



PENNSYLVANIA CHIEFS OF POLICE ASSOCIATION

BULLETIN

WINTER 2016



"THANK YOU BLUE":

A NEW EDITION OF OUR BULLETIN, FEATURING LEO'S ACROSS PA!

WHY I WEAR THE BADGE

A LETTER FROM OUR NEW PRESIDENT

TECHNOLOGY UPDATE

BENSALEM POLICE DUI ENFORCEMENT

LEGISLATIVE REPORT

LEGAL UPDATE

**INSIDE
THIS
ISSUE:**

FORM

A THE NATIONAL

DETECTIVE/INVESTIGATOR TEST



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PENNSYLVANIA CHIEFS OF POLICE ASSOCIATION BULLETIN

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"Thank You Blue"

Photos on Winter 2016 Bulletin were collected from different LEO Articles in the U.S.

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The content of the PCPA BULLETIN is to be a practical reference featuring PCPA information of specific interest and relevance to law enforcement professionals. Topics of interest include professional development, current legislative and goals, news items, PCPA upcoming events and legal issues. PCPA Reviews, reports and articles are submitted by members, experts and other interested law enforcement personnel. PCPA Articles or ideas for content should be submitted to PCPA Headquarters c/o Thomas C. Gross, 3905 North Front Street, Harrisburg, PA 17110-1536 or emailed to tgross@pachiefs.org.

TO ALL MEMBERS OF THE PCPA:



As your new Acting President, I am excited and humbled to lead such a great organization. These are very challenging times for law enforcement. As leaders, we all must speak with a reasoned, consistent and passionate voice to the public about the overall great job our men and women do on a daily basis.

We must also educate the citizens we serve about the difficulties of this profession. Finally, we must take responsibility for the occasional errors that do occur. If we do not take an active and articulate role in the ongoing dialog in our communities and across the nation, then we only give voice to our detractors or the uninformed.

Generally, a substantial majority of us are frustrated when our elected government officials act in an apparent cavalier manner, then refuse to explain their actions and use “spin” in place of facts. To our citizens, we are by far the most visible presence of government in their daily lives. Additionally, they do not make a distinction between elected and appointed officials. The frustration they feel with government in general often spills over to us as we are the government and we are there in the moment. We must counter that perception by always behaving in a manner that earns respect instead of demanding or assuming such respect. Treating people like they treat us is a guarantee of failure. Treating people better than they expect will alter their perceptions and turn it into a reality we need to encourage. Whoever is the most important person in your life, treat everyone you contact as you would want an officer to treat your most important person. Be courteous, be professional, take time, explain what is or will happen, consistent with tactical safety.

PCPA provides a tremendous opportunity for us to all come together to develop and implement consistent and comprehensive strategies that will dispel the existing inaccurate information and propel our

profession forward in a positive manner. However, changing perceptions does not happen in a vacuum. So, if you are not already doing so, please get actively involved. Among other things, come to the PCPA Conference in July next year. Many of our educational sessions will focus on the new realities of our profession. Never stop learning. Even when you become the teacher, never stop being a student. As law enforcement executives, we have an important voice in the critical conversations in our communities and elsewhere. However, awareness and intelligent analysis of new trends, tactics and information is a prerequisite to thoughtful and serious discussion. If we want people to think of us as the good guys, then we need to show them that we are indeed the good guys.

As enthusiastic as I am to be the President, it is tempered by the reason I am assuming this office early. As you may or may not know, Chief Mark Hall had to resign his position as Chief of Clarion and as President of the PCPA due to a long term illness. Please keep Mark in your thoughts and prayers as he deals with his unfortunate and unanticipated circumstances.

Please do not hesitate to contact me, the staff at PCPA Headquarters or any member of the Executive Board if you have questions or comments regarding our association or our profession.

Sincerely,

A handwritten signature in dark ink that reads "David J. Spotts".

PCPA Acting President

DEAR MEMBERS,

This final issue of the *Bulletin* for 2016 is published during a time of many changes that we are expecting in the year to come. As most of you know, our Association President Mark Hall submitted his resignation to the Board in November. Due to illness, Mark was no longer able to continue in his position as Chief of Police in Clarion, Pa. and he promptly notified us that he was regrettably stepping down as President.

While Mark's tenure as President lasted just over four months, his presence will be felt for the remainder of his term and beyond. As we look back at one of Mark's most critical decisions, it was his initiative to have the conference in Erie this year and despite the misgivings of some, this venue and conference was a total success. He has had input in many ways during his rise through the steps to President and was also active on the Municipal Police Officers Education Commission and with the Western Chiefs. We wish Mark the best in his journey as he leaves our leadership in the hands of Acting President David Spotts who currently serves as the Public Safety Director at Lower Paxton Township Police Department in Dauphin County.

As we learned of the need to transition to a new leader, our By-Laws served us well and provided a clear path to the continuation of leadership. Acting President Spotts has provided his thoughts elsewhere in this issue and was certainly able to hit the ground running on several matters. We hope to profile him more thoroughly in a future issue as he steps up to an extended term as President.

Of course the other big changes on the horizon have come about from the November elections. In Pennsylvania, we have elected a new Attorney General. Josh Shapiro has worked with

our organization in many capacities and we look forward to having this important role in the leadership of law enforcement in Pennsylvania come under his direction in January. We will also see a new Pennsylvania legislative session begin in January with some new faces in the Senate and the House. We were disappointed in November that Radar and Body Camera legislation was not acted on in the Pennsylvania House of Representatives. The Senate passed a Radar bill and a Body Camera bill and both of these would have allowed us to use the tools necessary to perform our work. This simple concept was apparent in the passage of good legislation by the Senate. We will now renew our efforts in January with a new session in hopes of educating our elected officials that we need to have the laws enacted that will allow the police officers who are serving our communities the best equipment that is available.

The election also resulted in a new President Elect of the United States. In January, Donald Trump will become the 45th President and much remains to be seen as to the changes that will come. Our organization was receiving questions on the day after the election as to how this new presidency will effect law enforcement. While that may be too early to tell, we all know that positions such as United States Attorney



CONTINUED ON PAGE 6 ►

EXECUTIVE BOARD & COMMITTEES

OFFICERS

David Spotts
Acting President
Director of Public Safety • Lower Paxton Township

Scott Bohn
1st Vice President
Chief of Police • West Chester Borough

Albert Walker
2nd Vice President
Chief of Police • Hanover Township

John English
3rd Vice President
Chief of Police • Edgeworth Borough

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Chairman
Chief of Police • Dallas Township

Bill Richendrfier
Secretary
Chief of Police • South Centre Township

Dave DiSanti
Treasurer
Chief of Police • Town of McCandless

Board Members
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Retired Chief of Police • Derry Township

Jason Umberger – 2017
Chief of Police • Swatara Township

Howard Kocher – 2017
Chief of Police • Lehman Township

James Sabath – 2017
Chief of Police • Tincum Township

Mark Toomey – 2018
Chief of Police • Upper Providence Township

James Adams – 2018
Chief of Police • Upper Allen Township

Michael Scott – 2018
Chief of Police • Baldwin Borough

Fred Harran – 2019
Director of Public Safety • Bensalem Township

Bryan Kelly – 2019
Chief of Police • Shaler Township

Larry Palmer – 2019
Chief of Police • Palmer Township

PCPA STAFF

Thomas Gross, Executive Director, tgross@pachiefs.org
Alexandra Boutselis, Administrative Assistant, aboutselis@pachiefs.org
Joseph Blackburn, Consulting and Member Services Manager, jblackburn@pachiefs.org
Christopher Braun, Grants Management and Technology Coordinator, cbraun@pachiefs.org
Cheryl Campbell, Administrative Manager, ccampbell@pachiefs.org
Dick Hammon, Accreditation Program Manager, rhammon@pachiefs.org
Jerry Miller, Offender Identification Technology Program Manager, jmiller@pachiefs.org
Andrea Sullivan, Administrative Assistant and Accreditation Assistant, asullivan@pachiefs.org
Bill Gibson, Physical Fitness, fitcop@botmail.com

