Legal Update

MIST – 2018

Course #: 18-001

Course Objectives

1) Identify major law changes that police officers need to know to accomplish their mission.
2) Analyze court decisions that impact operational activities and the case preparation process of officers “on the street” as well as police investigators.
3) Understand the preparation process of officers “on the street” as well as police investigators.

Course Goals

To Understand Significant Changes* in:

- Pennsylvania Crimes Code
- Pennsylvania Vehicle Code
- Rules of Criminal Procedure
- Pa. Supreme, Superior and Commonwealth Court Decisions
- U.S. Supreme Court

*From July 1, 2016 to June 30, 2017

M.P.O.E.T.C. Certification Requirements

- Officers must maintain current CPR/AED and First Aid certification. The cards you receive at the time of training are good for two years and refresher training must be accomplished before the two years expires regardless of when that falls within the overall certification cycle or calendar year.

- Officers must complete 12 hours of in-service training each calendar year, inclusive of any mandatory courses set by MPOETC. The Commission establishes some courses as mandatory for all officers, but the remainder of the hours can consist of either MPOETC developed courses or Continuing Law Enforcement Education (CLEE) courses. CLEE courses can only be applied to the training year during which they are taken. Both requirements (overall hours/mandatory courses) must be met by December 31 each year.

- Officers must qualify on all firearms used on duty. At a minimum, officers must successfully qualify on their primary duty weapon once per calendar year. Qualifications must be completed by December 31 each year.

M.P.O.E.T.C. Certification Requirements

- Notifications will be sent in advance via email to Chiefs and designated administrative personnel at 90 days, 60 days and 30 days indicating that a training requirement has not yet been completed.

- Departments are required to maintain accurate email contact information in the Training and Certification System (TACS) (link on the MPOETC webpage). Officers are able to log in as guest users and add email addresses to their profiles in TACS. Officers who add email contact information to their profiles also receive the notifications when training is required.

- Officers who fail to accomplish one or more of the requirements listed above will have their certification status changed to EXPIRED and will be removed from the list of certified officers maintained by the Administrative Office of Pennsylvania Courts (AOPC). Officers will be marked certified again once all required training has been completed and verified.

Act 111 of 2016 (eff. 12/25/16)

- **New offense** – Strangulation, 18 Pa.C.S. § 2718
  - –This new law addresses non-fatal strangulations that are frequently committed as acts of domestic violence.
- **Offense defined.--**A person commits the offense of strangulation if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by:
  - (1) applying pressure to the throat or neck; or
  - (2) blocking the nose and mouth of the person.
- Physical injury is NOT an element of the offense
- Consent is an affirmative defense
- Grading can be: M2, F2, or F1

Act 158 of 2016 (eff. 1/3/17)

- New subsection of burglary – 18 Pa.C.S. § 3502(a)(1)(i)
- Burglary of occupied residence with the commission, attempt or threat to commit a bodily injury crime
- Bodily injury crime defined:
  - (1) An act, attempt or threat to commit an act which would constitute a misdemeanor or felony under the following:
    - Chapter 25 (relating to criminal homicide).
    - Chapter 27 (relating to assault).
    - Chapter 29 (relating to kidnapping).
    - Chapter 31 (relating to sexual offenses).
    - Section 3301 (relating to arson and related offenses).
    - Chapter 37 (relating to robbery).
    - Chapter 49, Subchapter B (relating to victim and witness intimidation).
  - (2) The term includes violations of any protective order issued as a result of an act related to domestic violence.
- Grading: F1

Act 22 of 2017 (eff. 9/5/17)

BODY CAMERAS

- Law enforcement officers may now use body cameras inside a residence.
- The right to intercept conversations with a body camera is granted to:
  - Members of the Pennsylvania State Police
  - Police officers with current certification
  - Sheriffs or Deputy Sheriffs
- The law enforcement officer must be on official duty and either in uniform or clearly identifiable as a law enforcement officer.

Act 22 of 2017 (eff. 9/5/17)

PUBLIC ACCESS TO POLICE AUDIO AND VIDEO RECORDINGS

- Public access to police recordings is now governed by a new law, not by the Right to Know Law.

- The agency's open records officer and other relevant supervisors should familiarize themselves with the provisions and procedures under this new law.

- Obligations of municipal police departments
  - Comply with Pennsylvania State Police guidelines
  - Establish written policies regarding the use and storage of recordings
  - The written policies must be made public.

The sunset date of the Wiretap Act has been extended to December 31, 2023.

Act 134 of 2016 (eff. 1/2/17)

- § 6105: Persons not to possess, use, manufacture, control, sell or transfer firearms
- Penalty increased for violation of 18 Pa.C.S. § 6105 (from F2 to F1) in two circumstances:

  1. Defendant has a previous conviction at the time he commits the current offense OR

  2. Defendant has current "physical possession or control of a firearm whether visible, concealed about the person or within the person's reach."

- The overwhelming majority of Section 6105 violations are now felonies of the first degree.

Act 8 of 2017 (eff. 8/21/17)

Theft of Secondary Metals, 18 Pa.C.S. § 3935.1

The term "secondary metal" means wire, pipe or cable commonly used by communications, gas, water, wastewater and electrical utilities and railroads and mass transit or commuter rail agencies, copper, aluminum or other metal, or a combination of metals, that is valuable for recycling or reuse as raw material.

Grading of the offense:

- M3: Value of the secondary metal is less than $50
- M2: Value is $50 or more, but less than $200
- M1: Value is $200 or more, but less than $1000
- F3: Value is $1000 or more, or it is a third offense (regardless of value)

Act 142 of 2016 (eff. immediately)

This Act is dedicated to: Officer Brian Steven Gregg

Paramedic may perform blood draw:

- DUS/DUI
- DUI while operating privilege is suspended or revoked.
- Homicide by vehicle while DUI
- DUI

Paramedic not a chain of custody witness, if:

Police officer witnesses the draw and testifies

Paramedic services are recoverable court costs.

REMINDER: No blood test may be conducted unless police have either consent or a search warrant.

Act 165 of 2016

Vehicle Code amendments:

Temporary registration cards are valid for 60 days (§ 1310)

Obscuring registration plate (§ 1332)

- May not inhibit the operation of an electronic toll collection system (EZ Pass)
- May not inhibit the visibility of the issuing jurisdiction (state of issuance) at a reasonable distance

Registration plate and card may be seized for suspension arising from unpaid tolls in this Commonwealth or in a reciprocal jurisdiction. (§ 1380)

Act 165 of 2016

A conviction for violating Section 3316 (pertaining to texting) now joins Section 3325 (approaching emergency vehicle) and Section 3327 (duty of driver in emergency response area) as authorizing an additional 5 year sentence enhancement to the otherwise applicable sentence for homicide by vehicle or aggravated assault by vehicle (eff. 1/3/17)

Act 3 of 2017 (Real ID Compliance Act) (eff. immediately)

- Designed to put Pa. in compliance with federal Real ID Act of 2005
- As of 10/10/18, need REAL ID or passport to access:
  - Airports
  - Federal Buildings
  - Military Installations
- Pa. will not start issuing Real ID until 2019
- FYI – Pa. new driver's license is **NOT** Real ID compliant.

Pa New Driver's License

Act 10 of 2017 (Animal Abuse) (eff. 8/27/17)

"Libre's Law"

- Creates a clear delineation among summary offenses, misdemeanors and felony charges, and, for the first time, allows felony charges in cases other than animal fighting and killing endangered species.

Act 10 of 2017 (Animal Abuse) (eff. 8/27/17)

Act 10 restructures the animal cruelty provisions in Section 5511 of Title 18 into three broad offenses:

(1) Neglect,

(2) Cruelty, and

(3) Aggravated Cruelty

Act 10 of 2017 (Animal Abuse) (eff. 8/27/17)

- **Neglect:** Denying an animal necessary food and potable water, clean and sanitary shelter, or necessary veterinary care. Grading: A summary offense or a misdemeanor of the third degree if the violation causes bodily injury or the imminent risk of serious bodily injury. (Section 5532)

- **Cruelty:** Intentionally, knowingly, or recklessly ill-treating, overloading, beating, abandoning, or abusing an animal. Grading: A summary offense or a misdemeanor of the second degree if the violation causes bodily injury or the imminent risk of serious bodily injury. (Section 5533)

- **Aggravated cruelty: I**ntentionally or knowingly torturing an animal or committing neglect or cruelty and causing serious bodily injury or death to the animal. Grading: A felony of the third degree. (Section 5534)

- Summary offenses under this law carry a minimum fine of $50 and a maximum fine of $750 or up to 90 days imprisonment. (Section 5550)

Act 10 of 2017 (Animal Abuse) (eff. 8/27/17)

- Adds protections for horses (Sections 5537, 5539, 5540)
- Imposes some tethering restrictions that apply to dogs confined out of doors (Section 5536)
- Grants civil immunity to veterinarians, their technicians and assistants (Section 5556) and to humane society police officers (Section 5557) for reporting and investigating possible violations

Act 12 of 2017 (eff. 8/28/17)

The grading section of Endangering welfare of children (18 Pa.C.S. § 4304) has been amended.

(a) Offense defined.--

(1) A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.

(2) A person commits an offense if the person, in an official capacity, prevents or interferes with the making of a report of suspected child abuse under 23 Pa.C.S. Ch. 63 (relating to child protective services).

GRADING:

- General offense = M1
- Course of conduct = F3
- (a)(1) Offense: Risk of death or serious bodily injury (SBI) = F3
- (a)(1) Offense: Risk of death or SBI and course of conduct = F2
- Child under 6 = increase the grading by one level.

Act 30 of 2017

Driving under suspension

- When a defendant has been convicted of an offense that triggers a license suspension, the defendant will be given notice, in court, that his suspension shall be effective within 60 days.
- In a subsequent trial for driving while under suspension, that notice, previously given to the defendant in court, permits an inference that defendant was aware of his license suspension.
- Police officers are authorized to confiscate any license that has been revoked, suspended, canceled or disqualified.
- The confiscated license is to be returned to the Department of Transportation unless needed to be retained as trial evidence.
- These provisions become effective on October 20, 2018.

Act 30 of 2017

Suspension for refusing chemical testing:

- Officer shall inform the motorist that in addition to license suspension, the person will be subject to a license restoration fee of up to $2,000. (effective 1/20/18)
- We anticipate a new DL-26 will be issued containing the new warning.
- The warning regarding an enhanced jail sentenced may be given for refusal of breath testing only, not for refusal of blood testing.
- A motorist being involved in an accident in which someone was injured or killed is not grounds for a police officer to request chemical testing. Officer must have reasonable ground to suspect DUI. *Commonwealth v. Kohl* (1992).

Act 30 of 2017

Enhanced penalties for DUI conviction for certain defendants

- Refused a request for chemical testing of breath.
- Refused testing of blood pursuant to a valid search warrant (effective July 20, 2017).

