

The court recognizes that the law as it is offers a sanctuary on the other side of the state line. The remedy is in the amendment of the Maryland law to permit the fresh pursuit of drivers believed to have committed an indictable offense in another state. Pennsylvania has such a law. Act of 1976 P.L. 586, 42 Pa.C.S.A. §8922.

ORDER OF COURT

November 25, 1985, the evidence obtained by the police officer after he crossed the Maryland state line is suppressed and the case is dismissed for the reasons stated in the opinion. The costs shall be paid by the County.

COMMONWEALTH v. DURHAM, C.P. Franklin County Branch,
No. 484 - 1985

Vehicle Code - Driving Under Influence - Charges Within Five Days of Arrest

1. If a person is arrested for driving under influence and is released under Rule 130(d) the complaint must be filed within five days of arrest.
2. It is not improper for an officer to file a complaint more than five days after a blood test was taken where defendant was taken to a hospital for medical reasons and a blood test was taken prior to defendant's arrest.

John F. Nelson, District Attorney, Counsel for Commonwealth
E. Franklin Martin, Esquire, Counsel for Defendant

OPINION AND ORDER

EPPINGER, S.J., January 8, 1986:

While William A. Durham, Jr. was driving an automobile in Washington Township on July 19, 1985, he was involved in an accident. When a township police officer arrived at the scene, he found Durham lying unconscious on the hood of his car. At that time the officer noticed the odor of alcohol on Durham's breath. An ambulance and medics were summoned and after Durham was removed, the officer continued his investigation. He concluded that Durham was driving north on Pa. Route No. 16 when his car struck a parked vehicle, went up an embankment, flew through the air and landed nose first.



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LEGAL NOTICES

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on March 12, 1986, an application for a certificate for the conducting of a business under the assumed or fictitious name of Greencastle Family Dental Care, with its principal place of business at 50 Eastern Avenue, Greencastle, Pennsylvania, 17225. The name and address of the person owning or interested in said business is Robert E. Wennick, D.D.S., 358 Lincoln Way West, Chambersburg, PA 17201.

Jay H. Gingrich
Wertime, Guyer & Gingrich
11 South Washington St.
Greencastle, PA 17225

8-29-86

NOTICE is hereby given that on August 18, 1986, the petition of Willie Campbell, Jr. was filed in the Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, praying for a decree to change the name of said Franklin Campbell to Willie Campbell, Jr.

The Court has affixed September 25, 1986, at 10:45 A.M., in the assigned courtroom, as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any, they have, why the prayer of said petition should not be granted.

8-29, 9-5, 9-12, 9-19

LEGAL NOTICES, cont.

IN THE COURT OF COMMON PLEAS OF THE 39th JUDICIAL DISTRICT OF FRANKLIN COUNTY, PENNSYLVANIA — ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: September 4, 1986.

LLOYD: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Executor of the Estate of John H. Lloyd, late of Greene Township, Franklin County, Pennsylvania, deceased.

ROSENBERRY: First and final account, statement of proposed distribution and notice to the creditors of Valley Bank and Trust Company, Chambersburg, Pennsylvania, Executor of the Estate of Roy J. Rosenberry, late of Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

THOMAS: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Executor of the Estate of Earl A. Thomas, late of Hamilton Township, Franklin County, Pennsylvania, deceased.

Robert J. Woods
Clerk of Orphans' Court

8-8, 8-15, 8-22, 8-29

Later the officer went to the hospital where he observed Durham in the emergency room, strapped on a back board, conscious but appeared to be passing out. The treating physicians advised the officer that Durham had a possible neck sprain.

During this observation the officer felt Durham had been operating under the influence of intoxicants. He asked Durham for a blood sample to be tested for alcohol content, advising that if he refused, his operating privileges would be suspended. Durham signed a chemical release form at the hospital, the same was taken and given to the officer who placed it in a refrigerator and on July 22, 1985 sent it to a laboratory for analysis. The report was received July 25, 1985, showing 0.15% alcohol by weight in the blood and the complaint charging the defendant with driving under the influence of intoxicating liquor to a degree rendering him incapable of safe driving and when the amount of alcohol by weight in his blood was 0.10% or greater was filed July 26, 1985.

The district justice of the peace issued a summons and Durham appeared for a hearing. At that hearing, Durham moved the district justice of the peace to dismiss the case because "the charges were not filed within 5 days of the date of arrest without a warrant." The district justice of the peace denied the motion and Durham was bound over to court.

