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Supreme Court of Pennsylvania

27 MAP 2021

COMMONWEALTH OF PENNSYLVANIA,
Appellant

V.

AKIM SHARIF JONES-WILLIAMS,
Appellee

Brief for *Amicus Curiae* Pennsylvania District Attorneys Association in Support of Commonwealth of Pennsylvania, Appellant

Appeal from the Order of the Superior Court dated August 11, 2020, reconsideration denied October 14, 2020, at No. 1428 MDA 2017 which Reversed/Vacated the Judgment of Sentence of the York County Court of Common Pleas, Criminal Division, dated April 5, 2017 at No. CP-67-CR-0002824-2015 and Remanded for a new trial.

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(Answered in the negative by the court below.)

Suggested Answer: Yes.

B. DID PENNSYLVANIA PRECEDENT PERMIT THE WARRANTLESS BLOOD DRAW PURSUANT TO 75 Pa. C.S.A. § 3755(a)?

(Answered in the negative by the court below.)

Suggested Answer: Yes.

II. INTEREST OF *AMICUS CURIAE*

Amicus curiae, the Pennsylvania District Attorneys Association ("PDAA") is the only organization representing the interests of its member District Attorneys and their assistants in the Commonwealth of Pennsylvania. These prosecutors represent the collective interests of the people of the Commonwealth in criminal matters, which directly impact citizens' well-being and safety. The warrantless request for chemical blood testing upon a showing of probable cause is of significant importance in prosecuting criminal charges relating to driving under the influence of alcohol or controlled substances. Consequently, *amicus curiae* has a substantial interest in the issues raised in the instant petition before this Court, and thus presents this brief in support of the Appellant, Commonwealth of Pennsylvania through the District Attorney of York County. Pa. R.A.P. 531(a).

III. CERTIFICATION PURSUANT TO Pa. R.A.P. 531(b)(2)

No other person or entity has authored any portion of the within brief, in whole or in part, nor have any funds been expended by any person or entity in the preparation and filing of this brief outside the PDAA.

IV. STANDARD OF REVIEW

The standard of review in suppression cases is well-settled.

> When we review the ruling of a suppression court we must determine whether the factual findings are supported by the record. When it is a defendant who has appealed, we must consider only the evidence of the prosecution and so much of the evidence for the defense as, fairly read in the context of the record as a whole, remains uncontradicted. Assuming that there is support in the record, we are bound by the facts as are found and we may reverse the suppression court only if the legal conclusions drawn from those facts are in error.

See Commonwealth v. Jackson, 698 A.2d 571, 572 (Pa. 1997). *See also In the Interest of A.A.*, 195 A.3d 896, 901 (Pa. 2018). Thus the legal conclusions of the lower court are subject to plenary review. *Id*.

V. STATEMENT OF THE CASE

Amicus curiae hereby adopts the Statement of the Case as stated by Appellant, Commonwealth of Pennsylvania, through Timothy J. Barker, First Assistant District Attorney of York County and Stephanie E. Lombardo, Assistant District Attorney of York County, in their brief.

VI. SUMMARY OF THE ARGUMENT

Respectfully, the Superior Court erred in finding that the blood test results should have been suppressed, as the exigent circumstances exception to the warrant requirement applies pursuant to *Mitchell v. Wisconsin*, ___ U.S. ___, 139 S.Ct. 2525 (2019). The Supreme Court of the United States ("SCOTUS") addressed this exception in driving under the influence investigations on a number of occasions. In *Schmerber v. California*, 384 U.S. 757, 758 (1966), SCOTUS found that the exigent circumstances exception justified the warrantless blood draw where probable cause existed and the defendant was involved in an accident. In *Missouri v. McNeely*, 569 U.S. 141 (2013), SCOTUS decided that the exigent circumstances did not exist based upon probable cause alone – the dissipation of alcohol in the blood is not by itself a sufficient exigency to justify the warrantless blood draw. Most recently, in *Mitchell, supra*, SCOTUS found that the unconsciousness of the driver created a sufficient exigency to justify a warrantless blood draw based upon probable cause. In the instant case, Jones-Williams was both involved in a crash with a train resulting in death and serious injury of his passengers, and he was largely unconscious when the officer spoke to him at the hospital. Because these facts exceeded the emergent situations that were found to create exigent circumstances in both *Schmerber* and *Mitchell*, the warrantless blood draw from Jones-Williams for medical purposes satisfies the exigent circumstances exception to the warrant requirement.

