, a plurality, authored by Justice Wecht (164 A.3d at 1173-1182), and a concurring opinion by Justice Saylor (164 A.3d at 1183-1184), on behalf of five Justices, concluded that an implied consent statute could not be applied constitutionally in

a criminal case to admit blood test results where an unconscious DUI defendant did not actually consent.[13] In *Myers,* "[a] majority of this Court also held . . . that a warrantless blood draw from an unconscious DUI suspect violates the Fourth Amendment. *Id.* at 1173-1182 (plurality); 1183-84 (Saylor, C.J., concurring)." *Commonwealth v. Bell,* 211 A.3d 761, 773 (Pa. 2019).

In *Commonwealth v. March,* 172 A.3d 582 (Pa. 2017), in an almost factually identical case to Jones-Williams', involving a warrantless obtaining of blood test results, the Superior Court sustained the police action pursuant to an implied consent statute. This Court reversed and remanded the matter to the Superior Court for reconsideration in light of this Court's decision in *Myers* and the SCOTUS's decision in *Birchfield.* The Superior Court correctly concluded, in light of the decisions of this Court and the United States Supreme Court, that,

> Section 1547(a) and its counterpart, Section 3755(a), no longer independently support implied consent on the part of a driver suspected of or arrested for a DUI violation and, in turn, dispense with the need to obtain a warrant. "Simply put, statutorily implied consent cannot take the place of voluntary consent."

Jones-Williams, 237 A.3d at 542.

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[13] Justice Todd concurred on statutory grounds and did not address the constitutional issue, (*Id.* at 1184), while Justice Mundy was the lone dissenter. *Id.* at 1184-89.

B. The Commonwealth's claim that the exigent circumstances exception justified the warrantless search in this case is waived because the Commonwealth did not raise this issue in the lower court.

The disposition of the Superior Court can be affirmed by this Court if correct for any reason. *See, e.g. In Re: Adoption of: C.M.,* ____ A.3d _____, 2021 WL3073624 at *1 n.1 (Pa. 2021). Further, this Court can *sua sponte* find that an issue is waived. *E.g., Commonwealth v. Drake,* 414 A.2d 1023, 1025 (Pa. 1980); *Commonwealth v. Triplett,* 381 A.2d 877, 881 n. 10 (Pa. 1977). Based on the record, this Learned Court should find that the Commonwealth's exigent circumstances claim is waived.

The defense filed a motion to suppress the blood sample test results pursuant to Article I, Section 8 of the Pennsylvania Constitution as well as the Fourth Amendment of the United States Constitution. It was argued that a warrant was required to obtain the defendant's blood test results, and that there were no exigent circumstances to excuse the warrantless obtaining of the blood test results in this case. The motion further alleged that the implied consent statute could not constitutionally justify the search.[14]

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[14] The Commonwealth makes the frivolous argument that the defendant waived his claims under Article I, Section 8. Commonwealth Brief, 27 n. 141. The motion to suppress specifically and extensively contended that the defendant was entitled to relief under Article I, Section 8. RR 14a-19a. Counsel even discussed and cited *Commonwealth v. Shaw,* 770 A.2d 295 (Pa. 2001), a key Article I, Section 8 decision for the resolution of the issues in this case. RR 15a. At the outset of the motion to suppress hearing the prosecutor stated the defense claims, noting that they were raised under both the United States and Pennsylvania Constitutions. RR 123a-124a (N.T.M.S. 5-6). Counsel did more

At a suppression hearing "[t]he Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the defendant's rights. Pa.R.Crim.P. 581(H). "Rule 581 (H) clearly states it is the Commonwealth's burden to present evidence that the defendant's constitutional rights were not infringed." *Commonwealth v. Enimpah,* 106 A.3d 695, 701 (Pa. 2014). In addition to the burden placed by Rule 581, where as here there is a warrantless search, constitutionally "the burden shifts to the government to show that the search or seizure was reasonable." *United States v. Johnson,* 63 F.3d 242, 245 (3rd Cir. 1995).

The Commonwealth's only claim at the suppression hearing in support of the warrantless search was that the blood testing result "was obtained pursuant to Section 3755 of the vehicle code, which is commonly we call the legal blood draw portion of the Implied Consent Law." RR 124a (N.T.M.S. 6). The Commonwealth presented no evidence, testimony or otherwise at the suppression hearing in support of a

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than was required to preserve the Article I, Section 8 claim in *Commonwealth v. Alexander,* 243 A.3d 173, 193 n.8 (Pa. 2020). The Article I, Section 8 claim was also raised in the Superior Court, and that Court held that suppression was warranted pursuant to Article I, Section 8 and the Fourth Amendment. *Commonwealth v. Jones-Williams,* 237 A.3d 528, 533-34, 537 (Pa.Super. 2020) (attached as Appendix A).

finding of exigent circumstances. Judge Bortner held this matter under advisement to permit the filing of memorandums. RR 205a-206a, 212a (N.T.M.S. 87-88, 94).

The Commonwealth's post-hearing memorandum expressly disavowed that it was making a claim that there were exigent circumstances in this case. The Commonwealth again relied only on the implied consent statutes. RR 292a, 295a. "All binding precedent preserves our implied consent scheme under Sections 1547 and 3755 as an exception to the warrant requirement. *McNeely*[15] offers nothing to disturb this case law, as that case solely involved the exigent circumstances exception." RR 295a.

In *Myers,* 164 A.3d 1163 (Pa. 2017), where this Court held that the implied consent statute could not constitutionally sustain the admission of warrantless blood draw test results in a case, like here, involving an unconscious DUI suspect, the Court declined to consider the exigent circumstances exception. "Furthermore, the Commonwealth did not seek to demonstrate that exigent circumstances dispensed with

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[15] *Missouri v. McNeely,* 569 U.S. 141 (2013), held that whether there are exigent circumstances excusing a warrant are determined in DUI blood testing cases on a case by case basis. While the Supreme Court later held that in most cases, as here, involving an unconscious driver, there will be a finding of exigent circumstances, the focus is still on the individual case. *See Mitchell v. Wisconsin,* 139 S.Ct. 2525 (2019). In any event, the failure to raise the issue in the lower court is a waiver even if *Mitchell,* decided after the lower court proceedings, is viewed as a change in the law. Pa.R.A.P. 302(a) ("Issues not raised in the lower court cannot be raised for the first time on appeal."). *E.g., Commonwealth v. Hays,* 218 A.3d 1260 (Pa. 2019) (suppression claim based on new case decided while direct appeal was pending waived because not raised in the lower court); *Commonwealth v. Cabeza,* 469 A.2d 146 (Pa. 1983) (same).

the need to obtain a warrant, or that the blood draw was justified by any other exception to the warrant requirement. *See Myers,* 164 A.3d at 1181-82.

Although not binding on this Court, United States Circuit Courts have ruled on similar issues of waiver of suppression issues where the Government affirmatively declined to raise an issue in the lower court. In *United States v. Albrektsen,* 151 F.3d 951 (9th Cir. 1998), a defendant lost his suppression motion in the lower court. On appeal, the Ninth Circuit rejected the Government's reliance for affirmance on a claim it had disavowed in the lower court. *Albrektsen,* 151 F.3d at 952. The Circuit Court addressed the Government's attempt to argue on appeal for the first time that the officer's search of a motel room was lawful in order to protect himself. *Id.* Specifically, the court stated:

> In an attempt to salvage the search, the government now argues that the officer was entitled to conduct a sweep in order to protect himself. In doing so, the government seeks to avoid its statement to the district court that it was "not seeking to justify the entry under any form of security sweep at all." The protective sweep issue is not uninteresting. However, the government's waiver of the issue purdures. We will not consider the question on appeal. *See United States v. Perez,* 116 F.3d 840, 845 (9th Cir. 1997) (en banc); *Raines v. U.S. Parole Comm'n,* 829 F.2d 840, 844-45 (9th Cir. 1987); *United States v. Whitten,* 706 F.2d 1000, 1012 (9th Cir. 1983).
>
> *Id.* (citations omitted).

Similarly, in *United States v. Scales,* 903 F.2d 765 (10th Cir. 1990), a defendant was convicted of intent to distribute and appealed due to the denial of his motion to suppress evidence. On appeal, the Tenth Circuit rejected the Government's attempt to rely on probable cause to justify the search, an argument it expressly declined to make in the lower court. The court here noted,

> Not only did the Government not make this argument below, it argued to the district court that the dog sniff established probable cause, and it agreed with the court that the facts prior to the dog sniff gave rise only to a reasonable suspicion of criminal activity. . . Because the Government did not raise below whether probable cause existed at the earlier time, it is precluded from arguing that issue here. *See United States v. Maez,* 872 F.2d 1444, 1452, 53 (10th Cir. 1989) (Government lost right to assert on appeal the existence of exigent circumstances by failing to argue the issue below).

Id. at 769-70.

The Court should find that the Commonwealth has waived the exigent circumstances claim that it affirmatively declined to raise before the suppression court despite its burden under Rule 581 to show that the warrantless search was constitutionally justified.

C. The Superior Court issued a decision that was not only consistent with, but also properly applied and followed the binding legal precedent of the United States Supreme Court in *Mitchell v. Wisconsin,* ___ U.S. ___, 139 S.Ct. 2525 (2019), by finding that exigent circumstances did not exist to support a warrantless request to test Defendant's blood.