BUDGET & PERSONNEL

Dave Spotts (C)
Bob Jolley (NE)
John English (W)
Dave DiSanti (W)
Scott Bohn (SE)
Al Walker (NE)

EDUCATION AND TRAINING

Dave Spotts, Chair
Ashley Heiberger (NE)
Bill Richendrfier (NE)
Bryan Kelly (W)
Bill Daly (SE)

LEGISLATIVE

John English, Chair
Michael Scott (W)
Diane Conrad (C)
Dean Osborne (NW)
Randy Cox (W)

MEMBERSHIP/BYLAWS

Scott Bohn, Chair
Ken Truver (W)
Jim Adams (C)
Al Walker (NE)
Mark Pugliese (C)

NOMINATING

Al Walker, Chair

EXECUTIVE DIRECTOR'S MESSAGE

General, Homeland Security Director and members of the Supreme Court all have an impact on policing our nation.

Finally, this issue includes our remembrance for two departed colleagues. On November 10, Officer Scott Bashioum of the Canonsburg Police Department was killed in the line of duty. Just two days before that, Chief James Ersher of the Sewickley Police Department died unexpectedly at the age of 53. We have included their stories and ask that all keep them in your thoughts and prayers.

Wishing all a safe and peaceful Holiday;
Tom Gross
Executive Director



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NEW MEMBERS

ACTIVE

Curtis McCoy
Chief of Police
Conewago Township Police

Stephen Derenick
Chief of Police
Taylor Borough Police

James Klein
Chief of Police
New Kensington Police

Matt Conrad
Chief of Police
Punxsutawney Borough Police

William Horgas
Lieutenant Colonel
Pennsylvania State Police

William Teper Jr.
Major
Pennsylvania State Police

Maynard Gray
Major
Pennsylvania State Police

James Degnan
Major
Pennsylvania State Police

Dante Orlandi
Major
Pennsylvania State Police

Darwin Tobias III
Chief of Police
City of Shamokin Police

Todd Breiner
Chief of Police
Lebanon City Police

Michael Marks
Chief of Police
Whitehall Township Police

William Stone
Assistant Chief
Forty Fort Police

Jack Soberick
Chief of Police
Lansford Borough Police

Clifford LaFever
Chief of Police
Glassport Police

Gary Carver
Chief of Police
North Middleton Township Police

William Ryan
Chief of Police
Hummelstown Borough Police

AFFILIATE

Louis Otto
Township Supervisor
German Township



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PENNSYLVANIA CHIEFS OF POLICE ASSOCIATION MEMBER SERVICES

PCPA is proud to offer services to our members and their departments that are designed to provide technology, policy, infrastructure and training support to agencies. Consistent with our mission to promote excellence in leadership and expertise in law enforcement, to advocate for Law Enforcement leaders, and to provide innovative programs and training for our members, the Association employs a full-time staff of dedicated professionals. Staff responsibilities focus on developing and sustaining world-class services and capabilities for Pennsylvania's law enforcement agencies.

CONSULTING SERVICES

Testing - Entry Level

- National Police Officer Selection Testing
- Web Advertisement and Email to Prospective Applicants
- Oral Review Boards
- Background Investigations
- National Dispatcher Selection Testing
- Administration of Written Exams (Proctors)
- Physical Performance Testing
- Consortium Development and Administration

Testing - Promotional

- National Written Examinations for Supervisors, Detectives/Investigators
- Administration of Written Examinations (Proctor)
- Oral Review Board
- Customized Department Specific Examinations

Executive Search

Chief of Police Search and Selection Assistance, including:

- Job posting on PCPA web site
- Consultation with Municipality
- Oral Review Board
- Email Announcement to Membership
- Resume Review/Applicant Screening

ACCREDITATION

PCPA hosts the Pennsylvania Law Enforcement Accreditation Commission (PLEAC), providing Accreditation program support for municipal, state, and college/university police agencies and Sheriff's Departments. PLEAC standards represent law enforcement best practices for consistent, professional police operations. Through Accreditation, agencies can enhance competence, reduce insurance costs, reduce risk exposure to litigation, and strengthen community relationships. PLEAC is supported with funding from the Pennsylvania Commission on Crime and Delinquency.

PROGRAMS

- Pennsylvania Virtual Training Network (PAVTN), providing online, web-based police training for mandatory and elective courses.
- Central Booking Technology, LiveScan Fingerprinting, Commonwealth Photo Imaging Network (CPIN), Video Conferencing
- Web CPIN, Photo lineups of 8 million arrest photos available through JNET
- AFIS Latent Remote Search Terminal for certified fingerprint examiners
- Support to Counties with Act 81 Central Booking Plans
- cNet Online Records Management through JNET



IS YOUR INFORMATION UP-TO-DATE?

PLEASE TAKE A MOMENT TO VISIT THE PCPA WEBSITE AT WWW.PACHIEFS.ORG AND LOG IN AT THE TOP RIGHT CORNER USING YOUR EMAIL AND PASSWORD.

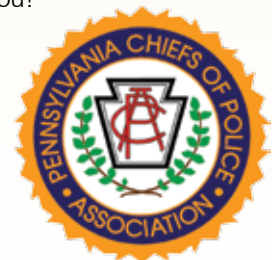


Logging in will allow you to gain access to members-only pages and information as well as the full membership directory. Here you can make changes to your contact information and department information.

Increasingly, the PA Chiefs of Police Association uses electronic methods, such as our web site, to keep our membership up-to-date and informed. Please make sure your email address is current and correct so that you don't miss out on pertinent information between magazines.

Your accurate information will allow us to better serve you!

Thank you!



TECHNOLOGY UPDATE

By Christopher J. Braun, MSIT, PCPA Technology Coordinator



PAVTN

In January 2017, the Pennsylvania Virtual Training Network will start its sixth year. We will add nine new courses. Available on January 1, 2017 will be Legal Update (17-001), a Mandatory MPOETC Course - 3 Credit Hours; Procedural Justice & Police Legitimacy (17-002), a Mandatory MPOETC Course - 3 Credit Hours; Handling Drug Overdose (17-003), an Elective MPOETC Course - 3 Credit Hours; Intelligence Assisted Policing (17-004,) an Elective MPOETC Course- 3 Credit Hours and Conviction Integrity (CLE00488), an Elective MPOETC Course - 3 Credit Hours. During the first quarter of 2017, we will release these additional courses, Responding to Veterans in Crisis, an Elective MPOETC course -3 Credit Hours; Responding to Trauma Victims; Elderly Justice; and Protection from Abuse Orders Training.

While you now have a greater number of elective courses for certification, please don't stop taking course just because you meet the minimum 12 hours. All of these courses will increase your knowledge of policing in the Commonwealth. They are free and available 24 hours a day, 365 day a year.