NOTICE TO POLICE OFFICERS REGARDING SEARCH WARRANTS FOR THE DRAWING OF BLOOD:

- A search warrant authorizing the drawing of blood is NOT an authorization to use force against a non-cooperating motorist.
- Consult your local DA regarding procedures pertaining to such motorists.

Saylor, C.J. concurring opinion
Todd, J. concurring opinion
Mundy, J. dissenting opinion

Commonwealth v. Myers, 164 A.3d 1162 (7/19/17)

- The Supreme Court of Pennsylvania affirmed the Superior Court ruling which was taught in the 2016 Legal Updates Course.
- A police officer may not request the drawing of blood from an unconscious motorist without either a search warrant or exigent circumstances.

Pa. Rule of Criminal Procedure 205 (eff. 10/1/17)

New Subsection 205(B) of the Rule clarifies that a search warrant may authorize the seizure of electronic storage media or electronically stored information.

The electronic information need not be reviewed immediately, at the scene of the seizure. The information may be copied and reviewed at a later time.

A search warrant is executed within the two day deadline when the information or media is initially seized.

Court order
Committee report

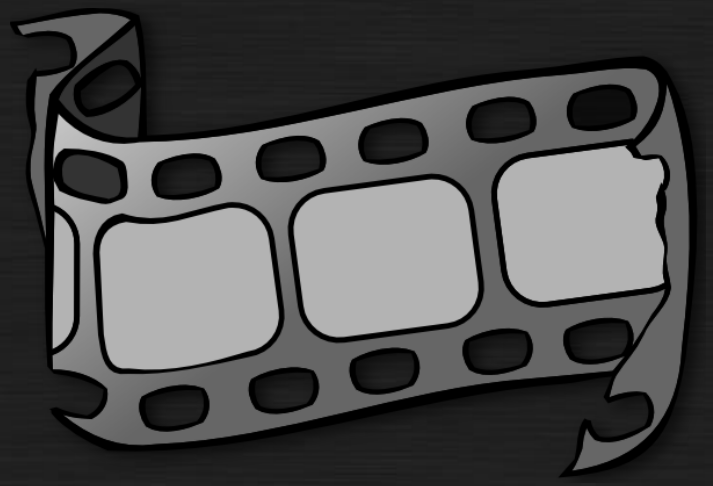
Pa. Rule of Criminal Procedure 203 & 513 (eff. 1/1/18)

Telephonic approval of arrest & search warrants

- Affiant may now communicate with the MDJ by telephone.
- MDJ shall verify the identity of the affiant.
- Permissible methods to verify the ID of affiant
  - Call-back system
  - Password system
  - Signature comparison (permitted, not required)
- If MDJ has a concern regarding the ID of the affiant, the MDJ has discretion to require video communication or in-person appearance.

Act 136 of 2017 and Act 9 of 2017

Val Pritchett Video



Boseman v. Dept. of Transportation, 157 A.3d 10 (Pa. Cmwlth. 3/17/17)

FACTS #1: Officer Brown noticed an SUV travelling 75 mph in a 55 mph zone. Officer Brown observed the SUV veer to the right side of the road and abruptly stop. The abrupt stop nearly caused the officer to strike the rear of the SUV. Officer Reynolds used his loudspeaker to advise the driver to pull to the shoulder of the road. The SUV, however, continued north for about a minute before making a left turn and then stopping.

Boseman, the driver, would not look at the officer, acted aggressively and used profanities. Her eyes were bloodshot and glassy. Her face was red and she slurred her speech. Officer Reynolds also noticed an odor of alcoholic beverages inside the SUV. Boseman exited the vehicle and failed three field sobriety tests. A preliminary portable breath test indicated the presence of alcohol.

Boseman v. Dept. of Transportation, 157 A.3d 10 (Pa. Cmwlth. 3/17/17)

ISSUE #1: Did Officer Brown have reasonable grounds to believe that Boseman was operating a motor vehicle while under the influence of alcohol?

RULING #1: Yes. Speeding. Veering to the right. Abruptly stopping. Ignoring requests to pull over. Aggressive behavior. Physical appearance. Odor of alcoholic beverage. Failed sobriety tests. PBT positive for alcohol. Given the totality of these circumstances, Officer Brown had reasonable grounds to conclude Boseman was operating her vehicle under the influence of alcohol.

Boseman v. Dept. of Transportation, 157 A.3d 10 (Pa. Cmwlth. 3/17/17)

FACTS #2: Officer Reynolds arrested Boseman and gave her warnings concerning refusal of chemical testing. Boseman declared she would not submit to a blood test without talking to a lawyer. Officer Reynolds then read Boseman the DL–26 form verbatim. After the officer read the DL–26 warnings to Boseman, she agreed to take a blood test. However, while driving to the hospital, Boseman changed her mind and told the officer to go "f" himself and said she was not giving blood.

ISSUE #2: Did Officer Reynolds properly advise Boseman of the Implied Consent Law?

RULING #2: Yes. The reading of the DL–26 form sufficiently informed Boseman that if she refused to submit to the chemical test, her operating privileges would be suspended. The fact that Boseman asked questions about her right to speak with an attorney prior to the test does not negate Officer Reynolds' actions. An officer has no duty to make sure the motorist understands the warnings regarding the inapplicability of *Miranda* rights.

Boseman v. Dept. of Transportation, 157 A.3d 10 (Pa. Cmwlth. 3/17/17)

FACTS #3: The officers handed Boseman the DL–26 form, which she read twice and signed. However, Officer Brown deemed Boseman's prior conduct a refusal. Boseman read and signed the DL–26 form. Boseman asked the officers to take her to the hospital. However, the officers told Boseman that it was too late.

ISSUE #3: Did Boseman refuse chemical testing?

RULING #3: Yes. Anything substantially less than an unqualified, unequivocal assent to submit to chemical testing constitutes a refusal. A motorist's refusal need not be expressed in words; a motorist's conduct may constitute a refusal. Officer Brown had no reason to take Boseman to the hospital once she refused to take a blood test. Police officers are not required to spend time either cajoling an arrestee or waiting for her to change her mind. Once a motorist refuses chemical testing, the refusal cannot be negated by any subsequent consent to chemical testing.

SIGNIFICANCE OF THE CASE: This case reinforces established legal principles. (1) There is no right to consult with an attorney before submitting to chemical testing. (2) Anything substantially less than an unqualified, unequivocal assent to submit to chemical testing constitutes a refusal.

Commonwealth v. Gause, 164 A.3d 532 (Pa. Super. 5/24/17) (*en banc*)

FACTS: Vehicle lawfully stopped for taillight violation at 1:20 am

OBSERVATIONS REGARDING DRIVER:

- Vehicle was not stopped for reasons of erratic driving.
- Gause provided license and registration without fumbling.
- Officer smelled an alcoholic beverage.
- Gause admitted to consuming one 12-ounce can of light beer.
- No slurred speech.
- Defendant had been shot in the leg 10 years ago.

FIELD SOBRIETY TESTING:

- HGN test showed no impairment.
- Gause passed one leg stand test.
- Stepped off imaginary line during walk and turn test.
- 1st Romberg balance test: Misjudged passing of 12 seconds for 30 seconds.

Commonwealth v. Gause, 164 A.3d 532 (Pa. Super. 5/24/17) (*en banc*)

DRUG EVALUATION TESTING:

- Marijuana not seen or smelled.
- 2nd Romberg balance test: Misjudged passing of 19 seconds for 30 seconds.
- Distinct and sustained eyelid tremors were observed.

ISSUE #1: Did the evidence establish that Gause was under the influence of alcohol to such a degree as to render him incapable of safe driving?

RULING #1: No. The evidence was insufficient to prove Gause's guilt beyond a reasonable doubt.

Commonwealth v. Gause, 164 A.3d 532 (Pa. Super. 5/24/17) (*en banc*)

ISSUE #2: Did the evidence establish that Gause was under the influence of a drug or drugs to a degree which impaired his ability to safely drive?

RULING #2: No. There was no evidence that Gause had recently ingested marijuana. There was no evidence of impairment or of erratic driving. The officer did not discover any physical evidence or eyewitness testimony of recent marijuana usage. There was no admission from Gause that he had recently smoked marijuana. There was no expert testimony connecting eyelid tremors to marijuana usage.

SIGNIFICANCE OF THE CASE: Conviction at trial requires proof beyond a reasonable doubt. Minimal evidence of impairment will not meet that standard. Expert testimony is necessary to connect eyelid tremors to marijuana usage.

Commonwealth v. Haines, 166 A.3d 449 (Pa. Super. 6/30/17)

- 4:00 am: Troopers arrived at a crash; a jeep went off the road – damage to jeep
- No one was in the jeep or in the area – no signs of injuries
- Ran registration plate – came back to Douglas Haines
- Ran Haines' driver's license information; obtained description and photo
- 10 minutes later, a vehicle approached. It stopped prior to the scene.
- Vehicle drove past the scene, but troopers could not see inside.
- Troopers ran registration – came back to Samuel Haines.
- They stopped the vehicle. A female was driving. The passenger matched the photograph of Douglas Haines.
- Troopers detected an odor of alcohol coming from the vehicle, asked Haines to exit. He lost his balance, smelled of an alcoholic beverage and failed field sobriety tests. He was arrested.

Commonwealth v. Haines, 166 A.3d 449 (Pa. Super. 6/30/17)

ISSUE #1: Did the vehicle stop require probable cause or reasonable suspicion?

RULING #1: Reasonable suspicion. If it is not necessary to stop the vehicle to establish that a violation of the Vehicle Code has occurred, an officer must possess probable cause to stop the vehicle. Where a violation is suspected, but a stop is necessary to further investigate whether a violation has occurred, an officer need only possess reasonable suspicion to make the stop.

When Trooper Jacobs effectuated the stop, he was investigating a violation of Section 3746(a)(2) (Immediate notice of accident to police department). While under some circumstances a violation of Section 3746(a)(2) could be immediately apparent and require no further investigation, such will often not be the case. Here, in contrast, we confront not only an offense that may require further investigation but also a stop that sought that information from a place other than the offending vehicle. If Trooper Jacobs had reasonable suspicion that the Samuel Haines vehicle contained evidence relevant to the possible violation at issue, he was authorized to make the stop.

Commonwealth v. Haines,

166 A.3d 449 (Pa. Super. 6/30/17)

ISSUE #2: Did the trooper have reasonable suspicion to stop the vehicle?

RULING #2: Yes. Three to four minutes after the radio report of an accident, Trooper Jacobs had arrived on the scene to find a vehicle, registered to Haines, crashed with its airbags deployed. No driver was in sight. Trooper Jacobs concluded that no one had been ejected from the vehicle; accordingly, he instructed other officers to begin canvassing the area. Trooper Jacobs saw a vehicle approach the accident scene, stop for 10 to 15 seconds in the roadway, and continue up the road. At the time, shortly after 4 a.m., there was no other traffic on the road. Trooper Jacobs ran the license plate and discovered that it was owned by Samuel Haines of Latonka Drive in Mercer. The vehicle was headed in the direction of Lake Latonka. Trooper Jacobs reasonably suspected that the vehicle might have stopped to pick up the operator of the wrecked vehicle.