A warrantless search is constitutionally justified where "the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment." *McNeely,* 569 U.S. at 148-49 (quoting *Kentucky v. King,* 563 U.S. 452, 460 (2011)). Exigencies may occur in a variety of ways, yet its defining trait is a "compelling need for official action and no time to secure a warrant." *Id.* at 149. (quoting *Michigan v. Tyler,* 436 U.S. 499, 509 (1978)). This need may arise, for example, "to prevent the imminent destruction of evidence." *Id.* (citing *Cupp v. Murphy,* 412 U.S. 291, 296 (1973); *Ker v. California,* 374 U.S. 23, 40-41 (1963)). To assess when an exigency exists, we must consider the totality of the circumstances. *Id.* (citing *Brigham City v. Stuart,* 547 U.S. 398, 406 (2006).

In 2019, as the present matter was on appeal to the Superior Court, the United States Supreme Court decided the case of *Mitchell v. Wisconsin,* ___ U.S. ___, 139 S.Ct. 2525 (2019). Like the instant case, *Mitchell* was an unconscious DUI suspect where the police made a blood draw without a warrant. The *Mitchell* Court, as in *McNeely,* held that officers can only administer blood draws with a warrant or

when an exception to the warrant requirement applies. *Id.* at 2533 (citing *Birchfield v. North Dakota,* 136 S.Ct. 2160, 2173 (2016)). Justice Alito noted for the Court that in prior cases, the Court has found that the exigency exception can justify warrantless blood draws, where the exigency at issue would be the destruction of BAC evidence. *Id.* (citing *Missouri v. McNeely,* 569 U.S. 141, 152 (2013)).

The Commonwealth cannot prevail in this case because *Mitchell* did not hold that there is a *per se* exigent exception for all (rather than most) blood draws, and obtaining of blood test results from unconscious DUI suspects. The *Mitchell* Court reiterated that, "under the exception for exigent circumstances, a warrantless search is allowed when 'there is compelling need for official action and no time to secure a warrant.'" *Id.* at 2534 (quoting *McNeely,* 569 U.S. at 149). This compelling need may arise when "an officer's duty to attend to more pressing needs may leave no time to seek a warrant." *Id.* at 2535. In these situations, a police officer "may almost always order a warrantless blood test". *Id.* at 2539. Notably, *Mitchell* did not decide "whether the exigent circumstances exception covers the specific facts of this case." *Id.* at 2534. The *Mitchell* case was then remanded to give the defendant an opportunity to show that there were no exigent circumstances. *Id.* at 2539.

There were no exigent circumstances here preventing the police from obtaining a warrant as they acknowledged in their testimony. Officer Farren testified at the suppression hearing as follows:

> Q. It was possible to obtain a search warrant though before you went to York Hospital?
>
> A. It could be, yes.

RR 184a (N.T.N.S. 66).

Lieutenant Lutz further testified as follows:

> Q. Now, prior to you requesting I believe it was Officer Farren to seek a legal blood draw from York Hospital, you did not request him to obtain a search warrant before doing so?
>
> A. That's correct.
>
> Q. You could have?
>
> A. If it was needed.
>
> Q. You could have?
>
> A. Yes, I could have.

RR 202a (N.T.M.S. 84)

Exigent circumstances are further dissipated by the officer's suspicion that Jones-Williams was under the influence of marijuana. In *Commonwealth v. Trahey,* 228 A.3d 520 (Pa. 2020), this Court held that,

> The timing constraints that animated the decisions in *McNeely, Birchfield,* and *Mitchell* all related to the evanescent nature of alcohol in a suspects breath or blood, which deteriorates in a matter of hours. None of those decisions suggested that controlled substances raise the same concerns. Indeed, the DUI statute facially reflects the diminished urgency of testing for controlled substances, inasmuch as its two-hour rule does not apply to the offense of driving under the influence of controlled substances. *See* 75 Pa. C.S. §3802(d); *Commonwealth v. Wilson,* 101 A.3d 1151, 1156 (Pa.Super. 2014) ("[W]e find that the absence of any such time requirement in subsection 3802(d) [is] persuasive that the legislature did not envision a time limit on testing for the presence of controlled substances after driving."). Moreover, there is no range of permissible concentrations of prohibited substances in a motorist's bloodstream; rather, "any amount" of such a substance in a motorist's system constitutes an offense. 75 Pa. C.S. §3802(d)(1).

Id. at 537.

In *Trahey,* the officer testified that it could take upwards of three hours to obtain a search warrant. *Id.* at 525. This Court held that even if it took three hours to obtain a warrant as the officer suggested, "there is minimal risk that evidence of controlled substances in the suspect's blood would reduce to a completely undetectable level within that time." *Id.* at 537.

The circumstances here are much more compelling to find a lack of exigent circumstances. When Officer Farren arrived at the hospital he learned that the defendant's blood had previously been drawn. The officer then went to the laboratory where the hospital possessed Jones-Williams' blood and requested that it be sent

to NMS Labs for further analysis. It is the taking of the blood from the hospital and subjecting it to testing for marijuana, and not the blood draw that is at issue in this case. That there was ample time to obtain a warrant before testing is indisputable. It was not until July 8, 2014, three days after the blood draw and request for testing, that the blood specimens were received by the lab. RR 71a. At some point in time later the blood was tested.

The Superior Court correctly concluded that there were no exigent circumstances that excused the warrantless search. *Jones-Williams,* 237 A.3d at 544. In so finding, the court noted that,

> Sergeant Farren testified that when he arrived at York Hospital, he learned that hospital personnel already obtained a blood sample from Appellant. *Id.* at 59. The blood draw occurred at 5:56 p.m., approximately one hour and 20 minutes after the accident. As of 5:56 p.m., then, Appellant's blood sample, including all of the intoxicants contained therein, was preserved. Thus, the extraction of Appellant's blood shortly before 6:00 p.m. on the date of the accident literally stopped the clock on any concern that the further passage of time could result in dissipation of evidence since the withdrawal of Appellant's blood by hospital personnel ceased all metabolic activity that might influence a toxicological assessment of the sample.
>
> *Id.*

Under controlling precedent of this Court and the United States Supreme Court, police were required to obtain a search warrant before searching Jones-Williams'

blood. Because they did not, Jones-Williams' Fourth Amendment and Article I, Section 8 protections against warrantless searches was violated. The Superior Court's consideration of *Mitchell* and other relevant precedent was appropriate in concluding that the Commonwealth failed to establish exigent circumstances to justify the warrantless intrusion in this case.

VII. Conclusion

For the foregoing reasons, this Court should affirm the judgment of the Superior Court, reversing the denial of the suppression motion and awarding a new trial.

Dated: September 8, 2021

Respectfully submitted,

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APPENDIX A

LexisNexis

User Name: Shawn Dorward
Date and Time: Wednesday, September 8, 2021 4:32:00 PM EDT
Job Number: 152439804

Document (1)

1. *Commonwealth v. Jones-Williams, 237 A.3d 528*

Client/Matter: -None-
Search Terms: jones-williams exigent circumstances
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Cases	Court: State Courts > Pennsylvania

Commonwealth v. Jones-Williams

Superior Court of Pennsylvania

May 7, 2019, Argued; August 11, 2020, Decided; August 11, 2020, Filed

No. 1428 MDA 2017

Reporter
237 A.3d 528 *; 2020 Pa. Super. LEXIS 674 **; 2020 PA Super 188; 2020 WL 4591761

COMMONWEALTH OF PENNSYLVANIA v. AKIM SHARIF ***JONES-WILLIAMS***

Subsequent History: Rehearing denied by *Commonwealth v. Jones-Williams, 2020 Pa. Super. LEXIS 871 (Pa. Super. Ct., Oct. 14, 2020)*

Appeal granted by *Commonwealth v. Jones-Williams, 2021 Pa. LEXIS 1833 (Pa., Apr. 28, 2021)*

Prior History: [1]** Appeal from the Judgment of Sentence April 5, 2017. In the Court of Common Pleas of York County. Criminal Division at No(s): CP-67-CR-0002824-2015. Before MICHAEL E. BORTNER, J.

Core Terms

blood, trial court, driver, suppression, blood test results, unconscious, exigency, warrant requirement, blood sample, arrest, ***exigent circumstances***, probable cause, alcohol, arrived, testing, controlled substance, hospital personnel, blood test, driving, scene, chemical testing, warrantless, police officer, compliance, totality of the ***circumstances***, motion to suppress, implied consent, laboratory, motor vehicle accident, ***circumstances***

Case Summary

Overview

HOLDINGS: [1]-The Commonwealth complied with the requirements of *75 Pa.C.S. § 3755(a)* because the officers had probable cause to believe that defendant was DUI when they asked the hospital to conduct chemical testing; [2]-The Commonwealth's warrantless request to test defendant's blood sample violated his constitutional rights and the trial court erred in denying his motion to suppress because by the time an officer arrived at the hospital, defendant was fading in and out of consciousness, did not have the opportunity to choose whether to exercise the right of refusal or to provide actual consent to the blood draw, and, as such, did not voluntarily consent to the blood draw; [3]-*Section 3755(a)* and its counterpart, *75 Pa.C.S. § 1547(a)*, no longer served as independent exceptions to the warrant requirement.

Outcome

Judgment of sentence vacated; order denying suppression reversed, and case remanded for new trial.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Motions to Suppress

Evidence > Burdens of Proof > Allocation

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

Evidence > Burdens of Proof > Preponderance of Evidence

HN1[] **De Novo Review, Motions to Suppress**

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. An appellate court's standard of review in addressing a challenge to a trial court's denial of a suppression motion is limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Since the prosecution prevailed in the

suppression court, we may consider only the evidence of the prosecution and so much of the evidence for the defense as remains un-contradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error. Although an appellate court is bound by the factual and the credibility determinations of the trial court which have support in the record, the appellate court reviews any legal conclusions de novo.