MOBILE ID

The Pennsylvania Chiefs of Police in cooperation with the Pennsylvania State Police is providing local police the Evolution handheld fingerprint scanner and a dedicated secure cellular network to connect to the PCPA secure sever which securely connects to the State Police Automated Fingerprint Identification System (AFIS) and the FBI Repository for Individuals of Special Concern (RISC). The Mobile ID project has been working through several technology and policy issues that have kept it behind schedule.

One of the problems is the FBI CJIS Security Policy defines a minimum set of security standards to ensure the protection of Criminal Justice Information. Agencies must comply with the standards to have access to CJIS information and data. To address this problem, PCPA will now require each device to use a dedicated cellular network with Secure Mobile Data Service (SMDS) Mobile, Device Management software, and two factor authentication to ensure that every agency complies with the FBI CJIS Security Policy.

Another set of problems surrounded the appropriate circumstances to use the Mobile ID devices and developing training and policies to meet those circumstances. We have drafted the documentation to address these issues and they are undergoing State Police review.



The last hurdle is developing an application procedure for police departments to be approved by the State Police to connect and second to apply to have grant funds pay for their devices. Again, the appropriate forms have been drafted and are now under review. It will be a two-step process. Frist, the agency will complete an application to the State Police. They must have an arrest ORI, an updated CLEAN/USER agreement, all user must be CLEAN certified and they must submit their use policy on departmental letterhead. Second, the department will submit a grant request form that will be reviewed by the Pennsylvania Crime and Delinquency's local technology workgroup.

We hope this dual application process will be available in January 2017. Please check the PCPA website, pachiefs.org for updated information.

WHY I WORE THE BADGE

"I grew up and went to school in the City of York and graduated high school in 1969 during a time of riots locally and nationally. In York, a Police Officer was killed and a woman just riding in a car through a white gang's turf was killed. These were strong influences on me as they happened in my community and I remember curfews, gunfire, fires, and National Guard troops. Almost immediately as I entered college, I became interested in the Law Enforcement major and just continued interest, joining the campus police, and became a police officer in York at age 21. It also helped that when I went to college, there was grant money toward tuition for those entering law enforcement. I believe those factors along with intense interest in knowing what was going on around me (some call that nosy) resulted in wearing the badge for 42 years. I could fill pages with good stories and horror stories, but I never could have dreamed to have had worked with so many good people doing good things and to have felt so fulfilled in choosing a police career."

Tom Gross
Executive Director
Pennsylvania Chiefs of Police Association



Tom Gross

WHY I WEAR THE BADGE

"Ever since I was a young boy, all I ever dreamed about was becoming a Police Officer. My mother says I would pretend to be an Officer while watching police shows, and would mimic them during my childhood play with family and friends. As I grew into a teenager, I began to realize the importance of Law Enforcement and began to dream and aspire to become a Police Officer. I looked up to my local Police Department and would rush to the street every time they circled my development. I was fascinated with their white shiny patrol car that had big red and blue emergency light bar on top.

I was born to a father and beautiful mother that spent their years trying to give me and my sister more opportunities by traveling to America. My father is a man of great integrity who waited years for a simple green card in order to get his wife and future children to the "Land of opportunity," the United States of America. I love this country and I'm proud to be an American. Although I didn't end up taking over my family's pizza shop, I know they are very proud of what I have become.

"Son... serve these people with everything you have and always watch your back." I can still remember those words being whispered to me in Italian by my father after my Police Academy graduation. In 2003 when I took the oath, I felt an instant change in my life. My lifetime dream became a reality and a lot of responsibility was attached to it. As a Police Officer, not only are we required to make split second decisions that could change someone's life, but we must live with these decisions, so they must be done ethically and honorably.

There is so much going on in each second, and my training at the Academy and post Academy prepared me for the most difficult decisions I would have to make in any given situation. I am dedicated and give 110% to the people who live and visit Pennsylvania's Capitol City. Our citizens deserve nothing but the best protection from my fellow officers and I.

I wear the badge to show my two sons, Alex and Braiden, how great this country is and to help them understand the importance of helping others. I wear the badge to give back; to create friendships; to help those in need; to support our neighbors; to build partnerships; to serve; to make the community safe; to make a difference; to protect the innocent; to mentor; to show kindness; to provide guidance; and to inspire. To show that the best way to change something is to not complain about it, but to become part of it and create the change yourself. Most importantly, I wear the badge to give back to a country that has given me absolutely everything. I wish to conclude this by honoring the fallen and remembering the families they have left grieving. Thank you for serving our county. **You are also why I wear the badge.**"

Pietro Picciurro
Explosives Canine Officer
Pennsylvania Capitol Police



Pietro Picciurro

WHY I WEAR THE BADGE

"Like many of my colleagues, I too was desirous to be a police officer at a young age. I recall elementary school safety programs where a trooper from the Pennsylvania State Police would stand up on stage in a spotless, well pressed uniform with riding boots polished to a reflective finish. He would talk about helping students cross intersections safely and school bus safety. Basically, it was recruitment for the Safety Patrol Program but it caught my attention and I idolized that trooper.

Forty years ago I was fortunate enough to be selected as a police officer at a department in Montgomery County. I realized that uniformed officers can make a difference in the lives of the people they serve. Certain incidents and cases stand out in my mind and I believe it is because I know my actions made a difference in some of those instances. An elderly woman suffering from dementia was being financially victimized by her live-in nephew. When the case was reported to me by the family, I was able to get her assets frozen by way of a court appointed attorney to stop her losses which totaled over \$100,000 and arrest the nephew for theft. Knowing that I helped preserve some of this woman's life savings reinforced to me the difference police officers can and do make daily in the lives of others.

Eventually after becoming a chief of police, I realized that I wear the badge for those who serve in my department. Having had the privilege to be a chief in two police departments over the past 14 years, has taught me the commitment and talent these officers of today possess. The officers who make up my department are making the difference in the lives of the people they serve. I can only make sure that they are getting the support, equipment and training they deserve. Time changes the course and direction of why we do what we do. For me, there is no greater pleasure than seeing members of my department making a difference in the lives of so many."

Mark A. Toomey
Chief of Police
Upper Providence Township



Mark A. Toomey

"It was my father, Jack McKim, who led me into policing. As a trade, dad was in construction, but he also worked part-time in a very small part-time department (North Beaver Township, Lawrence County) for a number of years.

Our small community didn't call the police until they really needed them; The abusive husband who was tearing up the house, the late-night EDP walking down the center of the highway, the teenaged victim of sexual abuse, the aging widow who thought she heard someone breaking in her home.

The township had wired in a landline that rang in all 4 of the officers' homes. I remember many nights when our police phone would ring, and dad would hustle out the door wearing a flannel shirt, gun belt, and blue jeans. We had a magnetic red light inside our '83 Ford Escort wagon, which dad used for off-duty police response.

His tales of getting the bad guys and helping the helpless were what drew me to this noble profession. At 73, he still offers his services. "Call me if you need some backup," he'll often say. He's serious - and he can probably still handle himself.

Decades later, times have certainly changed. Policing is no exception. Hotlines have been replaced with cell phones. Flannel shirts have been replaced by ballistic outer carriers, and (except for PSP's crash team cars) I haven't seen a station wagon responding to a crime in a very long time!

Some things, though, have not changed. Houses still go "bump" in the night - sometimes because of a burglar; spouses still live in fear of domestic violence; and sadly, there is never a shortage of people suffering emotional trauma, or young people who are being victimized. Someone has to help. Someone has to get the bad guys.

I've been proud to serve with the Ephrata Police (Lancaster County) since 1993. We have a great town and a supportive public. We often received gifts of homemade treats as a "thank you" - made by hands that are truly grateful.

