NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
RANDY EUGENE VANDERPOOL	:	
Appellant	:	No. 710 MDA 2018

Appeal from the Judgment of Sentence April 19, 2018
In the Court of Common Pleas of Bradford County
Criminal Division at No(s): CP-08-CR-0000889-2016

BEFORE: GANTMAN, P.J., KUNSELMAN, J., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, P.J.: **FILED OCTOBER 10, 2018**

Appellant, Randy Eugene Vanderpool, appeals from the judgment of sentence entered in the Bradford County Court of Common Pleas, following his stipulated bench trial convictions for five counts of driving under the influence of alcohol or a controlled substance ("DUI") and DUI related offenses, and careless driving.[1] We affirm.

In its opinion denying Appellant's suppression motion, the trial court fully and correctly set forth the relevant facts and procedural history of this case. Therefore, we only briefly summarize them. Around noon on October 21, 2016, police arrested Appellant under probable cause that he was DUI while his license was suspended for a previous DUI conviction. Within two

---

[1] 75 Pa.C.S.A. §§ 3802(a)(1), (a)(2), (b); 1543(b)(1), (b)(1.1)(i); and 3714(a), respectively.

hours, State Police Trooper Taylor Smith transported Appellant to Towanda Memorial Hospital for a blood draw. Trooper Smith read the amended DL-26B warnings to Appellant, and he consented to the test. After Trooper Smith received the test results (0.115%), he filed a criminal complaint charging Appellant with related offenses. Appellant moved to suppress the blood test results on March 3, 2017. The court held a hearing on May 30, 2017, and denied Appellant's motion to suppress on December 29, 2017.

Following a stipulated bench trial, the court convicted Appellant on February 2, 2018, of these charges and sentenced him on April 19, 2018, to a flat period of incarceration of ninety (90) days, plus a consecutive term of three (3) to twelve (12) months' incarceration, followed by a term of four (4) years' probation, plus fines. Appellant timely filed a notice of appeal on April 26, 2018.[2] On May 4, 2018, the court entered an order stating:

> **STATEMENT IN LIEU OF**
> **OPINION IN SUPPORT OF ORDER**
> **PURSUANT TO RULE 1925(a)**
>
> [Appellant] has appealed the undersigned's Order dated December 29, 2017, which denied [Appellant's] motion to suppress blood test results. The motion to suppress was fully briefed and argued and the order denying the motion was accompanied by a thirteen page Opinion of same date which explains the reasons for the denial. Therefore, there is no need for [Appellant] to provide clarification of the

[2] In the notice of appeal, Appellant purports to appeal from the December 29, 2017 order that denied his motion to suppress. This appeal, however, lies from the subsequent judgment of sentence. ***See Commonwealth v. Pratt***, 930 A.2d 561, 562 n.1 (Pa.Super. 2007), *appeal denied*, 596 Pa. 743, 946 A.2d 686 2008).

> errors complained of on appeal pursuant to rule 1925(b) or for the undersigned to further explain herein the reasons for the denial.
>
> Accordingly, the Prothonotary shall forthwith transmit the entire record to the Superior Court.

(Trial Court Order, filed May 4, 2018). Essentially, no Rule 1925(b) concise statement was ordered or filed.

Appellant raises the following issue on appeal:

> DID THE TRIAL COURT ERR IN DENYING APPELLANT'S MOTION TO SUPPRESS WHERE APPELLANT'S CONSENT TO THE BLOOD DRAW WAS THE DIRECT RESULT OF HIS KNOWLEDGE, PREVIOUSLY OBTAINED FROM DUI PROCEEDINGS, OF THE EXISTENCE OF ENHANCED PENALTIES FOR REFUSAL?

(Appellant's Brief at 6).

Our standard of review of the denial of a motion to suppress evidence is as follows:

> [An appellate court's] standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, [the appellate court is] bound by [those] findings and may reverse only if the court's legal conclusions are erroneous. Where…the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court's legal conclusions are not binding on [the] appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the [trial court

are] subject to plenary review.

Commonwealth v. Hoppert, 39 A.3d 358, 361-62 (Pa.Super. 2012), *appeal denied*, 618 Pa. 684, 57 A.3d 68 (2012).

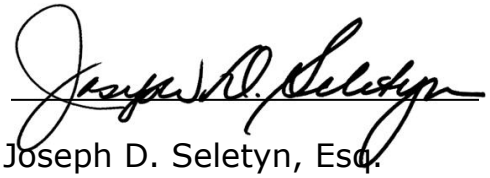
Recent Pennsylvania law makes clear law enforcement has no obligation to inform or enlighten DUI suspects on the full details of federal or state law changes. ***See Commonwealth v. Johnson***, 188 A.3d 486 (Pa.Super. 2018) (holding defendant's knowledge of prior law from previous arrest was irrelevant to consent; threat of civil penalties and evidentiary consequences in DL-26 revised warning is permissible; form that does not threaten criminal sanctions for refusal to consent to blood draw accurately reflects post-***Birchfield*** law; police had no duty to provide defendant with update on law or criminal procedure prior to requesting blood draw). ***See also Commonwealth v. Miller***, 186 A.3d 448 (Pa.Super. 2018) (holding court must not consider defendant's subjective belief regarding criminal penalties); ***Commonwealth v. Robertson***, 186 A.3d 440 (Pa.Super. 2018) (holding police have no affirmative duty to inform DUI suspects of sentencing statutes or risk of enhanced criminal penalties if they refuse blood test).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Evan S. Williams III, we conclude Appellant's issue merits no relief. The trial court opinion comprehensively discusses and properly disposes of the question presented. (***See*** Trial Court Opinion, filed December 29, 2017, at 4-13)

(finding: real time factual circumstances of law enforcement's request for blood test and defendant's compliance are critical to proper constitutional "consent" analysis; focus of ***Birchfield v. North Dakota***, ___ U.S. ___, 136 S.Ct. 2160, 195 L.Ed.2d 560 (2016) and its progeny is on actual threat by law enforcement of enhanced criminal penalties, which is what strips away voluntariness of consent to blood draw; if law enforcement does not communicate anything about statutory penalties then statutory penalties cannot be deemed to have threatened or coerced compliance; at hospital, trooper removed Appellant's handcuffs and read him **revised** DL-26B warnings; Appellant did not question trooper or share any of alleged reasons Appellant offered at suppression hearing for why he thought he had to consent; in fact Appellant said he undertook blood draw in part because he believed test would clear him of DUI charge as he thought he was under legal limit; this factual scenario contains no evidence to suggest trooper forced Appellant to submit to blood draw; Appellant's prior DUI arrest from 10 years ago did not transform trooper's exchange with Appellant into coercive event; Appellant's subjective knowledge of DUI law and enhanced penalties was not legal "coercion" because it was not based on anything trooper did or told Appellant; under totality of circumstances, Appellant's consent to blood draw was voluntary). Thus, the record supports the court's decision, and we affirm based on the trial court opinion.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/10/2018