Criminal Law & Procedure > ... > Vehicular Crimes > Driving Under the Influence > Probable Cause

Evidence > ... > Scientific Evidence > Bodily Evidence > Blood Alcohol

Criminal Law & Procedure > ... > Driving Under the Influence > Blood Alcohol & Field Sobriety Testing > Procedures

HN2 **Driving Under the Influence, Probable Cause**

Pursuant to the language of *75 Pa.C.S. § 3755(a)*, governmental officials may obtain an individual's blood test results if, after a motor vehicle accident, the driver requires emergency medical treatment and there is probable cause to believe that a DUI violation occurred.

Criminal Law & Procedure > ... > Vehicular Crimes > Driving Under the Influence > Probable Cause

HN3 **Driving Under the Influence, Probable Cause**

The Commonwealth demonstrates compliance with *75 Pa.C.S. § 3755(a)* if, following a motor vehicle accident, a driver seeks emergency medical treatment, an officer has probable cause to believe that the driver operated his or her vehicle under the influence of alcohol or a controlled substance, and the officer subsequently requests the driver's blood test results from the hospital.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Probable Cause

Criminal Law & Procedure > ... > Vehicular Crimes > Driving Under the Influence > Probable Cause

Evidence > ... > Scientific Evidence > Bodily Evidence > Blood Alcohol

Criminal Law & Procedure > ... > Driving Under the Influence > Blood Alcohol & Field Sobriety Testing > Procedures

HN4 **Search & Seizure, Probable Cause**

The Supreme Court of Pennsylvania previously recognized at least two pathways for achieving compliance with *75 Pa.C.S.§ 3755(a)*. *Section 3755(a)* is, to say the least, inartfully drafted. For some vague and curious reason, the legislature has required a probable cause determination without specifying who is to make such determination, or how such an abstract requirement is to be met. The request of a police officer, based on probable cause to believe a violation of *75 Pa.C.S. § 3731* (repealed), would seem to satisfy the probable cause requirement and therefore mandate that hospital personnel conduct blood alcohol content (BAC) testing. Likewise, a determination by hospital personnel familiar with *§ 3755(a)*, that probable cause existed to believe that a person requiring treatment had violated former *§ 3731*, would also seem to mandate that hospital personnel conduct BAC testing.

Criminal Law & Procedure > ... > Vehicular Crimes > Driving Under the Influence > Probable Cause

HN5 **Driving Under the Influence, Probable Cause**

The key inquiry is whether the individual who requested chemical testing did, in fact, have probable cause to believe that the individual who operated the vehicle was under the influence of alcohol or a controlled substance.

Criminal Law & Procedure > Search & Seizure > Warrantless Searches

HN6 **Search & Seizure, Warrantless Searches**

In light of the United States Supreme Court's decision in Birchfield, and the Pennsylvania Supreme Court's

decision in Myers, 75 Pa.C.S. § 3755(a) and its counterpart, 75 Pa.C.S. § 1547(a), no longer serve as independent exceptions to the warrant requirement.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Consent to Search

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

HN7 **Search & Seizure, Scope of Protection**

The Fourth Amendment and Pa. Const. art. I, § 8 prohibit unreasonable searches and seizures. A search conducted without a warrant is deemed to be unreasonable and therefore constitutionally impermissible, unless an established exception applies. Established exceptions include actual consent, implied consent, search incident to lawful arrest, and ***exigent circumstances***.

Criminal Law & Procedure > ... > Warrantless Searches > Consent to Search > Sufficiency & Voluntariness

HN8 **Consent to Search, Sufficiency & Voluntariness**

Consent, as an exception to the warrant requirement, must be voluntary. This is true even if consent is implied. Despite the existence of an implied consent provision, an individual must give actual, voluntary consent at the time that testing is requested.

Criminal Law & Procedure > ... > Blood Alcohol & Field Sobriety Testing > Implied Consent > Prerequisites

HN9 **Implied Consent, Prerequisites**

Like any other searches based upon the subject's consent, a chemical test conducted under the implied consent statute is exempt from the warrant requirement only if consent is given voluntarily under the totality of the ***circumstances***.

Criminal Law & Procedure > ... > Blood Alcohol & Field Sobriety Testing > Implied Consent > Refusals to Submit

HN10 **Implied Consent, Refusals to Submit**

An individual arrested for DUI, whether conscious or unconscious, possesses a statutory right to refuse chemical testing.

Criminal Law & Procedure > ... > Driving Under the Influence > Blood Alcohol & Field Sobriety Testing > Procedures

Evidence > ... > Scientific Evidence > Bodily Evidence > Blood Alcohol

Criminal Law & Procedure > ... > Blood Alcohol & Field Sobriety Testing > Implied Consent > Refusals to Submit

HN11 **Blood Alcohol & Field Sobriety Testing, Procedures**

Based upon the foregoing, we conclude that 75 Pa.C.S. § 1547(a) and its counterpart, 75 Pa.C.S. § 3755(a), no longer independently support implied consent on the part of a driver suspected of or arrested for a DUI violation and, in turn, dispense with the need to obtain a warrant. Simply put, statutorily implied consent cannot take the place of voluntary consent. Thus, in order for the Commonwealth to request a driver's blood test results, it must obtain a warrant or it must proceed within a valid exception to the warrant requirement. If government officials rely upon a driver's consent to request his blood test results, the Commonwealth must demonstrate that the driver's consent is voluntary, which means the driver had a meaningful opportunity to make a knowing and conscious choice of whether to undergo chemical testing or exercise his right of refusal.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > ***Exigent Circumstances***

Criminal Law & Procedure > ... > Warrantless Searches > ***Exigent Circumstances*** > Reasonable & Prudent Standard

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

HN12 **Search & Seizure, Exigent Circumstances**

Exigent circumstances comprise one of the well-recognized exceptions to the Fourth Amendment's and *Pa. Const. art. I, § 8*'s warrant requirements. ***Exigent circumstances*** exist when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > ***Exigent Circumstances***

Criminal Law & Procedure > ... > Warrantless Searches > ***Exigent Circumstances*** > Destruction of Evidence

Criminal Law & Procedure > ... > Warrantless Searches > ***Exigent Circumstances*** > Opportunity to Obtain Warrant

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > ***Exigent Circumstances***

HN13 **Search & Seizure, Exigent Circumstances**

An exigency may arise if an officer reasonably believes he is confronted with an emergency, in which the delay necessary to obtain a warrant, under the ***circumstances***, threatens the destruction of evidence. The existence of an exigency that overcomes the warrant requirement is determined on a case-by-case basis after an examination of the totality of the ***circumstances***.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > ***Exigent Circumstances***

Criminal Law & Procedure > ... > Warrantless Searches > ***Exigent Circumstances*** > Destruction of Evidence

Criminal Law & Procedure > ... > Warrantless Searches > ***Exigent Circumstances*** > Opportunity to Obtain Warrant

Criminal Law & Procedure > ... > Exclusionary Rule > Exceptions to Exclusionary Rule > ***Exigent Circumstances***

HN14 **Search & Seizure, Exigent Circumstances**

In general, ***exigent circumstances*** may exist to permit the police to pursue a warrantless blood draw if the driver's blood alcohol content (BAC) is dissipating and the driver is unconscious. The natural metabolization of BAC, alone, does not present a per se exigency that justifies an exception to the warrant requirement. Instead, the metabolization of alcohol or a controlled substance in the bloodstream and the ensuing loss of evidence are among the factors to consider when determining whether ***exigent circumstances*** justify a warrantless blood draw. Additional factors to consider include the need for the police to attend to a related car accident, the procedures in place for obtaining a warrant, the availability of a magistrate judge, and the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence.

Counsel: Shawn M. Dorward, Harrisburg, for Appellant.

Timothy J. Barker, Assistant District Attorney, York, for Commonwealth, Appellee.

Judges: BEFORE: BOWES, J., OLSON, J., and STABILE, J. OPINION BY OLSON, J.

Opinion by: OLSON

Opinion

[*531] OPINION BY OLSON, J.:

Appellant, Akim Sharif ***Jones-Williams***, appeals from the judgment of sentence entered on April 5, 2017, as made final by the denial of his post-sentence motion on September 11, 2017, following his jury and bench trial convictions for various crimes arising from a motor vehicle accident. After careful review, we vacate Appellant's judgment of sentence, reverse the order denying suppression, and remand for a new trial.

The facts and procedural history of this case are as follows. On July 5, 2014, Appellant was driving a red

2014 Mitsubishi Outlander accompanied by his fiancé, Cori Sisti, and their daughter, S.J. At approximately 4:42 p.m., Appellant's vehicle collided with a train at Slonnekers Landing, near the 1100 block of Cly Road, York Haven, Pennsylvania.

Officer Michael Briar and two paramedics, Leslie Garner and Lisa Gottschall, were first to arrive at the scene. Upon arrival, they found Appellant outside of the vehicle, but Sisti and S.J. still **[**2]** inside. Garner and Gottschall immediately began treating Appellant, while Officer Briar attempted to assist Sisti and S.J. Ultimately, emergency personnel declared Sisti dead at the scene, but transported Appellant and S.J. to the hospital for medical treatment.[1] Subsequently, various individuals informed the officer in charge, Lieutenant Steven Lutz, that they detected an odor of burnt marijuana emanating from Appellant. Therefore, at approximately 6:00 p.m., Lieutenant Lutz directed Sergeant Keith Farren to go to the hospital to interview Appellant and obtain a blood sample.

