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Criminal Justice Updates - September 2020

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Criminal Justice Updates - September 2020

Abstract

The Criminal Justice Update is a monthly newsletter created by the Adams County Bar Foundation Fellow providing updates in criminal justice policy coming from Pennsylvania's courts and legislature as well as the US Supreme Court.

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Keywords

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Disciplines

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CRIMINAL JUSTICE UPDATES



A monthly newsletter produced by the ACBF Fellow at Gettysburg College through the ACBF Grant Program

September 2020

Keep up to date with developments in criminal law, criminal procedure, and victims issues via this monthly newsletter.

Comments or questions?
Contact Haley Shultz at
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Updates from PA Governor's Office

Highlights from Executive Order Number: 2019-06: Reducing Gun Violence

Date: August 16, 2019

- **Senior Advisor for Gun Violence Prevention:** Established a Senior Advisor for Gun Violence Prevention who will coordinate the Commonwealth's gun reform agenda.
- **Office of Gun Violence Prevention:** Established within the Pennsylvania Commission on Crime and Delinquency (PCCD) the Office of Gun Violence Prevention (Office), which shall work to eradicate gun violence from a public safety perspective. The Office will collaborate with the Division

of Violence Prevention, coordinate a system of focused police deterrence in neighborhoods and cities where violence is most extreme, and work with other Commonwealth agencies and stakeholders on community gun violence prevention and lost and stolen firearms reporting requirements for law enforcement.

- **Division of Violence Prevention:** Established within the Department of Health, the Division of Violence Prevention (Division), which will work to eradicate and prevent gun violence from a public health perspective. The Division will collaborate with the Office of Gun Violence Prevention and administer the Department of Health's new and existing violence prevention programs.
- **Violence Data Dashboard:** The Department of Health will establish a Violence Data Dashboard (Dashboard) that will collect and provide data on the scope, frequency, locations, and populations affected by violence, including data on the number of victims of gun violence, rates at which gun violence occurs in locations, and contributory factors. The Department of Health will coordinate with and collect data from the Department of Human Services, Pennsylvania State Police, PCCD, and other Commonwealth entities.
- **Executive Agency Responsibilities:** In addition to the foregoing, the following Commonwealth agencies will provide support to assist in understanding the causes and prevention of gun violence.
 - Department of Health, in addition to establishing the Dashboard, the Department of Health will establish a Suicide Death Review Team to conduct multidisciplinary reviews of suicides, provide data to the Dashboard, and make recommendations to prevent future suicide related deaths in Pennsylvania.
 - Department of Human Services will direct the Suicide Prevention Task Force to make recommendations on actions to reduce suicides by gun.
 - Pennsylvania State Police will enhance and expand its efforts to identify and deter potential sources of gun violence, develop gun violence prevention training, and draft guidelines for local gun buyback programs.

- **Special Council on Gun Violence:** There is established within PCCD a Special Council on Gun Violence to study and make recommendations to reduce and prevent gun violence.
 - **Council Responsibilities.** The Council shall:
 - Conduct its first meeting within 60 days of this Executive Order.
 - Adopt a public health and community engagement strategy that includes gun owners, health care professionals, and victims of gun-related incidents, that will provide direction, duties, and responsibilities to the Office.
 - Review current background check processes for firearms purchasers and make recommendations for improvement.
 - Review best practices and make recommendations that keep weapons from dangerous individuals.
 - Identify and define strategies across Commonwealth agencies to align resources to reduce gun violence.
 - Provide PCCD and the Senior Advisor with recommendations to reduce incidents of community violence, mass shootings, domestic violence, suicide, and accidental shootings in this Commonwealth within 180 days of the initial meeting of the Council.

