

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

NO. 16 MAP 2023

COMMONWEALTH OF PENNSYLVANIA,
APPELLANT

V.

LARRY WARDELL HUNTE,
APPELLEE

APPEAL FROM THE OMNIBUS PRE-TRIAL ORDER OF THE
COURT OF COMMON PLEAS OF CUMBERLAND COUNTY,
DATED JANUARY 20, 2023, AT CP-21-CR-0003121-2021,
SUPPRESSING EVIDENCE AND DISMISSING CHARGES

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TABLE OF CONTENTS

Statement of Jurisdiction..... 1

Order in Question 2

Statement of the Scope and Standard of Review..... 3

Statement of the Questions Involved 4

Statement of the Case 5

Summary of the Argument 10

Argument:

I. THE TRIAL COURT ERRED WHEN IT HELD THAT TITLE 75 SECTION 3755 IS UNCONSTITUTIONAL..... 11

II. THE TRIAL COURT ERRED WHEN IT GRANTED DEFENDANT'S MOTION TO SUPPRESS DESPITE THE COMMONWEALTH'S CLEAR COMPLIANCE WITH 75 PA.C.S. § 3755 AND SUBSEQUENT EXECUTION OF TWO LAWFULLY ISSUED SEARCH WARRANTS..... 17

III. THE TRIAL COURT ERRED WHEN IT DETERMINED THAT THE COMMONWEALTH COULD NOT MEET A PRIMA FACIE BURDEN AND DISMISSED SEVERAL CHARGES 27

Conclusion..... 30

TABLE OF AUTHORITIES

Cases

<u>Birchfield v. North Dakota</u> , 579 U.S. 428, 455 (2016).....	17-18
<u>Com. Dept. Of Transp. Bureau of Traffic Safety v. Emory</u> , 498 A.2d 26, 28 (Pa. Commw. Ct. 1985)	14
<u>Commonwealth v. Bell</u> , 211 A.d 761, 765 (Pa. 2019).....	3, 22-23
<u>Commonwealth v. Chase</u> , 960 A.2d 108, 113 (Pa. 2008)	12
<u>Commonwealth v. Haynos</u> , 525 A.2d 394, 399 (Pa. Super. 1987)	14
<u>Commonwealth v. Hopkins</u> , 117 A.3d 247, FN.1 (Pa. 2015).....	1
<u>Commonwealth v. Jones-Williams</u> , 279 A.3d 508 (Pa. 2022)....	5, 12, 15, 23
<u>Commonwealth v. Ludwig</u> , 874 A.2d 623, 628 (Pa. 2005).....	11-12
<u>Commonwealth v. MacPherson</u> , 752 A.2d 384, 388 (Pa. 2000).....	3, 11
<u>Commonwealth v. Myers</u> , 164 A.3d 1162, 1165 (Pa. 2017)	20, 24
<u>Commonwealth v. Patton</u> , 985 A.2d 1283, 1286 (Pa. 2009).....	3
<u>Commonwealth v. Riedel</u> , 651 A.2d 135, 175 (Pa. 1994).....	19
<u>Commonwealth v. Shaffer</u> , 209 A.3d 957, 968-69 (Pa. 2019).	3
<u>Commonwealth v. Simon</u> , 655 A.2d 1024, 1027-28 (Pa. Super. 1995)	14
<u>Commonwealth v. Trahey</u> , 228 A.3d 520, 538 (Pa. 2020).....	20-22
<u>In re Ajaj</u> , 288 A.3d 94, 99 (Pa. 2023).....	3
<u>Int. of T.W.</u> , — Pa. —, 261 A.3d 409, 416 (2021).....	12
<u>Missouri v. McNeely</u> , 569 U.S. 141 (2013).....	20-21
<u>Mitchell v. Wisconsin</u> , 139 S.Ct. 2525 (2019).....	15, 21-22, 26
<u>Schmerber v. California</u> , 384 U.S. 757 (1966).....	21

Statutes

75 Pa.C.S. § 1547	18
75 Pa.C.S. § 3755	13
75 Pa.C.S. § 3802(c)	28
75 Pa.C.S. § 3802 (d)(1)(i).....	28
75 Pa.C.S. § 3802 (d)(1)(iii)	28
75 Pa.C.S. § 3802 (d)(2).....	28
75 Pa.C.S. § 3802 (d)(3).....	28
75 Pa.C.S. § 3804	18
PA. CONST. art. I, § 8	12
U.S. CONST. amend. IV.....	12

Other Authorities

2017 Pa. Legis. Serv. Act 2017-30 (S.B. 553).....	20
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Statement of Jurisdiction

The Pennsylvania Supreme Court has jurisdiction in this matter because the court of common pleas held that a statute was unconstitutional pursuant to the United States Constitution and the Constitution of the Commonwealth. 42 Pa.C.S. § 722(7). See Commonwealth v. Hopkins, 117 A.3d 247, FN.1 (Pa. 2015). The Commonwealth has filed an appeal as of right because the common pleas court order will terminate or substantially handicap the prosecution. Pa.R.A.P. 311(d).

Statement of the Scope and Standard of Review

This appeal concerns the constitutionality of a statute and whether the Commonwealth met a *prima facie* case, which are both questions of law; therefore, the standard of review is *de novo*, and the scope of review is plenary. Commonwealth v. Bell, 211 A.d 761, 765 (Pa. 2019); Commonwealth v. MacPherson, 752 A.2d 384, 388 (Pa. 2000); *see also*, In re Ajaj, 288 A.3d 94, 99 (Pa. 2023); Commonwealth v. Patton, 985 A.2d 1283, 1286 (Pa. 2009). This Court's standard of review for a suppression motion is limited to determining whether the suppression court's factual findings are supported from the record and whether the legal conclusion drawn from those facts are correct. Commonwealth v. Shaffer, 209 A.3d 957, 968-69 (Pa. 2019).

Statement of the Questions Involved

- I. Whether the Trial Court exceeded its authority when it held 75 Pa.C.S. § 3755 violates the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution, in disregard of clear binding precedent?

Suggested Answer: Yes.

- II. Whether the Trial Court erred when it granted Defendant's Motion to Suppress evidence despite the Commonwealth's compliance with 75 PA.C.S. § 3755 (a) and its execution of lawfully issued search warrants?