SIGNIFICANCE OF THE CASE: If it is not necessary to stop the vehicle to establish that a violation of the Vehicle Code has occurred, an officer must possess probable cause to stop the vehicle. Where a violation is suspected, but a stop is necessary to further investigate whether a violation has occurred, an officer need only possess reasonable suspicion to make the stop.

Commonwealth v. Bush, 166 A.3d 1278 (Pa. Super. 7/1/17)

FACTS: Trooper Jones was traveling in the left-hand lane on I-83, southbound, when he observed a dark colored SUV, traveling northbound, that had its high beams on. When he made those observations, Trooper Jones was within 300 feet of the SUV. Between the northbound and southbound lanes on I-83, there was a guardrail at the height of the concrete barriers. Defendant was driving in the northbound right hand lane, and Trooper Jones was traveling in the southbound left-hand lane. The separation between the northbound and southbound lanes was approximately sixty feet in width. Trooper Jones made a U-turn, stopped the SUV, and discovered evidence of DUI.

ISSUE #1: Did the vehicle stop require probable cause or reasonable suspicion?

RULING #1: Probable cause. Since an investigation would have provided Trooper Jones with no additional information as to whether defendant violated Section 4306 of the Vehicle Code, probable cause was necessary to justify the traffic stop.

Commonwealth v. Bush, 166 A.3d 1278 (Pa. Super. 7/1/17)

ISSUE #2: Did the trooper have probable cause to stop a vehicle for a violation of the law regarding high beam headlights, when the vehicle was on the opposite side of a divided highway, with the northbound and southbound lanes separated by a guardrail and concrete barrier?

RULING #2: Yes. Section 4306(a) provides that when the driver of a vehicle "approaches an oncoming vehicle within 500 feet, the driver shall use the low beam of light." There is no exception in the statute for divided highways, or for concrete barriers. Trooper Jones testified that the guardrail and concrete barrier did not prevent defendant's SUV's high beams from shining into his eyes, testifying that defendant's SUV's lights "affected my eyes, they were bright into my eyes." Trooper Jones possessed probable cause to stop defendant's vehicle.

SIGNIFICANCE OF THE CASE: The high beams law applies to divided highways. The trooper is to be praised for his legally helpful testimony about the impact of the high beams on his vision, despite the divided highway.

Commonwealth v. Baldwin, 147 A.3d 1200 (Pa. Super. 9/1/16)

FACTS: Philadelphia police officers were on patrol in an area known for a high number of drug and gun crimes. Baldwin was seen going behind a van in a parking lot. Taking into account the nature of the area and Baldwin's behavior, the officers believed that Baldwin may have discarded something behind the van. The officers pulled into the lot, but did not activate lights or sirens, and they did not block Baldwin's path. The officers searched behind the van but found nothing. The officers asked Baldwin for identification which he provided. An NCIC and PaCIC check of Baldwin revealed he was wanted on traffic warrants. A search incident to his arrest yielded two jars of marijuana and 25+ Xanax pills.

ISSUE: Was the request for Baldwin's identification a mere encounter or investigative detention?

Commonwealth v. Baldwin, 147 A.3d 1200 (Pa. Super. 9/1/16)

RULING: The request for Baldwin's identification was a mere encounter. As the courts have explained in numerous decisions, the police-citizen interactions will fall into one of three categories.

The "mere encounter" (or request for information) need not be supported by any level of suspicion but also carries no compulsion for the citizen to stop or respond.

The "investigative detention" must be supported by reasonable suspicion and subjects the suspect to a stop and period of detention but does not have the coercive conditions that constitute an arrest.

The "custodial arrest" must be supported by probable cause.

Commonwealth v. Baldwin, 147 A.3d 1200 (Pa. Super. 9/1/16)

The examination of Baldwin's claim focuses on prior Pennsylvania decisions which establish that asking for ID, under a specific set of facts, does not constitute an investigative detention.

In *Commonwealth v. Au*, 615 Pa. 330, 42 A.3d 1002 (2012), a police sergeant initiated contact with a car that was in the parking lot of a closed business. The sergeant asked about the age of the vehicle occupants and asked for identification. When Au retrieved his ID marijuana came into view. The Court ruled that the request for ID was a mere encounter because the sergeant did not block the vehicle's path and did not use lights or sirens.

In *Commonwealth v. Lyles*, 626 Pa. 343, 97 A.3d 298 (2014), police officers approached two men sitting on the steps of a vacant property. The officers asked why they were sitting there and requested ID. During the interaction, drugs were discovered. The Pa. Supreme Court ruled that the request for ID from Lyles did not constitute an investigatory detention since there was no restraint of liberty, use of physical force, or show of authority.

In Baldwin's case the officers entered the parking lot without lights or sirens. They did not block Baldwin's path from the lot. Only after searching the area did police approach Baldwin and ask for his identification. The totality of circumstances analysis reveals that there were no coercive elements of an investigatory stop. The request for ID was a mere encounter.

Commonwealth v. Parker, 161 A.3d 357 (Pa. Super. 5/1/17)

FACTS: On June 24, Officer James Good observed defendant engage in conduct which he believed to be a drug sale. Defendant remained an investigatory target, but no arrest was made on June 24.

On August 1, Officer Good observed a person he believed to be the same individual he had observed on June 24. Officer James Anderson was notified of the defendant's location by Officer Good. Officer Anderson followed this individual for a short time and then he and Officer Rutt both stationed their bicycles in front of the defendant at a street corner. As a pretext for the confrontation, Officer Anderson testified that he told the defendant "there was a disturbance at McDonald's and he was a part of the disturbance." Officer Anderson asked for the defendant's name, date of birth, address, telephone number and Social Security number because he did not have any identification on him at the time. After his identity was confirmed, he was released. At all times, the defendant was cooperative and provided the information requested of him. The confrontation lasted no longer than five minutes. Officer Anderson conceded on cross-examination that his sole purpose was to identify the suspect for purposes of their drug investigation.

Defendant sought to suppress the information obtained by the police during the August 1 confrontation, including his phone number which was used as evidence connecting the defendant to other drug transactions.

Commonwealth v. Parker, 161 A.3d 357 (Pa. Super. 5/1/17)

ISSUE: Did the police officers exceed the scope of a mere encounter?

RULING: Yes. Officers Anderson and Rutt confronted defendant on the street at night. Officer Anderson falsely stated to defendant that he was part of a disturbance at a McDonald's and requested information pertaining to defendant's identity. The presence of two officers, along with Officer Anderson's suggestion that defendant was suspected of criminal activity, gave rise to an investigative detention, because a reasonable person in defendant's position would not have felt free to leave.

We recognize that multiple recent decisions have held that police officers do not need reasonable suspicion to ask individuals for identification, including Au, 615 Pa. 330, 42 A.3d 1002 (4/26/12), and Baldwin, 147 A.3d 1200 (Pa. Super. 9/1/16). These decisions are distinguishable from the present case for a simple reason: the investigating officers in these cases did not suggest that the defendants were suspected of criminal wrongdoing, and therefore the encounters did not transform into investigatory detentions. In contrast, Officer Anderson insinuated that defendant was involved in a criminal disturbance at McDonald's, and therefore a reasonable person in defendant's position would not have felt free to leave.

Commonwealth v. Parker, 161 A.3d 357 (Pa. Super. 5/1/17)

The officers did not have reasonable suspicion to stop defendant. Although Officer Good observed defendant engage in a drug transaction on June 24, 2014, over one month earlier, there was no criminal activity afoot on the evening of August 1, 2014. Defendant was simply walking down the street. Indeed, his lack of criminal activity prompted Officer Anderson to invent the pretext that defendant had been part of a recent disturbance at a McDonald's.

SIGNIFICANCE OF THE CASES: (Baldwin and Parker): A request for identification constitutes a mere encounter when it is done without a show of force or coercive authority.

Commonwealth v. McCoy, 154 A.3d 813 (Pa. Super. 1/27/17)

FACTS: Philadelphia Police officers were patrolling in North Philadelphia, a high crime area due to the number of shootings, firearms arrests and armed robberies. The officers, working as part of a Mobile Field Force detail, were traveling north when they observed McCoy coming out of an alleyway on the right side (east) of the street. McCoy initially exited the alleyway and began walking southbound toward the police car. McCoy was looking down at first but did eventually raise his head to see the marked radio patrol car. When he did see the officers he "came to a full stop in his walk—and his eyes got big." He restarted his walk southbound but he slowed his pace.

The officer closest to McCoy focused on McCoy's behavior. Based on her experience, the highly violent and criminal nature of the area, the time of night (10:40 pm), the fact the McCoy was the only person on the street on this particularly cold winter night and McCoy's strange behavior the officer believed that McCoy was involved in some sort of criminality.

Upon hearing the sound of the patrol car door opening, McCoy began running. The officer never issued any verbal commands to McCoy prior to his spontaneous running. The officer began a foot pursuit of McCoy. When McCoy turned onto an intersecting street he threw a loaded .22 caliber revolver into the bed of a parked pickup truck. The pursuing officer recovered the gun and continued the pursuit until McCoy was arrested.

Commonwealth v. McCoy, 154 A.3d 813 (Pa. Super. 1/27/17)

ISSUE: Was McCoy subject to seizure when the police officer made an attempt to open the car door to engage McCoy?

RULING: No. The court revisited the three levels of police citizen interaction, the "mere encounter," the "investigatory detention" and the "custodial arrest." Opening a patrol car door was a mere encounter. From the mere encounter it was very easy to establish reasonable suspicion. McCoy's evasive and suspicious behavior in a high crime area on a particularly cold winter night, along with his unprovoked flight and the officers' extensive years of training and experience, gave the officers reasonable suspicion that criminal activity was afoot. The abandonment of the gun was the result of proper legal action and correct police tactics.

SIGNIFICANCE OF THE CASE: The recall of detail and explanation of all the factors that lead to the reasonable suspicion of criminal activity are critical to overcoming a suppression motion.

United States v. Murray, 821 F.3d 386 (3rd Cir. 4/28/16)

FACTS: Police officers were engaged in a prostitution investigation. One officer knocked on the door of a motel room. The door was opened by Jessica Burns. She allowed the police officers to enter the motel room, telling them that she was a prostitute and that she worked for the person who had rented the room, a drug dealer that provided her with drugs.

While the police were interviewing Burns, Murray knocked on the door. Jessica Burns permitted Murray to enter the room. Murray was patted him down, and the officers found a cell phone, a large sum of cash, and room keys for another motel. During the execution of a search warrant at the other motel officers found 192.4 grams of crack cocaine.