<https://www.governor.pa.gov/newsroom/executive-order-2019-06-reducing-gun-violence/>

Updates from the PA Legislature

Criminal Law & Procedure

Senate Bill 968 (Browne)

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2019&sind=0&body=S&type=B&bn=968>

“Would amend Title 42 (Judiciary and Judicial Procedure) and Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes to consolidate overlapping duties of the Department of Corrections and the Pennsylvania Board of Probation and Parole. The legislation would transfer the Board of Pardons to Title 61 by adding a new Chapter 73 and making related repeals under the Administrative Code. The Board of Pardons would remain independent, but the Department of Corrections would provide facilities, administrative support, and other assistance to the Board upon request. The measure would also change the name of “The Pennsylvania Board of Probation and Parole” to “The Pennsylvania Parole Board.” The Board would be authorized to establish special conditions of supervision for paroled offenders. Conditions of supervision would have to be based on the risk presented by and the rehabilitative needs of the offender. It would also have the power to promulgate regulations establishing general conditions of supervision applicable to every paroled offender. The bill would permit two-person panels that make decisions on parole, re-parole, return or revocation to meet and take action via videoconferencing with the exception of in-person testimony pursuant to the Crime Victims Act. The legislation would amend the provisions of Title 61 relating to victim statements and participation in hearings to require the Victim Advocate to provide notice to victims and family members and to the Board. An additional provision would designate parole agents as peace officers and give them police power and authority throughout the Commonwealth. The Department of Corrections would be required to establish statewide standards for supervision or qualifications of probation personnel. The measure would further establish that a ‘parole violator center’ is a type of facility to which a technical parole violator could be sent. A ‘parole violator center’ would be defined as ‘an area within the secure perimeter on the grounds of a state correctional institution or contracted county jail that has been designated to house offenders detained or recommitted by the board for a technical parole violation.’ The appropriation for the Board and the Board of Pardons would each be in separate line items.”

Senate Bill 1170 (Langerholc)

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=o&body=S&type=B&bn=1170>

“Would amend Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes to allow expert testimony in a criminal proceeding relating to domestic violence. Specifically, the legislation would amend Section 5920(a) to provide that a court may qualify an expert witness in a criminal case regarding: (i) any crime listed under Subchapters H (relating to registration of sexual offenders) and I (relating to continued registration of sexual offenders) of Chapter 97; (ii) an offense under Title 18 Chapters 30 (relating to Human Trafficking) and 31 (relating to sexual offenses); and (iii) a criminal -4- ~Policy Development and Research Office~ proceeding for a domestic violence offense. The expert would assist the trier of fact in understanding the dynamics of sexual violence and domestic violence, victim responses to sexual violence and domestic violence, and the impact of sexual violence and domestic violence on victims.”

Victims Issues

Senate Bill 530 (Martin)

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sind=o&body=S&type=B&bn=530>

“Would amend the Public School Code of 1949 to protect students who are victims of sexual assault. The legislation would add Section 1318.1 to provide that, if a student is convicted or adjudicated delinquent of sexual assault upon another enrolled student in the same public school, the public school entity would have to take one of the following three actions against the convicted or adjudicated student: 1) expel the student; 2) transfer the student to an alternative education program; or 3) reassign the student to another educational program within the public school entity. The convicted or adjudicated student could not be educated in the same school building, transported on the same school vehicle, or allowed to participate in the same school-sponsored activities at the same time as the victim. A public school entity would not be required to take action if the student does not attend the same school as the victim. Action could be taken for sexual assaults that occur outside the school setting if the sexual assault was: (1) against another student enrolled in the public school entity; (2) has the effect of substantially interfering with the victim’s education, creating a threatening or hostile environment; or (3) substantially disrupts the orderly operation of the school. An offending student could return to the school only if the adjudication/conviction is overturned or if the victim is no longer attending the school entity. A student convicted of sexual assault upon another student enrolled in the same public school entity would be required to notify the public school entity of the conviction no later than 72 hours after the conviction. A public school entity that receives a transfer student who was expelled from a public or nonpublic school for an act or offense involving a sexual assault could assign that student to an alternative assignment or provide alternative education services. Prior to admission to a public school entity, the parent, guardian, or person otherwise responsible for a student would have to provide a sworn statement or affirmation stating whether the student was previously or is presently expelled under the provisions of the section. Each public school entity would be required to develop or update its written policies to comply with the provisions of the section and, in the case of student with disabilities, take all steps necessary to comply with the Individuals with Disabilities Education Act. An additional provision would amend Section 2011-B (relating to school participation in the Opportunity Scholarship program) to exclude a student who has been expelled under Section 1318.1 from the pool of potential recipients of an opportunity scholarship if a school district elects to participate in the program.”