When Sergeant Farren arrived at York Hospital, he discovered Appellant lying in a hospital bed, restrained, and fading in and out of consciousness. As such, Sergeant **[*532]** Farren could not interview Appellant or request that he consent to a blood draw. Later, however, Sergeant Farren learned that hospital personnel drew Appellant's blood at 5:56 p.m., before his arrival.[2] This prompted Sergeant Farren to request that the hospital's laboratory transfer Appellant's blood sample to National Medical Services ("NMS") laboratory for testing to determine the presence of alcohol or controlled substances. Sergeant Farren filled **[**3]** out the requisite forms at 7:30 p.m. He did not obtain a warrant prior to submitting the request to test Appellant's blood sample. The hospital laboratory transferred Appellant's blood sample on July 8, 2014 (three days after the collision) and NMS laboratory issued its toxicology report analyzing Appellant's blood sample on July 15, 2014. The results revealed that Appellant's blood contained Delta-9 THC, the active ingredient in marijuana, at a concentration of 1.8 ng/ml and Delta-9 Carboxy THC, a marijuana metabolite, at 15 ng/ml.

Thereafter, on June 9, 2015, the Commonwealth filed a bill of information against Appellant. Specifically, the Commonwealth charged Appellant with one count each of the following offenses: homicide by vehicle while driving under the influence ("DUI"); homicide by vehicle; endangering the welfare of a child ("EWOC"); recklessly endangering another person ("REAP"); DUI: controlled substance — schedule I; DUI: controlled substance - schedule I, II, or III; DUI: general impairment; careless driving; careless driving — unintentional death; aggravated assault while DUI; and aggravated assault by vehicle. Bill of Information, 6/9/15, at *1-3 (un-paginated).

On October **[**4]** 26, 2015, Appellant filed an omnibus pre-trial motion. In his motion, Appellant moved to suppress the blood test results obtained by police. Appellant's Omnibus Pre-Trial Motion, 10/26/15, at *1-14 (un-paginated). Appellant argued that the police violated his constitutional rights by requesting to test his blood sample without a warrant. ***Id.*** at *9-14 (un-paginated); ***see also*** Appellant's Brief in Support of Omnibus Pre-Trial Motion, 1/29/16, at 29-39. Appellant also asserted that, notwithstanding the statutory provisions set forth at *75 Pa.C.S.A. § 3755(a)* (Reports by Emergency Room Personnel), if the police "can obtain a warrant . . . without affecting the efficacy of the investigation," the *Fourth Amendment of the United States' Constitution* and *Article I, Section 8 of Pennsylvania's Constitution* require them to do so. Appellant's Omnibus Pre-Trial Motion, 10/26/15, at *11 (un-paginated).

The trial court held a suppression hearing on December 21, 2015, and subsequently denied Appellant's motion to suppress on April 27, 2016. Trial Court Order, 4/27/16, at 1. In doing so, the trial court held that Appellant's blood test results were admissible because ***exigent circumstances*** existed and, as such, the warrantless search did not violate Appellant's constitutional rights. Trial Court Opinion, 4/27/16, at 7-11.

Appellant's **[**5]** jury trial commenced January 9, 2017. The Commonwealth admitted at trial the report documenting the presence of Delta-9 THC and Delta-9 Carboxy THC in Appellant's bloodstream. N.T. Trial, 1/10/17, at 261. On January 13, 2017, Appellant was found guilty of homicide by vehicle while DUI,[3] homicide by vehicle,[4] **[*533]** EWOC,[5] REAP,[6] DUI: controlled

[1] S.J. survived the injuries she sustained in the accident.

[2] The record does not establish why hospital personnel collected a blood sample from Appellant. It is clear, however, that hospital personnel performed the blood draw before receiving a request from Sergeant Farren.

[3] *75 Pa.C.S.A. § 3735(a)*.

[4] ***75 Pa.C.S.A. § 3732(a)***.

substance - schedule 1,[7] DUI: controlled substance — metabolite,[8] aggravated assault while DUI,[9] aggravated assault by vehicle,[10] and careless driving.[11] On April 5, 2017, the trial court sentenced Appellant to four to eight years' imprisonment followed by 12 months' probation.

"On April 17, 2017, Appellant filed a post-sentence motion alleging that the trial court erred in denying suppression of Appellant's blood test results and that the trial court erred in finding that the weight of the evidence was met in [five] of the [nine] counts. [Through oversight, the trial court] granted the motion on May 10, 2017. On May 19, 2017, the trial court vacated its [May 10, 2017] order [] and ordered the parties to schedule a hearing [on] the post-sentence motion. [Thereafter, t]he trial court allowed Appellant to file a supplemental post-sentence motion on June 21, 2017[, **[**6]** and] held a hearing on the post-sentence motion on July 25, 2017. The trial court then denied [Appellant's] post-sentence motion [by] operation of [] law on September 11, 2017." Trial Court Opinion, 4/13/18, at 3.

On September 14, 2017, Appellant filed a notice of appeal to this Court. Appellant's Notice of Appeal, 9/14/17, at 1-2. On October 5, 2017, the trial court entered an order directing Appellant to file a concise statement of matters complained of on appeal pursuant to *Pa.R.A.P. 1925(b)(1)*. Trial Court Order, 10/5/17, at 1. Appellant timely complied.

The trial court issued an opinion pursuant to *Pa.R.A.P. 1925(a)* on April 13, 2018. Trial Court Opinion, 4/13/18, at 1-32. In its *Rule 1925(a)* opinion, the trial court stated that it incorrectly determined that ***exigent circumstances*** existed to permit the warrantless search. ***Id.*** at 12. In view of its error, the trial court asked this Court to "suppress Appellant's blood test results" and "affirm [Appellant's convictions for EWOC and REAP] based upon the circumstantial evidence." ***Id.*** at 32.

On appeal, Appellant raises the following issues for our review:[12]

> I. [Did the trial court err in denying Appellant's motion to suppress when the Commonwealth failed to comply with *75 Pa.C.S.A. § 3755(a)* of the Motor Vehicle Code?]
>
> II. [If **[**7]** the Commonwealth did comply with *Section 3755(a)*'s requirements, did the trial court still err in denying Appellant's motion to suppress because statutory compliance is insufficient to overcome the warrant requirement of the *Fourth Amendment of the United States Constitution* or *Article I, Section 8 of the Pennsylvania Constitution* in light of the recent decisions in ***Birchfield v. North Dakota***, *136 S.Ct. 2160, 195 L. Ed. 2d 560 (2016)*, ***Missouri v. McNeely***, *569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013)*, ***Commonwealth v. Myers***, *640 Pa. 653, 164 A.3d 1162 (Pa. 2017)*, and ***Commonwealth v. [*534] March***, *643 Pa. 95, 172 A.3d 582 (Pa. 2017)*?]
>
> III. Did the trial court err in denying [Appellant's] [m]otion for [s]uppression of [e]vidence [when] there were not ***exigent circumstances*** [and] the police officers could have reasonably obtained a search warrant before [requesting the transfer of Appellant's blood sample to NMS laboratory for testing] without significantly undermining the efficacy of the search?
>
> IV. Did the trial court err in finding that, as a matter of law, the Commonwealth provided sufficient evidence to meet its burden of proof regarding [the following convictions: homicide by vehicle while DUI, aggravated assault by vehicle while DUI, EWOC, and REAP?]
>
> V. Did the trial court abuse its discretion in denying [Appellant's] [p]ost-[s]entence [m]otion where the jury's verdict [was against the weight of the evidence for the following convictions: homicide by vehicle while DUI, aggravated assault by vehicle while DUI, EWOC and REAP?]

Appellant's Brief at 1-2.

In Appellant's first three issues, he argues that the trial court erred in denying his motion to suppress. Appellant's Brief at 45-58. ***HN1***[⬆] "Once a motion to suppress evidence has been filed, it is the Commonwealth's burden to prove, by a preponderance

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[5] *18 Pa.C.S.A. § 4304(a)(1)*.

[6] *18 Pa.C.S.A. § 2705*.

[7] *75 Pa.C.S.A. § 3802(d)(1)(i)*.

[8] *75 Pa.C.S.A. § 3802(d)(1)(iii)*.

[9] *75 Pa.C.S.A. § 3735.1(a)*.

[10] ***75 Pa.C.S.A. § 3732.1(a)***.

[11] *75 Pa.C.S.A. § 3714(a)*.

[12] We have altered the order of Appellant's issues for clarity and ease of discussion. ***See [**8]*** Appellant's Brief at 1-2.

of the evidence, that the challenged evidence was not obtained in violation of the defendant's rights." ***Commonwealth v. Wallace***, *615 Pa. 395, 42 A.3d 1040, 1047-1048 (Pa. 2012)*; ***see also*** *Pa.R.Crim.P. 581(H)*. With respect to an appeal from the denial of a motion to suppress, this Court has declared:

> An appellate court's standard of review in addressing a challenge to a trial court's denial of a suppression motion is limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Since the prosecution prevailed in the suppression court, we may consider only the evidence of the prosecution and so much of the evidence for the defense as remains un[-]contradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.
>
> ***Commonwealth v. Stevenson***, *2006 PA Super 38, 894 A.2d 759, 769 (Pa. Super. 2006)* (citation omitted). Although we are bound by the factual and the credibility **[**9]** determinations of the trial court which have support in the record, we review any legal conclusions *de novo*. ***Commonwealth v. George***, *2005 PA Super 233, 878 A.2d 881, 883 (Pa. Super. 2005)*, *appeal denied*, [] *586 Pa. 735, 891 A.2d 730 (Pa. 2005)*.

Commonwealth v. Wells, *2007 PA Super 30, 916 A.2d 1192, 1194-1195 (Pa. Super. 2007)* (parallel citations omitted).