There are, of course, still many needs for policing, and dangers to those who do the job. The brave men and women of the Ephrata Police are serving with courage and integrity 24/7.

Every day I see our officers arrive for work, willing to do those unpleasant tasks and deal with those dangerous people; they dig for more evidence; they meticulously build cases; they comfort the injured and sorrowful; they stop the violence. They miss ball games with their kids, holidays with their family, and sleep - lots of sleep - all in the name of a safer, better community. I've seen them perform acts of investigative genius, and acts of tremendous bravery. They do it for the citizens they serve. God knows it's not for the "glory!" They humble me.

I wear the badge to contribute in some meager way to the efforts of my fellow officers. And I do it to make Jack proud."

Chris McKim - Lieutenant
Ephrata Police Department



Jack McKim graduates from the Allegheny Part-Time Police Academy (1979) - I'm the cute one.



Carter McKim (middle son - 14) graduates from Camp Cadet of Lancaster County as Cadet of the Year (2016) - I'm the cute one.



PLEASE JOIN US IN HONORING AND REMEMBERING OUR DEPARTED COLLEAGUES.



Canonsburg officer **Scott Bashioum** will be remembered for his service, both to the community as a police officer and to the country as a veteran. On November 10, 2016, Officer Bashioum was killed on duty while responding to a domestic violence incident. His partner, Jim Saieva Jr., was shot and injured. Bashioum is the 122nd line of duty death this year and the 56th by intentional gunfire. He is the third officer killed in Pennsylvania this year.

Hundreds of officers from across Pennsylvania and beyond joined the procession, dozens of officers stood outside when the church reached capacity, and the service was broadcast over loudspeaker for those outside.

Scott was a graduate of Burgettstown High School. After High School, he joined the Air Force and served during the Persian Gulf War and Operation Enduring Freedom. He retired as a Senior Master Sergeant after 29 years of service. Officer Bashioum was a seven-year veteran working with the Canonsburg Police Department, who also served as Assistant Chief at the Slovan Fire Department, Company 18 and earned lifetime membership honors. Scctt was a Free Mason at Washington Lodge 164. He was a community man, always giving and lending a hand to whoever was in need. He was a mentor to many of his comrades throughout his years of service to his county. He was an avid blood donor at the local blood bank. Even after his time here on earth, he was able to participate in the Center for Organ Recovery and Education program, as he was an organ donor.



Original article posted by Observer-Reporter, Washington County News, November 16, 2016.

Chief James Rudolph Ersher, Sr. 53, of Baden, passed away unexpectedly on Tuesday, November 8, 2016. Born July 27, 1963, in Pittsburgh, Pa., he served his country during peacetime with the military police, U.S. Army in Germany. He had an extensive law enforcement career beginning in 1986, where he served as a patrolman with the Sewickley Police Department until he was selected to be Chief of Police in 2007, until his untimely death. He was a member of the Fraternal Order of Police, Pennsylvania Chiefs of Police Association, was actively involved in the Sewickley Boro D.A.R.E. program, Baden Legion, and the Sewickley Masonic Lodge #630. His passion in life was spending time with his family especially at his hunting camp up north.



Original article posted by www.timesonline.com, November 9, 2016.



WELCOME TO OUR NEWEST ACCREDITED AGENCIES



**EAST BRANDYWINE TOWNSHIP
CHESTER COUNTY
CHIEF MARK D. KOCSI**

RE-ACCREDITED AGENCIES AT THE PLEAC MEETING IN MARCH:

Upper Allen Township
Cumberland County
Chief James W. Adams

Sandy Township
Clearfield County
Chief Donald E. Rouch

Somerset Borough
Somerset County
Chief Randolph G. Cox

Penbrook Borough
Dauphin County
Chief David E. Hiester

Findlay Township
Allegheny County
Chief Jesse J. Lesko, Jr.

Adams County Sheriff's
Adams County
Sheriff James W. Muller



PLEASE SAVE THE DATE FOR THE 13TH ANNUAL PENNSYLVANIA LAW ENFORCEMENT ACCREDITATION TRAINING CONFERENCE.

The Conference will be held from March 27 - 29, 2017
at the Red Lion Hotel Harrisburg East
4751 Lindle Road, Harrisburg, PA

Registration information will be forthcoming.

Thank You Blue



Santa arrives in his customized Capitol Police sleigh for the Annual Dauphin County Assistance Holiday Celebration. Capitol Police Sergeant Rick Finicle (Santa) shows up every year and puts a smile on everyone's face.



Capitol Police "Shop with a Cop". Includes dinner, a trip to Walmart to buy gifts, then to the Heinz Center where they wrap the gifts with their "cop".



Slate Belt Regional PD purchasing gifts for kids.



Northern Lancaster County Regional "Shop with a Cop"



ACHA Officer Cylda Hoda visits the girls weekly at their community building to do fun activities like dancing. The girls always have so much fun!



Giant Grocery Store gives a generous donation to Lower Paxton PD, local charities and other emergency services. LPPD will use the donation to support their community programming and events, including those that provide for positive police - citizen interactions. Officer Moises Vargas was there on behalf of LPPD.



South Fayette Officer Jason Hensel & Officer Mike Benney collect teddy bears for children in crisis.



Swatara Township Chief Jason Umberger "Bigs In Blue" Program



Lower Pottsgrove Sergeant William James "Read Across America"



Lower Pottsgrove Officer Kevin Black repairing a flat bicycle tire for a youngster.



South Londonderry Township traffic control at the Blood, Sweat & Tears 5-miler to benefit the Leukemia & Lymphoma Society.

THANK YOU BLUE!



Bethel Park Officers shovel driveway for an elderly man who suffered a heart attack.



Coatesville City Police Officers in the Community



Amity Township Officer Brian Devlin changes a flat tire for a family in need.



Richland Township PD, Community Policing



Montgomery Township Officer Robert Johnson, Child Fingerprinting



Bensalem Twp. Officer Thomas Mee, Lending a Helping Hand



Lower Paxton Twp. Officers visit a daycare. The children showed their appreciation and excitement by making signs for the officers.



Hellam Twp. PD canopy for trick or treat night. Officers handed out over 600 plastic cups filled with candy.



Hellam Twp. Officers attending the Eastern York High School Varsity Club Festival, for meet and greet with students.



LEO's supporting Special Olympic event.



PA Capitol Police "Annual Bicycle Rodeo"



PSP Troopers visiting students during lunch.

*PCPA has been granted permission by each Police Department to publish the photos in the Winter 2016 Bulletin for educational purposes. Consumers are not authorized to publish or redistribute any of these photos without obtaining consent from the Department.

If you have a photo & story you would like to share with PCPA please email Alexandra Boutselis at aboutsels@pachiefs.org

BENSALEM POLICE DUI ENFORCEMENT WITH BLOOD DRAWS AT HEADQUARTERS

By Frederick A. Harran, Director
Bensalem Township Police Department

In September of 2014 the Bensalem Township Police Department began to conduct suspected DUI offender blood draws at their headquarters. To accomplish this, Bensalem Police had a secured room in their prisoner processing area outfitted with a phlebotomy chair. The police department also entered into an agreement with Bensalem Township EMS to conduct all blood draws from suspected DUI offenders at Bensalem Police headquarters.



The main reasons for the change of transporting DUI suspects to a hospital for blood draws to conducting the blood draws at a secured police facility are: safety, police manpower, costs, and turnaround time.