Updates from the PA Courts

PA Superior Court*

(Reporting only cases with precedential value)

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. MICHAEL MCLAUGHLIN

FILED SEPTEMBER 28, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S24027-200%20-%20104558193114688950.pdf?cb=1>

"Appellant, Michael McLaughlin, appeals from an order denying his petition seeking coram nobis relief on the ground that the judge who presided over his trial should have recused himself because he himself was under criminal investigation at the time of trial. We affirm. Coram nobis relief is unavailable because claims of judicial bias are only cognizable under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. Furthermore, PCRA relief is unavailable because Appellant has completed service of his sentence."

COMMONWEALTH OF PENNSYLVANIA v. DENNIS L. SHIRES, II

FILED SEPTEMBER 28, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S41034-190%20-%20104558099114681601.pdf?cb=1>

"Dennis L. Shires, II (Appellant), appeals nunc pro tunc from his July 6, 2017 judgment of sentence, which the trial court imposed after revoking Appellant's probation. Appellant's counsel originally filed in this Court a petition to withdraw and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009). We denied counsel's petition and remanded for the filing of new briefs on the issue of whether Appellant's violations of the conditions of supervision imposed by the State Board of Probation and Parole (the Board) were sufficient to revoke his probation. Counsel has filed a merits brief and the Commonwealth declined to file a responsive brief. After review, we conclude that the trial court erred by revoking Appellant's probation based upon his violations of the conditions of supervision when those conditions were neither court-ordered nor germane to the condition of probation set by the trial court in 2002. Accordingly, we vacate Appellant's judgment of sentence, reverse the order revoking his probation, and reinstate his 2002 judgment of sentence."

COMMONWEALTH OF PENNSYLVANIA v. MAYNARD LEE BROWN

FILED SEPTEMBER 28, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S38043-200%20-%20104558427114703240.pdf?cb=1>

"Appellant, Maynard Lee Brown, appeals from the judgment of sentence entered in the Court of Common Pleas of Bradford County after he pleaded guilty to the offense of Driving Under the Influence ("DUI"), 75 Pa.C.S.A. § 3802(a)(2), an ungraded misdemeanor and his first such offense in ten years. Sentenced to a term of three months' to six months' imprisonment, Appellant contends his minimum sentence of incarceration was illegal because 75 Pa.C.S.A. § 3804(a)(1)(i) provides that a first time offender under Section 3802(a)(2) shall undergo a mandatory minimum term of six months' probation. We affirm."

COMMONWEALTH OF PENNSYLVANIA v. STEVEN JAMES SMITH

FILED SEPTEMBER 28, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-A03041-200%20-%20104558125114684147.pdf?cb=1>

"Appellant, Steven James Smith, appeals from the Order entered June 5, 2019, which denied him relief from his lifetime requirement to register as an offender pursuant to The Sexual Offender Registration and Notification Act ("SORNA").1 Pursuant to our Supreme Court's decision in *Commonwealth v. Lacombe*, --- A.3d ---, 35 MAP 2018 (Pa. filed July 21, 2020), and after careful review, we vacate the lower court's Order and remand for further proceedings consistent with this Opinion."

COMMONWEALTH OF PENNSYLVANIA v. TIMOTHY OLIVER BARR II

FILED SEPTEMBER 25, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-A13005-200%20-%20104557000114591286.pdf?cb=1>

"This is a Commonwealth appeal from the trial court's order granting Appellee's, Timothy Oliver Barr II, motion to suppress and habeas corpus petition ("habeas petition"). In granting Appellee's suppression motion, the trial court held that the odor of marijuana no longer provides police with probable cause to search a motor vehicle from which the odor

emanates because a substantial number of Pennsylvania citizens can now consume marijuana legally, calling into question the so-called plain smell doctrine. After careful review, we agree with the trial court that the odor of marijuana does not per se establish probable cause to conduct a warrantless search of a vehicle. However, because the trial court failed to afford that factor any weight, and did not appear to evaluate any other factors in conjunction with the odor of marijuana in its probable cause analysis, we vacate the portion of the order granting suppression and remand for reconsideration by the trial court. We also vacate the portion of the order granting Appellee's habeas petition, and remand for reconsideration by the trial court following resolution of the suppression issue."