Additionally, the warrantless chemical test was permissible pursuant to the implied consent statute, as Jones-Williams was not under arrest when his blood was drawn. In *Commonwealth Myers*, 164 A.3d 1162, 1171 (Pa. 2017), this Court was clear that the right to refuse chemical testing is derived from 75 Pa. C.S.A. § 1547(b), not 75 Pa. C.S.A. § 3755(a). In *Commonwealth v. Reidel*, 651 A.2d 135 (Pa. 1994), this Court specifically denied the defendant's claim to the right to refuse chemical testing pursuant to 75 Pa. C.S.A. § 1547(b), as he was not under arrest when the blood was drawn for medical purpo6ses prior to police request. Notably, this principle was cited with approval in *Myers, supra*. Thus the right to refuse chemical testing is triggered by the arrest of the subject, regardless of their state of consciousness. Because police in the instant case possessed the requisite probable cause to request a chemical test, and because Jones-Williams was not under arrest when the hospital personnel drew his blood for medical purposes prior to police arrival, the requirements of the implied consent statue at 75 Pa. C.S.A. § 3755(a) were satisfied.

For the above reasons, the decision of the Superior Court should be reversed, and the judgment of sentence should be reinstated.

VII. ARGUMENT

A. FEDERAL PRECEDENT DICTATES THAT EXIGENT CIRCUMSTANCES PERMITTED THE WARRANTLESS BLOOD DRAW.

One of the questions presented for this Court's review in the instant case is whether exigent circumstances exist to support a warrantless request to test the defendant's blood, pursuant to recent binding precedent. *See Mitchell v. Wisconsin*, ___ U.S. ___, 139 S.Ct. 2525 (2019). Thus the issue involves an analysis of federal Fourth Amendment jurisprudence. Fortunately, the issue of exigent circumstances to permit a warrantless blood draw has been discussed by SCOTUS on several occasions.

There is no question that the Fourth Amendment to the U.S. Constitution creates a right to be free from unreasonable searches. U.S. Const. amend. IV. *See Commonwealth v. Cihylik*, 486 A.2d 987, 989 (Pa. Super. 1985)(*citing Ker v. California*, 374 U.S. 23, 33 (1963))(further citations omitted). There is also no question that the withdrawal of blood constitutes a search subject to the protections of the Fourth Amendment and Article 1, Section 8 of the Pennsylvania Constitution. *See Birchfield v. North Dakota*, ___ U.S. ___, 136 S.Ct. 2160 (2016); *Commonwealth v. Davenport*, 308 A.2d 85 (Pa. 1973).

However, the warrantless search of the person is reasonable if it falls within a recognized exception to the Fourth Amendment search warrant requirement. *See e.g. United States v. Robinson*, 414 U.S. 218 (1973)(search incident to arrest); *Minnesota*

v. Dickerson, 508 U.S. 366 (1993)(plain feel); *Missouri v. McNeely*, 569 U.S. 141 (2013)(exigent circumstances). Actual consent, implied consent, search incident to lawful arrest, and exigent circumstances may negate the necessity of obtaining a warrant before conducting a search. *See e.g. Schmerber v. California*, 384 U.S. 757, 771-772 (1966)(search incident to lawful arrest and exigent circumstances); *Commonwealth v. Cieri*, 499 A.2d 317, 320-321 (Pa. Super. 1985)(implied consent); *Commonwealth v. Quarles*, 324 A.2d 452 (Pa. Super. 1974)(plurality opinion)(actual consent).[1] Accordingly, a warrantless search may be proper where probable cause exists to believe that a crime has been or is being committed, and an exception to the warrant requirement is applicable. *See Commonwealth v. Riedel*, 651 A.2d 135, 139 (Pa. 1994).