First, Appellant argues that the trial court erred in denying his motion to suppress because the Commonwealth did not comply with the requirements of *75 Pa.C.S.A. § 3755(a)* of the Motor Vehicle Code when Sergeant Farren requested chemical testing of Appellant's blood. Relying solely on this Court's decision in ***Commonwealth v. Shaffer***, *714 A.2d 1035 (Pa. Super. 1999)*, Appellant claims that a valid blood draw occurs pursuant to *Section 3755(a)* **only** when hospital personnel make a probable cause determination that a driver was DUI. Here, Appellant argues that the Commonwealth did not adhere to *Section 3755(a)*'s requirements because it did not show that, at the time hospital personnel **[*535]** drew Appellant's blood, they "made an independent finding of probable case" or that they were "privy to any determinations of probable cause made by any of the police officers." Appellant's Brief at 55. Thus, Appellant argues that the Commonwealth failed to demonstrate compliance with *Section 3755(a)*. We disagree.

Section 3755(a) of the Motor Vehicle Code reads as follows:

> ***§ 3755*. Reports by emergency room personnel**
>
> (a) General rule. --If, as a result of a motor vehicle accident, **[**10]** the person who drove, operated or was in actual physical control of the movement of any involved motor vehicle requires medical treatment in an emergency room of a hospital and if probable cause exists to believe a violation of *section 3802* (relating to driving under influence of alcohol or controlled substance) was involved, the emergency room physician or his designee shall promptly take blood samples from those persons and transmit them within 24 hours for testing to the Department of Health or a clinical laboratory licensed and approved by the Department of Health and specifically designated for this purpose. This section shall be applicable to all injured occupants who were capable of motor vehicle operation if the operator or person in actual physical control of the movement of the motor vehicle cannot be determined. Test results shall be released upon request of the person tested, his attorney, his physician or governmental officials or agencies.

75 Pa.C.S.A. § 3755(a). ***HN2***[↑] Thus, pursuant to the language of the statute, governmental officials may obtain an individual's blood test results if, after a motor vehicle accident, the driver requires emergency medical treatment and there is probable cause to believe that **[**11]** a DUI violation occurred.

Setting aside, for a moment, the issue of whether statutory compliance, by itself, continues to support an independent basis for obtaining blood test results without a warrant and consistent with constitutional concerns, we conclude that the Commonwealth, in this case, proved adherence with the requirements of *Section 3755(a)*. In ***Commonwealth v. Riedel***, *539 Pa. 172, 651 A.2d 135, 139 (Pa. 1994)*, the appellant was involved in a single vehicle accident and sustained injuries. ***Id.*** *at 137*. Subsequently, emergency personnel arrived and began treating the appellant in an ambulance. ***Id.*** A Pennsylvania State Trooper later arrived and observed that the appellant exhibited signs of intoxication. ***Id.*** As such, the trooper followed medical personnel to the hospital to request a blood draw from the appellant for chemical analysis. ***Id.*** The trooper,

however, learned that medical personnel already drew the appellant's blood for medical purposes and, as such, did not request a blood draw. ***Id.*** The trooper later wrote to the hospital requesting the results of the appellant's blood test. ***Id.*** "Based on this information, [the] appellant was charged with [DUI], *75 Pa.C.S.[A.] §§ 3731(a)(1)* and *(a)(4)*, [and later] convicted in a non-jury trial." ***Id.*** After this Court affirmed the appellant's **[**12]** judgment of sentence, he appealed to our Supreme Court. ***See Commonwealth v. Reidel,*** *620 A.2d 541 (Pa. Super. 1992)* (unpublished memorandum).

On appeal, the appellant argued that "the police violated his *Fourth Amendment* rights against unreasonable searches and seizures when, in the absence of ***exigent circumstances***, they obtained the results of his medical purposes blood test without a warrant." ***Riedel, supra at*** *137*. In response, the Commonwealth argued that the trooper properly obtained the appellant's blood test results because he complied with *Section 3755(a)*. ***Id. at*** *139*. **[*536]** Agreeing with the Commonwealth, our Supreme Court in ***Riedel*** explained that the facts established that the appellant was in a motor vehicle accident, was transported to the hospital for emergency medical treatment, and that the officer had probable cause to believe he was DUI. ***Id. at*** *140*. Accordingly, the Court concluded that, even though the officer "chose to wait[] and obtain [the] appellant's test results by mailing a request to the director of the hospital's laboratory," he still complied with the terms of *Section 3755(a)*. ***Id.***

This Court reached a similar conclusion in ***Commonwealth v. Keller***, *2003 PA Super 178, 823 A.2d 1004 (Pa. Super. 2003)*. Like ***Riedel, Keller*** involved a motor vehicle accident, emergency medical treatment, and the existence of probable cause to believe that the appellant was DUI. As such, an officer went **[**13]** to the hospital where the appellant was transported and "filled out a Toxicology Request form." ***Id.*** *at 1007*. The hospital then "mailed a report of the blood test results to the State Police." ***Id.*** Prior to trial, the appellant moved to suppress his blood test results and the trial court granted suppression. ***Id.*** *at 1008*.

On appeal, the Commonwealth argued that the trial court erred in suppressing the appellant's blood test results. ***Id.*** This Court agreed. In reaching this conclusion, we noted that the "police officer specifically requested that a BAC test be performed at [the hospital]" and the appellant "never disputed that [the trooper] had probable cause to believe that [he] was [operating a motor vehicle under the influence] of alcohol." ***Id.*** *at 1010*. As such, this Court concluded that hospital personnel "were required to withdraw blood from [the appellant] and release the test results" pursuant to *Section 3755(a)*. ***Id.*** ***HN3***[↑] Accordingly, per ***Riedel*** and ***Keller***, the Commonwealth demonstrates compliance with *Section 3755(a)* if, following a motor vehicle accident, a driver seeks emergency medical treatment, an officer has probable cause to believe that the driver operated his or her vehicle under the influence of alcohol or a controlled substance, and the **[**14]** officer subsequently requests the driver's blood test results from the hospital.

The facts of the instant case are nearly identical to both ***Riedel*** and ***Keller***. Indeed, after Appellant's vehicle collided with the train, emergency personnel transported Appellant to the hospital for emergency medical treatment, during which, the hospital extracted a sample of Appellant's blood. Following Appellant's transport, the officers at the scene of the accident developed probable cause to believe that Appellant was DUI after multiple emergency personnel who responded to the accident reported to Lieutenant Lutz that they detected an odor of marijuana about Appellant's person. Thereafter, at the request of Lieutenant Lutz, Sergeant Farren responded to the hospital and requested Appellant's blood test results.[13] Based upon the foregoing, we conclude that the Commonwealth complied with *Section 3755(a)*.

Appellant's position, which asserts that there was non-compliance with *Section 3755(a)* because hospital personnel lacked **[*537]** probable cause, is unavailing because he recognizes only one of the possible ways the Commonwealth may adhere to *Section 3755(a)* in seeking blood test results for an individual who requires emergency medical treatment following **[**15]** a motor vehicle accident. ***HN4***[↑] Indeed, our Supreme Court previously recognized at least two pathways for achieving compliance with *Section 3755(a)*:

> *Section 3755(a)* is, to say the least, inartfully

[13] The procedure followed by law enforcement personnel complied with *Section 3755(a)* even though the hospital extracted Appellant's blood sample prior to Sergeant Farren's request. ***See Commonwealth v. Seibert***, *2002 PA Super 15, 799 A.2d 54, 64 (Pa. Super. 2002)* (explaining that an "officer is entitled to the release of [chemical] test results" if "an officer determines there is probable cause to believe a person operated a motor vehicle under the influence . . . and requests that hospital personnel withdraw blood" regardless of the fact that "medical staff previously drew the blood and a request by the police . . . came after the blood was drawn.")

> drafted. For some vague and curious reason, the legislature has required a probable cause determination without specifying who is to make such determination, or how such an abstract requirement is to be met. The request of a police officer, based on probable cause to believe a violation of Section 3731, would seem to satisfy the probable cause requirement and therefore mandate that hospital personnel conduct BAC testing. Likewise, a determination by hospital personnel familiar with Section 3755(a), that probable cause existed to believe that a person requiring treatment had violated Section 3731, would also seem to mandate that hospital personnel conduct BAC testing.

Commonwealth v. Shaw, *564 Pa. 617, 770 A.2d 295, 299 n.3 (Pa. 2001)*.[14] Herein, the officers had probable cause to believe that Appellant was DUI when they asked the hospital to conduct chemical testing. As we have stated, this is sufficient to show that the Commonwealth complied with the requirements of *Section 3755(a)*.

Next, Appellant argues that, even if the Commonwealth established compliance with *Section 3755(a)*, the trial court erred in denying his motion to suppress because *Section 3755(a)* is unconstitutional. **[**16]** ***HN6***[↑] Upon review, we conclude that, in light of the United States Supreme Court's decision in ***Birchfield, supra***, and our Supreme Court's decision in ***Myers, supra***, *Section 3755(a)* and its counterpart, *Section 1547(a)*, no longer serve as independent exceptions to the warrant requirement. As such, the search of Appellant's blood test results violated the *Fourth Amendment of the United States Constitution* and *Article I, Section 8 of the Pennsylvania Constitution.*

HN7[↑] The *Fourth Amendment* and *Article I, Section 8* prohibit unreasonable searches and seizures. ***Commonwealth v. McAdoo***, *2012 PA Super 118, 46 A.3d 781, 784 (Pa. Super. 2012)*. "A search conducted without a warrant is deemed to be unreasonable and therefore constitutionally impermissible, unless an established exception applies." ***Commonwealth v. Strickler***, *563 Pa. 47, 757 A.2d 884, 888 (Pa. 2000)*. Established exceptions include actual consent, implied consent, search incident to lawful arrest, and ***exigent circumstances***. ***Commonwealth v. Livingstone***, *644 Pa. 27, 174 A.3d 609, 625 (Pa. 2017)* (citation omitted).