United States v. Murray,

821 F.3d 386 (3rd Cir. 4/28/16)

ISSUE: Could the police rely upon the consent of Jessica Burns to enter Murray's motel room?

RULING : Yes. Even though the room was registered to Murray, Burns had common authority or apparent authority over the room. When Murray granted Burns access to his motel room, he assumed the risk that she would permit others, including law enforcement, to enter the room when he was not present. Jessica Burns voluntarily consented to the entry by the police.

SIGNIFICANCE OF THE CASE: Under certain circumstances, police are entitled to rely upon the consent of a third person in order to enter someone else's premises.

CASES REGARDING THIRD-PARTY CONSENT

Consent by spouse or paramour:

- *United States v. Matlock*, (U.S. 1974): Paramour who possesses common authority over premises may consent to the search by the police.
- *Georgia v. Randolph*, (U.S. 2006): A physically present husband's express refusal of consent to a police search is controlling, regardless of the consent of his wife.
- *Fernandez v. California*, (U.S. 2014): *Georgia v. Randolph* applies only when the objecting spouse is physically present, saying "stay out," when officers propose to make a consent search. Although defendant had originally objected to the search, consent was lawfully granted by the defendant's paramour after defendant had been lawfully arrested and removed from the premises. *See also* *Yancoskie*, (Pa. Super. 2006) (police obtained wife's consent when husband was away on fishing trip).
- *Commonwealth v. Perel*, (Pa. Super. 2014) Girlfriend may not consent to search of boyfriend's shaving kit or luggage.

CASES REGARDING THIRD-PARTY CONSENT

Consent by family members:

- *Commonwealth v. Lowery*, (Pa. Super. 1982): Mother may consent to search of her adult son's bedroom. Mother frequently entered room; door was never locked, no other indication that son had any expectation of privacy in the bedroom with respect to his mother.
- *Commonwealth v. Pinkins*, (Pa. 1987): Defendant's bedroom was located in his mother's home. The revolver, which belonged to defendant's mother, was in defendant's jacket pocket in the closet of his bedroom.

The murder weapon belonged to defendant's mother and she had a right to search for her property anywhere in her home. Defendant's mother was acting as a property owner when she searched for her revolver in her home. Defendant did not have a legitimate expectation of privacy in any area in which his mother's revolver was located, with respect to a search by her for her property.

- *Commonwealth v. Maxwell*, (Pa. 1984): 16 year old daughter gave lawful consent to search of family home after discovering dead body.

CASES REGARDING THIRD-PARTY CONSENT

Landlord and tenant:

- *Commonwealth v. Davis*, (Pa. Super. 1999): A landlord cannot consent to a search of a tenant's premises, regardless of the landlord's right to enter and inspect. Although the landlord had the authority to enter and inspect the premises for maintenance reasons, we find that such authority, granted for a specifically limited purpose, does not equate to "common authority" over the apartment for Fourth Amendment purposes.

- *Commonwealth v. Devlin*, (Pa. Super. 1982): Landlord could give consent to the search of a basement where the tenant stored property in plain view. The basement was within the common use and control of both the landlord and other tenants, and was not exclusively within the possession of the defendant. The landlord could give consent to a search of the basement.

Mundy, J. concurring

Saylor, C.J. concurring & dissenting

Commonwealth v. Loughnane, ___ Pa. ___, ___ A.3d ___ (11/22/17)

FACTS: Police developed probable cause to believe that defendant's truck was involved in a fatal, hit and run accident. The police seized the truck from the driveway at defendant's residence. While the truck was in police custody, an eyewitness to the fatal accident identified the truck by sight and by sound.

ISSUE: Does the automobile exception, as recognized in Commonwealth v. Gary, 625 Pa. 183, 91 A.3d 102 (4/29/14), permit the police to seize defendant's vehicle from his driveway without a search warrant?

RULING: No. The automobile exception applies only to vehicles located on the street or in some other public location. A defendant has a greater expectation of privacy when his vehicle is parked in his residential driveway. In that situation the police need either a search warrant or exigent circumstances before they may seize the vehicle.

Mundy, J. concurring

Saylor, C.J. concurring & dissenting

Commonwealth v. Loughnane, ___ Pa. ___, ___ A.3d ___ (11/22/17)

SIGNIFICANCE OF THE CASE:

- This ruling reversed the Superior Court decision taught in the 2017 Legal Updates class.
- The Supreme Court of Pennsylvania did not need to decide whether or not defendant's driveway was part of the curtilage of his residence. The district attorney conceded that in this case the truck was located within the curtilage of the residence.
- There may be circumstances that permit police entry onto a residential driveway for the purposes of approaching the home and engaging in a consensual encounter with a resident of the home. In that circumstance, plain view observations regarding a vehicle in the driveway may be lawful. Future cases may provide guidance regarding this issue.
- Regardless of the outcome of those future cases, a vehicle may not be seized from a resident's private driveway without either a search warrant or exigent circumstances.

Donohue, J. concurring & dissenting
Baer, J. concurring & dissenting
Mundy, J. dissenting

Commonwealth v. Livingstone, ___ Pa. ___, ___ A.3d ___ (11/27/17)

FACTS: On June 14, 2013, at 9:30 p.m., a Pennsylvania state trooper was traveling on Interstate 79 when he observed a vehicle pulled over onto the right shoulder of the road. The engine was running, but the hazard lights were not activated. The trooper activated his emergency lights and, pulled alongside the stopped vehicle. Defendant, the sole occupant of the vehicle, was sitting in the driver's seat and she appeared to be entering an address into her vehicle's navigation system. Based upon his investigation and observations, the trooper concluded she was driving while under the influence of alcohol. Defendant was arrested.

ISSUE #1: The trooper activated his emergency lights and pulled alongside defendant's vehicle. Did that conduct constitute a stop and seizure of the defendant?

RULING #1: Yes. Despite the fact that emergency lights may be used for safety purposes, a reasonable person, innocent of any crime, would interpret the activation of emergency lights on a police vehicle as a signal that he or she is not free to leave.

Commonwealth v. Livingstone, ___ Pa. ___, ___ A.3d ___ (11/27/17)

ISSUE #2: Does activating emergency lights and pulling alongside a stopped vehicle require suspicion of criminal activity on the part of the motorist?

RULING #2: No. The Supreme Court of Pennsylvania ruled that police may engage in conduct pursuant to a community caretaking function. There are three components to community caretaking, (1) emergency aid, (2) automobile impoundment and inventory searches and (3) acting as a public servant on behalf of public safety. In these circumstances, a police officer is rendering aid and assistance, not investigating crime.

Commonwealth v. Livingstone, ___ Pa. ___, ___ A.3d ___ (11/27/17)

ISSUE #3: Under what circumstances may a police officer engage in conduct pursuant to the community caretaking function?

RULING #3:

1. Police officers must be able to point to specific, objective, and articulable facts that would reasonably suggest to an experienced officer that a citizen is in need of assistance.
2. The police caretaking action must be independent from the detection, investigation, and acquisition of criminal evidence.

So long as a police officer is able to point to specific, objective, and articulable facts which, standing alone, reasonably would suggest that his assistance is necessary, a simultaneously held, subjective, law enforcement concern by the officer will not negate the validity of that search.

3. Once the officer is assured that the citizen is not in peril or is no longer in need of assistance or that the peril has been mitigated, then any actions beyond that constitute a seizure implicating the protections provided by the Fourth Amendment.

Donohue, J. concurring & dissenting
Baer, J. concurring & dissenting
Mundy, J. dissenting

Commonwealth v. Livingstone, ___ Pa. ___, ___ A.3d ___ (11/27/17)

ISSUE #4: Did this trooper act properly, pursuant to his community caretaking function?

RULING #4: No. There are many reasons why a driver might pull to the side of a highway: the driver may need to look at a map, answer or make a telephone call, send a text message, pick something up off the floor, clean up a spill, locate something in her purse or in his wallet, retrieve something from the glove compartment, attend to someone in the back seat, or, as in this case, enter an address into the vehicle's navigation system. Pulling to the side of the road to perform any of these activities is encouraged, as a momentary distraction while driving may result in catastrophic consequences.

Commonwealth v. Livingstone, ___ Pa. ___, ___ A.3d ___ (11/27/17)

RULING #4 (cont.): The trooper was unable to articulate any specific and objective facts that would reasonably suggest that defendant needed assistance. He had not received a report of a motorist in need of assistance, and did not observe anything that outwardly suggested a problem with defendant's vehicle. Moreover, although it was dark, the weather was not inclement. Finally, defendant, who was inside her vehicle, did not have her hazard lights on. The seizure of defendant was not valid.

SIGNIFICANCE OF THE CASE: With emergency lights flashing, the approach of a stopped vehicle, requires reasonable suspicion of either criminal conduct or that a citizen is in need of assistance.
It is permissible for a police officer to have law enforcement concerns if that officer also possesses facts which reasonably would suggest that the officer's assistance is necessary.

FACTS:

Commonwealth v. Randolph, 151 A.3d 170 (Pa. Super. 11/16/16)

- On Interstate 80, Corporal Heart of the Pennsylvania State Police conducted a traffic stop of Randolph in a Chrysler minivan for violations of the Vehicle Code.
- The Corporal learned that Randolph had a prior PWID.
- Randolph was asked out of the car, during this time a trooper arrived, and the Corporal told Randolph which traffic offenses he committed and gave him a warning.
- The Corporal noticed the minivan didn't have seats in the back.
- The Corporal told Randolph he was free to leave and then as he walked towards his car he continued to ask him questions.
- Randolph said:
  - ✓ Wife had recently given birth and that they had moved from South Carolina to New Jersey.
  - ✓ Visiting his aunt's grandmother in a hospital in Ohio.
  - ✓ Did not know the name of the hospital.
  - ✓ Later said he was visiting his aunt.
  - ✓ Did not have luggage because he was not staying over, despite the long trip.
- The passenger told the trooper that he was from New York.

FACTS (cont'd):

Commonwealth v. Randolph, 151 A.3d 170 (Pa. Super. 11/16/16)

- Randolph consented to a search of the minivan, but K-9 Draco did not indicate there was any contraband in the vehicle.
- The Corporal seized cell phones and noticed an "aftermarket" compartment installed between the driver and passenger seats.
- The Corporal asked Randolph about the compartment and Randolph's "demeanor immediately became defensive."
- The Corporal applied for a search warrant for the compartment in the minivan, which had to be opened by taking the passenger door off the minivan and utilizing electric hook-ups. The search revealed 550 grams of cocaine and a scale.

Commonwealth v. Randolph, 151 A.3d 170 (Pa. Super. 11/16/16)

ISSUE #1: Were the questioning conducted by the Corporal and the consent subsequently obtained for the vehicle search lawful under the circumstances?

RULING #1: Yes.

