

**[J-65-2012] [MO: Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA, : No. 88 MAP 2011

Appellant

v.

DANIEL ROGER SMITH,

Appellee

:
: Appeal from the order of Superior Court
: dated 04-06-2011 at No. 944 EDA 2010
: which Vacated & Remanded the Court of
: Common Pleas Bucks County, Criminal
: Division, order dated 03-29-2010 at No.
: 09-CR-0003973-2009.
:
: ARGUED: May 8, 2012
:

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: September 25, 2013

I agree with Chief Justice Castille that a more direct explanation of our holding as it pertains to Commonwealth v. Walsh, 460 A.2d 767 (Pa. Super. 1983), and Commonwealth v. Danforth, 576 A.2d 1013 (Pa. Super. 1990), would clarify our rule going forward. Whatever the proper interpretation of those cases, certain language in Walsh could easily be expanded upon by our courts if we do not make our disapproval clearer. Indeed, I believe this was the case in Danforth, which, despite first explaining the analysis is one considering the totality of the circumstances, went on to cite Walsh for the proposition that, where a defendant “can establish that he had no notice of the criminal investigative purpose of the blood test, his consent would be invalid.” Danforth, at 1023 (quoting Walsh, at 773).

This overstates the rule in two ways, and such overstatement should be expressly rejected herein. First, it implies a defendant must have a subjective knowledge of the purpose of the search, an issue properly rejected by the majority. Second, when read in

isolation from the balance of Walsh, it implies objective awareness of the purpose of the test is an absolute requirement for valid consent. While the majority correctly notes “this Court has been clear that no one fact or circumstance can be talismanic in the evaluation of the validity of a person’s consent[,]” Majority Slip Op., at 15 (citing Commonwealth v. Gillespie, 821 A.2d 1221, 1225 n.1 (Pa. 2003); Commonwealth v. Smith, 368 A.2d 272, 277 (Pa. 1977)), I would directly address and dispel the above-quoted language from Walsh.

The majority states: “Accordingly, to the extent the Superior Court held that police officers must explicitly inform drivers consenting to blood testing that the results of the test may be used against them in criminal prosecutions in order for the consent to be valid, it went too far.” Id. Not only did the Superior Court err here by requiring a police warning of the purpose of the test before consent can be deemed valid, but its prior holdings implying such an understanding (even an objective one gleaned without an explicit warning) is required for valid consent were also in error. Rather, an objective understanding of the purpose of the test is merely one element a court may consider when analyzing the voluntariness of consent under the totality of the circumstances, just as one’s knowledge of the right to refuse consent is merely a single factor to be considered, and not a requirement.