In the context of investigations for driving under the influence of alcohol or controlled substances ("DUI"), the application of the exigent circumstances exception has been discussed at the federal level on several occasions. In *Schmerber v. California*, 384 U.S. 757, 758 (1966), SCOTUS reviewed a warrantless blood draw from a conscious suspect who was arrested at the hospital while he was receiving medical treatment for injuries suffered in an accident. In analyzing the Fourth Amendment challenge, SCOTUS found that probable cause was clear, and the existence of an accident created a sufficient exigency to justify a warrantless blood draw, as any further delay caused by a warrant application threatened the destruction

[1] *But see Commonwealth v. Myers*, 164 A.3d 1162, 1173 (Pa. 2017)(three of seven justices

of evidence. *See Schmerber*, at 768-769, 770-771.

This warrant exception was further explained in *Missouri v. McNeely, supra*. In *McNeely*, the suspect was arrested for DUI following a routine traffic stop. *See McNeely*, at 145-146. When the suspect refused to submit to a blood test, the police officer directed hospital personnel to draw a blood sample anyway, which revealed a blood alcohol content of 0.154%. *Id*. In analyzing the Fourth Amendment challenge, SCOTUS found that while probable cause was also clear, the natural dissipation of alcohol in the blood stream is not a sufficient *per se* exigency to justify a warrantless blood draw. *Id*., at 152-153. Unlike *Schmerber*, no additional exigency existed to permit the warrantless blood draw. *Id*., at 156.

In its most recent decision in *Mitchell v. Wisconsin, supra*, SCOTUS further refined the exigent circumstances exception for warrantless blood draws. In *Mitchell*, the defendant was arrested for DUI following a routine police encounter, but he lost consciousness on the way to the hospital for blood testing. *See Mitchell*, 139 S.Ct. at 2532. When Mitchell was unable to agree to submit a blood sample, the officer directed medical personnel to draw blood for testing, which revealed a blood alcohol content of 0.222%. *Id*. In analyzing the Fourth Amendment challenge, SCOTUS found that the exigent circumstances rule almost always permits a warrantless blood draw on an unconscious subject, especially when they are involved in an accident. *Id*., at 2531. SCOTUS again found that the ongoing need to preserve highway safety is a

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concluded that implied consent is not an independent exception to the warrant requirement).

vital public interest, and the unconscious driver is an actual emergency sufficient to invoke the exigent circumstances exception. *Id*., at 2537-2538. In light of this precedent, the exigent circumstances exception to the warrant requirement permits a warrantless blood draw when probable cause exists, along with an emergency situation that would cause delay in seeking a warrant.

A review of the instant record reveals that the exigent circumstances exception justified the warrantless blood draw. Primarily, there is no question that probable cause exists. Pennsylvania precedent dictates that a chemical test of blood, breath or urine is authorized when *any* sign of intoxication is present, in addition to an accident. *See Commonwealth v. Danforth*, 576 A.2d 1013, 1024 (Pa. Super. 1990)(Olszewski, J., concurring)(*citing Commonwealth v. Pelkey*, 503 A.2d 514 (Pa. Super. 1985)). In the instant case, Jones-Williams was the operator of a 2014 Mitsubishi Outlander that collided with a Norfolk Southern train on railroad tracks, killing his fiancée Cori Sisti and severely injuring their 2-year-old daughter S.J. (P.T. 1,23,44,63,75,79, Commonwealth Exhibit 4; S.T. 80). In the aftermath of the crash, two people noticed an odor of burnt marijuana around Jones-Williams – train conductor Virgil Weaver and Paramedic Leslie Garner (P.T. p. 14, 19, 27-28). This information was relayed to police (P.T. 29; S.T., p. 44-46, 47-48), who then sent an officer to the hospital to obtain a blood draw. (S.T. 47-49, 59-60, 76-79, 84-85). Because Jones-Williams was the driver of the SUV involved in an accident, and because he exhibited a sign of intoxication, probable cause existed for the chemical test request.

