NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ELIZABETH A. HUGHES	:	
Appellant	:	No. 218 EDA 2024

Appeal from the Order Entered November 8, 2023
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): MC-51-CR-0018581-2022

BEFORE: DUBOW, J., KING, J., and SULLIVAN, J.

MEMORANDUM BY KING, J.: **FILED APRIL 29, 2025**

Appellant, Elizabeth A. Hughes, appeals from the order entered in the Philadelphia County Court of Common Pleas, which denied her petition for writ of *certiorari* after she was convicted of four counts of driving under the influence of alcohol or a controlled substance ("DUI") in the Philadelphia Municipal Court.[1] We affirm.

The trial court opinion set forth the relevant facts of this appeal as follows:

> On October 22, 2022, at around 8:43 p.m., Officer Carlos Dreyfuss ("Dreyfuss") of the Philadelphia Police responded to a report of a motor vehicle accident in the area of 20th and Wallace Street in Philadelphia. Dreyfuss encountered multiple people who identified [Appellant] as the driver of a vehicle that crashed into multiple vehicles. [Appellant] was present, standing outside the vehicle in the middle of the

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[1] 75 Pa.C.S.A. § 3802.

> street. Dreyfuss smelled a strong odor of alcohol in [Appellant's] breath, saw her wobbling around and determined she was not fit to operate a vehicle. She told Dreyfuss she was not driving the vehicle and was intoxicated. She was placed under arrest on suspicion of DUI.
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> [Appellant] was transported to the Police Detention Unit ("PDU") for processing where Police Officer Joseph DiGangi ("DiGangi") was assigned to obtain a sample of [Appellant's] blood. DiGangi has been a police officer for nine years, had participated in dozens of DUI investigations and was trained in field sobriety testing and advanced roadside impairment training.
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> Prior to the blood test being administered, DiGangi read to [Appellant] the warnings contained in the Pennsylvania Department of Transportation's form DL-26. He testified that he read the form verbatim in a level tone. At the time, other officers may have been present in the room and he did not have his service weapon on him. He did not recall if she was handcuffed but, if she was, he would have indicated it in his notes on form 75-439 (the "439"), Exhibit C-2. DiGangi testified that after he read the warnings, [Appellant] consented to the blood test. He testified that [Appellant] understood the warnings and she did not appear to have any questions. DiGangi indicated on the DL-26 form that [Appellant] refused to sign on the Signature of Operator line and he testified that refusing to sign on the Signature of Operator line is different than refusing the blood test.
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> DiGangi recorded his observations of [Appellant] on the 439, reporting that she spoke with slurred speech, had red blood shot eyes, a flushed face, and thought she was in New Jersey. He also noted that when asked to spell her name, she used a singing-type cadence that helped her remember.[2] DiGangi specifically noted on the 439: "She

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[2] The trial court opinion refers to "singing," and Appellant's brief also claims that Appellant "sang her name." (Appellant's Brief at 3, 7). Nevertheless, Officer DiGangi did not use the word "singing" during his testimony. Rather, Officer DiGangi described Appellant's behavior as follows:

(Footnote Continued Next Page)

> said after being read warnings she was not the driver, agreed to take test" and she "Agree [sic] to take the test … 10:06 P.M."

(Trial Court Opinion, filed 2/20/24, at 2-4) (record citations omitted).

On April 27, 2023, the parties appeared in Municipal Court. At that time, Appellant moved to suppress certain evidence obtained through her interactions with the police. Appellant first sought to suppress her pre-arrest statements to the police, which the court granted. (***See*** N.T. Suppression Hearing/Trial, 4/27/23, at 37). Appellant then moved to suppress the results of the blood draw, arguing that her extreme intoxication left her unable to

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> All right, I guess what stands out, and I do remember this part pretty well is when I asked her to spell her name she spelled it in cadence so she kept breaking it up when doing it. I guess when you're trying to recall something there's a word for it. It's like a trick almost to remember something. So, I do remember that part when she was spelling Elizabeth Hughes like El-lis-a-beth.