Suggested Answer: Yes.

- III. Whether the Trial Court erred when it held the Commonwealth could not establish a *prima facie* case and dismissed several charges against Defendant where toxicology results obtained pursuant to a legal search warrant established that Defendant was under the influence of alcohol and a controlled substance?

Suggested Answer: Yes.

Statement of the Case

On October 4, 2021, Defendant was charged with Homicide by Vehicle While DUI;¹ Aggravated Assault by Vehicle While DUI;² Recklessly Endangering Another Person;³ Driving Under the Influence (various subsections);⁴ and several traffic violations related to a fatal crash. On December 16, 2021, a preliminary hearing was held, where Magisterial District Judge Vivian Cohick presided, and all charges were held for court. On February 7, 2022, Defendant was formally arraigned.

On February 23, 2022, Defendant, through counsel, filed an Omnibus Pre-Trial Motion. In his Motion, Defendant claimed the blood draw was obtained unlawfully.⁵ Judge Albert Masland held an evidentiary hearing on September 12, 2022, in the Court of Common Pleas of Cumberland County. The Commonwealth presented testimony from two state troopers; Defendant did not present any witnesses.

¹ 75 Pa.C.S. § 3735 (A)(1)(i)

² 75 Pa.C.S. § 3735.1 (A)

³ 18 Pa.C.S. § 2705

⁴ 75 Pa.C.S. § 3802 (A)-(D)(3).

⁵ In doing so, he relied on the Pennsylvania Superior Court decision in Commonwealth v. Jones-Williams which found 75 Pa. Con. Stat. § 3755 unconstitutional. Commonwealth v. Jones-Williams, 237 A.3d 528 (Pa. Super. 2020). At the time of his filing, Jones-Williams was on appeal with the Pennsylvania Supreme Court. As such, the parties agreed to stay any hearing on Defendant's Motion until after the Pennsylvania Supreme Court issued a decision. On July 20, 2022, the Pennsylvania Supreme Court issued a decision holding that it was inappropriate for the Superior Court to rule on the constitutionality of Section 3755 and remanded the case for further proceedings. Commonwealth v. Jones-Williams, 273 A.3d 508 (Pa. 2022).

On June 7, 2021, Trooper Ryan German, a Pennsylvania State Trooper assigned to the Carlisle Barracks of the Pennsylvania State Police, was working the midnight shift. (Notes of Testimony, IN RE: Omnibus Pretrial Motion, hereinafter "N.T." at 5). During Trooper German's 10-year career in law enforcement, he has investigated over 250 Driving Under the Influence (DUI) cases. (N.T. at 4-5). He has basic and advanced training in DUI investigation, referred to as ARIDE (Advanced Roadside Impaired Driving Enforcement). (N.T. 4). Trooper German was partnered with Trooper Robert Gayewski for that shift; Trooper Gayewski has been a state trooper for approximately three years. (N.T. at 13). He has also completed standard field sobriety test training and ARIDE, investigating over 100 DUI investigations during his time with the Pennsylvania State Police. (N.T. at 14).

Troopers German and Gayewski were dispatched to a crash around 2120 Newville Road, West Pennsboro Township, Cumberland County. The crash scene was a rural area with a speed limit of about 45 MPH. (N.T. 6-7). This area of the road was mostly straight and there were no obstacles or weather conditions that appeared to contribute to the crash. (N.T. at 15). Upon arrival, troopers observed "complete mayhem;" a vehicle was overturned and had apparently rolled over several times. (N.T. at 6, 14-15). There was a "debris field" that covered approximately 150 feet. (N.T. at 6).

The debris field was littered with Fentanyl patches and open containers of alcohol; alcoholic beverages, such as a bottle of tequila, were also located within the compartment of the vehicle. (N.T. at 8, 16). Firefighters and medics were present providing emergency services. (N.T. at 15). There were no other vehicles involved in the crash. (N.T. at 15).

The Troopers located two individuals who appeared to have been ejected from the vehicle during the crash, laying on either side of the driveway of a residence. (N.T. at 6). A female victim, Mary Staggs, had sustained head and facial injuries; she was unconscious when police arrived. (N.T. at 7). Miss Staggs was the front seat passenger at the time of the crash. (N.T. at 20). Ultimately, she died as a result of her injuries. (N.T. at 7).

The male, later identified as Larry Hunte, (Defendant/Appellee) appeared to be dazed, confused, and had a strong odor of alcohol about him. (N.T. at 7). Defendant was speaking to a first responder named Shawn Smith when Trooper Gayewski first observed him. (N.T. at 16). Later, Defendant was transported to Holy Spirit Hospital by ambulance due to his injuries. (N.T. at 8).

Under the totality of the circumstances, Trooper German and Trooper Gayewski believed that Defendant was intoxicated at the time of the crash and wanted to investigate further. (N.T. at 9-10). Trooper German went to

Holy Spirit Hospital, but Defendant was no longer awake and would not wake up when police attempted to wake him. (N.T. at 9). Trooper German attempted to wake Defendant because he wanted to read Defendant a DL-26B Form and request Defendant's consent to a blood draw to determine if Defendant had been under the influence of drugs or alcohol at the time of the crash. (N.T. at 9). Trooper German read the form out loud to Defendant, but he did not respond. (N.T. at 9).

Holy Spirit Hospital provided a standard hospital form that it maintains for law enforcement to request a blood draw when they have probable cause to believe someone is under the influence of drugs or alcohol. (N.T. at 10; Exhibit 1). Trooper German completed the form and submitted it to the hospital; a phlebotomist then drew Defendant's blood for the purposes of obtaining a legal toxicology examination. (N.T. at 10). The Pennsylvania State Police did not immediately take the blood sample. (N.T. at 11). Trooper Gayewski prepared a search warrant for Defendant's blood sample, and had it signed by a magisterial district judge; that warrant was then used to obtain the sample of Defendant's blood that had been drawn and preserved pursuant to Trooper German's request using Holy Spirit's form. (N.T. at 17) (Exhibit 1). Trooper Gayewski then prepared a second search warrant requesting that the blood sample be tested by a toxicologist at the forensic

lab. (N.T. at 18) (Exhibit 1). The blood sample was tested by an accredited lab; it was determined that Defendant had a blood alcohol concentration of .178 at the time he was driving; cocaine metabolite and marijuana were also present in his system. (N.T. at 19).