On September 29, 2005 Newtown Borough Police Officer Brian Gregg was murdered at St. Mary's Medical Facility when a DUI suspect, who had been arrested and taken to the hospital for a blood draw, was able to take control of another officer's service weapon and kill Officer Gregg. This tragic death of a police officer clearly exemplifies the dangers police officers and medical personnel encounter when a suspect under the influence of drugs or alcohol is transported to medical facility for testing. Keeping a DUI suspect in a secured police facility avoids this risk.

Secondary to safety, blood draws at a secured police facility allows for more officers to remain on the street rather than draining police resources. The typical DUI arrest in Bensalem only takes an officer an hour compared to two or three hours if the blood draw was conducted at a hospital. Many departments

require two officers to escort a DUI suspect to a hospital for testing so this is an additional drain on valuable and costly manpower. The ultimate goal relating to DUI enforcement is to remove the threat of intoxicated drivers present to our citizens. The Bensalem Township Police Department is achieving that goal as a result of the blood draw program.

There has been a staggering 70% increase in DUI enforcement in Bensalem Township. In the first half of 2014 (January 1 to June 30), prior to the implementation of the blood draws at their headquarters, Bensalem Police conducted 93 DUI investigations. Comparably, in the first half of 2015, with blood draws being conducted at their headquarters, Bensalem Police conducted 158 DUI investigations. Of particular note, 48% of the DUI investigations in 2015 involved suspects driving under the influence of narcotics or a combination of narcotics and alcohol.

The 70% increase in DUI enforcement in Bensalem Township has certainly proven the effectiveness of having blood draws conducted at a secured police facility but more importantly, this has played a vital role in keeping the motorists and citizens of Bensalem Township safe.

On November 3, 2016 Hose Bill 2058 was signed into law by the Governor Wolf after being introduced by Representatives Frank Farry and Gene DiGirolamo and Senator Tommy Tomlinson. This will allow all Paramedics in the Commonwealth the ability under their "Scope Of Practice" to perform blood draws for law enforcement in accordance with the Statute.

2017 ANNUAL EDUCATION & TRAINING CONFERENCE JULY 23-26, 2017

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PCCD AND PCPA PARTNER ON TECH FORUMS

By Tom Gross

This fall, the Pennsylvania Commission on Crime and Delinquency presented four regional law enforcement technology forums in partnership with the Pennsylvania Chiefs of Police Association. The effort was organized by Kathy Clarke, Supervisor of the Law Enforcement Unit at PCCD and Bob Merwine, Director, Office of Criminal Justice Improvements of PCCD. The forums were held in Carlisle, Cranberry, Valley Forge, and Wilkes-Barre and over four hundred participants attended these events. The purpose was to provide a one stop forum that included a number of different programs available from PCCD, Pa. Chiefs and other agencies. Three of the programs were kicked off by State Representative Michael Vereb and the Cranberry forum was opened by Bob Merwine with State Representative Dom Costa also in attendance. Captain Jacqueline Bailey-Davis of the Philadelphia Police Department started each forum with an overview of their department's efforts to adopt the Pillars of the President's 21st Century Policing Report.

The rest of the day featured PCPA presentations by Chris Braun, Grants Management and Technology Coordinator on the PA. Virtual Training Network (PAVTN) and Executive Director Tom Gross on the Pennsylvania Law Enforcement Accreditation Commission (PLEAC) and the PCCD programs on Crisis Intervention Training and Mental Health First Aid. In addition, PCPA



PCCD Article photo: "Jerry Miller, Pa. Chiefs Technical Program Manager and Dan Allen of Data Works Plus manned a display of Central Booking equipment and other technologies available to police departments at PCCD Forums"

programs for Central Booking with Livescan, CPIN, and Mobile Identification were presented and on display in conjunction with vendors from CNET. There were also presentations on Rapid DNA, Iris and Speech Recognition, Facial Recognition, and Drug Drop Box programs.

Other agencies that presented information included the Pa. Justice Network (JNET), PA State Police on CLEAN (Commonwealth Law Enforcement Assistance Network) and PACIC (Pennsylvania Criminal Intelligence Center, and Municipal Police Officers Education and Training Commission (MPOETC) with their new web site for TACS (Training and Certification System). There were victim's services presentations from PCCD and from the State Office of Victim Advocate

and also from the Pennsylvania Coalition Against Domestic Violence on the Protection from Abuse Database (PFAD). Attendees also got updates from PCCD on juvenile holding and the Juvenile's (JHELD) Compliance System and on the Law Enforcement Justice Information Sharing (LEJIS) Network.

With the number of services covered in one day, many in attendance agreed that this was a great use of their time in order to gather information about a number of frequently used and updated programs. The training was free to those who attended and there were also opportunities to network and spend time with individual program and technology experts. While no new forums are scheduled at this time, there was a great deal of support for the benefits of a repeat of these types of forums in the future.

ASKRAIL, TRAINING, AND INNOVATION BOOSTING PENNSYLVANIA RAIL SAFETY

By Emily Traiforos

Pennsylvania's emergency responders have new tools at their disposal for training for and responding to incidents involving railroads.

AskRail, a mobile phone app launched by Class I railroads in 2015, is one of these innovative tools. It is designed to prepare first responders for a rail emergency by giving them access to information in the event of a rail incident. Responders with the app can, for example, use a railcar ID search to see if a railcar is carrying hazardous material, view the contents of an entire train, and see emergency contact information for all Class I railroads and Amtrak.

AskRail, as well as CSX's similar Rail Respond phone app, exemplify the freight rail story: massive private investments—\$25 billion annually over the last several years—are catalyzing the development of technologies and training that make a safe network even safer.

The statistics speak for themselves. The train accident rate fell by 79 percent since 1980 and 38 percent since 2000. According to the most recent statistics available from the Federal Railroad Administration, 2014 was the safest year on record for freight railroads.

Through efforts that focus on prevention, mitigation and response to incidents, America's railroads are paving the path to safety through innovation.

TRAINING AND COMMUNITY RESPONSE PLANNING

Pennsylvania's 57 freight railroads, including Norfolk Southern (NS), CSX, CN and CP, collaborate with cities, counties, the state and the federal government to draft response plans in the case of a rail incident, as well as provide training to first responders.

Earlier this year, NS unveiled a new educational train and website to help first responders across its network respond to potential rail-related incidents. The other major railroad operating in Pennsylvania, CSX, also has a "safety train" traveling its network. These trains include classrooms and various railcars that provide opportunities for hands-on training. The new NS safety train visited Harrisburg in May.

The Security and Emergency Response Training Center (SERTC) in Pueblo, Colorado is another key venue for training. More than 20,000 first responders are trained every year at the facility, a collaboration between the rail industry and the Federal Railroad Administration, through individual railroad efforts and industry programs. The center also offers free, web-based training for those who cannot attend in person.



Railroads couple these training opportunities with response planning. By participating in state emergency planning committees and working with communities to develop their own emergency response plans, freight railroads are working to close the knowledge gap about how they operate and how communities can prepare.

Key to this preparation is giving emergency responders the information they will need to respond to incidents—that's where innovations like AskRail come in. Likewise, railroads will provide designated personnel with commodity flow information upon request.

ADDITIONAL LOCAL TRAINING OPPORTUNITIES

Of course, safety trains and SERTC are just two of the ways that railroads approach training. Locally, CSX, NS and their short line railroad partners provide free training using railroad and TRANSCAER® resources. Founded in 1986, TRANSCAER (Transportation Community Awareness and Emergency Response) is a voluntary national outreach effort that focuses on assisting communities in preparing for and responding to a possible hazardous material transportation incident.