(N.T. Suppression Hearing/Trial, 4/27/23, at 26). Again, on cross-examination, Officer DiGangi asserted, "I do remember the cadence because I thought it was funny. I did smirk at that." (***Id.*** at 31). The following exchanged subsequently occurred:

> [APPELLANT'S COUNSEL:] But you did write [in the 439] that she was singing her name and thought she was in the wrong state?
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> [OFFICER DIGANGI:] Yes.

(***Id.*** at 33). The phrasing of counsel's question, however, did not comport with the 439, which simply stated "spelled name in cadence[.]" (***See*** Commonwealth's Response to Petition for Writ of *Certiorari*, filed 11/1/23, at Exhibit A).

provide voluntary consent. (***Id.*** at 37-39). The court declined to suppress the results of the blood draw, and Appellant immediately proceeded to trial. Thereafter, the court found Appellant guilty of DUI (general impairment), DUI (highest rate of alcohol), DUI (controlled substances), and DUI (combined influence of alcohol and drugs).[3] ***See*** 75 Pa.C.S.A. § 3802(a)(1), (c), (d)(1) and (3), respectively. On August 8, 2023, the court sentenced Appellant to seventy-two (72) hours to six (6) months' imprisonment.

On September 6, 2023, Appellant filed a petition for writ of *certiorari* to the Court of Common Pleas. On November 8, 2023, the court conducted a hearing on the matter. The court entered its order denying *certiorari* that same day.

Appellant timely filed a notice of appeal on November 21, 2023. On November 22, 2023, the court ordered Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Appellant timely filed her Rule 1925(b) statement on December 11, 2023.

Appellant now raises two issues for this Court's review:

> Did the [trial] court err in finding that [Appellant] voluntarily consented to a blood draw where she was so intoxicated that she was incoherent, erroneously believed she was in New Jersey, and spontaneously sang her name to police?
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> Did the [trial] court erroneously deny the motion to suppress where [Appellant's] agreement to the blood draw

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[3] The parties stipulated to the results of the blood draw, which revealed fourteen (14) nanograms of cocaine in Appellant's blood, as well as a blood alcohol level of .339%. (***See*** N.T. Suppression Hearing/Trial at 36).

was in response to unconstitutionally coercive threats of severe civil consequences if she refused?

(Appellant's Brief at 1).

Initially, we note that:

> When the Municipal Court (1) denies a motion to suppress, (2) finds the defendant guilty of a crime, and (3) imposes sentence, the defendant has the right either to request a trial *de novo* or to file a petition for a writ of *certiorari* in the Court of Common Pleas of Philadelphia County. Pa.R.Crim.P. 1006(1)(a). If the defendant files a *certiorari* petition challenging the denial of a suppression motion, the Court of Common Pleas of Philadelphia County sits as an appellate court and reviews the record of the suppression hearing in the Municipal Court. ***Commonwealth v. Coleman***, 19 A.3d 1111, 1118-19 (Pa.Super. 2011); ***Commonwealth v. Menezes***, 871 A.2d 204, 207 n.2 (Pa.Super. 2005). Importantly, when performing this appellate review, the Court of Common Pleas of Philadelphia County applies precisely the same standard that the Superior Court applies in appeals from [C]ommon [P]leas [C]ourt orders denying motions to suppress. Specifically,
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> > [the Court of Common Pleas] 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, [the Court of Common Pleas] 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 Court of Common Pleas 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 [C]ourt [of Common Pleas], whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the

> conclusions of law of the court … below are subject to … plenary review.
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> ***Commonwealth v. Jones***, 605 Pa. 188, [197-98,] 988 A.2d 649, 654 (2010). The scope of review from a suppression ruling is limited to the evidentiary record created at the suppression hearing. ***In re L.J.***, 622 Pa. 126, [149,] 79 A.3d 1073, 1087 (2013).

Commonwealth v. Neal, 151 A.3d 1068, 1070-71 (Pa.Super. 2016).

This Court has recently explained:

> "[A] defendant is legally required to raise all claims in a writ of *certiorari* pertaining to the proceedings in the Municipal Court, or they will be considered waived on appeal." ***Commonwealth v. Williams***, 125 A.3d 425, 431 (Pa.Super. 2015) (citation omitted). Further, when an appellant challenges a trial court's denial of a petition for writ of *certiorari*, "[w]e will not disturb the [trial] court's [decision] unless we find an abuse of discretion." ***Commonwealth v. Noss***, 162 A.3d 503, 507 (Pa.Super. 2017). When a writ of *certiorari* is denied, a defendant may raise evidentiary and sufficiency issues on appeal. ***See Coleman***, 1[9] A.3d at 1119.