After reviewing briefs submitted by the parties, the trial court issued an Opinion and Order Dated January 20, 2023, Granting Defendant's Omnibus Pretrial Motion, holding that 75 Pa.C.S. § 3755 is unconstitutional. The Commonwealth filed a Notice of Appeal to this Honorable Court, asserting the trial court abused its discretion in finding a statute unconstitutional and erred by granting Defendant's Omnibus Pretrial Motion.

Summary of Argument

The Trial Court exceeded its authority when it held that 75 Pa.C.S. § 3755 is unconstitutional. The Supreme Court of the United States and this Honorable Court have held that Implied Consent Laws are constitutional, and that exigent circumstances, such as those observed here, are grounds for a warrantless blood draw when investigating a DUI crash.

The circumstances here, where Defendant was unconscious, suspected of driving and causing a fatal DUI crash, and under medical care, are the exact circumstances where the Supreme Court of the United States has deemed a warrantless blood draw is appropriate. The police complied with the statutory framework of the Pennsylvania Implied Consent Laws and obtained lawfully issued search warrants after the evidence (Defendant's blood) had been preserved.

Because the blood test results were lawfully obtained, the Commonwealth is able to establish a prima facie case of Driving Under the Influence against Defendant, and the Trial Court erred when it granted Defendant's Motion to Dismiss several charges.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT HELD THAT TITLE 75 SECTION 3755 IS UNCONSTITUTIONAL.

The trial court held the seizure of Defendant's blood pursuant to 75 Pa.C.S. § 3755 (a) was unconstitutional and violated Defendant's rights under the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Constitution of this Commonwealth. The court reasoned the plain language of the statute authorizes a warrantless search and seizure of a suspect's blood.

A statute is presumed to be constitutional and will only be invalidated as unconstitutional if it "clearly, palpably, and plainly violates constitutional rights." Commonwealth v. Ludwig, 874 A.2d 623, 628 (Pa. 2005), citing Commonwealth v. MacPherson, 752 A.2d 384, 388 (Pa. 2000). Courts have the duty to avoid constitutional difficulties, by construing statutes in a constitutional manner. Id. (internal citations omitted). The party challenging the statute's constitutionality bears a heavy burden of persuasion. MacPherson, 752 A.2d at 388. A statute may be deemed to be unconstitutionally vague if it fails in its definiteness or adequacy of statutory expression; it must provide reasonable standards by which a person may

gauge his future conduct (i.e. notice and warning). Ludwig, 874 A.2d at 628 (internal citations omitted).

It is well-settled that the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution prohibits unreasonable searches and seizures. Commonwealth v. Jones-Williams, 279 A.3d 508 (Pa. 2022) *citing* Int. of T.W., 261 A.3d 409, 416 (Pa. 2021). The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, paper, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularity describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

Similarly, Article I, Section 8 of the Pennsylvania Constitution provides:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizure, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

PA. CONST. art. I, § 8.

A search and seizure without a warrant is presumed to be unreasonable, unless one of the well delineated exceptions applied. Jones-Williams, 279 A.3d 508, *citing* Commonwealth v. Chase, 960 A.2d 108, 113 (Pa. 2008).

The trial court reasoned that 75 Pa.C.S. § 3755 (a) authorizes a warrantless search and seizure that did not fall within any known exception to the warrant requirement. The language of Section 3755 of the Motor Vehicle Code is not vague and does not “clearly, palpably,” or “plainly” violate Constitutional rights. Section 3755 (a) states:

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. 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. § 3755 (a) (2004).

The statute clearly outlines the limited circumstances where emergency room personnel may draw blood, prior to receiving a search warrant, and later provide it to law enforcement. First, the statute requires that the patient was the driver of a motor vehicle was involved in a motor vehicle accident. Second, the driver must be brought to the emergency room for medical

treatment. Third, there must be probable cause to believe the person's actions were a violation of section 3802 of the Motor Vehicle Code (related to driving under the influence of alcohol or a controlled substance).

The appellate courts have consistently held that the police officer, not hospital personnel, is required to make the probable cause determination outlined in Section 3755. Com. Dept. Of Transp. Bureau of Traffic Safety v. Emory, 498 A.2d 26, 28 (Pa. Commw. Ct. 1985) (noting that imposing a duty on emergency room personnel to make a probable cause determination would render the statute invalid and the court presumes the legislature did not intend that.); Commonwealth v. Simon, 655 A.2d 1024, 1027-28 (Pa. Super. 1995); Commonwealth v. Haynos, 525 A.2d 394, 399 (Pa. Super. 1987). The plain language of the statute provides notice to drivers that if they are involved in a motor vehicle accident and appear to be under the influence of drugs or alcohol rendering them incapable of safe driving, a blood draw may be conducted at the emergency department, and the results of that blood draw may later be provided to law enforcement. Nothing in the statute prohibits law enforcement from obtaining a search warrant to seize the blood sample at a later date, which is precisely what Troopers did in this instance.

The trial court came to its conclusion, partially, due to the Pennsylvania Superior Court's analysis in Jones-Williams I, despite the fact this Honorable Court had reversed that decision and specifically held that "it was inappropriate for the Superior Court to determine constitutionality of statute allowing officials to obtain blood results of defendant's blood sample after motor vehicle accident in which defendant required emergency medical treatment and there was probable cause to believe driving under the influence (DUI) violation occurred." Commonwealth v. Jones-Williams, 279 A.3d 508 (Pa. 2022). The statutory language of 75 Pa.C.S. § 3755 is not vague and must be presumed constitutional.

The trial court also ignored the holding in Mitchell v. Wisconsin and failed to recognize these circumstances were exigent circumstances that allowed for a warrantless seizure to preserve evidence. In Mitchell, the court considered circumstances where the police are dealing with an unconscious driver, investigating the scene of a crash, and must also attend to other injured passengers or victims. Mitchell v. Wisconsin, 139 S.Ct. 2525, 2530 (2019). The Supreme Court of the United States held the general rule is where a driver is unconscious, a warrant is not needed. Id.