So far this year, TRANSCAER has partnered with NS in Pennsylvania to hold table-top drills in Cambria and Lehigh counties, as well as a full-scale exercise in King of Prussia.

Gene Patten of Dana Transportation Companies and Bruce Gacsal of Quality Distribution, Inc. are the Re-

gion 1 TRANSCAER coordinators, and they can provide help in obtaining training. Patten can be reached at 1-800-733-3262 or gpatten@danacompanies.com and Gacsal can be reached at 718-424-3069 or bgacsal@qualitydistribution.com. Likewise, Joseph Taylor of CSX and John Casey of Casey's Specialized Services are the Pennsylvania state coordinators for TRANSCAER. Taylor can be reached at 412-928-4730 or joe_taylor@csx.com and Casey can be reached at 717-344-9807 or john.casey.cruising@gmail.com.

Railroads also recognize that mitigation and response are only part of the equation, alongside prevention. In 2016, the rail industry will continue advancing innovations that improve the efficiency and safety of the network. Multidimensional ultrasonic technology, currently in testing, is a sophisticated system that aims to identify track imperfections. Unmanned aerial vehicles, or drones, are also being tested for use in track and bridge inspections.

Safety is at the core of railroading culture and freight railroads will continue to advance innovations that prepare emergency responders and make a safe mode of transportation even safer—in Pennsylvania and across the country.

Emily Traiforos is the State Director for Pennsylvania at GoRail, a national non-profit promoting the benefits of freight railroads. For more information on how your first responders can access AskRail, visit: <http://askrail.us/>.

LEGISLATIVE REPORT FOR DECEMBER 2016

The following is a list of bills that were of particular interest to the Pennsylvania Chiefs of Association. The Session of 2015 ended on December 1, 2016 and no further activities are expected to occur until the beginning of the 2017 Session on January 3, 2017. This list does NOT consist of ALL bills related to police and criminal justice matters as there are numerous bills that were filed and received no action. If you know of any bills of interest as the new session starts, please do not hesitate to contact Jerry Miller at headquarters to get an update.

SB 535, RADAR

This bill passed the Senate with an overwhelming vote of 47 – 3. The bill was referred to the House Transportation Committee and no further action took place in the House. This bill provided that Title 75, Section 3368 (c) be amended to add that any police officer may use radar. The officer must be trained and there was also a provision for Lidar.

HB 1538 – PROHIBITING RELEASE OF OFFICERS NAMES – USE OF FORCE

(PN 2509) Amends Title 44 (Law and Justice) adding a new chapter relating to the release of law enforcement officer information when a firearm is discharged or force is used. Provides that pending the conclusion of an official investigation that involves the discharge of a firearm or use of force by a law enforcement officer during the performance of the officer's official duties, the name and identifying information of the officer may not be released to the public by any public official or public employee conducting or participating in the official investigation or any person acting on behalf of such official or employee. Further provides that after the conclusion of the official investiga-

tion, the officer's name and identifying information shall be released to the public if the officer is charged with a criminal offense relating to the discharge of the weapon or use of force. If the law enforcement officer is not charged with a criminal offense relating to the discharge of the firearm or the use of force, the law enforcement officer's name and identifying information may not be released to the public, if the release of the information can reasonably be expected to create a risk of harm to the person or property of the law enforcement officer or an immediate family member of the law enforcement officer. (Prior Printer Number: 2173) **THIS BILL PASSED THE SENATE AND THE HOUSE AND WAS VETOED BY GOVERNOR WOLF on November 21, 2016.**

SB 976 – BODY CAMS

(PN 2165) Amends Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure), in Title 18, in wire-tapping and electronic surveillance, further providing for definition of "oral communication", for exceptions to prohibition of interception and disclosure of communications to include oral, electronic or wire communications, and for exceptions to prohibitions in possession, sale, distribution, manufacture or

advertisement of electronic, mechanical or other devices; and adding a chapter to Title 42 providing for recordings by law enforcement officers. Persons who are engaging in an oral, electronic or wire communication with an inmate shall be notified that the communication may be recorded or monitored. Effective in 60 days. (Prior Printer Number: 1205, 1372)

(PN 2165) Amends Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure), in Title 18, in wire-tapping and electronic surveillance, further providing for definition of "oral communication", for exceptions to prohibition of interception and disclosure of communications to include oral, electronic or wire communications, and for exceptions to prohibitions in possession, sale, distribution, manufacture or advertisement of electronic, mechanical or other devices; and adding a chapter to Title 42 providing for recordings by law enforcement officers. Persons who are engaging in an oral, electronic or wire communication with an inmate shall be notified that the communication may be recorded or monitored. Effective in 60 days. (Prior Printer Number: 1205, 1372)

(PN 1372) Amends Title 18 (Crimes and Offenses) adding exceptions to the Wiretap Act to allow law enforcement officers to record communications with another person when the communications occur in a police interrogation room as long as there is a visible sign warning that communications may be recorded and the officer is in uniform or clearly identifiable as a police officer. Also adds language providing an officer may record an oral communication between individual inside a residence if the officer is executing an arrest or search warrant; if an individual with actual or apparent authority has consented to the recording; and if exigent circumstances

are present. Further provides for the preservation and production of any audio or audiovisual recordings made under these exceptions. Effective in 60 days. (Prior Printer Number: 1205)

(PN 1205) Amends Title 18 (Crimes and Offenses) to allow law enforcement officers to use body-worn cameras. Also allows law enforcement officers to enter a private residence with an activated body-worn camera. Adds language clarifying that officers may record interviews in police facilities with suspects or witnesses. Effective in 60 days. **THIS BILL PASSED IN THE SENATE 45-5 AND WAS REFERRED TO THE HOUSE JUDICIARY WHERE NO FURTHER ACTION OCCURRED BEFORE THE END OF THE SESSION.**

THE ACTS LISTED BELOW BECAME LAW IN 2016, HOWEVER THIS IS NOT A COMPREHENSIVE LIST OF THOSE ACTS, ONLY

THOSE PRIMARILY EFFECTING LAW ENFORCEMENT.

ACT 5 – SB 166 – EXPUNGEMENTS

Amends Title 18 (Crimes and Offenses) adding a new section, 9122.1 permitting a court to enter an order for limited access regarding criminal history records for convictions and misdemeanors of the second degree or third degree, or an ungraded defense that carries no more than two years in prison. Further provides for an individual to be eligible for an order of limited access, the convicted individual shall have to be free from arrest from arrest or prosecution for ten years following final release from confinement or supervision. Also provides when a petition is filed a court is required to notify a district attorney who may file objections within 30 days, if no objection is received a court may grant the petition without hearing if all the requirements of the statute are met. The central repository, upon notice or order from the court, is required to no-

tify all criminal justice agencies, which have received criminal history records or information related to the conviction. Also provides limited access shall not be permitted where an individual has a prior conviction for an offense punishable by more than two years or four or more convictions for crimes punishable for more than one year, and shall not be available for certain other specified offenses. Criminal history subject to an order can only be released to a criminal justice agency a state licensing agency for use as authorized in Section 9124 of the Crimes Code. Prohibits anyone who is not entitled to disclosure of a record from requiring or requesting disclosure of the record from the individual who has been the subject of an order for limited access. Provides for a \$132 fee upon filing a petition which shall be divided among the Administrative Office of the Pennsylvania Courts, the clerk of courts, the Pennsylvania State Police (PSP), and the district attorney of the county.