COMMONWEALTH OF PENNSYLVANIA v. TIMOTHY WILLIAMS

FILED SEPTEMBER 25, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S38045-200%20-%20104556831114577848.pdf?cb=1>

"Appellant, Timothy Williams, appeals from the order entered by the Court of Common Pleas of York County dismissing without relief his first petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46. Appellant contends, inter alia, the PCRA court erred in dismissing his petition seeking reinstatement of post sentence rights nunc pro tunc."

"We vacate the Order denying PCRA relief, reinstate Appellant's post-sentence rights and direct appeal rights nunc pro tunc, and remand to the trial court, which shall accept for review Appellant's timely pro se post-sentence motions previously filed with the court. Order vacated. Post-sentence rights and direct appeal rights reinstated nunc pro tunc consistent with this decision. Jurisdiction relinquished."

COMMONWEALTH OF PENNSYLVANIA v. STEVEN MARK MICKLEY

FILED SEPTEMBER 24, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S09024-200%20-%2010455562113908700.pdf?cb=1>

"Steven Mark Mickley appeals from the judgment of sentence, entered in the Court of Common Pleas of Lehigh County, following his convictions of sexual abuse of children/dissemination of child pornography and sexual abuse of children/possession of child pornography. After our review, we vacate and remand."

COMMONWEALTH OF PENNSYLVANIA v. KEITH EPPS

FILED SEPTEMBER 23, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S29042-200%20-%20104554047113528852.pdf?cb=1>

"Keith Epps (Epps) appeals from the order entered in the Court of Common Pleas of Philadelphia County (PCRA court) dismissing his timely petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. We affirm."

COMMONWEALTH OF PENNSYLVANIA v. PRESTON DAQUEN BONNETT

FILED SEPTEMBER 22, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S38037-200%20-%20104552044113383811.pdf?cb=1>

"Appellant's Rule 1925(b) statement is a blanket statement wherein he declares the evidence was insufficient to convict him of all charges. However, the statement fails to specify the element or elements upon which the evidence was allegedly insufficient to support Appellant's convictions of Second Degree Murder, First Degree Murder and Arson. This failure is especially significant herein, where the crimes were comprised of multiple elements and arose from two informations. Thus, we conclude that Appellant's sufficiency of the evidence claim is waived on appeal. See Commonwealth v. Williams, 959 A.2d 1252, 1257- 1258 (Pa.Super. 2008). Judgment of sentence affirmed."

COMMONWEALTH OF PENNSYLVANIA v. TERRANCE MORGAN

FILED SEPTEMBER 17, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-A10005-200%20-%20104548368113058252.pdf?cb=1>

“Terrance Morgan appeals from his July 8, 2019 judgment of sentence imposed after he was found guilty of escape. After careful review, we vacate Appellant’s judgment of sentence and reverse his conviction due to the Commonwealth’s failure to exercise due diligence under Pa.R.Crim.P. 600.”

COMMONWEALTH OF PENNSYLVANIA v. SUJAN GURUNG

FILED SEPTEMBER 17, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S30030-200%20-%20104548335113055581.pdf?cb=1>

“The Commonwealth appeals from the order granting the motion to suppress filed by Sujan Gurung. The Commonwealth argues that the police had probable cause to stop Gurung’s vehicle when Gurung failed to use a turn signal before moving from one lane of traffic to another. We agree and therefore reverse the order of the suppression court and remand for further proceedings.”

COMMONWEALTH OF PENNSYLVANIA v. CHESTER M. BRAME

FILED SEPTEMBER 15, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S39030-200%20-%20104545405112800407.pdf?cb=1>

“Appellant, Chester M. Brame, appeals from the January 9, 2020 judgment of sentence imposing an aggregate sentence of five to ten years’ incarceration following Appellant’s conviction, in a bench trial, of possession with the intent to deliver a controlled substance (oxycodone), possession of a controlled substance, possession of drug paraphernalia, fleeing or attempting to elude a pursuing police officer, and tampering with physical evidence. We affirm.”