In this case, the police were responding to a serious crash, where the passenger succumbed to her injuries and died. The defendant was also

injured and required medical treatment. The crash site was described as a “debris field” and numerous first responders were present to manage the situation. Troopers were working with other first responders to care for the defendant and passenger, preserve evidence, and investigate the cause of the crash. Through that investigation, probable cause was developed to support the belief that Defendant was driving under the influence of alcohol and/or a controlled substance. The police went to the hospital, in an attempt to obtain consent for a blood draw and found defendant unresponsive. After reading the DL-26B and receiving no response, despite their attempts to wake Defendant, they completed the hospital form and requested blood be drawn pursuant to 75 Pa.C.S. § 3755 (a). That seizure of Defendant's blood was warrantless, but under the exigent circumstances it was necessary and reasonable to preserve the evidence needed in a DUI prosecution, namely a Blood Alcohol Content (BAC). These circumstances are the exact type of circumstances the Supreme Court of the United States has recognized allow for a warrantless blood draw. The Trial Court erred when it found that §3755 (a), and the seizure that occurred here, were unconstitutional.

The trial court erred as a matter of law when it ignored clear case law from this Honorable Court and the Supreme Court of the United States. Pennsylvania's implied consent laws are Constitutional and contemplate the

type of emergency situation that allows for a warrantless seizure of blood when investigating a DUI crash.

II. THE TRIAL COURT ERRED WHEN IT GRANTED DEFENDANT’S MOTION TO SUPPRESS DESPITE THE COMMONWEALTH’S CLEAR COMPLIANCE WITH 75 P.A.C.S. § 3755 AND SUBSEQUENT EXECUTION OF TWO LAWFULLY ISSUED SEARCH WARRANTS.

The parties agree the Commonwealth complied with the statutory scheme set forth by the Motor Vehicle Code; the defendant was involved in a serious crash that rendered him incapable of consent; and the police executed two search warrants to secure and test the blood sample that was obtained pursuant to the request made under § 3755. The facts establish there were exigent circumstances to justify the warrantless seizure of defendant’s blood; the police complied with § 3755 and a warrant was executed to test the defendant’s blood after it had been legally secured, preserving the evidence necessary for prosecution.

The Fourth Amendment of the United States Constitution prohibits “unreasonable searches,” which the United States Supreme Court has held include taking a sample of blood or the administration of a breath test in the context of a Driving Under the Influence investigation. Birchfield v. North Dakota, 579 U.S. 428, 455 (2016). In Birchfield, the United States Supreme Court examined the context where a sample may be obtained at the time of

arrest, despite the refusal by a suspected intoxicated driver, and what ramifications are appropriate for refusing to comply with a request. Id. at 454-55. The Court recognized breath tests do not implicate significant privacy concerns and may be obtained as a search incident to arrest without a search warrant. Id. at 461-63, 476. Alternatively, blood tests require the extraction of something from the subject's body and are more intrusive. Id. at 463. While states may enact Implied Consent Laws and allow a suspect to consent to the warrantless blood draw, a state may not impose criminal sanctions for refusing to comply with a warrantless blood draw. Birchfield, 579 U.S. at 476-77.

In the wake of Birchfield, and the holding that Implied Consent Laws may not impose criminal penalties, the Pennsylvania legislature amended 75 Pa.C.S. § 1547. Under Section 1547, prior to the 2017 Amendment, a driver who refused a chemical test of breath or blood would be subjected to enhanced criminal penalties and license suspensions. See 75 Pa.C.S. § 3804. In July 2017, the Pennsylvania Legislature Amended the statute to allow for civil and administrative sanctions for a driver's refusal to submit to a breath test or refusing to comply with a valid search warrant. 2017 Pa. Legis. Serv. Act 2017-30 (S.B. 553). Notably, 75 Pa.C.S. § 3755 was not amended at that time.

Prior to Birchfield and the amendment to §1547, this Honorable Court examined a request for blood test results under Section 3755. In Riedel, the defendant was involved in a one vehicle crash and had been taken for medical treatment. Commonwealth v. Riedel, 651 A.2d 135, 175 (Pa. 1994). The responding officer, a Pennsylvania State Trooper, observed signs of intoxication when interacting with the defendant at the scene, as well as full beer cans and empty beer cans in the area of the crash. Id. The Trooper traveled to the hospital where the defendant was being treated and learned that medical personnel had already drawn his blood. Id. at 177. The Trooper made a request for the blood test results a short time later. Id. at 178. This Honorable Court described Section 3755 as the “emergency room counterpart” of the Implied Consent Law defined by Title 75, Section 1547 (a). Id. at 179. This Court held where an officer has probable cause to request a blood draw due to suspected driving under the influence, the failure to verbalize the request while specifically referencing the Motor Vehicle Code does not bar the officer from obtaining the results of the blood test done for medical purposes without a warrant. Id. This Court concluded if the police have probable cause to request the blood, they are entitled to obtain the blood test results without a warrant. Id. at 180.

After Birchfield, this Honorable Court examined the application of the Pennsylvania Implied Consent Law when a suspected drunk driver is unconscious. In Myers, an officer encountered the defendant after a citizen reported that someone was screaming. Commonwealth v. Myers, 164 A.3d 1162, 1165 (Pa. 2017). The driver had slurred speech, staggered, and smelled of alcohol. Id. The officer also observed a bottle of brandy on the front seat of the driver's car. Id. The defendant was arrested for DUI but taken to the hospital, where staff administered medication that rendered him unconscious. Id. The officer nevertheless read the defendant implied consent warnings and had a blood draw conducted. Id. The Court concluded that implied consent statutes do not satisfy the warrant requirement and provides the citizen the opportunity to refuse consent, subject to penalty. Id. at 1176-77. An individual must give actual, voluntary consent at the time of the request, and if they refuse, a warrant is required unless a warrantless search is necessitated by exigency. Id. at 1178-79. Notably, the Court recognized in its decision the Commonwealth had not established any exigent circumstances to justify a warrantless search, but under other circumstances the outcome may be different. Id. at 687.

Exigent circumstances are a "compelling need for official action and no time to secure a warrant." Commonwealth v. Trahey, 228 A.3d 520, 538 (Pa.

