

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**CLIFFORD VINCENT LIBERTI,
Defendant**

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CR-1933-2016

RECONSIDERATION

ORDER

On May 25, 2017, Defense Counsel filed a Motion to Reconsider the Order of May 9, 2017. The Court granted reconsideration and an argument was scheduled for August 18, 2017.

Defense Counsel argues that the law does not allow conditioning a privilege (driving) on surrendering a constitutional right (right to be free from unreasonable searches) and cites the case Camara v. Municipal Court of the City and County of San Francisco, 87 S.Ct. 1727 (U.S. 1967) (whereby an occupant sought to enjoin criminal proceedings against him based upon his refusal to submit to a warrantless search of his apartment by a building inspector for respondent city). The Supreme Court ruled the occupant “had a constitutional right to insist that inspectors obtain a warrant to search and that appellant may not constitutionally be convicted for refusing to consent to the inspection.” The Court finds the holding in Camara to be analogous to that in Birchfield¹, DUI Defendants cannot be subject to a criminal conviction for refusing to consent to a chemical search of their blood.

Birchfield held that chemical searches of drivers’ blood were not excepted from the warrant requirement as searches incident to arrest. But consent is still a valid exception to the warrant requirement. The Birchfield Court directed the lower court to

¹ 136 S. Ct. 2160, 2185 (2016).

reconsider its upholding the suspension of a driver's license when the driver had been warned that he would be subject to criminal penalties if he refused the blood draw. The case was remanded to reconsider the driver's consent to the blood draw in light of the partially inaccurate advisory, that there was a criminal penalty associated with refusal alone. The Court finds the legal standard as created by Birchfield advises the Court to consider all the circumstances in which a Defendant consented and to determine whether that consent was voluntary or due to coercion.

In the facts here, the Defendant was not advised that there would be a criminal penalty if he refused. This Court, in its opinion of May 9, 2017, considered all the circumstances surrounding Defendant's consent to the blood draw and found that the consent was voluntary. The Court finds that the DL26B form that was used in Defendant's case complies with the requirements of Birchfield. Gordon092617bt; Wilt101817bt. As such, Defendant's Motion for Reconsideration of the Order of May 9, 2017, is hereby DENIED.

BY THE COURT,

Nancy L. Butts, President Judge

cc: Peter Campana, Esq.
DA
Gary Weber, Esq.