At issue in the present case is the implied consent scheme set forth in *Sections 1547* and *3755* of the Motor Vehicle Code. Previously, Pennsylvania courts concluded that the aforementioned statutes obviated "the need to obtain a warrant in DUI cases." ***March, supra at 808***; ***see Riedel, supra at 143***; ***Keller, supra at 1009***; ***Commonwealth v. Barton***, *456 Pa. Super. 290, 690 A.2d 293, 296 (Pa. Super. 1997)*. Indeed, both this Court and our Supreme Court have explained that,

> "[t]ogether, *[S]ections 1547* and *3755* comprise a statutory scheme which, under **[*538]** particular ***circumstances***, not only imply the consent of a driver to undergo chemical or blood tests, but also require hospital personnel to withdraw blood **[**17]** from a person, and release the test results, at the request of a police officer who has probable cause to believe the person was operating a vehicle while under the influence.

Barton, supra at 296, *citing* ***Riedel, supra at 180***. Thus, our courts previously held that compliance with the aforementioned statutory scheme independently negated the need to obtain a warrant because a "driver's implied consent under the statute satisfie[d] the consent exception to the warrant requirement." ***March, supra at 808***. In recent years, however, Pennsylvania's so-called implied consent scheme has undergone judicial scrutiny, especially in the wake of decisions by the United States Supreme Court and the Pennsylvania Supreme Court that suggest that consent, as an exception to the warrant requirement, can only be inferred consistent with constitutional imperatives where it is voluntarily given under the totality of the ***circumstances***.

We begin by looking at *Section 1547* of the Motor Vehicle Code, which our Supreme Court recently examined, and which states, in relevant part, as follows:

> ***§ 1547*. Chemical testing to determine amount of alcohol or controlled substance**
>
> (a) General rule. —Any person who drives, operates or is in actual physical control of the movement of a vehicle **[**18]** in this

[14] Based upon this language, it would appear that either law enforcement officers or hospital personnel may make the probable cause determination. ***HN5***[↑] Thus, the key inquiry is whether the individual who requested chemical testing did, in fact, have probable cause to believe that the individual who operated the vehicle was under the influence of alcohol or a controlled substance.

> Commonwealth shall be deemed to have given consent to one or more chemical tests of breath, blood or urine for the purpose of determining the alcoholic content of blood or the presence of a controlled substance if a police officer has reasonable grounds to believe the person to have been driving, operating or in actual physical control of the movement of a vehicle:
>
> > (1) in violation of section 1543(b)(1.1) (relating to driving while operating privilege is suspended or revoked), 3802 (relating to driving under influence of alcohol or controlled substance) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock)[.]

75 Pa.C.S.A. § 1547(a)(1).

Until our Supreme Court's decision in ***Myers, supra*** "[t]he [i]mplied [c]onsent [l]aw, 75 Pa.C.S.[A.] § 1547(a), assume[d] acquiescence to blood testing 'absent an affirmative showing of the subject's refusal to consent to the test at the time that the testing is administered.'" ***Riedel, supra*** *at 141, citing* ***Commonwealth v. Eisenhart***, *531 Pa. 103, 611 A.2d 681, 683 (Pa. 1992)*. This view seems to have emerged from the language of Section 1547(b), which was said to "grant[] an explicit right to a driver who is under arrest for [DUI] to refuse to consent to chemical testing." ***Riedel, supra*** *at 141*. Section 1547(b) states, in pertinent part:

> (b) Suspension for refusal.—
>
> > (1) If any person **[**19]** placed under arrest for a violation of section 3802 is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted but upon notice by the police officer[.]

75 Pa.C.S.A. §1547(b)(1). Pennsylvania courts interpreting this provision traditionally limited the right to refuse blood testing to those individuals who were both conscious and under arrest for a violation of Section 3802.

Our Supreme Court addressed this issue in ***Eisenhart, supra***. In ***Eisenhart***, after a "vehicle crashed into the cement wall of a residence," a police officer arrived and observed that the appellant, Eisenhart, displayed **[*539]** signs of intoxication, including pupil dilation, difficulty maintaining balance, and a general dazed demeanor. *Id. at 681-682*. Eisenhart also failed two field sobriety tests. *Id. at 682*. As such, the officer placed him under arrest. ***Id.*** While the officer transported Eisenhart to the hospital for a blood test, he "alternatively agreed and refused to submit to a blood test." ***Id.*** "At the hospital, [Eisenhart] refused to consent to a blood alcohol test." ***Id.*** Nonetheless, hospital personnel conducted a blood test, which revealed an alcohol level over the legal limit. ***Id.***

The Commonwealth ultimately charged Eisenhart with various crimes, including DUI. ***Id. [**20]*** Thereafter, Eisenhart attempted to suppress the blood test results. He argued "that once the operator of a vehicle refuses to submit to a blood test . . . 75 Pa.C.S.[A.] § 1547[] prohibits the testing of blood for alcohol level and the subsequent evidentiary use of such test results." *Id. at 682*. Eventually, our Supreme Court granted *allocatur* to consider "whether the appellant has the right to refuse to submit to blood alcohol testing under the Motor Vehicle Code." ***Id.***

Ultimately, the Court concluded that "[t]he statute grants an explicit right to a driver who is **under arrest** for [DUI] to refuse to consent to chemical testing." *Id. at 683* (emphasis added); ***see also*** *75 Pa.C.S. § 1547*. Notably, the Court limited its holding to "conscious driver[s]." *Id. at 684*. Indeed, it declined to opine on an unconscious driver's statutory right to refuse consent and stated that the "conscious driver has the right under *1547(b)* to revoke that consent and once that is done, 'the testing shall not be conducted.'" ***Id.*** (citation omitted).

The Supreme Court later reaffirmed ***Eisenhart***'s holding in ***Riedel***, the facts of which we explained above. The ***Riedel*** Court not only addressed the Commonwealth's compliance with Section 3755(a), but also discussed whether the appellant in **[**21]** ***Riedel*** "was denied the right to refuse blood alcohol testing under 75 Pa.C.S.A. §1547, the [i]mplied [c]onsent [l]aw." ***Riedel, supra*** *at 138*. Indeed, Riedel claimed that he possessed "an absolute right to refuse testing" and "any other interpretation would result in an impermissible distinction between drivers under arrest and those, like [Riedel], who are not requested to consent because they are unconscious or are receiving emergency medical treatment." ***Id.*** *at 141*.

The Supreme Court disagreed. Instead, the Court held that because Riedel was "not under arrest at the time the blood test was administered[, he could not] claim the explicitly statutory protection of [S]ection 1547(b)." ***Id.*** Moreover, the Court explained that it would "not reformulate the law to grant an unconscious driver or [a]

driver whose blood was removed for medical purposes the right to refuse to consent to blood testing" because the "decision to distinguish between classes of drivers in the implied consent scheme is within the province of the legislature." ***Id.*** Thus, pursuant to ***Eisenhart*** and ***Riedel***, the implied consent statute found at *Section 1547* operated as an independent exception to the warrant requirement. At this time, however, the right to refuse consent to a blood **[**22]** draw or chemical testing did not extend to unconscious drivers who may have been under suspicion for DUI but who had not yet been arrested.

Recently, however, our Supreme Court altered the reading of the implied consent statute in ***Myers, supra***. In ***Myers***, the Philadelphia Police responded to a call stating that an individual was "screaming" in a vehicle. ***Id. at 1165***. An officer arrived at the scene and observed a vehicle matching the call description with an individual, Myers, in the driver seat. ***Id.*** The officer **[*540]** pulled up behind the vehicle and activated his siren and emergency lights. ***Id.*** Myers subsequently exited the vehicle and "stagger[ed]" toward the officer. ***Id.*** Myers tried to speak "but his speech was so slurred that [the officer] could not understand [him]." ***Id.*** The officer detected alcohol about Myers' person and observed a bottle of brandy in the vehicle's front seat, as the driver's door was open. ***Id.*** Because the officer believed that Myers needed medical attention due to his state of inebriation, the officer placed Myers under arrest and called for a wagon to transport him to the hospital. ***Id.***

Thereafter, another Philadelphia police officer arrived at the hospital where Myers was taken. ***Id.*** "A few **[**23]** minutes before [the officer] arrived, however, the hospital staff administered four milligrams of Haldol" to Myers, rendering him unconscious. ***Id.*** As such, Myers was unresponsive when the officer attempted to communicate with him. ***Id.*** Nonetheless, the officer read the ***O'Connell***[15] warnings to Myers, who did not respond, and then directed a nurse to draw Myers's blood. ***Id.*** The officer did not have a warrant. ***Id.*** The Commonwealth later charged Myers with DUI. Myers then moved to suppress his blood test results, which the trial court subsequently granted. The Commonwealth appealed.