2020) *citing* Missouri v. McNeely, 569 U.S. 141 (2013). This Honorable Court has recognized that under some circumstances, such as a need to prevent the destruction of evidence, a warrantless search may be reasonable. Trahey, 228 A.3d at 530. However, the evaluation must be done based on the totality of the circumstances. Id. Where an unconscious driver is suspected of driving under the influence, and there is a need to draw the driver's blood to prevent the dissipation of alcohol, there may be exigent circumstances. See Schmerber v. California, 384 U.S. 757 (1966).

Where a driver is unconscious and cannot consent to a blood or breath test, and the police have probable cause to believe the person has committed a drunk driving offense, the police may almost always order a warrantless blood test to measure the driver's blood alcohol content. Mitchell v. Wisconsin, 139 S.Ct. 2525, 2539 (2019). In Mitchell v. Wisconsin, a police officer encountered the defendant after receiving a report that he was highly intoxicated and driving. Id. at 2532. Initially, Mitchell was slurring and could hardly stand, but conscious. Id. However, on the way to the police station, he became too lethargic for a breath test and the police took him to the hospital for a blood test. Id. The officer read Mitchell Wisconsin's implied consent warning that provides for the opportunity to refuse the test, but Mitchell remained unconscious. Id. The officer then requested that the

hospital draw the blood and the test results were used in a later prosecution. Id. The United States Supreme Court concluded that because the police had probable cause to believe Mitchell had committed a drunk driving offense, and his unconscious stupor required medical attention prior to a breath test being performed, exigent circumstances existed that allowed for a warrantless blood draw. Id. at 2539. In reaching this conclusion, SCOTUS recognized the importance of BAC testing in DUI prosecutions and observed that the evidence is “literally disappearing by the minute.” Id. at 2535-36. Obtaining a BAC is necessary to continue the effort to maintain safe highways, a “compelling interest.” Id. ⁶

In addition to examining the legality of Implied Consent, this Honorable Court has the evidentiary consequences of a refusal. In Commonwealth v. Bell, a suspected DUI driver refused to submit to a blood test. Commonwealth v. Bell, 211 A.3d 761, 764 (Pa. 2019). At trial, the officer testified to the defendant's refusal, and he was convicted. Id. The trial court granted Bell's post-sentence motion alleging the evidence of his refusal should have been precluded pursuant to Birchfield and ordered a new trial.

⁶ This Court examined Mitchell v. Wisconsin in Commonwealth v. Trahey, 228 A.3d 520 (Pa. 2020). That case is distinguishable from the case at bar because there the defendant was not unconscious; the police had the availability of an intoxilyzer, and the officer did not comply with the framework of implied consent when the form was improperly completed for defendant's consent to a legal blood draw.

Id. The Commonwealth filed an interlocutory appeal to the Superior Court; a panel agreed it was permissible to present evidence of the refusal. Id. at 765. Bell then appealed and this Court considered whether the Implied Consent Law was a violation of the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution to the extent that it permitted evidence of a driver's refusal to be used as evidence in a later trial. Id. at 765. This Court concluded evidentiary consequences of a driver's refusal are squarely within the other consequences approved of by Birchfield, and the admission of evidence related to a driver's chemical test refusal at a later trial was constitutionally permissible. Id. at 776.

Most recently, this Court examined a warrantless blood draw where the hospital staff had drawn the blood *prior* to the officer's arrival. In Commonwealth v. Jones- Williams, the defendant drove his car, with a minor child and adult passenger, onto train tracks, resulting in the vehicle and its occupants being struck by the train. Commonwealth v. Jones-Williams, 279 A.3d 508, 511 (Pa. 2022). During the course of the crash investigation, police developed probable cause to believe the defendant was under the influence of marijuana at the time of the accident. Id. at 511. When an officer arrived at the hospital that was treating defendant, he learned that a *blood draw had already been conducted* and filled out a form requesting the hospital transfer

the blood to NMS Labs for testing and then release to law enforcement the results of the tests. Id. at 512. After being convicted at trial, defendant filed an appeal to the Pennsylvania Superior Court challenging the trial court's admission of the blood test results, in part, because the Commonwealth had not obtained a search warrant to obtain the results. Id. at 513-14. The Superior Court held that the Commonwealth had complied with § 3755 (a) when requesting the blood, but because of this Court's decision in Myers, the panel believed the Commonwealth was required to obtain a search warrant or establish exigent circumstances. Id. at 514.

On appeal to this Court, the Commonwealth asserted the Superior Court issued a decision in conflict with binding precedent regarding 75 Pa.C.S. §3755 and exigency under Mitchell v. Wisconsin. Id. The Court examined both exigency and implied consent as an exception to the warrant requirement. Id. at 515. This Honorable Court concluded because the blood had been drawn by the hospital prior to the police request, the evidence had been preserved and there were no exigent circumstances to justify the warrantless seizure. Id. at 519. This Court further held because the record was devoid of any facts to establish the blood was taken pursuant to § 3755, it could not be said the Commonwealth adhered to that statute and the

Superior Court should not have addressed the Constitutionality of that section. Id. at 520.

In the present case, law enforcement found defendant in a debris field littered with Fentanyl patches and alcohol bottles. He exhibited signs of intoxication and had an odor of alcoholic beverages. The crash had occurred on a relatively straight area of road, with no impediments or weather conditions that could explain the crash. The police had sufficient probable cause to believe that defendant was under the influence of alcohol or a controlled substance rendering him incapable of safe driving. Accordingly, Troopers went to the hospital and complied with 75 Pa.C.S. § 1547 by reading Defendant the PennDOT DL-26B form. Defendant, unconscious, could not consent or refuse. Trooper German then completed the form provided by the hospital, in compliance with 75 Pa.C.S. § 3755 (a), to facilitate a blood draw. After the blood was drawn, the evidence was preserved. Therefore, the Pennsylvania State Police applied for and received a search warrant to seize the blood sample and a second search warrant to test the blood.