- Consent to search was voluntary and the stop had converted into a mere encounter.
- Totality of the circumstances review for determining whether a traffic stop has become a mere encounter ("whether the individual would objectively believe that he was free to end the encounter").
- Interaction with Randolph was a mere encounter based on a totality of the circumstances (location and time of the stop; length and type of questioning; physical interactions; etc.).

Commonwealth v. Randolph, 151 A.3d 170 (Pa. Super. 11/16/16)

ISSUE #2: Did the search warrant affidavit establish probable cause to search the hidden compartment?

RULING #2: No.

- Totality of the circumstances test for reviewing probable cause within a search warrant.
- The Corporal wrote based on his "training and experience" he believed the compartment could contain illegal contraband.
- Needed to explain what training and experience or why that led to his conclusion.
- The court noted that the training and experience referenced in the affidavit "was an empty phrase" especially along with the fact that K-9 Draco failed to indicate.
- The original consent did not include the compartment (concealed and difficult to open).

SIGNIFICANCE OF THE CASE: This is a good example of a traffic stop, valid consent, and a reminder to add details to search warrant affidavits. A general statement of "based on my training and experience" is not enough. Officers should explain what specific training and experience is being relied upon and why such background is relevant to the search.

FACTS:

Commonwealth v. Watley, 153 A.3d 1034 (Pa. Super. 12/2916)

- State Police conducted a traffic stop of Watley for driving 95 miles per hour in a 45 miles per hour zone. His passenger was Randy Hayward.
- Trooper Moyer approached the passenger side and Trooper Solo approached the driver side and asked Watley why he was driving so fast.
- Watley claimed to be headed to a hospital (he had already passed two exits that would lead to the hospital).
- Watley provided an ID card for “Chonce Acey”.
- Passenger Hayward provided his alias of “Jermaine Jones” along with a date of birth, but no social security number.
- Hayward was also sitting in a manner that suggested he was trying to hide something.
- Hayward had a warrant out of New Jersey.

FACTS Cont'd:

Commonwealth v. Watley, 153 A.3d 1034 (Pa. Super. 12/2916)

- Trooper Moyer had Watley exit the vehicle and turn over his keys before returning to the vehicle.
- Passenger Hayward was also asked out of the vehicle, and Trooper Solo recovered a loaded firearm from under the floor mat ("raised into a high bump") and then directed Watley to exit the car.
- Watley decided to run for it, temporarily evading apprehension.
- Passenger Hayward asked for a jacket from the vehicle, which the troopers searched before giving to him. That search of the jacket revealed receipts with Watley's name on them.
- Search warrant for the vehicle: another firearm, ammunition for both firearms, marijuana, and thirty-four Ecstasy pills.
- Passenger Hayward gave a statement in which he indicated that Watley was the driver, Watley told him there was a gun in the car, and that Watley was a drug dealer ("he made his drops and transactions").

Commonwealth v. Watley, 153 A.3d 1034 (Pa. Super. 12/2916)

ISSUE: Did the troopers have reasonable suspicion to justify a protective sweep of the vehicle?

RULING: Yes.

- Totality of the circumstances → reasonable suspicion.
  - "Bulge" in the floor mat;
  - Watley was still in the vehicle within reach of the hidden firearm;
  - Arrest warrant and Hayward's conduct.
- Court: there was "reasonable suspicion to believe a firearm was under the floor mat" and "reasonable suspicion [for the trooper] to fear for his safety", thus the search was lawful.

SIGNIFICANCE OF THE CASE: The court used the totality of the circumstances test to analyze whether a protective sweep of a vehicle was supported by reasonable suspicion. It is important to think about and document the details of an encounter that lead to a search of a vehicle. The court will consider "the objective reasonableness of the search under the totality of the circumstances."

FACTS:

Commonwealth v. Petty, 157 A.3d 953 (Pa. Super. 3/10/17)

- Narcotics Unit of the Philadelphia Police Department set up surveillance.
- Two buys from property with CI (suspect: Darnell Faison). After second buy, they applied for a search warrant of the property.
- Third buy was conducted and search warrant was executed.
- Faison was arrested and the keys to the property were recovered off of him.
- Inside the property, police went to a second floor rear bedroom and found Petty in bed with a female.
- Petty was told to get up, but he started reaching for his pants, which were on the floor.
- The officers told Petty to stop and searched the pants.
- Inside of the pockets, officers recovered money, a wallet with Petty's ID, and a package containing drugs.
- Petty challenged the search of his pants, arguing that the search warrant for the property did not extend to his pants.

Commonwealth v. Petty, 157 A.3d 953 (Pa. Super. 3/10/17)

ISSUE: Did police properly search a pair of pants that were on the floor of a property for which they had a valid search warrant?

RULING: Yes.

- The search warrant allowed the officers to search the named location and the property contained within that location.
- Because the defendant was not wearing his pants, they were not in his possession (the "possession test"). The pants were "a plausible repository for the object of the search."
- "[A] valid search warrant authorizes the search of any container found on the premises that might contain the object of the search." See United States v. Ross, 456 U.S. 798 (1982).

SIGNIFICANCE OF THE CASE: When executing a search warrant for a property, police may also search personal belongings, which may contain the items for which they are searching, that are not in the physical possession of those within the property. The possession test is a straightforward way to consider what may be searched during the execution of a search warrant.

FACTS:

Commonwealth v. Runyan, 160 A.3d 831 (Pa. Super. 4/20/17)

- High crime area of Razzcal's bar (prior drug arrests of dealers and buyers).
- Officer Hartman had several years of experience, which included time with a drug task force.
- Officer Hartman and Officer Moyer saw a vehicle with four occupants parked by the bar and approached.
- Rear driver's side passenger was Runyan.
- Officer Hartman noticed odor of burnt marijuana and saw bag of marijuana on the floor in the rear.
- When told about the marijuana, the driver attempted to crawl to the back and to exit the car.
- The officers then asked all four occupants out of the vehicle and conducted a search of the car and the purses that were left in the car.
  - Runyan's purse: a spoon, syringe, and crack pipe.
  - Another purse, which contained an ID with the last name Runyan: two syringes and a spoon.

Commonwealth v. Runyan, 160 A.3d 831 (Pa. Super. 4/20/17)

ISSUE: Was the warrantless search of the purses conducted with probable cause and lawful under Commonwealth v. Gary?

RULING: Yes, the officers lawfully searched the vehicle and the purses pursuant to *Commonwealth v. Gary* and Interest of I.M.S.

- Totality of the circumstances: probable cause based on location of the interaction, odor of marijuana, marijuana in plain view, driver's conduct, and officer's experience. Because the officers had probable cause to search the vehicle, they were permitted to search the purses in the vehicle (which could – and did – contain illegal contraband).
- *Gary*: "Where police possess probable cause to search a car, a warrantless search is permissible."
- *Interest of I.M.S.*: "Since the police had probable cause to conduct a warrantless search of the automobile for contraband, the police could also search the juvenile's drawstring bag where contraband could be concealed."

Commonwealth v. Runyan, 160 A.3d 831 (Pa. Super. 4/20/17)

SIGNIFICANCE OF THE CASE: This case reaffirms the warrantless search of a vehicle under Commonwealth v. Gary and the search of containers in the vehicle. Officers must have probable cause, and if that is established, a warrant is not required to search the vehicle and containers in the vehicle that could contain contraband.

NOTE: If the purses were still on the defendant's person, *Gary* and *Interest of I.M.S*. would not apply, because the container is no longer in the vehicle.

Commonwealth v. Freeman,

150 A.3d 32 (Pa. Super. 10/31/16)

FACTS:

- Trooper Spence conducted a traffic stop (11:26 am on I-80) because Freeman committed Vehicle Code violations.
- Spence noticed an odor of air fresheners and Freeman was noticeably nervous.
- Freeman had a prior weapons arrest in New York.
- The vehicle was a rental, for one day, and had to be returned to New York the following morning.
- When Trooper Spence asked Freeman more about his trip, his response differed.
- Trooper Spence asked for backup and Trooper DeLaurentis arrived.
- Freeman denied consent to search, so Trooper Spence called for a K9 trooper (about 26 minutes into the encounter). After some time, the K9 trooper and dog arrived.
- The search of the vehicle was done expeditiously and the K9 indicated on the trunk of the vehicle. The time from the stop to arrest was over one hour.
- Freeman was outside of his vehicle and was asked if he wanted a jacket or to wait in the patrol car that was heated. Freeman rebuffed both options, but then complained of the cold weather during his challenge to this case.
- After getting a search warrant, the troopers recovered 80 pounds of marijuana from the vehicle.

Commonwealth v. Freeman,

150 A.3d 32 (Pa. Super. 10/31/16)

ISSUE #1: Was there reasonable suspicion for a continuing investigatory detention after the vehicle was lawfully stopped?

RULING #1: Yes. The totality of the circumstances test applies, and there was reasonable suspicion for a continuing detention.

The trooper's reasons for detaining the defendant included: the odor of air fresheners, the defendant's demeanor, the defendant's prior weapons arrest in New York, the circumstances of the car rental, the defendant's inconsistencies when asked about his trip.

The trooper also provided the relevancy of his training and experience, including: air fresheners with traffic stops involving drugs, 12 years as an officer, "several hundred traffic stops involving controlled substances," his knowledge of "source" and "destination" areas.

The trooper believed he had reasonable suspicion to call for the K9 and did so. Once the K9 indicated, the defendant was further detained pending a search warrant.

Commonwealth v. Freeman,

150 A.3d 32 (Pa. Super. 10/31/16)

ISSUE #2: Was the investigatory detention, that was lengthy and in cold weather, lawful?

RULING #2: Yes, the length of the detention was reasonable and the defendant's complaints about the cold are without merit. The length of time and the weather did not change this from an investigative detention. The court looked at the reasonableness and diligence of the officer's actions. "There was no evidence that the detention was delayed for any improper reason. It stands to reason that dispatching a canine unit to a rural location will likely take longer than doing so in an urban area. We therefore hold that the duration of the detention was not unreasonable." Regarding the weather, the trooper testified that it was not that cold, the defendant was offered his jacket (and declined), the defendant was offered to sit in the heated patrol car (and declined), and the defendant asked for his scarf (which was given to him). The court did not view the defendant's weather complaint as having any impact on the reasonableness of the investigatory detention.

SIGNIFICANCE OF THE CASE: The court found that there was reasonable suspicion for the investigatory detention. With an investigatory detention, officers should be prepared to explain the steps they took during their investigation and when they took them. The court will consider diligence and reasonableness.