After agreeing to review the case, our Supreme Court first addressed whether an unconscious arrestee possesses the statutory right to refuse blood testing pursuant to *Section 1547(b)* of the Motor Vehicle Code. Ultimately, the Court explained that "the statute [contains] unambiguous language [that] indicates that the right of refusal applies without regard to the motorist's state of consciousness." ***Id. at 1172***. Thus, the Court held that *Section 1547(b)*'s right of refusal applies to all arrestees, conscious or unconscious. ***Id.***

Next, the Court addressed whether "*75 Pa.C.S.[A.] § 1547(a)* [which] provid[es] that a DUI suspect 'shall be deemed to have given consent' to a chemical test [constitutes] an independent exception to the warrant requirement of the *Fourth Amendment to the United States Constitution* and *Article I, Section 8 of the Pennsylvania Constitution*." ***Id. at 1180*** (citation omitted). Although unable to garner majority approval,[16] the Court concluded that "the language of *75 Pa.C.S.[A.] § 1547(a)* . . . does not constitute an independent exception to the warrant requirement." ***Id.***

In reaching this conclusion, the Court recognized that consent, as an exception to the **[**25]** warrant requirement, must be voluntary. **[*541]** ***Id. at 1176-1177***. ***HN8***[↑] Per the Court, this is true even if consent is implied. ***Id.*** Indeed, the ***Myers*** Court concluded that,

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[15] The ***O'Connell*** warnings were first pronounced in ***Commonwealth, Department of Transportation, Bureau of Traffic Safety v. O'Connell***, *521 Pa. 242, 555 A.2d 873 (Pa. 1989)*. In a later opinion, our Supreme Court explained both the ***O'Connell*** warnings and the reasoning behind the warnings:

> in order to guarantee that a motorist makes a knowing and conscious decision on whether to submit to testing or refuse and accept the consequence of losing his driving privileges, the police must advise the motorist that in making this decision, he does not have the right to speak with counsel, or anyone else, before submitting to chemical testing, and further, if the motorist exercises his right to remain silent as a basis for refusing to submit to testing, it will be considered a refusal and he will suffer the loss of his driving privileges[. T]he duty of the officer to provide the ***O'Connell [**24]*** warnings as described herein is triggered by the officer's request that the motorist submit to chemical sobriety testing, whether or not the motorist has first been advised of his [***Miranda v. Arizona***, *384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)]* rights.

Commonwealth, Dep't of Transp., Bureau of Driver Licensing v. Scott, 546 Pa. 241, 684 A.2d 539, 545 (Pa. 1996).

[16] Only Justices Donohue and Dougherty joined this portion of Justice Wecht's opinion. ***See*** *Myers, 164 A.3d at 1180, n. 15*.

"despite the existence of an implied consent provision, an individual must give actual, voluntary consent at the time that testing is requested." *Id. at 1178*. In reaching this conclusion, the ***Myers*** Court relied upon the United States Supreme Court's decision in ***Birchfield v. North Dakota, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016)***. It stated:

> Of particular salience for today's case, the ***Birchfield*** Court addressed the ***circumstance*** in which a DUI suspect is unconscious when a chemical test is sought. The [United States Supreme] Court explained:
>
> > It is true that a blood test, unlike a breath test, may be administered to a person who is unconscious (perhaps as a result of a crash) or who is unable to do what is needed to take a breath test due to profound intoxication or injuries. But we have no reason to believe that such situations are common in drunk-driving arrests, and when they arise, the police may apply for a warrant if need be.
>
> *Id. at 2184-85*. Lest anyone doubt what the Supreme Court meant when it stated that police officers in such ***circumstances*** "may apply for a warrant if need be," the Court emphasized that "[n]othing prevents the police **[**26]** from seeking a warrant for a blood test when there is sufficient time to do so in the particular ***circumstances*** or from relying on the ***exigent circumstances*** exception to the warrant requirement when there is not." *Id. at 2184*. Noting that all fifty states have enacted implied consent laws, *Id. at 2169*, the Court nowhere gave approval to any suggestion that a warrantless blood draw may be conducted upon an unconscious motorist simply because such a motorist has provided deemed consent by operation of a statutory implied consent provision. Rather, the Supreme Court indicated that a warrant would be required in such situations unless a warrantless search is necessitated by the presence of a true exigency.

Id. at 1178-1179. *HN9*[↑] Based upon the foregoing, the ***Myers*** Court concluded that, "[l]ike any other searches based upon the subject's consent, a chemical test conducted under the implied consent statute is exempt from the warrant requirement only if consent is given voluntarily under the totality of the ***circumstances***." *Id. at 1180*. As such, the Court held that because the appellant in ***Myers*** was unconscious, he did not have the opportunity to "make a 'knowing and conscious choice' regarding whether to undergo chemical testing or to exercise **[**27]** his right of refusal." *Id. at 1181* (citation omitted). Thus, the totality of the ***circumstances*** demonstrated that he did not voluntarily consent to the blood draw. ***Id.***

In ***Myers***, a majority of our Supreme Court held that *HN10*[↑] an individual arrested for DUI, whether conscious or unconscious, possessed a statutory right to refuse chemical testing. A mere plurality of the ***Myers*** court held, however, that *Section 1547(a)*, by itself, does not establish an independent exception to the warrant requirement. Following ***Myers***, the issue of whether compliance with *Section 1547(a)* or *Section 3755(a)*, standing alone, serves as an independent exception to the warrant requirement remains unsettled, especially for individuals who are unconscious and not under arrest at the time of a blood draw.

Despite this uncertainty, the subsequent history of a recently-published decision by a panel of this Court offers insight as to how our Supreme Court would address these issues in future cases. The facts in **[*542]** ***Commonwealth v. March, 2017 PA Super 18, 154 A3d 803 (Pa. Super. 2017)*** are nearly identical to the facts of the instant case. On July 14, 2015, a single vehicle accident occurred. *Id. at 805*. When police arrived at the scene, emergency medical personnel were treating March, the driver, who was unresponsive and subsequently transferred to the hospital **[**28]** for treatment. ***Id.*** After investigating the scene of the accident, the officer learned information that provided probable cause to believe that March was under the influence of a controlled substance at the time of the accident. ***Id.*** The officer then traveled to Reading Hospital to request a sample of March's blood. ***Id.*** A request was made, without a warrant, and a blood draw was subsequently taken which later revealed the "presence of several Schedule I controlled substances in March's blood." *Id. at 806*. Notably, at the time of the blood draw, March was unconscious but not under arrest. *Id. at 805*. Thereafter, the Commonwealth charged March with various crimes, including DUI (controlled substance). *Id. at 806*. March filed an omnibus pre-trial motion seeking to suppress the blood evidence based upon an allegedly illegal blood draw. ***Id.*** The trial court granted March's motion. ***Id.*** The Commonwealth then appealed to this Court.

On appeal, this Court concluded that the "interplay" between *Section 1547(a)* and *Section 3755(a)* "allowed for [March's] warrantless blood draw and release of the results." *Id. at 813*. In reaching this conclusion, this

Court in ***March*** made the distinction that, unlike the appellant in ***Myers***,[17] March was not under arrest at the time of the **[**29]** blood draw. ***Id.*** As such, this Court concluded that he did not possess the statutory right to refuse consent pursuant to *Section 1547(b)*. ***Id.*** In making this distinction, the ***March*** Court relied on the Pennsylvania Supreme Court's previous decisions in ***Riedel*** and ***Eisenhart.*** ***Id.*** Furthermore, the Court, relying on ***Riedel***, concluded that because March "was unconscious and unresponsive," he did not have the right to refuse to consent to blood testing. ***Id.*** Accordingly, we concluded that the "warrantless blood draw was permissible" because March "was involved in a motor vehicle accident, was unconscious at the scene and required immediate medical treatment, was not under arrest, and remained unconscious when the blood tests were administered." ***Id.*** Ultimately, however, the Supreme Court vacated and remanded our decision in ***March. See Commonwealth v. March***, *643 Pa. 95, 172 A.3d 582 (Pa. 2017)*. In doing so, the Supreme Court expressly instructed this Court to reconsider our disposition in ***March*** in light of the decision in ***Myers, supra*** and the United States Supreme Court's decision in ***Birchfield, supra. See id.***

HN11[↑] Based upon the foregoing, we conclude that *Section 1547(a)* and its counterpart, *Section 3755(a)*, no longer independently support implied consent on the part of a driver suspected of or arrested for a **[**30]** DUI violation and, in turn, dispense with the need to obtain a warrant. "Simply put, statutorily implied consent cannot take the place of voluntary consent." ***Myers, supra at 1178***. Thus, in order for the Commonwealth to request a driver's blood test results, it must obtain a warrant or it must proceed within a valid exception to the warrant requirement. If government officials rely upon a driver's consent to request his blood test results, the Commonwealth must demonstrate that the **[*543]** driver's consent is voluntary, which means the driver had a meaningful opportunity to "make a 'knowing and conscious choice' of whether to undergo chemical testing or exercise his right of refusal." ***Id. at 1181*** (citation omitted).

In this case, the Commonwealth cannot simply rely upon its compliance with *Section 3755(a)* to justify the warrantless request to test Appellant's blood sample. As stated above, by the time Sergeant Farren arrived at York Hospital, Appellant was fading in and out of consciousness. N.T. Suppression Hearing, 12/21/15, at 59. Appellant, therefore, did not have the "opportunity to choose whether to exercise [the right of refusal] or to provide actual consent to the blood draw." ***Myers, supra at 1181***. "Because [Appellant] was deprived of this choice, **[**31]** the totality of the ***circumstances*** unquestionably demonstrate[] that he did not voluntarily consent to the blood draw." ***Id.*** Thus, the Commonwealth's warrantless request to test Appellant's blood sample violated Appellant's constitutional rights and the trial court erred in denying his motion to suppress.

Lastly, we must address whether ***exigent circumstances*** existed in this case to permit the warrantless request to test Appellant's blood sample. Herein, Appellant argues that the Commonwealth failed to prove that ***exigent circumstances*** existed to permit the warrantless search. Appellant's Brief at 57-58. We are constrained to agree.

HN12[↑] ***Exigent circumstances*** comprise one of the "well-recognized exception[s]" to the *Fourth Amendment's* and *Article I, Section 8*'s warrant requirements. ***McNeely, supra at 148***. ***Exigent circumstances*** "[exist] when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable." ***Id. at 148-149***. In ***Schmerber v. California***, *384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966)*, the United States Supreme Court considered the constitutionality of a warrantless blood draw under ***circumstances*** analogous to those present here. ***HN13***[↑] The ***Schmerber*** Court concluded that an exigency may arise if an officer "reasonably [] believe[s he is] confronted with an emergency, **[**32]** in which the delay necessary to obtain a warrant, under the ***circumstances***, threaten[s] the destruction of evidence." ***Id. at 770***. The existence of an exigency that overcomes the warrant requirement is determined on a case-by-case basis after an examination of the totality of the ***circumstances***. ***McNeely, supra at 145*** (determination of whether an exigency supports a warrantless blood draw in drunk-driving investigation is done "case by case[,] based on the totality of the ***circumstances***").