In addition, the accident created a sufficient exigency to justify the warrantless blood draw. While the instant case involves the presence of marijuana in the blood, the Commonwealth introduced evidence to demonstrate that like alcohol, the active component of marijuana also naturally dissipates in the blood stream as the body metabolizes the drug. At the pretrial hearing, Toxicologist Ayako Chan-Hosokawa testified regarding the amount of the active component of marijuana - Delta-9 THC – and the amount of inactive metabolite of marijuana - Delta-9 Carboxy THC – at the time of testing. (P.T. 52). The active component Delta-9 THC impairs the marijuana user, which can cause *inter alia* distorted perception, confusion, dizziness and lethargy. (P.T. p. 52). At trial, Chan-Hosokawa further explained the breakdown of Delta-9 THC to its metabolite in the bloodstream as the body metabolizes the drug. (T.T. 296). Thus like alcohol, marijuana also naturally dissipates in the bloodstream.

Notably, the degree of dissipation of marijuana in the blood stream is crucial to any prosecution for Homicide by Vehicle While DUI. For this offense, the Commonwealth is required to demonstrate not only that the driver was under the influence of alcohol or a controlled substance, but that this consumption was the cause of the fatality. *See Commonwealth v. McCurdy*, 735 A.2d 681, 685 (Pa. 1999); *Commonwealth v. Samuels*, 778 A.2d 638 (Pa. 2001). Accordingly, the degree of intoxication is important, and any dissipation of marijuana in the blood reduces the Commonwealth's ability to demonstrate the degree to which this intoxication was the cause of the fatality.

While *McNeely* tells us that this dissipation alone does not create a sufficient exigency to justify a warrantless blood draw, *Schmerber* and *Mitchell* permit such a draw when other emergent factors exist. Pursuant to *Mitchell*, Jones-Williams' unconsciousness alone constitutes a sufficient exigency to permit a warrantless blood draw. Notably, the facts of the instant case exceed the emergency which existed in *Mitchell*. *Mitchell* involved an arrested subject who lost consciousness due to his own intoxication. The instant case involves an unconscious subject who was involved in a harrowing accident with a train. Because the instant case involves a greater exigency than that which was found to be acceptable in *Mitchell*, the warrantless blood draw from Jones-Williams was constitutionally permissible.

In this regard, the analysis in the instant case is more akin to *Schmerber*. In *Schmerber*, SCOTUS found that the existence of an accident created a sufficient exigency to justify a warrantless blood draw, as any further delay caused by a warrant application threatened the destruction of evidence. *See Schmerber*, at 768-769, 770-771. In the instant case, police were investigating a fatal crash between an SUV and a train adjacent to an occupied campground on Fourth of July weekend. One officer described the crash scene as chaotic. (S.T. 37-38). Police presence was required at the crash site at the minimum to manage the scene boundaries, preserve and collect evidence, interview witnesses, secure the removal of the victim's body, complete an accident reconstruction and eventually clear the scene. In fact, it is hard to imagine any single-crash scene with greater exigency. If the accident in *Schmerber* was

sufficient to justify a warrantless blood draw, then the chaotic train crash scene in the instant case certainly qualifies as well. Prophetically, these are the kind of police activities identified in *Mitchell* which often create an exigency with unconscious subjects. *See Mitchell*, at 2531 ("[p]olice officers most frequently come upon unconscious drivers when they report to the scene of an accident, and under those circumstances, the officers' many responsibilities—such as attending to other injured drivers or passengers and preventing further accidents—may be incompatible with the procedures that would be required to obtain a warrant.") Because probable cause existed to believe that Jones-Williams was DUI, and because an actual emergency existed beyond the dissipation of marijuana in the bloodstream, the exigent circumstances exception to the warrant requirement of the Fourth Amendment justified the warrantless blood draw in the instant case. Accordingly, the decision of the Superior Court should be reversed, and the judgment of sentence should be reinstated.

B. PENNSYLVANIA PRECEDENT DICTATES THAT THE BLOOD WAS PROPERLY DRAWN PURSUANT TO THE IMPLIED CONSENT STATUTE.

The other question presented for this Court's review in the instant case is whether 75 Pa. C.S.A. § 3755(a) supports the implied consent to the warrantless blood draw from a driver suspected or arrested for DUI. Thus the issue involves an analysis of Pennsylvania case law on the implied consent statute. Fortunately, this issue has

been presented to the Pennsylvania appellate courts on several occasions as well.

Primarily, SCOTUS has long recognized the importance of preserving highway safety.