FACTS:

Commonwealth v. Green, 168 A.3d 180 (Pa. Super. 7/25/17)

- On Route 115 in Luzerne County, Trooper Solo was on duty with his K9, Astor.
- Trooper Solo had ten years of experience with the State Police, prior drug trainings and experience, 1,000 drug investigations and had been accepted as an expert in drug trafficking/interdiction.
- Trooper Solo conducted a traffic stop when he detected Green speeding and noticed that Green was nervous.
- Trooper Solo recognized Green from a prior stop during which Green was a passenger in a vehicle from which drugs were recovered.
- He recognized the vehicle that Green was driving from a prior stop involving the vehicle's owner during which a needle was recovered.
- Green told Trooper Solo that he had dropped his son off in Philadelphia that morning.
- Upon checking Green's record, Trooper Solo learned that Green had prior assault and drug arrests.
- Green was asked out of the car and if he would consent to a search of the car, which Green declined.
- K9 Astor searched the exterior of the car and indicated on the driver and passenger sides.
- Upon searching the vehicle, Trooper Solo recovered 525 packets of heroin from the engine area.

Commonwealth v. Green, 168 A.3d 180 (Pa. Super. 7/25/17)

ISSUE #1: Was there reasonable suspicion to detain the defendant and for the K9 search?

RULING #1: Yes. Based upon the totality of the circumstances, the trooper had reasonable suspicion, separate from the basis for the traffic stop, that Green was transporting drugs. The facts supporting the detention and search included: Green's nervousness, the vehicle owner not being present, Green traveling from Philadelphia, a drug source location, Green's criminal history and the trooper's prior knowledge of Green and the vehicle. Based on the same factors supporting the detention, there was also reasonable suspicion for K9 Astor to search the car.

ISSUE #2: Was there probable cause to search the vehicle without a warrant?

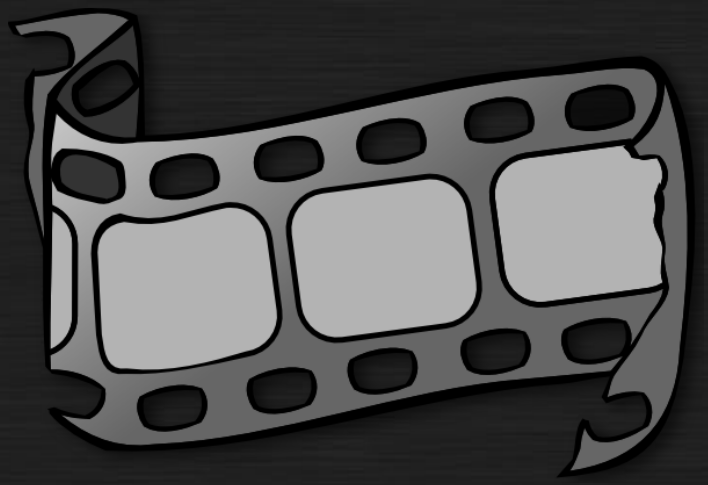
Commonwealth v. Green, 168 A.3d 180 (Pa. Super. 7/25/17)

RULING #2: Yes. K9 Astor's indication that narcotics were in the vehicle, coupled with Trooper Solo' experience, provided probable cause supporting the search. A warrant was not required, pursuant to *Commonwealth v. Gary*.

SIGNIFICANCE OF THE CASES: This case indicates the importance of providing details of a traffic stop and the law enforcement officer's experience when addressing reasonable suspicion and probable cause.

Commonwealth v. Simonson and Commonwealth Menichino

Val Pritchett Video



Commonwealth v. Champney, 161 A.3d 265 (Pa. Super. 4/26/17) (*en banc*)

FACTS #1: Champney was a murder suspect, incarcerated prior to trial on other charges. Champney was being transported from prison to a preliminary hearing on those other charges. On the return trip, Sergeant Fox asked Champney if he had shot Roy Bensinger. Champney responded, "Before I make any kind of statement, I think I should talk to Frank Cori."

ISSUE #1: Did defendant assert his right to counsel?

RULING #1: Yes. Sgt. Fox knew that Frank Cori was an attorney. Sgt. Fox also knew that when he had earlier asked Champney to give a statement about the Bensinger homicide one month earlier, Champney stated that he would have to speak to an attorney before talking to the police. Champney was in custody, was asked directly whether he had committed a murder, and identified a particular lawyer known to his interrogator. A reasonable officer would conclude that Champney clearly invoked his right to counsel.

Commonwealth v. Champney, 161 A.3d 265 (Pa. Super. 4/26/17) (*en banc*)

FACTS #2: The next contact by the police with Champney occurred five months later at the prison. They wanted to question Champney about an arson. They met with Champney in a prison conference room. Champney was advised of his *Miranda* rights and signed a waiver form.

Sgt. Fox told Champney that he believed he could put together probable cause for homicide charges against Champney. Champney asked about a plea deal and told the police to contact the District Attorney. After an unsuccessful attempt to locate the DA, Sgt. Fox returned to the conversation with Champney. During that subsequent conversation, Champney made incriminating admissions with respect to the murder.

ISSUE #2: Were the police permitted to reinitiate the interrogation of Champney five months after he had terminated an interrogation by asserting his right to counsel?

Commonwealth v. Champney, 161 A.3d 265 (Pa. Super. 4/26/17) (*en banc*)

RULING #2: Yes. In *Maryland v. Shatzer*, 559 U.S. 98 (2010), the United States Supreme Court held that interrogative custody (custody for purposes of *Miranda* warnings) ended when a sentenced prisoner was returned to his prison cell. In *Howes v. Fields*, 565 U.S. 499 (2012), the United States Supreme Court held that a sentenced prisoner, removed from his prison cell and taken to a prison conference room, and told that he was free to leave to return to his prison cell, was not in interrogative custody for purposes of *Miranda*.

Champney, who was being held in prison while awaiting trial on other charges, was in the same legal position as Shatzer and Fields. Champney's return to prison following the initial interrogation represented the same sort of "return to normalcy" experienced by Shatzer when Shatzer was returned to the general prison population. Champney experienced a break in such custody between December 23, 1997 and May 13, 1998. That break in custody lasted for longer than 14 days. Therefore, Champney's waiver of rights on May 13, 1998 was valid.

SIGNIFICANCE OF THE CASE: An assertion of the right to counsel is binding upon police officers for so long as the suspect remains in custody. A break in custody of greater than 14 days permits the police to reinitiate interrogation. The return of a prisoner to his jail cell constitutes a break in custody.

Commonwealth v. Lukach, 163 A.3d 1003 (Pa. Super. 4/11/17)

appeal granted, No. 54 MAP 2017 (9/22/17)

FACTS: Defendant was a murder suspect, brought to City Hall for questioning. Defendant was read his *Miranda* rights, and acknowledged that he understood them. The police chief questioned defendant about his whereabouts on the night of the murder. At 1:25 p.m., defendant stated, "I don't know, just, I'm done talking. I don't have nothing to talk about."

The chief advised defendant that he did not have to speak to police, stating, "You don't have to say anything, I told you that you could stop." He continued to ask questions, told defendant that he did not believe his story, and informed defendant that police officers had collected evidence from the crime scene for processing. At 1:36 p.m., police officers confiscated defendant's shoes. The chief continued to ask questions. Defendant requested to speak to a representative of the District Attorney's Office in exchange for a potential "deal." The prosecutor arrived 20 minutes later. Defendant was again advised of his *Miranda* rights and gave a detailed statement to police, confessing his involvement in the murder.

ISSUE: Did defendant assert his right to remain silent when he said he was "done talking?"

Commonwealth v. Lukach, 163 A.3d 1003 (Pa. Super. 4/11/17)

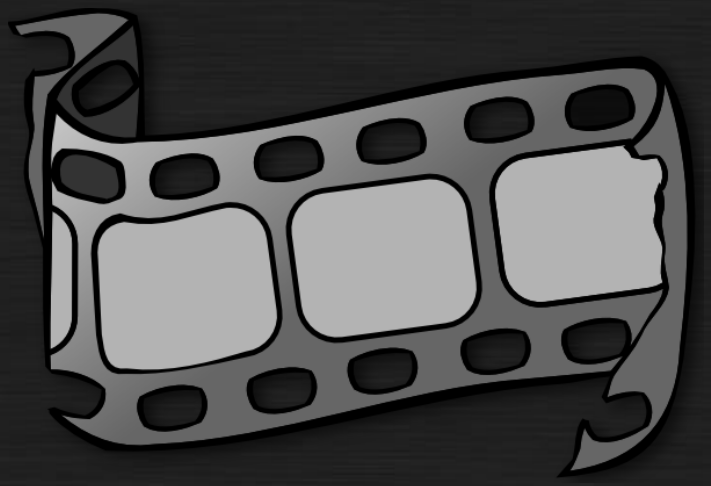
appeal granted, No. 54 MAP 2017 (9/22/17)

RULING: Yes. Although ineloquently phrased, defendant's statements were not qualified. They were not ambiguous. They were not equivocal. In response to continued questioning, defendant stated, "I don't know, just, I'm done talking. I don't have nothing to talk about." This was the sort of statement that would lead a reasonable police officer, in those circumstances, to understand the statement to be a request to remain silent. The police should not have continued the interrogation.

SIGNIFICANCE OF THE CASE: Police officers must honor an unambiguous request to remain silent, even if it is not eloquently stated. The Supreme Court of Pennsylvania has agreed to decide this case.

Commonwealth v. McFadden and Fields v. City of Philadelphia

Val Pritchett Video



Commonwealth. v. Taylor, 137 A.3d 611 (Pa. Super. 4/11/16) (*en banc*)

FACTS: A PFA order existed between defendant and his former wife which contained a "no contact through any means including through a third person" provision, with the exception that text message exchanges were permitted, solely concerning custody scheduling. A separate custody order permitted text messages for legitimate issues involving the children.

During one custody exchange, defendant told his child (a third party) to ask his ex-wife about the sale of the marital residence. The child did so and a conversation then occurred between the two ex-spouses. On a second occasion, the defendant sent a text message directly to his ex-wife again concerning issues with the marital residence.
The defendant was found guilty of Indirect Criminal Contempt (ICC) for two violations of the court's order.

ISSUE: Were the ICC convictions proper since the court order permitted texting for matters which involved the children?

Commonwealth. v. Taylor, 137 A.3d 611 (Pa. Super. 4/11/16) (*en banc*)

RULING: Yes. The evidence was sufficient in both instances of communication (through the child and via the direct text message) to support convictions for violations of the PFA order.

SIGNIFICANCE OF THE CASE: In both instances, the defendant agreed that the PFA order was clear, that he had notice and that he initiated contact. In reviewing the evidence the Superior Court agreed that he also acted with wrongful intent in that his communication concerned their jointly owned real estate and did not, as he contended, concern where their children would live. In this case the findings of the trial court were supported by the record and evidenced that both communications resulted in proper PFA violations as both met all four prongs of the ICC test.

Commonwealth v. Lambert, 147 A.3d 1221 (Pa. Super. 9/7/16)

FACTS: Plaintiff obtained a PFA order against defendant which specifically stated that the defendant, "may not post any remark(s) and/or images regarding plaintiff, on any social media networks…"

The day following the entry of the final PFA order, the defendant authored several posts on his own Facebook page which regarded but did not specifically name the plaintiff. These posts included an image of their shared tattoo, called her specific pet names, and referenced both a recently estranged paramour and the three years the PFA would be in effect. Based on those postings the court convicted the defendant of ICC for violating the PFA order.