CONTINUED ON PAGE 22 ▶



ACT 19 – HB1278 – TELEVISION EQUIPMENT

Amends Title 75 (Vehicles), in other required equipment, further providing for television equipment by stipulating that no motor vehicle shall be operated on a highway with an image display device where a broadcast television image, a live stream video image from the internet, satellite or any other source or a prerecorded video image is visible to the driver while the vehicle is in motion. The bill provides for exceptions.

ACT 30 HB 1310 – RELEASE OF 911 INFORMATION

Amends Title 35 (Health and Safety), in emergency telephone service, providing for prohibited release of information by adding that in a response to a request under the Right-to-Know Law, a public safety answering point (PSAP) may not release individual identifying information of an individual calling a 911 center, victim or witness. The bill provides for applicability and definitions.

ACT 33 SB 290 – IGNITION INTERLOCKS

Amends Title 75 (Vehicles), in general provisions, defining “ignition interlock limited license” and providing for its issuance to individuals whose operating privileges have been suspended for offenses involving alcohol; providing for blood testing; in licensing of drivers, further providing for occupational limited license and providing for ignition interlock limited license; and, in driving after imbibing alcohol or utilizing drugs, further providing for ignition interlock and for the offense of illegally operating a motor vehicle not equipped with ignition interlock. Eliminates chemical tests on urine for the purpose of determining the alcoholic concentration of blood or the presence of a controlled substance. Further provides the Department of Transportation shall

issue an interlock limited license only upon securing proof that one motor vehicle owned, leased, or principally operated by the person, whichever the person most operates has been equipped with an approved ignition interlock system. Provides guidelines related to timing and repeat offenses.

ACT 34 SB 1108 – AUTOCYCLES

Amends Title 75 (Vehicles) adding autocycles as a special designation under the definition of motorcycles and providing for their registration and titling. Stipulates that autocycles are to be operated with a motor vehicle license. Includes other provisions related to seatbelt requirements, helmets and windshields. Also provides a combination of vehicles which is hauling milk to or from a manufacturer may be permitted by the Department of Transportation and local authorities to move upon highways within their respective jurisdictions 24 hours a day, seven days a week, except during inclement weather as defined in the department’s regulations, if the gross weight does not exceed 95,000 pounds and the weight of any non-steering axle does not exceed 21,000 pounds. Further provides a permit may be issued for this type of movement upon an interstate highway. An application to the department for the movement of milk, except for raw milk, shall designate the route the applicant requests to use.

ACT 111 HB 1581 - STRANGULATION

Amends Title 18 (Crimes and Offenses) adding a new section providing for the offense of strangulation. Provides the offense shall be graded as a felony of the second degree if committed against a family or household member, by a caretaker against a care-dependent person, or in conjunction with sexual violence. Further provides the offense shall be graded as a felony of the first degree if the defendant is subject to an active protection from abuse order or sexual violence or intimidation protection order that covers the victim; if the defendant uses an instrument of crime; or the defendant has previously been convicted of enumerated sexual offenses or equivalent offenses in another jurisdiction. Also provides the offense of strangulation shall otherwise be graded as a misdemeanor of the second degree. Provides for definitions of "care-dependent person", "caretaker", "legal entity", and "private care residence".

ACT 158 SB 1062 - BURGLARY

Amends Title 18 (Crimes), in burglary and other criminal intrusions, further providing for definition of burglary; penalties related to burglary convictions; and related definition. Requires the Pennsylvania Commission on Sentencing to provide for a sentence enhancement within its guidelines for an offense under Title 18, section 3502 (a) (10) (i) relating to burglary).





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- 9** Most agencies set an application fee to cover the cost of the written exam component too (S&A can provide the written exam as well).



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MARSHALL DENNEHEY
WARNER COLEMAN & GOGGIN

Law Alert

Legal Update for Law Enforcement

DECEMBER 2, 2016

STUMP THE CHUMP

Chris-

Settle an argument for my Sergeant and me. The example is a police shooting. I say that until the District Attorney clears the officer, he can't be forced to make any statement. He says that Garrity warnings means the officer has to answer, even if he incriminates himself. That could never be under the Miranda case, right?

Lumpy Potatoes

Lumpy:

Pay the good Sergeant. Under Garrity, an officer can be compelled to make a statement, even though it might incriminate him, and refusal to make the statement, can result in their termination. The reason is this- A Garrity statement can't be used against the officer in the criminal investigation. The two investigations, criminal (Miranda) and administrative (Garrity) must be kept

completely separate. Most Police departments wait for the criminal investigation to be done before taking a Garrity statement, but that's by choice, not by law.

Chris "The Chump" Boyle

COMMENT: Hot Diggitty Dog, the Chump loves one of these cases that is the equivalent of a college level class- "4th Amendment 101". This one is the legal equivalent of a Chipotle burrito, just chock full of good stuff (all of it bad for somebody's health, but oh so tasty. In this case it's bad for the chucklehead about to be incarcerated, so we'll take a bite). A nice refresher on numerous concepts important to law enforcement- plain view, exclusionary rule, automobile exception, res gestae statements....sorry, I passed out there for a second when I re-read Officer Filler's assessment of the situation at the bottom of paragraph # 4. ('Oh, sh!t, he has a shotgun.'") Nice work troops! Enjoy-

UNITED STATES V. PEREZ-BOSCANA, 2016 U.S. DIST. LEXIS 165557 (NOVEMBER 30, 2016 E.D.PA.)

Defendant Rolando Perez-Boscana has been charged in a two-count Indictment with possession of a firearm by a convicted felon, in violation of 18 U.S.C. 922(g)(1) (Count One), and possession of an unregistered shotgun, in violation of 26 U.S.C. 5861(d) (Count Two). Presently before the Court is Defendant's Motion to Suppress a shotgun recovered from Defendant's van during a warrantless search, as well as incriminating post-arrest statements made by Defendant during a subsequent drive to the police station. We held a Hearing on the Motion on September 22, 2016. For the reasons that follow, we deny Defendant's Motion in its entirety.

I. BACKGROUND

When Defendant testified during the September 22, 2016 Hearing, he admitted to asking family members to commit perjury on his behalf. ¹ As a result, we have largely discredited Defendant's version of the events. The police officers involved in the search and subsequent arrest of Defendant credibly testified during the September 22, 2016 Hearing to the following facts. On the evening of January 20, 2016, Philadelphia Police Officers Robert Filler and George Lane were on patrol in a marked patrol vehicle in the neighborhood near Front Street and Clearfield Street, searching for a suspect in a double homicide that had taken place nearby. (9/22/16 N.T. at 12-13, 40, 91.) Officers Filler and Lane patrolled that neighborhood every night. (Id. at 90-91.) It is "a high drug area, open air drug market, [with] lots of violent crime, lots of guns, [and] lots of robbers." (Id. at 90.)

¹For example, during the September 22, 2016 Hearing, Defendant admitted to asking his sister, Millie, to testify that Defendant found the shotgun in her home, even though Defendant knew that Millie did not know that the shotgun had been stored in her home. (9/22/16 N.T. at 191,206-209.) Additionally, Defendant's Hearing Testimony also unearthed falsehoods he told his family about the shotgun. Defendant testified that he did not tell the officers at any point during their encounter that he intended to turn the shotgun over to the police. (Id. at 197-99.) However, in a recorded telephone call he made from prison on January 22,

2016, Defendant told his fiancée, Valerie, that he had told the officers that he had been attempting to take the shotgun to the police district. (Id. at 201-204, Gov't's Ex. 18 at 3.)