Commonwealth v. Hicks, No. 2738 EDA 2023, 2024 WL 5232934 at *2 (Pa.Super. filed Dec. 27, 2024) (unpublished memorandum).[4]

In her first issue, Appellant contends that she could not voluntarily consent to the blood draw because she was too intoxicated. Appellant emphasizes the evidence "that she sang her name to a Philadelphia police officer and thought she had been taken to New Jersey." (Appellant's Brief at 7). Appellant's mental state

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[4] We may rely on unpublished decisions of this Court filed after May 1, 2019 for their persuasive value. ***See*** Pa.R.A.P. 126(b).

> was so divorced from reality that she could not have voluntarily consented. She was no run-of-the-mill driver who had consumed one glass of wine too many. She not only smelled of alcohol and spoke with slurred speech, … but she was "incoherent" and "wobbling around" at the time of her arrest.

(***Id.*** at 9). Appellant maintains that "[s]omeone as drunk as she was could not have consented to medical treatment, could not have entered into a contract, and certainly could not have consented to sexual activity." (***Id.*** at 10) (internal footnotes omitted). Based upon the foregoing, Appellant concludes that the court erred by failing to suppress evidence related to the blood draw. We disagree.

"The United States Supreme Court has held that because 'the taking of a blood sample' is a search within the meaning of the Fourth Amendment to the United States Constitution, police officers may not compel the taking of a blood sample without a search warrant, absent an applicable exception." ***Commonwealth v. Haines***, 168 A.3d 231, 234 (Pa.Super. 2017) (quoting ***Birchfield v. North Dakota***, 579 U.S. 438, 455, 136 S.Ct. 2160, 2173, 195 L.Ed.2d 560 (2016) (footnote omitted)). "One such exception is consent, voluntarily given." ***Commonwealth v. Strickler***, 563 Pa. 47, 56, 757 A.2d 884, 888 (2000). ***See also Commonwealth v. Myers***, 640 Pa. 653, 681, 164 A.3d 1162, 1178 (2017) (plurality) (explaining that ***Birchfield***'s holding "supports the conclusion that … an individual must give actual, voluntary consent at the time that testing is requested").

Section 1547 of the Vehicle Code provides that "[a]ny person who

drives, operates or is in actual physical control of the movement of a vehicle" in the Commonwealth is deemed to have "given consent to one or more chemical tests of breath or blood 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 that said person has been driving while intoxicated. ***See*** 75 Pa.C.S.A. § 1547(a). This implied consent implicates a right to refuse, which is subject to civil penalties. ***See id.***

"[A] trial court must consider the totality of the circumstances when determining if a defendant's consent to a blood draw was voluntary." ***Commonwealth v. Miller***, 186 A.3d 448, 451 (Pa.Super. 2018), *appeal denied*, 650 Pa. 247, 199 A.3d 858 (2018).

> While there is no hard and fast list of factors evincing voluntariness, some considerations include: 1) the defendant's custodial status; 2) the use of duress or coercive tactics by law enforcement personnel; 3) the defendant's knowledge of [her] right to refuse to consent; 4) the defendant's education and intelligence; 5) the defendant's belief that no incriminating evidence will be found; and 6) the extent and level of the defendant's cooperation with the law enforcement personnel.

Commonwealth v. Robertson, 186 A.3d 440, 447 (Pa.Super. 2018), *appeal denied*, 649 Pa. 179, 195 A.3d 852 (2018).

"[K]nowledge of the right to refuse to consent to the search is a factor to be taken into account, [but] the Commonwealth is not required to demonstrate such knowledge as a prerequisite to establishing voluntary consent." ***Commonwealth v. Carmenates***, 266 A.3d 1117, 1125 (Pa.Super.