The United States Supreme Court recently revisited the issue of ***exigent circumstances*** in the context of intoxicated driving investigations. ***HN14***[↑] In ***Mitchell***

[17] This Court issued its decision in ***March*** prior to our Supreme Court's decision in ***Myers, supra***. Thus, the panel relied upon this Court's previous decision in ***Commonwealth v. Myers***, *2015 PA Super 140, 118 A.3d 1122 (Pa. Super. 2015), appeal granted, 635 Pa. 60, 131 A.3d 480 (2016)*.

v. Wisconsin, 139 S.Ct. 2525, 204 L. Ed. 2d 1040 (2019), the Court explained that, in general, ***exigent circumstances*** may exist to permit the police to pursue a warrantless blood draw if the driver's BAC is dissipating and the driver is unconscious. *Mitchell* 139 S.Ct. at 2537. In ***McNeely***, however, the Supreme Court cautioned that the natural metabolization of BAC, alone, does not present "a *per se* exigency that justifies an exception to the [warrant requirement]." *McNeely, supra at 145*. Instead, ***McNeely*** clarified that the "the metabolization of alcohol [or a controlled substance] in the bloodstream and the ensuing loss of evidence are among the factors" to consider when determining whether ***exigent*** **[**33]** ***circumstances*** justify a warrantless blood draw. *Id. at 165*. ***McNeely*** also **[*544]** highlighted additional factors, such as the "need for the police to attend to a related car accident," "the procedures in place for obtaining a warrant, the availability of a magistrate judge," and "the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence." *Id. at 164*. Notably, this Court previously utilized the aforementioned factors to determine whether an exigency existed in a drunk-driving investigation. ***See*** *Commonwealth v. Trahey, 2018 PA Super 72, 183 A.3d 444, 450-452 (Pa. Super. 2018)* (applying the factors listed in ***McNeely*** to determine whether, under the totality of the ***circumstances***, an exigency permitted a warrantless blood draw).

Based upon the totality of ***circumstances*** present in this case, we conclude that the Commonwealth failed to prove that an exigency permitted the police to request, without a warrant, the chemical testing of Appellant's blood sample. At the suppression hearing, the Commonwealth established that the police were "dealing with a chaotic situation" and that they had probable cause to believe that Appellant was driving under the influence of marijuana. N.T. Suppression Hearing, 12/21/15, at 77. Specifically, **[**34]** Officer Briar explained that the scene involved a collision between a train and a vehicle where one person (Sisti) was declared dead, and two others (Appellant and S.J.) required emergency treatment. ***Id.*** at 7-39. In addition, Officer Kevin Romine testified that he interviewed the train's conductor, Virgil Weaver, on the day of the accident and Weaver informed him that he "detected an odor of marijuana around the vehicle" after attempting to render aid. ***Id.*** at 46. In addition, Officer Romine testified that he interviewed Leslie Garner, the paramedic who assisted Appellant, and she confirmed that "she detected an odor of marijuana about [Appellant's] person." ***Id.*** at 47.

While these ***circumstances*** undoubtedly confirm the existence of a tragic and unfolding emergency, other factors compellingly undermine the conclusion that ***exigent circumstances*** permit us to jettison the warrant requirement. Sergeant Farren testified that when he arrived at York Hospital, he learned that hospital personnel already obtained a blood sample from Appellant. ***Id.*** at 59. The blood draw occurred at 5:56 p.m., approximately one hour and 20 minutes after the accident. As of 5:56 p.m., then, Appellant's blood sample, including all of the intoxicants contained **[**35]** therein, was preserved. Thus, the extraction of Appellant's blood shortly before 6:00 p.m. on the date of the accident literally stopped the clock on any concern that the further passage of time could result in dissipation of evidence since the withdrawal of Appellant's blood by hospital personnel ceased all metabolic activity that might influence a toxicological assessment of the sample. As a result, any argument that an exigency existed at the time Sergeant Farren submitted his request to test Appellant's blood sample was no longer viable.[18] Sergeant Farren and **[*545]** Lieutenant Lutz's testimony at the suppression hearing bolsters this conclusion as both officers admitted that the police could have obtained a warrant before asking that chemical tests be performed on Appellant's blood. ***See*** N.T. Suppression Hearing, 12/21/15, at 65-66 and 83. Therefore, in view of the foregoing ***circumstances***, we conclude that no exigency permitted the warrantless search in this case and, as such, the trial court erred in denying Appellant's motion to suppress.

We note that, initially, the trial court denied suppression based upon a finding of ***exigent circumstances***. Upon review, it is apparent that the trial **[**36]** court originally

[18] Sergeant Farren's request to test Appellant's blood sample constitutes the relevant search for purposes of our constitutional analysis. That is, we look to the ***circumstances*** that existed at the time of his request to determine whether an exigency was present. The blood draw by hospital personnel did not trigger protections under either the *Fourth Amendment* or *Article I, Section 8* because there is no evidence that hospital personnel acted at the direction of the police or as an agent of the police. ***Seibert, supra at 63*** (explaining that, "because the hospital did not withdraw [the appellant's] blood at the direction of [the police] the search did not implicate [the appellant's] *Fourth Amendment* rights." Instead, "the hospital withdraw [the appellant's] blood on its own initiative for its own purposes."). As such, in the absence of state action (or a demonstration thereof), the earliest possible governmental search occurred when Sergeant Farren requested that Appellant's blood sample be submitted for chemical testing.

inferred that an exigency existed because the requirements of *75 Pa.C.S.A. § 3755(a)* were met. Indeed, the court explained its reasoning as follows:

> Here, there was an accident scene involving the parties to the accident, emergency [personnel], and the investigators. As recounted above, [Lieutenant] Lutz dispatched [Sergeant] Farren to the hospital to obtain blood from [Appellant] after gathering enough information at the scene to form probable cause [that Appellant was DUI]. [T]he officers [also] had to process an accident scene and [Appellant was] transported to a hospital. The exigency [Lieutenant] Lutz felt is evident in his testimony when he stated, "I instructed [Sergeant] Farren, who was reporting on duty, that **as soon as he came on duty** to **jump** in his car and respond to [] York Hospital and request a legal, a BAC for [Appellant]." [] N.T., [Preliminary Hearing,] 4/29/15, at 47 [emphasis in original]. Though [Lieutenant] Lutz's subjective feeling of exigency carries no weight, [the court] agree[s] that the ***circumstances*** warranted it.
>
> Metabolization of alcohol is not, in and of itself, enough to find exigency; however, [the court] believe[d] that investigators' fears vis-à-vis metabolization **[**37]** are enough to find exigency when the officers were delayed by needs more pressing tha[n] obtaining [Appellant's] BAC—namely, attending to victims and processing the scene of death.
>
> ***
>
> [Thus, Appellant's] request to suppress the results from the blood draw in this case for lack of a warrant is denied.

Trial Court Opinion, 4/27/16, at 10-11.

In its *1925(a)* opinion, however, the court explained:

> The trial court based its denial of suppression of the blood test results upon its finding of ***exigent circumstance***[s]. Upon further review, the trial court believes it erred [in denying suppression.] While the Newberry Township Police Department was preoccupied with the hectic nature of a train wreck, [Sergeant] Farren arrived at York Hospital to request a blood test. When he arrived, York Hospital had already conducted a [blood draw]. All [Sergeant] Farren did was [] follow the procedure under [*75 Pa.C.S.A. § 3755(a)*] and instruct the hospital staff to transfer the blood samples to NMS [laboratory] in Willow Grove.
>
> When the trial court denied [] suppression, it incorrectly viewed the totality of the ***circumstances*** and gave too much weight to the preoccupied police force. The trial court now believes that there w[ere] not **[**38]** urgent and compelling reasons [that prevented Sergeant Farren **[*546]** from leaving the hospital to procure] a warrant before returning to have the blood samples transferred to NMS [laboratory]. Because of this, ***exigent circumstances*** did not exist[.]

Trial Court Opinion, 4/13/18, at 12-13.

As detailed above, we agree with the trial court's statement in its *1925(a)* opinion that no exigency existed to justify the warrantless search. Thus, the trial court should have suppressed Appellant's blood test results. As such, we must vacate Appellant's judgment of sentence, reverse the trial court's order denying suppression, and remand for a new trial.[19] ***Commonwealth v. Krenzel***, *2019 PA Super 159, 209 A.3d 1024, 1032 (Pa. Super. 2019)* (where trial court erred in denying suppression, order denying suppression should be reversed, appellant's judgment of sentence should be vacated, and case should be remanded for a new trial); ***Commonwealth v. Boyd Chisholm***, *2018 PA Super 291, 198 A.3d 407, 418 (Pa. Super. 2018)* (same).

Judgment of sentence vacated. Order denying suppression reversed. Case remanded for new trial. Jurisdiction relinquished.

Judgment Entered.

Date: 08/11/2020

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[19] Due to our disposition, we need not address Appellant's remaining appellate issues.

In the Supreme Court of Pennsylvania

Middle District

Docket No. 27 MDA 2021

Commonwealth of Pennsylvania,

Appellant

v.

Akim Sharif Jones-Williams,

Appellee

Certificate of Word Count Compliance

I, Shawn M. Dorward, Esquire, on this 8th day of September, 2021, certify that this filing does not exceed 14,000 words.

Respectfully submitted,

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In the Supreme Court of Pennsylvania

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Certificate of Compliance

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

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