ISSUE: Whether the evidence was sufficient to convict the defendant of ICC for violation of the PFA order?

Commonwealth v. Lambert, 147 A.3d 1221 (Pa. Super. 9/7/16)

RULING: Yes. In this case the order was clear as to the prohibited conduct, the contemnor (the defendant) had notice, the postings were a volitional act and the contemnor acted with wrongful intent.

SIGNIFICANCE OF THE CASE: Social media posting on a personal social media page may subject the poster to ICC charges. Wrongful intent is imputed where the facts show that the poster's actions would be a violation. Although the plaintiff was not named, the proximity in time from the entry of the order to the postings along with the several identifying posts lead to the conclusion that the posts were referring to the plaintiff in violation of the order.

T.K. v. A.Z., 157 A.3d 974 (Pa. Super. 3/14/17)

FACTS: T.K. (former wife) and A.Z. were married for eleven years and separated in 2009. The separation was contentious such that child custody exchange had to occur at a local police station and communication was to occur through a court-monitored application.

In the seven years following the separation, A.Z. stalked T.K. by following her in his car almost every day, following her in the local grocery store, following her to the bathroom at the local football game and sitting near her at that game while making loud comments about her. He also watched her and the children while they were sledding, constantly called the children and told them he was near T.K.'s home and would honk when he drove past. These actions caused T.K. to be concerned for her safety based on the escalating behavior. The Court ordered the entry of a PFA based on this conduct and A.Z. appealed.

ISSUE: Whether the entry of the PFA order was proper based on the evidence presented?

T.K. v. A.Z.,157 A.3d 974 (Pa. Super. 3/14/17)

RULING: Yes. The PFA order was properly entered. The behavior described falls squarely within the conduct contemplated by the PFA statute in its definition of abuse.

SIGNIFICANCE OF THE CASE: Engaging in a course of conduct or repeatedly committing acts towards another (including following without proper authority) which causes the person fear for their safety is that type of conduct defined as abuse under the PFA statute. A victim is not required to testify that he/she was "afraid" if the victim testified the conduct placed him/her in deep concern for his/her personal safety.

Special procedures for cases involving violations of Protection From Abuse (PFA) orders

DETERMINATION OF CHARGES – CRIMINAL OR PFA-ICC

- In many cases, a person who violates a Protection from Abuse (PFA) order may be charged with Indirect Criminal Contempt (ICC) for the violation of the court order and the accused may also be charged with other criminal offenses. These other criminal offenses may involve crimes committed against the victim or illegal weapons or drugs seized when the accused is apprehended.

- If a defendant pleads guilty to ICC or is found guilty of ICC for violating the PFA order, that ICC conviction may prohibit the defendant from being separately tried or punished for other criminal conduct committed during that criminal episode. Therefore, many District Attorneys want to charge the accused only with the criminal offenses or only with the ICC, but not both.

Special procedures for cases involving violations of Protection From Abuse (PFA) orders

DETERMINATION OF CHARGES – CRIMINAL OR PFA-ICC

1. Has the victim suffered bodily injury or serious bodily injury? If so, the criminal charges are more important than the ICC charge.

2. Is it necessary to immediately remove the accused from the scene? If the situation allows for a choice between a lesser criminal charge where the accused is not subject to warrantless arrest or a PFA violation which permits a warrantless arrest, and removal from the scene, then the ICC charge is more important than the criminal charges.

3. Police officers are encouraged to contact either their District Attorney's Office or the on-call Assistant District Attorney for guidance regarding which charges to file.

4. In the rare situation where both ICC and criminal charges are to be filed, separate criminal complaints may be needed according to the procedures in your county. Please follow your county's practices regarding the filing of complaints. Please also insure that the ICC charge and any related criminal charges are resolved at a single court proceeding.

IMPORTANT PROCEDURES FOR THE PROTECTION OF PFA VICTIMS

Out-of-state protection orders are enforceable under the full faith and credit provision of the PFA Act. Officers should make note of the effective dates of the order, and the specific restrictive provisions. PFA plaintiffs (potential victims) should be advised to register their out-of-state order with the Prothonotary's Office in the County Courthouse. Orders registered with the Prothonotary will be registered in NCIC.

Proof of Indirect Criminal Complaint for violation of a PFA requires that:

A. The order is definite, clear and specific, leaving no doubt as to what conduct is prohibited.

B. The accused had notice of the order.

C. The acts constituting the violation must have been volitional.

D. The accused acted with wrongful intent.

In the Interest of R.A.F., 149 A.3d 63 (Pa. Super. 9/21/16)

FACTS: Officers in Harrisburg were on patrol in a part of the city known for vandalism and for individuals carrying guns. Their attention was drawn to two juveniles who entered an abandoned lot and began rummaging on the ground. As they watched, R.A.F. picked up a shotgun, loaded it and concealed it down his pant leg and under his sweatshirt. The juveniles then walked away and were stopped. The shotgun's barrel had been visibly shortened to 18 and 9/16 inches, the stock shortened or removed and the serial number obliterated. R.A.F. was adjudicated delinquent for possession of a prohibited offensive weapon.

ISSUE: Whether the juvenile possessed the legal *mens rea* that is that he consciously disregarded a substantial and known risk that he was possessing a firearm made or adapted for concealment under 18 Pa.C.S. § 908?

In the Interest of R.A.F., 149 A.3d 63 (Pa. Super. 9/21/16)

RULING: Yes. The evidence was sufficient to support the juvenile's conviction that he intentionally, knowingly or with reckless disregard of a substantial and unjustifiable risk to others, possessed the sawed-off shotgun. R.A.F and his cohort searched through tall grass and intentionally retrieved the shotgun, R.A.F. then loaded the shotgun with the appropriate ammunition for that weapon, ammunition R.A.F. brought with him to the scene. Those facts along with the clear concealment inside R.A.F.'s pants permit the reasonable inference that R.A.F. was aware of the shotgun's unlawful nature and intended to possess it for no lawful purpose.

SIGNIFICANCE OF THE CASE: Retrieving a shotgun and concealing it establishes the elements of unlawful possession.

Commonwealth. v. Goslin, 156 A.3d 314 (Pa. Super. 2/16/17) (*en banc*)

FACTS: A father (the defendant) attended a meeting with school personnel at his son's elementary school regarding his son's possession of a pocket knife on school property. The defendant was agitated and he had a threatening demeanor. At one point, the defendant brought out his own pocket knife and slammed it down on the table. Defendant was charged and convicted of possession of a weapon on school property.

ISSUE: Whether the evidence was sufficient to sustain the conviction for possession of a weapon on school property?

Commonwealth. v. Goslin, 156 A.3d 314 (Pa. Super. 2/16/17) (*en banc*)

RULING: No. Under the statute as written, it is a defense to possess a weapon on school property if it is possessed for any "other lawful purpose" regardless of whether the possession is related to the reason that the person is on school property.

SIGNIFICANCE OF THE CASE: Any person may bring any weapon onto school property if the person possesses the weapon for any lawful purpose. The Superior Court expressed its concern about individuals possessing weapons on school property and urged the legislature to review the language of the statute.

Commonwealth. v. Martinez, 153 A.3d 1025 (Pa. Super. 12/29/16)

FACTS: The complainant left a restaurant to go to an outside location to relieve himself. He walked to an alley across the street. When he got into the alley, Martinez, approached the complainant and asked if he needed anything. The complainant replied he didn't need anything he was just relieving himself.

Martinez proceeded to ask the complainant "What do you got?" The complainant responded he had nothing. Martinez produced a silver revolver which he pressed against the complainant's cheek. Martinez then went on to slam the complainant's head into a nearby car before taking a cell phone and $50 from the complainant. Martinez was arrested later that evening. He was found guilty of multiple offenses, including terroristic threats.

ISSUE: Was the evidence sufficient to support the terroristic threats conviction where the defendant did not speak any threats but only uttered "What do you got?"

Commonwealth. v. Martinez, 153 A.3d 1025 (Pa. Super. 12/29/16)

RULING: Yes. The terroristic threats statute requires communication of a threat to commit a crime of violence with the intent to terrorize. An express or specific threat is not necessary to convict for terroristic threats. It is also unnecessary for an individual to specifically articulate the crime of violence which he or she intends to commit where the crime can be inferred.

In this case, in a dark alley, Martinez placed a gun against the complainant's face after an initial verbal exchange. He then proceeded to rummage through the complainant's pockets and take personal property and money belonging to the complainant. Based on the totality of circumstances, it is reasonable to infer that Martinez's words and actions established a threat to commit a crime with the intent to terrorize the victim.

SIGNIFICANCE OF CASE: The charge of terroristic threats can be established by a totality of circumstances analysis even where there is no specific threat uttered. The behavior and words of the offender can form the basis for the crime of terroristic threats.

Lazarus, J. concurring opinion

Commonwealth. v. Smith, 146 A.3d 257 (Pa. Super. 8/25/2016)

FACTS: Police officers went to Smith's residence to execute a material witness warrant. They were initially met by Smith's mother. Smith was spotted descending the staircase from the second floor. Upon seeing the police, Smith ran toward the back of the house. The officers gave chase. He was found in the basement, hiding under the stairs.

When the officers took Smith into custody, they made several observations. The officers saw a small semi-automatic pistol, a pistol magazine and a bag of bullets on a dresser in the basement. The manufacturer's serial number had been ground down but could still be seen with magnification. Smith was convicted of a violation of 18 Pa.C.S. § 6110.2 (possession of a firearm with an altered manufacturer's number).

ISSUE #1: Was the evidence sufficient to support the possession of a firearm with an altered or obliterated serial number?

Lazarus, J. concurring opinion

Commonwealth. v. Smith, 146 A.3d 257 (Pa. Super. 8/25/2016)

RULING #1: Yes. To sustain a possession charge the Commonwealth must establish actual possession or constructive possession. Smith did not have the gun on his person at the time of arrest. This fact makes actual possession impossible. Therefore, the Commonwealth must prove that Smith constructively possessed the gun on top of the dresser. Constructive possession can be proven through a set of circumstances that would lead to a conclusion that possession of a contraband item was more likely than not.

In this case the circumstantial evidence goes against Smith. First, Smith's flight into the basement demonstrated a consciousness of guilt. Second, the testimony of the officers established that the identification cards, sneakers, and mail found in the basement belonged to Smith. The circumstantial evidence presented by the Commonwealth established constructive possession of the firearm.

Lazarus, J. concurring opinion

Commonwealth. v. Smith, 146 A.3d 257 (Pa. Super. 8/25/2016)

ISSUE #2: Was the evidence sufficient to prove the firearm had an altered or obliterated serial number?