COMMONWEALTH OF PENNSYLVANIA v. TASAI BETTS

FILED SEPTEMBER 15, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S28010-200%20-%20104545150112782921.pdf?cb=1>

“Tasai Betts appeals from the trial court’s June 17, 2019 order dismissing his petition for relief under the Post-Conviction Relief Act (“PCRA”). After careful review, we vacate the order and remand with instructions.”

COMMONWEALTH OF PENNSYLVANIA v. JAMES PATRICK KEMICK

FILED SEPTEMBER 15, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S36006-200%20-%20104545569112808353.pdf?cb=1>

“Appellant, James Patrick Kemick, appeals from the February 7, 2020 order denying his motion to dismiss the criminal charges currently pending against him on grounds that the prosecution of those charges violates the protection against double jeopardy and the compulsory joinder rule. We vacate the order and remand this case with instructions.”

COMMONWEALTH OF PENNSYLVANIA v. DARRYL RICHARD

FILED SEPTEMBER 11, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-A19037-200%20-%20104542302112546055.pdf?cb=1>

“The Commonwealth appeals from the order entered in the Philadelphia County Court of Common Pleas, granting in part a motion to suppress evidence filed by Darryl Richard (Appellee). The Commonwealth contends that the trial court erred in suppressing evidence recovered from a vehicle because the officers possessed probable cause to search the vehicle. Because we agree the initial traffic stop of Appellee was proper, and Appellee’s nervous behavior coupled with the strong smell of marijuana emanating from his vehicle provided the requisite probable cause to search the vehicle, we reverse the order of the trial court, and remand for further proceedings.”

COMMONWEALTH OF PENNSYLVANIA v. MICHAEL WAY

FILED SEPTEMBER 09, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S33028-200%20-%201045391111140955.pdf?cb=1>

“Michael Way (Appellant) appeals from the judgment of sentence imposed following his convictions of possession of a controlled substance and possession with the intent to deliver a controlled substance (PWID). Appellant challenges the trial court’s denial of his suppression motion. After careful consideration, we affirm.”

"We conclude that the record supports the trial court's determination that Officer Bogan, in light of his experience, observed and articulated specific facts that caused him to reasonably believe Appellant and the driver of the pickup truck were engaging in a drug transaction. Accordingly, the trial court did not err in denying Appellant's suppression motion. Judgment of sentence affirmed."

COMMONWEALTH OF PENNSYLVANIA v. SAMMY HILL

FILED SEPTEMBER 09, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S38034-200%20-%20104539027111135641.pdf?cb=1>

"The Commonwealth appeals from the February 25, 2020, Order of the Court of Common Pleas of Huntingdon County dismissing, with prejudice, charges arising from Appellee, Sammy Hill's, possession of marijuana and drug paraphernalia while in prison. 1 After careful review, we reverse and remand the case to the trial court for further proceedings."

"Understanding that the three branches of government are independent but yet, at times, have overlapping responsibilities, and understanding that the trial court is frustrated with the process in the types of cases as herein, we cannot allow a trial court to bypass the constitutional processes in our system of government. As such, respectfully, we hold that the trial court abused its discretion in dismissing the charges against Appellee and violated the separation of powers doctrine by exceeding the scope of its own authority under the Constitution of the Commonwealth. Order reversed. Case remanded for further proceedings. Jurisdiction relinquished."

COMMONWEALTH OF PENNSYLVANIA v. TOD SCHNEIDER

FILED SEPTEMBER 09, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-A18005-200%20-%20104538754111118296.pdf?cb=1>

" Appellant, Tod Schneider, appeals from the judgment of sentence of an aggregate term of five years' probation, imposed after a jury convicted him of two counts of aggravated assault, 18 Pa.C.S. § 2702(a)(3), two counts of simple assault, 18 Pa.C.S. § 2701(a)(1), one count of resisting arrest, 18 Pa.C.S. § 5104, one count of possessing a controlled substance, 35 P.S. § 780-113(a)(16), and one count of possessing drug paraphernalia, 35 P.S. § 780-113(a)(32). Appellant challenges the court's denial of his pretrial motion to suppress, as well as the sufficiency of the evidence to sustain his resisting arrest conviction. After careful review, we vacate Appellant's judgment of sentence and remand for a new trial."