When examining the totality of the circumstances, in light of both federal and state jurisprudence, the blood draw was legally obtained. The Commonwealth had probable cause to believe that Defendant was under the

influence of a controlled substance and/or alcohol and needed to obtain his BAC in order to properly investigate and prosecute the fatal crash that he is alleged to have caused. The nature of his physical condition injured and unconscious, and the dissipation of alcohol in a person's blood as time goes on, created exigent circumstance that permitted a warrantless blood draw, as contemplated by Mitchell v. Wisconsin. Complying with Pennsylvania's statutory framework, Trooper German completed the appropriate form to have the blood drawn, preserving the evidence. Once the blood was drawn, the exigency ended. By then obtaining a warrant to secure the blood, and a warrant to test the blood, Trooper German acted reasonably and within the law.

The circumstances here are distinguishable from those of Myers. There, the police found Defendant sitting in his vehicle after reports of someone screaming. He was highly intoxicated and became unresponsive on their way to the police station. When taken for medical treatment, the police did not complete a request pursuant to § 3755, and the Commonwealth did not establish any exigent circumstances existed. The Court recognized under truly exigent circumstances, a warrantless blood draw may be conducted. In contrast, the police in the instant case were investigating a fatal crash; there was a large crime scene and other first

responders assisting with the care of both Defendant and the victim. The police attempted to obtain consent, but ultimately requested the blood draw pursuant to § 3755 in order to preserve the evidence of intoxication that was suspected to be in Defendant's blood. After that evidence was preserved, they obtained a search warrant to seize the blood sample and a warrant to test it. The facts of this case are more analogous to those found in Mitchell and can be distinguished from Myers.

The Trial Court erred when it determined that Myers was more applicable and found §3755 unconstitutional. Clear binding precedent has held that Implied Consent Laws are constitutional when they do not carry a criminal penalty, and that exigent circumstances permit a warrantless blood draw in the context of a DUI investigation. Accordingly, the Commonwealth respectfully requests that this Honorable Court reverse the trial court's Order and remand for further proceedings.

III. THE TRIAL COURT ERRED WHEN IT DETERMINED THAT THE COMMONWEALTH COULD NOT MEET A PRIMA FACIE BURDEN AND DISMISSED SEVERAL CHARGES.

For the reasons stated above, the Commonwealth submits that the Trial Court failed to apply binding precedent and improperly concluded that the Commonwealth could not establish a *prima facie* case, dismissing charges.

The Trial Court suppressed results of Defendant's blood draw, and dismissed one count of Driving Under the Influence, Highest Rate of Alcohol, 75 Pa.C.S. § 3802(c); Driving Under the Influence of a Controlled Substance, 75 Pa.C.S. § 3802 (d)(1)(i); Driving Under the Influence with the presence of a Drug Metabolite, 75 Pa.C.S. § 3802 (d)(1)(iii); Driving Under the Influence of Drugs or a Combination of Drugs, 75 Pa.C.S. § 3802 (d)(2); and Driving Under the Influence of a Combination of Drugs and Alcohol, 75 Pa.C.S. § 3802 (d)(3).

The statute for Driving Under the Influence provides for varying types of intoxication levels or intoxicating substances. *See generally*, 75 Pa.C.S. § 3802. Blood testing is necessary to determine a motorist's BAC. Commonwealth v. Bell, 211 A.3d 761, 770 (Pa. 2019). The Legislature has enacted the implied consent law (§1547 and § 3755 of the Motor Vehicle Code) to impose civil penalties on those who refuse to provide a breath or blood sample. *Id.* Here, the Commonwealth is required to prove that Defendant had a BAC of 0.16% or higher at the time he was operating a motor vehicle, or within two hours of driving or being in actual, physical control of the movement of the vehicle.⁷ To establish the charges related to driving under the influence of a controlled substance or a combination of alcohol and drugs, the Commonwealth is required to prove that Defendant

⁷ 75 Pa.C.S. § 3802 (c).

had any amount of a Schedule I controlled substance; the metabolite of a Scheduled I Controlled Substance; or a combination of drugs and alcohol that rendered him incapable of safe driving.⁸ All of these charges require the results of the blood test suppressed by the trial court.

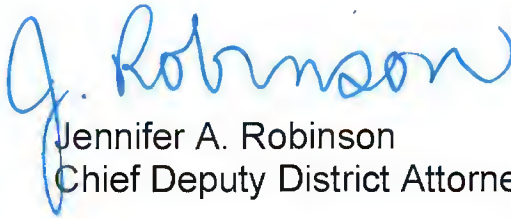
Shortly after the incident, Defendant became incapacitated at the hospital. The police complied with the implied consent statute. Trooper German read Defendant the DL-26B and completed a form pursuant to § 3755 requesting a warrantless blood draw after a finding of probable cause that Defendant was under the influence of alcohol or a controlled substance and had been injured in a crash. Troopers then obtained lawfully issued search warrants to seize the blood sample and have it tested. The results showed Defendant had a BAC over 0.16%, cocaine metabolite, and marijuana in his system at the time he was operating the motor vehicle. But for the Trial Court's erroneous finding that Pennsylvania's Implied Consent Statute under §3755 is unconstitutional, the Commonwealth would have been able to establish a *prima facie* case of the charges dismissed by the court. The Commonwealth respectfully requests this Court reverse and remand the Trial Court's Order dismissing charges against Defendant.

⁸ 75 Pa.C.S. §3802 (d).

CONCLUSION

Wherefore, the Commonwealth respectfully requests that this Honorable Court reverse the Order of the Trial Court and Remand the case for further proceedings in which the Commonwealth may present evidence of Defendant's BAC.

Respectfully submitted,



Jennifer A. Robinson
Chief Deputy District Attorney



PENNSYLVANIA STATE POLICE

General Offense Report

GO# PA 2021-785534

Operational Status: PENDING COURT

Related Report Image(s)

Type: Other

Description:

Geisinger

Laboratory Medicine

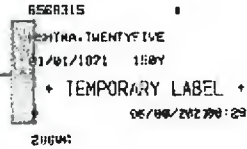
Geisinger Holy Spirit

CERTIFICATION OF REQUEST FOR BLOOD OR URINE ALCOHOL TESTING

Name of Individual to be Tested: Larry Hunt

Date of Birth: 9/25/93

Date: 6/8/21 Time: 0030



The Law Enforcement Officer requests that the individual stated above has a blood or urine sample being drawn by a Geisinger Medical Laboratory staff member and certifies that a determination of probable cause, that the individual was operating a motor vehicle while under the influence of alcohol or a controlled substance, has been established.