> *First*, highway safety is a vital public interest. For decades, we have strained our vocal chords to give adequate expression to the stakes. We have called highway safety a "compelling interest," *Mackey [v. Montrym]*, 443 U. S. [1], at 19, 99 S. Ct. 2612, 61 L. Ed. 2d 321 [1979]; we have called it "paramount," *id*., at 17, 99 S. Ct. 2612, 61 L. Ed. 2d 321. Twice we have referred to the effects of irresponsible driving as "slaughter" comparable to the ravages of war. *Breithaupt* v. *Abram*, 352 U. S. 432, 439, 77 S. Ct. 408, 1 L. Ed. 2d 448 (1957); *Perez* v. *Campbell*, 402 U. S. 637, 657, 672, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971) (Blackmun, J., concurring in result in part and dissenting in part). We have spoken of "carnage," [*South Dakota v.*] *Neville*, 459 U. S. [553], at 558-559, 103 S. Ct. 916, 74 L. Ed. 2d 748 [1983], and even "frightful carnage," *Tate* v. *Short*, 401 U. S. 395, 401, 91 S. Ct. 668, 28 L. Ed. 2d 130 (1971) (Blackmun, J., concurring). The frequency of preventable collisions, we have said, is "tragic," *Neville*, *supra*, at 558, 103 S. Ct. 916, 74 L. Ed. 2d 748, and "astounding," *Breithaupt [v. Abram]*, *supra*, [352 U.S. 432] at 439, 77 S. Ct. 408, 1 L. Ed. 2d 448. And behind this fervent language lie chilling figures, all captured in the fact that from 1982 to 2016, alcohol-related accidents took roughly 10,000 to 20,000 lives in this Nation *every single year*. See National Highway Traffic Safety Admin. (NHTSA), Traffic Safety Facts 2016, p. 40 (May 2018). In the best years, that would add up to more than one fatality per hour.

See Mitchell, at 2535-2536 (emphasis in original). Accordingly, SCOTUS has repeatedly expressed its support for state implied consent statutes in combating the horrors of drunk driving, the latter of which began almost as soon as vehicles became prevalent in the early 1900s. *See Birchfield*, at 2167.

> It is well established that a search is reasonable when the subject consents, *e.g., Schneckloth* v. *Bustamonte*, 412 U. S. 218, 219, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973), and that sometimes consent to a search need not be express but may be fairly inferred from context, cf. *Florida* v. *Jardines*, 569 U. S. 1, ___-___, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013) (slip op., at 6-7); *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 313, 98 S. Ct. 1816, 56 L. Ed. 2d 305 (1978). Our prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply. See, *e.g.*, *McNeely*, *supra*, at ___, 133 S. Ct. 1552, 185 L. Ed. 2d 696, 710 (plurality opinion); *Neville*, *supra*, at 560, 103 S. Ct. 916, 74 L. Ed. 2d 748. Petitioners do not question the constitutionality of those laws, and nothing we say here should be read to cast doubt on them.

See Birchfield, at 2185. Accordingly, substantial federal support exists for the validity of state implied consent statutes in promoting highway safety.

Likewise, Pennsylvania jurisprudence has long recognized the validity of Pennsylvania's implied consent law. *See Commonwealth v. Quarles*, 324 A.2d 452 (Pa. Super. 1974)(75 Pa. C.S.A. § 1547(a)(1) is constitutional); *Commonwealth v. Smith*, 555 A.2d 185, 189 (Pa. Super. 1989)(*citing Commonwealth v. Cieri*, 499 A.2d 317 (Pa. Super. 1985))(same). *But see Commonwealth v. Kohl*, 615 A.2d 308 (Pa. 1992)(75 Pa. C.S.A § 1547(a)(2) is unconstitutional, as this section does not require probable cause before blood draw). Thus the currently applicable implied consent statutes have passed constitutional muster.