2021) (quoting ***Strickler, supra*** at 79, 757 A.2d at 901). "Further, the maturity, sophistication and mental or emotional state of the defendant (including age, intelligence and capacity to exercise free will), are to be taken into account." ***Id.*** (internal citation, footnote, and quotation marks omitted). ***See also Commonwealth v. Hill***, No. 1359 MDA 2018 (Pa.Super. filed Aug. 15, 2019) (unpublished memorandum), *appeal denied*, 658 Pa. 249, 228 A.3d 255 (2020) (rejecting argument that defendant was too intoxicated to provide consent to blood draw; noting that voluntary intoxication is not defense to criminal charge).

Instantly, the Court of Common Pleas provided the following reasons for denying Appellant's petition for writ of *certiorari*:

> After [Appellant] was arrested, she was transported to PDU where she was processed. The fact that [Appellant] was in custody weighs against [Appellant's] voluntariness of consent for the first factor. Regarding the second factor, there was no use of duress or coercive tactics by law enforcement personnel. There was no evidence to show that [Appellant] was handcuffed and DiGangi did not have his service weapon on him when the DL-26 form was read to [Appellant]. The DL-26 form was read verbatim in a level tone and there was no evidence of coercive tactics when the form was read to her. Although [Appellant] refused to sign the DL-26 form, her refusal to sign on the Signature of Operator line corroborated her claim that she was not the operator of the vehicle. DiGangi testified that she orally gave her consent for the blood test. This was indicated on the 439 where DiGangi noted twice that [Appellant] agreed to take the test.
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> DiGangi testified that [Appellant] understood the DL-26 warnings that he read to her…. He further testified that the

> blood draw itself involves a nurse extracting blood, and [Appellant] did not refuse this procedure. [Appellant] provided no evidence at the suppression hearing that she was unconscious at any time or otherwise unable to provide consent. The [Municipal Court] found Officer DiGangi to be credible and determined that there was no evidence to controvert his testimony. The [Municipal Court] found that [Appellant] had sufficient mental capacity to tell DiGangi that she was not driving the vehicle. The Municipal Court concluded that she understood the DL-26 warnings and consented to the blood draw.

(Trial Court Opinion at 8, 10-11) (record citations omitted).

We agree with the trial court that Appellant's consent to the blood draw was voluntary. As the Municipal Court jurist observed at the suppression hearing, "[s]he was smart enough to say I wasn't driving the car." (N.T. Suppression Hearing/Trial at 38). Thus, the record demonstrates that Appellant's inebriation did not prevent her from attempting to conceal her crimes. The record also confirms the circumstances of the administration of the DL-26 warnings were not unduly coercive. Despite Appellant speaking with an unusual "cadence" and thinking she was taken to New Jersey, the record indicates that Appellant was not so intoxicated to render her consent involuntary. ***See Robertson, supra***; ***Hill, supra***. Consequently, Appellant is not entitled to relief on her first claim.

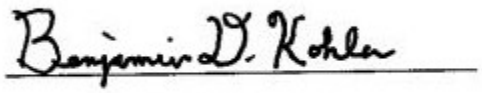
In her second issue, Appellant maintains that the standard DL-26 warnings that she received "are express threats," which "run afoul of search and seizure rights [by] being intentionally coercive." (Appellant's Brief at 14). Appellant admits that the Court of Common Pleas relied upon binding

precedent from Pennsylvania appellate courts to conclude that the DL-26 form is not impermissibly coercive because the threatened consequences are civil, rather than criminal, penalties. Appellant insists, however, that Pennsylvania case law "does not comport with United States Supreme Court decisions dictating how voluntariness is evaluated." (***Id.*** at 16).

As Appellant acknowledges, this Court has previously considered and rejected Appellant's argument, and we are bound by these decisions. ***See, e.g., Commonwealth v. Geary***, 209 A.3d 439, 443 (Pa.Super. 2019) (stating: "Though the language of the consent form threatens penalties for refusing consent, they are exclusively either civil or evidentiary in nature"; this does not run afoul of ***Birchfield, supra***); ***Commonwealth v. Ingram***, 926 A.2d 470, 476 (Pa.Super. 2007) (explaining Superior Court opinions are binding precedent which this Court must follow until they are overruled by *en banc* Superior Court panel or higher court). Accordingly, we discern no error or abuse of discretion and affirm the denial of Appellant's petition for writ of *certiorari*.

Order affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 4/29/2025