RULING #2: Yes. The serial number on Smith's gun could be made out but magnification was required to do so. The Philadelphia Police firearm examiner testified that the wear on the serial number area of the gun was not normal wear, but was the result of someone taking a tool and grinding down the serial number area. The fact that someone tried to make the serial number illegible satisfies that statutory requirement that the number had been changed or altered.

SIGNIFICANCE OF CASE: When establishing constructive possession there must be sufficient circumstances that would lead to an inference that possession was more likely than not. To establish the altered number requirement of Section 6110.2 the Commonwealth must show that the firearm's serial number was degraded to render it illegible by ordinary observation.

Commonwealth. v. Anderson, ___ A.3d ___ (Pa. Super. 8/23/2017) (*en banc*)

FACTS: Anderson was charged with two violations of the Pennsylvania Uniform Firearms Act [PUFA]. Anderson was on his way home from his job as a private security guard, and he stopped at a party to pick up a friend who had asked him to take her home. He had a confrontation with Mr. Ellis. Ellis pulled out a gun, and Anderson tried to grab that gun from him. Anderson shot and killed Ellis. Anderson was not licensed to carry a firearm, but he did possess a valid Act 235 [Lethal Weapons Training] certificate. The trial court dismissed the charges.

ISSUE: May Anderson be charged with carrying a firearm without a license when he possessed a certificate of completion of Lethal Weapons Act training?

Commonwealth. v. Anderson, ___ A.3d ___ (Pa. Super. 8/23/2017) (*en banc*)

RULING: Yes. The PUFA requires a person carrying a firearm to have a license, but an Act 235 certificate is not a license and does not function as a type of document that could serve as a substitute for a license. Nothing in the PUFA authorizes anyone to substitute another form of gun authorization for the license required by the PUFA.

Section 6106(b) contains no exception for persons carrying Act 235 certificates. The exceptions in Section 6106(b) are defenses that may be raised at trial. Anderson may defend himself by seeking to prove that he meets each of the elements described in Section 6106(b)(6) for persons who protect valuables and property in the discharge of their duties. But the fact that Anderson may assert a defense under Section 6106(b)(6) does not mean that his possession of an Act 235 certificate entitles him to have the charges dismissed.

SIGNIFICANCE OF THE CASE: A Lethal Weapons Act certificate is not a substitute for the license required by law to carry a firearm.

Commonwealth v. Shull, 148 A.3d 820 (Pa. Super. 9/13/16)

FACTS: At 3:00 a.m. a college student was walking home after work. Defendant stopped the student, asked for directions, then asked for money. He blocked her when she attempted to walk away, reached for her purse, threw her to the ground, grabbed her by the hair and dragged her down the street. As she was being dragged, she noticed a gun in his hand.

ISSUE: Was the evidence sufficient to convict defendant of robbery where he made no verbal threats, never pointed the gun at her and never mentioned the gun's existence?

Commonwealth v. Shull, 148 A.3d 820 (Pa. Super. 9/13/16)

RULING: Yes. Under cover of darkness on an isolated street, defendant reacted violently, physically overwhelmed the victim, and aggressively dragged her by the hair while clutching a gun--with finger on trigger-- directly over her face. The victim's belief that he was prepared to inflict serious bodily harm upon her was entirely reasonable.

SIGNIFICANCE OF THE CASE: A gun can place a victim in fear of serious bodily injury even if the gun is not pointed at the victim or used to make an explicit threat.

Commonwealth v. Lloyd, 151 A.3d 662 (Pa. Super. 11/29/16)

FACTS: Defendant, pretending to need assistance, induced a parking garage attendant to open the door to the booth in which he was working. Defendant forced his way inside the booth, knocking the attendant to the side with his body. While inside the booth, defendant stole keys belonging to vehicles parked in the garage.

ISSUE: Was the evidence sufficient to convict the defendant of robbery?

Commonwealth v. Lloyd, 151 A.3d 662 (Pa. Super. 11/29/16)

RULING: Yes. Defendant gained entry to the valet-booth by using his body to physically remove the attendant from the entrance. In so doing, defendant forcefully separated the attendant from the keys under his protection.

SIGNIFICANCE OF THE CASE: The force necessary to elevate a theft into a robbery may be established by showing that the defendant used force to separate the victim from the stolen property.

Commonwealth. v. Furness, 153 A.3d 397 (Pa. Super. 12/22/16)

FACTS: The resident testified that he saw Furness walk by his window with a screwdriver or similar tool in his hand, and that Furness "stuck [the tool] wherever the top and the bottom window actually meet." The resident also testified that the window lock is between the top and bottom panes, and that Furness attempted to pry open the lock using the tool.

ISSUE: Was there a sufficient entry by defendant into the residence to establish defendant's guilt of criminal trespass?

Commonwealth. v. Furness, 153 A.3d 397 (Pa. Super. 12/22/16)

RULING: No. Although entry by an instrument or by a tool will constitute an entry by the defendant, the instrument or tool must actually cross into the interior of the residence. Only that the outer portion of the window pane was "indented," and there was no hole in the pane such that a tool could protrude through the outer boundary. Absent evidence to suggest that Furness, or any portion of a tool used to pry open the lock, protruded through the window pane and entered into the interior of the premises, the jury could not reasonably infer that Furness had gained entry into the home.

SIGNIFICANCE OF THE CASE: Burglary and criminal trespass are like football where it is necessary to "break the plane of the goal line." Where there is no actual entry into the residence either by the defendant or by a tool or instrument possessed by the defendant, the evidence is not sufficient.

Commonwealth. v. Wanner,

158 A.3d 714 (Pa. Super. 3/28/17)

FACTS: On January 26, 2016, defendant and her co-defendant rang the doorbell of a fur shop. When the shop owner came to the door, they told her that they were curious about the shop's products. She allowed them to enter. After entering the shop, they began touching the furs and asking questions about the furrier process. Suddenly, their tone changed, as they began referencing the Bible and asking the shop owner if she thought she was God. At that point, the shop owner asked them to leave. She repeated the request multiple times but they would not go.

A scuffle occurred as the owner attempted to usher defendant and her co-defendant from the shop area into the lobby. During the scuffle, defendant thrust her cell phone into the shop owner's face. The owner somehow got possession of both defendant's and her co-defendant's phones as she ushered them outside the shop and into the lobby. Another scuffle ensued after they were all in the lobby as the owner tried to lock the shop door behind her. After she was eventually able to get the door locked, she ran up the steps to the office to call the police. Defendant and her co-defendant ran screaming behind her. They were still in the lobby when the police arrived.

ISSUE: Was the evidence sufficient to convict the defendant of defiant trespass?

Commonwealth. v. Wanner,

158 A.3d 714 (Pa. Super. 3/28/17)

RULING: Yes. Defiant trespass includes and element of intent. Therefore, a defendant who enters a property with a bona fide, good faith, but mistaken belief that he was entitled to be there cannot be convicted of Defiant Trespass.

Defendant argued that the shop owner's act of confiscating her phone made it reasonable for her to remain in the lobby of the shop until police arrived. However, this argument fails for two reasons. In the first instance, the crime was complete before the cell phones had been wrested from defendant and her co-defendant. The owner had revoked their privilege to remain in the store by telling them to leave numerous times. However, they refused. Furthermore, it was clear that their refusal to leave was not because their telephones had been taken; it was part of their plan to harass the shop owner because of her business.

SIGNIFICANCE OF THE CASE: Defiant Trespass requires proof of criminal intent. It must be proven that defendant remained on the premises knowing that he had no right to be there. Criminal intent was proven in this case.

Commonwealth v. Hutchison, 164 A.3d 494 (Pa. Super. 5/22/17)

FACTS: Hutchison and Miles rented an apartment together. On July 7 or 8, Miles died of a drug overdose in the apartment. Hutchison discovered Miles' body on July 8. Two days later, he finally called the police and notified them that there was a dead body in the apartment. When police arrived, Hutchison originally told them that he discovered Miles' body that morning.

ISSUE: Was the evidence sufficient to convict Hutchison of Abuse of Corpse?

RULING: Yes. Section 5510 of the Crimes Code provides that a person who treats a corpse in a way that he knows would outrage ordinary family sensibilities commits a misdemeanor of the second degree. Hutchison concealed Miles' corpse from authorities so that she could not receive a proper burial. This inaction violated Section 5510.

SIGNIFICANCE OF THE CASE: The offense of Abuse of Corpse does not require physical damage to the dead body, and the offense may be caused by inaction as well as by active conduct.

Commonwealth v. Storey, ___ A.3d ___ (Pa. Super. 7/20/17)

FACTS: O'Reilly asked his friend, Possinger to obtain heroin for him. Possinger obtained the heroin from his usual dealer, Mr. Storey, the defendant. Possinger gave O'Reilly the heroin obtained from Storey. O'Reilly died as a result of consuming the heroin that Possinger purchased from Storey.

ISSUE: May Storey be convicted of the drug delivery resulting in O'Reilly's death when he did not sell the heroin directly to O'Reilly and did not even know of O'Reilly's existence?

RULING: Yes. In order to find Storey guilty, the jury must have found beyond a reasonable doubt that Storey: (i) intentionally sold a controlled substance, and (ii) the death of another person resulted from this sale. 18 Pa.C.S. § 2506(a). Those elements were proven beyond a reasonable doubt. The presence of an intermediary does not change the result.

SIGNIFICANCE OF THE CASE: A conviction for a drug delivery which results in a death does not require any direct contact between the seller and the victim.

Commonwealth v. Vetter, 149 A.3d 71 (Pa. Super. 9/27/16)

FACTS: Corporal Skywalker observed Vetter's car stopped in the traveling lanes of southbound Route 61 with the driver's side door opened and the occupant of the vehicle standing outside the vehicle in between the door and his vehicle with his back towards the Corporal and his hands in front of him as though he was urinating in the roadway. The trial court dismissed the charge of disorderly conduct, concluding that defendant's conduct did not constitute disorderly conduct.

ISSUE: Did defendant commit disorderly conduct?

Commonwealth v. Vetter, 149 A.3d 71 (Pa. Super. 9/27/16)

RULING: No. 18 Pa.C.S. § 5503(a)(4) is the only section potentially applicable to public urination (creating a physically offensive condition). However, the offense of disorderly conduct is not intended as a catchall for every act which annoys or disturbs people. It is not to be used as a dragnet for all the irritations which breed in the ferment of a community. It has a specific purpose; it has a definite objective; it is intended to preserve the public peace. The Commonwealth presented no evidence to demonstrate how Vetter's conduct, urinating at the side of a highway, in the dark of night, in a snow storm, away from any residence or businesses, positioning himself such that he was largely protected from view, was likely to lead to tumult and disorder.

SIGNIFICANCE OF THE CASE: Disorderly conduct is not a crime to be charged whenever there is bad behavior. There must be proof of a breach of the peace and a risk of public disorder.

Thank You for Your Attention

Legal Update

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