The relevant sections of the Pennsylvania implied consent statute are as follows:

> 75 Pa. C.S.A. § 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 in this 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);
>
> …
>
> (b) If any person 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…

75 Pa. C.S.A. § 1547(a)(1), (b). The "reasonable grounds" standard has been interpreted to require probable cause. *See Commonwealth v. Kohl*, 615 A.2d 308, 315 (Pa. 1992). Also included within the implied consent analysis is 75 Pa. C.S.A. §3755, which states as follows:

> 75 Pa. C.S.A. § 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. 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). These two sections, when considered together, "'…not only imply the consent of a driver to undergo chemical or blood tests, but also require hospital personnel to withdraw blood 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.'" *Commonwealth v. Seibert*, 799 A.2d 54, 64 (Pa. Super. 2002) (*quoting Commonwealth v. Shaffer*, 714 A.2d 1035, 1037 (Pa. Super. 1998)); *Commonwealth v. Barton,* 690 A.2d 293, 296 (Pa. Super. 1997)(*citing Commonwealth v. Riedel*, 651 A.2d 135, 139-140 (Pa. 1994)). *See also Commonwealth v. Shaw*, 770 A.2d 295, 299 n. 3 (Pa. 2001)(the probable cause determination pursuant to 75 Pa. C.S.A. § 3755(a) can be made by either police or hospital personnel).

The goal of this statutory scheme is not only to preserve evidence, but to "'facilitate the prosecution of chemically impaired drivers.'" *See Shaffer*, at 1039 (*citing Kohl, supra*). This Court has clarified that the goal is <u>not</u> to hinder police officers in performing their duties when they have the requisite probable cause to request chemical testing. *See Reidel*, at 140 (emphasis in original). Based upon this

language, this Court historically has held that a driver's consent to the blood draw is implied until the person actually refuses. *See Commonwealth v. Eisenhart*, 611 A.2d 681, 683 (Pa. 1992). More recently, this Court has extended this right to refuse to consent to chemical testing pursuant to 75 Pa. C.S.A. §1547(b) to unconscious drivers subject to arrest. *See Commonwealth Myers*, 164 A.3d 1162, 1171 (Pa. 2017).

Notable to the instant case, *Myers* was clear that the right to refuse chemical testing is derived from 75 Pa. C.S.A. § 1547(b), not 75 Pa. C.S.A. § 3755(a). *See Myers*, at 1171-1172 n. 14. While the Commonwealth argued in *Myers* that the right to refuse chemical testing stems from the consciousness of the driver, this Court examined the plain language of §1547(b) and determined that the right to refuse is triggered by his status as an arrestee, regardless of his state of consciousness. *Id*., at 1172. Citing *Reidel, supra* with approval, this Court opined that the right of refusal did not apply in *Reidel* because the defendant was not under arrest when the blood was drawn. *Id*., at 1171 n. 14. Accordingly, it is the arrest status of the defendant that triggers the right to refuse chemical testing under the implied consent statute.

A review of *Reidel* is also helpful to this analysis. In *Reidel*, this Court analyzed the implied consent statute when the blood was drawn pursuant to 75 Pa. C.S.A. § 3755(a). In *Reidel*, the defendant was transported to the hospital for medical treatment after a crash where the defendant and his passenger were injured. *See Reidel*, at 175-176. Police observed indicia of alcohol consumption and intoxication at the scene, and the officer traveled to the hospital intending to request a chemical

test. *Id*., at 175-176. However, the defendant's blood had already been drawn for medical purposes. *Id*., at 176. Instead, the officer later wrote to the hospital seeking the results of blood testing, which revealed a blood alcohol content of 0.255%. *Id*., at 176.

In resolving the constitutional challenge, this Court recognized that the blood draw by hospital personnel had no Fourth Amendment implications, as no government action was involved. *Id*., at 177. In finding that the release of the blood test results pursuant to § 3755(a) was permissible, this Court noted the minimal intrusion as compared to the actual chemical test. *Id*., at 182-183. "The litmus test under section 3755 is *probable cause* to request a blood test, not the request itself." Id., at 182 (emphasis in original). Notably, this Court specifically denied the defendant's claim to the right to refuse chemical testing pursuant to 75 Pa. C.S.A. § 1547(b), as he was not under arrest when the blood was drawn. *Id*., at 184-185. "We will not reformulate the law to grant an unconscious driver or driver whose blood was removed for medical purposes the right to refuse to consent to blood testing." *See Reidel*, at 185 (*quoting Commonwealth ex rel. Fox v. Swing*, 186 A.2d 24, 27 (Pa. 1962)).[2] Accordingly, this Court refused to extend the right to refusal in 75 Pa. C.S.A.§ 1547(b) to defendants who have not been arrested.