"In the present case, Appellant avers that "[t]he police had no legal justification for the warrantless entry into [his] home[,]" and "[a]s such, the police were not lawfully discharging their duties when arresting [Appellant] after illegally entering his home." Appellant's Brief at 61. We disagree. Appellant's argument would carry more weight if Lieutenant Love had immediately arrested him upon illegally entering his home. However, that is not what occurred. Appellant was arrested only after he shoved and assaulted Lieutenant Love and the other officers trying to subdue him. Appellant's conduct unequivocally provided the officers with probable cause to arrest him for assault. Appellant provides no legal authority to support his position that, regardless of his attack on the officers, they had no legal authority to arrest him simply because they had unlawfully entered his residence. By this rationale, Appellant could not have been lawfully arrested even had he shot and killed Lieutenant Love. This argument is meritless. Appellant's physical assault of the lieutenant provided probable cause to arrest him and, thus, his arrest was legal. Consequently, Appellant's challenge to the sufficiency of the evidence to sustain his resisting arrest conviction fails, and he may be retried for that offense. Judgment of sentence vacated. Case remanded for further proceedings. Jurisdiction relinquished."

COMMONWEALTH OF PENNSYLVANIA v. KEVIN ROBINSON

FILED SEPTEMBER 04, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S33043-200%20-%20104536093110819414.pdf?cb=1>

"Appellant, Kevin Robinson, appeals from the judgment of sentence entered in the Court of Common Pleas of Philadelphia County after a jury convicted him of third-degree murder, firearms not to be carried without a license, carrying a firearm of the public streets of Philadelphia, and possession of an instrument of crime. Herein, Appellant raises two issues challenging the court's denials of his pre-trial and post-sentence motions seeking DNA testing of a green hoodie sweatshirt he was seen wearing when he committed his crimes. We affirm."

"As discussed, the trial court viewed Appellant's post-sentence motion in light of a trial record comprising multiple sources, such as eyewitnesses, surveillance video, and Appellant, himself, offering his own voluntary confession, supplying direct identification evidence implicating Appellant as the decedent's shooter. Moreover, substantial circumstantial evidence corroborated such accounts. Appellant's motion thus failed to demonstrate a reasonable possibility that DNA evidence would establish his actual innocence. Accordingly, we find no abuse of discretion in the denial of Appellant's post-sentence motion for post-conviction testing. For the foregoing reasons, we affirm judgment of sentence."

COMMONWEALTH OF PENNSYLVANIA v. VICTOR LEE COPENHAVER

FILED SEPTEMBER 02, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S69043-180%20-%20104533129110605794.pdf?cb=1>

"This case is before us on remand from the Pennsylvania Supreme Court. Commonwealth v. Copenhaver, 229 A.3d 242 (Pa. 2020). Victor Lee Copenhaver (Appellant) has appealed the judgment of sentence imposed after the trial court convicted him of two counts of driving under the influence of alcohol and a controlled substance (DUI), possession of a small amount of marijuana, and three summary violations of the Vehicle Code. Appellant challenges, inter alia, the denial of his suppression motion. With the benefit of the Supreme Court's decision, we vacate Appellant's judgment of sentence, reverse the order denying suppression, and remand to the trial court."

"In sum, with the benefit of the Supreme Court expressly determining that driving a vehicle with an expired registration does not entail a breach of the peace, we conclude that the traffic stop in this case was improper. The trial court thus erred in denying Appellant's motion to suppress the evidence derived from the stop. Accordingly, we vacate Appellant's judgment of sentence, reverse the order denying the suppression motion, and remand to the trial court for proceedings consistent with this decision. Judgment of sentence vacated. Suppression order reversed. Case remanded. Jurisdiction relinquished."