Officer's Name and Badge Number: Tpo Ryan German 12750

Law Enforcement Agency: PSP Carlisle

Date and Time of Request: 6/8/21 0030

Specimen Collected By: Lola M Ditzler

[Signature]
Officer's Signature

[Signature]
Collector's Signature

**Signed employee will be available to testify in court upon receipt of a subpoena.

Notation of Resistance: The above named individual refused to submit to blood testing or resisted the taking of blood in a way that made the withdrawal of blood medically contraindicated.

Notation of Resistance or Refusal:

Witness _____ Date and Time: _____

Note: The individual being tested does not need to, nor should be asked to, sign either a consent or waiver of liability form, Conrad vs Commonwealth, 598 A.2d 336 (1991).


12



CERTIFICATE 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 required filing confidential information and documents differently than non-confidential information and documents.

Date: July 25, 2023



Jennifer A. Robinson
Chief Deputy District Attorney

*March
CHC*

COMMONWEALTH

: IN THE COURT OF COMMON PLEAS OF
: CUMBERLAND COUNTY, PENNSYLVANIA

V.

LARRY W. HUNTE

: CP-21-CR-0003121-2021

IN RE: OMNIBUS PRE-TRIAL MOTION

ORDER OF COURT

AND NOW, this 20th day of January, 2023, for the reasons set forth herein, having determined that 75 Pa.C.S. §3755 violates the Fourth Amendment of the Constitution of the United States and Article I, Section 8 of the Constitution of Pennsylvania, Defendant's Motion to Suppress blood test results is **GRANTED**. Further, his Motion to Dismiss is **GRANTED** as to Counts 5 and 6 but otherwise **DENIED**.

By the Court,



Albert H. Masland, J.

Courtney Hair LaRue, Esquire
Office of the District Attorney

Edward F. Spreha, Jr., Esquire
For the Defendant

FILED
2023 JAN 20 AM 11:44
CLERK OF COURT
CUMBERLAND COUNTY PA

JAN 23 2023

Copies Distributed _____

COMMONWEALTH

: IN THE COURT OF COMMON PLEAS OF
: CUMBERLAND COUNTY, PENNSYLVANIA

V.

LARRY W. HUNTE

: CP-21-CR-0003121-2021

IN RE: OMNIBUS PRE-TRIAL MOTION

OPINION AND ORDER OF COURT

Masland, J., January 20, 2023:--

I. INTRODUCTION.

Late in the evening of June 7, 2021, Troopers German and Gayewski of the Pennsylvania State Police were called to the scene of an accident on Newville Road in West Pennsboro Township.¹ Upon arrival, the Troopers observed two individuals lying on the ground in the vicinity of a badly damaged vehicle, from which they had apparently been ejected.² Strwn about that vehicle were several fentanyl patches and opened alcohol containers.³ The individuals were identified as the Defendant, Larry W. Hunte, and a female passenger who later succumbed to her injuries.⁴

Noting the odor of alcohol about Defendant, his slurred speech, and his admissions that he was the driver and that he had been drinking, Trooper German opted to continue his investigation by following Defendant to Penn State Health Holy Spirit Medical Center where he was being transported for treatment. Arriving at Defendant's bedside and finding him unconscious, the Trooper nonetheless read aloud the DL-26 form concerning the

¹ Affidavit of Probable Cause.

² Hearing of September 12, 2022.

³ *Id.*

⁴ *Id.*

right to refuse blood testing.⁵ He then proceeded to request that medical personnel draw Defendant's blood, submitting to the hospital a form labelled "Certification of Request for Blood or Urine Alcohol Testing," which includes an acknowledgement by the Trooper that a "determination of probable cause [as to DUI] has been established."⁶ Blood was then drawn and tested, revealing the presence of alcohol and controlled substances.

Before us now is Defendant's Omnibus Pre-Trial Motion, filed February 22, 2022, wherein Defendant seeks suppression of the results of the aforementioned blood draw and dismissal of certain charges related thereto.⁷ This matter was continued pending resolution of the appeal from the Superior Court's decision in *Commonwealth v. Jones-Williams*, 237 A.3d 528 (Pa. Super. 2020) (holding 75 Pa.C.S. §3755 unconstitutional) ("*Jones-Williams I*"). The Supreme Court having reversed in *Commonwealth v. Jones-Williams*, 279 A.3d 508 (Pa. 2022) (Superior Court erred in reaching constitutional question) ("*Jones-Williams II*"), and the parties since having been heard and afforded an opportunity to submit revised argument, the matter is ready for review.

The parties do not dispute that §3755 purports to authorize a warrantless, non-consensual blood draw under the circumstances described *supra*, differing only as to the constitutionality of that provision. Defendant relies chiefly on *Commonwealth v. Myers*, 164 A.3d 1162 (Pa. 2017) (implied consent statute does not establish independent exception to warrant requirement) (plurality as to same), while the Commonwealth relies on *Commonwealth v. March*, 154 A.3d 803 (Pa. Super. 2017) (approving warrantless

⁵ *Id.*

⁶ *Id.* Commonwealth's Exhibit No. 1.

⁷ Counts 5 (75 Pa.C.S. §3802(c) Highest Rate of Alcohol), 6 (§3802(d)(1)(i) Schedule I Drug), 7 (§3802(d)(1)(iii) Drug Metabolite), 8 (§3802(d)(2) Drug or Combination of Drugs), and 9 (§3802(d)(3) Combination of Alcohol and One or More Drugs).

blood draw from unconscious DUI suspect on basis of §3755) (rev'd and remanded for reconsideration in light of *Myers*). For the following reasons, we find that this matter cannot be resolved on non-constitutional grounds and, fully cognizant of our Supreme Court's disapproval of the Superior Court's constitutional holding in *Jones-Williams I*, we nonetheless echo the Superior Court in holding §3755 unconstitutional under *Myers*.

II. APPLICABILITY OF §3755.

Though the parties do not contest the applicability of §3755, it is necessary to begin with a close reading of the statute, which provides, in relevant part, as follows:

If, as a result of a motor vehicle accident, the person who drove ... 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 ... was involved, the emergency room physician or his designee shall promptly take blood samples from [that person].