In light of this precedent, Jones-Williams' blood was properly drawn pursuant to 75 Pa. C.S.A. § 3755(a). Jones-Williams was transported from the accident to York

[2] While *Myers* did overrule a portion of this statement that applies to unconscious drivers who have

Hospital by ambulance for medical treatment. (P.T. 73-74; S.T. 56-57, 64, 79). After learning of the odor of marijuana about Jones-Williams' person, Officer Farren was directed the go to the hospital to interview the defendant and obtain a blood draw. (P.T. 47; S.T. 56-58, 64, 79-80, 84-85). Officer Farren was unable to interview Jones-Williams due to his intermittent consciousness, so he proceeded to the lab to request blood testing. (S.T. 57-60). Notably, Officer Farren did not place Jones-Williams under arrest. (S.T. 59, 62). At the lab, Officer Farren completed the necessary paperwork at 7:30pm, but the blood had already been drawn by hospital personnel at 5:56 pm. (P.T. Commonwealth's Exhibit 1; S.T., p. 59-62). It was this sample that was sent to the laboratory for chemical testing. (P.T. 51, Exhibit 1; S.T. 61-62).

Based upon this record and the above precedent, the results of the chemical test were admissible at trial. Primarily, there is no question that Officer Farren possessed the requisite probable cause to request chemical testing – Jones-Williams was the driver of a SUV involved in a horrific crash resulting in the death of his fiancée and severe injury of his 2-year-old daughter. Immediately after the crash, he smelled of burned marijuana. *See Commonwealth v. Danforth*, 576 A.2d 1013, 1024 (Pa. Super. 1990)(Olszewski, J., concurring)(*citing Commonwealth v. Pelkey*, 503 A.2d 514 (Pa. Super. 1985))(a chemical test of blood, breath or urine is authorized when *any* sign of intoxication is present, in addition to an accident). Thus the probable cause requirement of 75 Pa. C.S.A. § 3755(a) has been satisfied.

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been arrested, *see Myers*, at 1172, 1180, the remainder of this statement is unaffected.

Additionally, as this Court recognized in *Myers* and *Reidel*, because Jones-Williams was not under arrest at the time his blood was drawn by hospital personnel, he had no right to refuse chemical testing. This is where the Superior Court respectfully erred. In reaching its conclusion, the Superior Court focused exclusively upon the defendant's unconsciousness in reaching its conclusion, rather than upon his custodial status, as dictated by 75 Pa. C.S.A. § 1547(b). *See Commonwealth v. Jones-Williams*, 237 A.2d 528, 541-543 (Pa. Super. 2020). As recognized in *Myers*, this exclusive focus on the consciousness or unconsciousness of the subject is incorrect, as the right to refuse chemical testing is only triggered by arrest. Because Jones-Williams was not under arrest at the time blood was drawn by hospital personnel, and because police had the requisite probable cause to request chemical testing, the requirements of 75 Pa. C.S.A. § 3755(a) were satisfied. Accordingly, the decision of the Superior Court should be reversed, and the judgment of sentence should be reinstated.

VIII. CONCLUSION

For the foregoing reasons, the Pennsylvania District Attorneys Association, as *amicus curiae*, respectfully requests that this Court reverse the decision of the Superior Court and reinstate the judgment of sentence.

Respectfully submitted,

Michael Piecuch
District Attorney, Snyder County
President, Pennsylvania District Attorneys Association

Alisa R. Hobart

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Berks County, Pennsylvania
Member, Amicus Committee
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IX. 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.

Alisa R. Hobart

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Pennsylvania District Attorneys Association

CERTIFICATES OF COMPLIANCE

I certify that the word count of the foregoing Brief for Amicus Curiae Pennsylvania District Attorneys Association complies with the word count limitations of Pa. R.A.P. 531(b)(1)(i) and Pa. R.A.P. 2135(d), as this brief contains 4,947 words, according to Microsoft Word, the word processing program used to prepare this brief.

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.

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