COMMONWEALTH OF PENNSYLVANIA v. VISMANI CANALES CARMENATES

FILED SEPTEMBER 01, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-A11018-200%20-%20104531526110484813.pdf?cb=1>

"The Commonwealth appeals from the order entered by the suppression court granting Vismani Canales Carmenates' motion to suppress. The Commonwealth argues the suppression court erred in relying on waived arguments, making factual findings that contradicted the testimony, and granting Carmenates' motion to suppress. We reverse."

"On review of the totality of the circumstances, we do not agree that Carmenates' consent was not knowing, intelligent, and voluntary. The Trooper's testimony that he observed Carmenates following the truck in front of him too closely for safety was sufficient to permit the initial stop. There was no evidence of police excesses or physical contact, and nothing suggests the Trooper's demeanor and manner of expression or the content of his questions and statements were coercive to the extent as to overbear Carmenates' ability to refuse consent. The Trooper was not joined by any additional troopers, did not draw his weapon, and did not employ aggressive language or gestures. Indeed, all evidence was of an even-tempered interaction. See Strickler, 757 J-A11018-20 - 14 - A.2d at 900 (finding consent voluntary in the absence of such actions). Furthermore, the Trooper returned Carmenates' documents to him and gave him a mere warning before asking to see the luggage, lessening any objective justification for Carmenates' feeling compelled to consent. Most important, Carmenates understood the Trooper wanted him to open his luggage when the Trooper pointed at it, and he exhibited his consent by opening it for him without complaint. Carmenates'

testimony that he subjectively felt he had to follow the Trooper's instructions does not require suppression. Rather, the test is an objective one. See *Strickler*, 757 A.2d at 901-02. There is no evidence the Trooper acted in a way that would reasonably have coerced or pressured Carmenates into giving consent. Further, there was no need for Trooper Hoy to read Carmenates his Miranda rights because there was no custodial interrogation, as Carmenates was not in custody. Furthermore, the trooper had good reason to ask Carmenates to get out of his vehicle, as he testified it was for his safety while using the Google Translate application. Although the Trooper and Carmenates spoke different languages, Google Translate enabled Carmenates and Trooper Hoy to understand each other sufficiently, and the two communicated successfully by gestures when the Trooper wanted Carmenates to open the luggage. Under the totality of the circumstances, we conclude the Commonwealth carried its burden to establish that Carmenates' consent was valid. Order reversed. Case remanded. Jurisdiction relinquished."

COMMONWEALTH OF PENNSYLVANIA v. TEDDY A. GASTON

FILED SEPTEMBER 01, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S38031-200%20-%20104531141110459328.pdf?cb=1>

"Appellant, Teddy A. Gaston, appeals from the December 11, 2019, judgment of sentence entered in the Court of Common Pleas of Schuylkill County following his conviction by a jury on the charges of driving while under the influence ("DUI") of a controlled substance-schedule 1-1 st offense, driving while operating privilege is suspended or revoked (with a BAC .02% or greater), and limitations on driving (backing up of vehicle improperly). 1 On appeal, Appellant challenges the denial of his pre-trial suppression motion, in which he alleged that his consent to a warrantless blood draw was coerced in violation of *Birchfield v. North Dakota*, ___ U.S. ___, 136 S.Ct. 2160 (2016). After a careful review, we affirm."

"Similar to *Moser*, the suppression court in the instant case concluded the officer read the DL-26 Form to Appellant after he had already consented to the blood draw. Further, the suppression court did not find credible J-S38031-20 - 13 - Appellant's testimony that, aside from the DL-26 Form, Officer Stamets made statements indicating Appellant would face enhanced criminal penalties before Appellant expressly consented to the blood test. Consequently, the suppression court did not err in concluding Appellant's consent to submit to the blood test was not given on pain of committing a criminal offense in violation of *Birchfield*. 9 See *Commonwealth v. Neysmith*, 192 A.3d 184 (Pa.Super. 2018) (holding the defendant's consent to blood draw, which was given prior to the defendant being advised of the warnings in the noncompliant *Birchfield* DL-26 Form, was voluntary and not coerced by the threat of enhanced penalties for refusing the test). For all of the foregoing reasons, we find no merit to Appellant's suppression claim, and we affirm his judgment of sentence."

*The PA Supreme Court did not report any precedential cases this month

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