The plain language of this rather "inartfully drafted" legislation appears to contemplate medical personnel acting on their own initiative, but our Courts have held that it also authorizes the drawing of blood at the request of a police officer where the statute's requirements are otherwise satisfied. *Commonwealth v. Shaw*, 770 A.2d 295, n. 3 (Pa. 2001). As described *supra*, it is undisputed that, as a result of a motor vehicle accident, Defendant, who drove the involved vehicle, was transported to a hospital for emergency medical treatment; that the facts known to Trooper German supported probable cause to believe that Defendant was driving under the influence; and that, on the basis of the same, Trooper German requested that medical personnel draw Defendant's blood.

Further, the facts before us can be readily distinguished from those of *Jones-Williams II*, wherein our Supreme Court found the record inadequate to demonstrate the Commonwealth's compliance with §3755 – a prerequisite to any constitutional analysis.

There, the defendant's blood was drawn prior to the investigating officer's arrival at the hospital and for reasons unclear.⁸ Here, Defendant's blood was drawn at the request of Trooper German. There, the officer made no mention of §3755 in his testimony concerning the blood draw and provided the hospital with a form acknowledging that he was "requesting this test in accordance with 75 Pa.S.C.A. [sic] 1547."⁹ Here, Trooper German testified that he requested the blood draw under the authority of §3755 and that the aforementioned "Certification of Request for Blood or Urine Alcohol Testing" – ambiguous on its face – was also predicated upon §3755.¹⁰

It is true that Trooper German first read his unconscious suspect the DL-26 form, which pertains to §1547, but we interpret this as a separate effort, whose failure then prompted the Trooper to request the taking of Defendant's blood under an alternative authority, i.e. §3755, as he testified.¹¹ In summary, we agree with the parties that the Commonwealth satisfied the requirements of §3755 and that Trooper German consciously acted under the purported authority of the same. In the absence of any other basis on which to resolve the matter before us *Barasch v. Bell Telephone Co. of Pennsylvania*, 605 A.2d 1198, 1203 (Pa. 1992) ("our courts should not decide constitutional issues in cases which can properly be decided on non-constitutional grounds"), we must now address Defendant's challenge to the statute's constitutionality.

⁸ *Jones-Williams II*, at 520.

⁹ *Id.*

¹⁰ Hearing. The Commonwealth agrees as to the form. Brief In Opposition, filed October 27, 2022, at 5.

¹¹ It is not entirely clear to us why the applicability of §3755 should turn on which statute the Trooper or form contemplated, but *Jones-Williams II*, to which we must defer, emphasized such factors. It is one thing for courts to interpret matters in the cool light of dawn; it is entirely another to expect such contemplation by law enforcement acting in the heat of the moment.

III. CONSTITUTIONALITY OF §3755.

The law concerning the concept of "implied consent," both within and without this Commonwealth, is not a shining model of clarity. However, an edifying consensus may be emerging, endorsed by our Supreme Court in *Myers*, which provides in essence that (i) "implied consent" statutes purporting to create an independent exception to the warrant requirement are unconstitutional, while (ii) "implied consent" statutes that merely impose penalties for non-consent – where not inconsistent with *Birchfield v. North Dakota*, 579 U.S. 438 (2016) (barring imposition of criminal penalties for refusal) and related precedents – are constitutional, if confusingly labeled. *Myers* at 1174-5 (noting with approval a summary of the problem by the Court of Appeals of Wisconsin).

Section 3755 falls squarely within the first category. The *Myers* court was able to preserve the constitutionality of §1547 by virtue of that provision's express prohibition of non-consensual blood draws and the attribution of its prefatory "implied consent" language to inartful construction – placing it in the second category. The same is not possible for §3755. It contains no equivalent to §1547(b)(1) ("[absent consent,] the testing shall not be conducted"). Rather, it expressly "authorize[s] what the Fourth Amendment [and] Article I, Section 8 would prohibit," i.e. a warrantless search falling within no recognized exception to the usual rule. *Myers* at 1173. Though reversed on other grounds, our Superior Court in *Jones-Williams I* reached the same conclusion. Here, however, given the clearer applicability of §3755 and the absence of any alternative basis for disposition of the case, there is no escaping Defendant's constitutional challenge. We thus hold that the seizure of Defendant's blood pursuant to §3755 violated his rights under the Fourth Amendment of the United States Constitution and Article I, Section 8 of the

Constitution of this Commonwealth, such that the challenged test results must be suppressed.¹²


IV. MOTION TO DISMISS.

Finally, Defendant contends that, absent the inadmissible blood test results, the Commonwealth is unable to establish a *prima facie* case for the several DUI charges that require evidence of either drug consumption or a particular BAC, i.e. Counts 5 (75 Pa.C.S. §3802(c) Highest Rate of Alcohol), 6 (§3802(d)(1)(i) Schedule I Drug), 7 (§3802(d)(1)(iii) Drug Metabolite), 8 (§3802(d)(2) Drug or Combination of Drugs), and 9 (§3802(d)(3) Combination of Alcohol and One or More Drugs). We agree in part. The fentanyl patches discovered at the scene provide the drug-related evidence required to sustain Counts 7, 8, and 9, but not Count 6, as fentanyl is not a Schedule I substance. 35 P.S. §780-104(2)(ii)(6). Nor, can BAC be established on the basis of the kind of evidence discussed *supra*, e.g. slurred speech, and so we issue the following:

ORDER OF COURT

AND NOW, this 20th day of January, 2023, for the reasons set forth herein, having determined that 75 Pa.C.S. §3755 violates the Fourth Amendment of the Constitution of the United States and Article I, Section 8 of the Constitution of Pennsylvania, Defendant's Motion to Suppress blood test results is **GRANTED**. Further, his Motion to Dismiss is **GRANTED** as to Counts 5 and 6 but otherwise **DENIED**.

By the Court



Albert H. Masland, J.

¹² In the event that it should be determined that we, like the Superior Court in *Jones-Williams I*, erred in reaching the validity of §3755, we would observe that the seizure would be no less unconstitutional in the absence of its purported statutory justification, such that the same result would be required.

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Office of the District Attorney

Edward F. Spreha, Jr., Esquire
For the Defendant