In this omnibus pretrial motion defendant renews that objection, citing Pa.R.Crim.P. 130(b) and (d) and *Commonwealth v. Revtai*, ___ Pa. Super. ___, ___, 494 A.2d 399, 401 (1985). In *Revtai* it was held that the provisions of Rule 130(d) are mandatory and that if an operator is arrested for driving under the influence and is released under Rule 130(b), the complaint must be filed within five days of the arrest. The accident was on July 19 and the complaint was not filed until July 26.

In this case Durham was not transported to the hospital to have a sample of his blood taken. He was transported there for treatment. While there the blood sample was requested, Durham consented and the emergency room staff took the sample. To do this it was not necessary to arrest the defendant. Our courts have held that while a test for blood alcohol can be taken at the scene of

the accident where it is necessary for the police to transport a person to a place where blood or breath will be conducted, a lawful arrest is required; *Commonwealth v. Quarles*, 229 Pa. Super. 363, 389, 324 A.2d 452, 466 (1974).

There is no evidence in this case that Durham was arrested on July 19, 1985. He was taken to the hospital for medical reasons. Under the Vehicle Code, 75 Pa.C.S.A. §3755, if as a result of a motor vehicle accident the driver is taken to a hospital for treatment and if *probable cause exists* (emphasis ours) to believe he is driving under the influence, emergency room personnel shall promptly take a blood sample for testing to determine the alcohol content of the person's blood. It has been held in *Quarles*, that an arrest was not required under the implied consent law then in force before a breathalyzer test was taken. Under the language of that act such test might be taken if the officer had reasonable grounds to believe the person to be tested had been driving under the influence. "Reasonable grounds to believe" and "probable cause exists" are equivalent. See *Quarles*, supra.

So we conclude that the taking of the blood and testing it was appropriate and that since Durham was not under arrest when the test was taken, it was not improper for the officer to file the complaint more than five days after the test was taken. In *Commonwealth v. Pekley*, Slip Opinion, No. 1042 Pittsburgh 1984, filed November 29, 1985, the circumstances were similar. There an accident occurred, the medics transported the driver to the hospital for treatment after being instructed by the investigating officer to get a blood alcohol test performed at the hospital. They did, the officer on going to the hospital, learned that it was 0.233% and then placed the operator under arrest for driving under the influence. Relying on the language of the Vehicle Code, 75 Pa.C.S.A. §1547, the implied consent section the court held that the results were admissible even though defendant had not consented to the taking of his blood.

ORDER OF COURT

January 5, 1986, defendant's omnibus pretrial motion to dismiss the information is denied.

STRAIT, ET AL, v. BOARD OF COMMISSIONERS OF FULTON COUNTY, ET AL, Fulton County Branch, No. 233 of 1985-C

Equity - Class Action - Real Estate Assessments - 4th and 8th Class County Assessment Law

1. An aggrieved taxpayer may not proceed into the Common Pleas court without first going through the assessment appeals board, unless his attack is upon the validity of the taxing statute.
2. The appeals process of the assessment law covers a class action as well as individual taxpayer's claims.
3. The Court may exercise equitable jurisdiction in spite of plaintiffs' failure to exhaust the statutory appeals process if he alleges a substantial constitutional question.

DeWayne Thomas Newman, Esq., Counsel for Plaintiffs

Stanley J. Kerlin, Esq., Counsel for Defendants

WALKER, J., March 6, 1986:

Plaintiffs, seventeen property owners residing in Fulton County, filed a class action suit in equity. It is alleged that their assessments were not set at the current market value or actual value as required by the Fourth to Eighth Class County Assessment Law. Therefore, the plaintiffs seek to recover back taxes allegedly owed them due to the alleged improper assessments of their respective properties.

The defendants — the Board of Commissioners of Fulton County, the Board of Assessment Appeals of Fulton County, and Maynard Gordon — filed preliminary objections to the complaint raising the following issues: (1) lack of jurisdiction; (2) failure to state a cause of action; (3) laches; (4) lack of standing; (5) insufficient pleading; and (6) impertinent pleading.

It is clear, for the reasons discussed below, that this court does not have jurisdiction over this controversy. Since the plaintiffs' class action complaint must be dismissed, the court does not find it necessary to consider the defendants' other objections.