At approximately 7:10 p.m., Officers Filler and Lane were driving northbound on the 3000 block of North Water Street, when they noticed two individuals, one of whom was Defendant, standing behind a van that was parked on the sidewalk in violation of a traffic law,² with both of its rear swing-out doors open. (Id. at 15, 17, 19-21, 123-24.) Although the street was poorly lit, Officer Filler stated that the light from the patrol car's headlights illuminated the back of the van, allowing him to see into the back of the van from his vantage point in the driver's seat. (Id. at 18, 20, 23, 93.) Officer Filler testified that "as we were traveling I observed what I believed to be a stock of a shotgun or a long rifle wood stock" in the back area of the van. (Id. at 21.) Officer Filler immediately told Officer Lane, "'Oh, sh!t, he has a shotgun.'" (Id. at 22.)

As Officers Filler and Lane approached the van in their patrol car, they observed Defendant close the van doors and walk away from the van in the direction of the officers, while the second individual walked away.³(Id. at 22, 54-55, 94, 98.) Officer Filler stopped the patrol car when he [*4] was four to six feet from Defendant. (Id. at 28.) When Officer Filler exited the patrol car, he observed Defendant drop two 12-gauge shotgun shells onto the sidewalk. (Id. at 28-29, 58-59, 129-30.) Officer Lane retrieved the ammunition, and Officer Filler stopped Defendant and frisked him for weapons. (Id. at 23, 28, 59, 94, 100, 112.) Officer Filler then detained Defendant in the back of the patrol car and asked him about the van. (Id. at 23.)

²Although the officers' post-arrest report (Def.'s Ex. 6) states only that Defendant had committed a parking violation, the Government has stated that Defendant violated 75 Pa. Cons. Stat. Ann. 3353(a)(1)(ii).

³The second individual was never identified. (9/22/16 N.T. at 20.)

Defendant informed Officer Filler that he was the owner of the van. (Id. at 23, 64.) Officer Filler proceeded to walk over to the van while Officer Lane remained with Defendant. (Id. at 64, 94.) The engine of the

van was running throughout the encounter, although Officer Filler did not notice that the van was turned on until after Defendant had been detained. (Id. at 69.) Using a flashlight, Officer Filler looked through the van window and observed a shotgun behind the rear seat of the van. (Id. at 67.) Officer Filler attempted to open the door to the van, but found that it was locked. (Id. at 23-24.) He walked back to the patrol car and told Officer Lane that there was a shotgun in the van. (Id. at 24.) Officer Filler testified:

I went back to this Defendant. I let him know; that if he had a key, to let us have it. We were going to get into the van. If I had to break the windows, we were going to get in. The car was running, at that point. You know, there was a shotgun in the car and the car's running. He just discarded two shotgun shells. I mean, I was going to do what we had to do to get that [shotgun].

(Id.) Although Defendant initially told the officers that he did not have a key to the van, he eventually produced a set of keys from his right sock. (Id. at 95, 101.) Officer Lane unlocked the van and recovered a double-barreled shotgun with a wood stock from the rear of the van. (Id. at 102.) After recovering the shotgun, the officers handcuffed Defendant, placed him under arrest, and transported him to the police station. (Id. at 36, 131.)

While Officers Filler and Lane were transporting Defendant, the three men had a conversation because Defendant was concerned about the charges he faced. (Id. at 37.) While the officers denied interrogating Defendant during the drive to the station, they reported that Defendant told them that "he thought that if the gun was not loaded, that it wasn't as much of an offense." (Id. at 37-38, 106.) Defendant also told the officers that "he didn't think he could get in trouble if the shotgun shells were separated from the shotgun[;]" and that he had been trying to sell the shotgun for \$100.00. [*6] (Id. at 38, 106.)

II. LEGAL STANDARD

"A defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides." Fed. R. Crim. P. 41(h). On a motion to suppress, the burden of proof is initially on the defendant who seeks suppression of the evidence. United States v.

Johnson, 63 F.3d 242, 245 (3d Cir. 1995) (citing United States v. Acosta, 965 F.2d 1248, 1256 n.9 (3d Cir. 1992)). "[O]nce the defendant has established a basis for his motion, i.e., the search or seizure was conducted without a warrant, the burden shifts to the government" to establish by a preponderance of the evidence that the evidence sought to be suppressed is admissible. Id. (citing United States v. McKneely, 6 F.3d 1447, 1453 (10th Cir. 1993)); see also United States v. Lowe, 791 F.3d 424, 432 n.4 (3d Cir. 2015) (citing Johnson, 63 F.3d at 245).

When evaluating a motion to suppress, the credibility of witnesses is assessed by the trial court. United States v. Demings, 787 F. Supp. 2d 320, 326 (D.N.J. 2011) (citing United States v. Davis, 514 F.2d 1085, 1088 (7th Cir. 1975)). The court "can accept or reject any or all of a witness's testimony." Id. (citing United States v. Murphy, 402 F. Supp. 2d 561, 569-70 (W.D. Pa. 2005)).

III. DISCUSSION

Defendant contends that the shotgun seized during the search of his van and his incriminating post-arrest statements should be suppressed either as (1) the poisonous fruits of an invalid investigatory stop, or in the alternative, as (2) evidence subject to the exclusionary rule as the result of a warrantless search and seizure lacking probable cause. The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and that "no Warrants shall issue, but upon probable cause . . ." U.S. Const. amend. IV. Ordinarily, under the Fourth Amendment, the government must obtain a warrant prior to searching areas in which an individual possesses a reasonable expectation of privacy. United States v. Herrold, 962 F.2d 1131, 1137 (3d Cir. 1992). The Supreme Court has explained that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions." Horton v. California, 496 U.S. 128, 133 n.4 (1990) (quoting Katz v. United States, 389 U.S. 347, 357 (1967)). Evidence obtained during a warrantless search is admissible at trial only if the search and seizure were permissible under one of the recognized exceptions to the Fourth Amendment's war-

warrant requirement. *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993); *Herrold*, 962 F.2d at 1137.

In the event that evidence is illegally obtained due to a Fourth Amendment violation, a defendant may seek to suppress the evidence. *United States v. Calandra*, 414 U.S. 338, 347 (1974); *Herrold*, 962 F.2d at 1137. Furthermore, evidence obtained in a search conducted in connection with an invalid investigatory stop may be inadmissible as "fruit of the poisonous tree." *United States v. Brown*, 448 F.3d 239, 244 (3d Cir. 2006) (quoting *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963) and citing *United States v. Coggins*, 986 F.2d 651, 653 (3d Cir. 1993)). The exclusionary rule was created by the Supreme Court as a "deterrent sanction that bars the prosecution from introducing evidence obtained by way of a Fourth Amendment violation." *Davis v. United States*, 564 U.S. 229, 231-32 (2011); see also *United States v. Katzin*, 769 F.3d 163, 169 (3d Cir. 2014) ("To deter Fourth Amendment violations, when the Government seeks to admit evidence collected pursuant to an illegal search or seizure, the judicially created doctrine known as the exclusionary rule at times suppresses that evidence and makes it unavailable at trial." (citing *Herring v. United States*, 555 U.S. 135, 139 (2009))).

A. Fruit of the Poisonous Tree

Defendant argues that because the initial investigatory stop was not based on reasonable suspicion that criminal activity was afoot, evidence of the shotgun is tainted as a result of the Fourth Amendment violation and, therefore, must be suppressed as fruit of the poisonous tree. Specifically, Defendant contends that because Officer Filler could not have seen the shotgun from his vantage point in the patrol car, the investigatory stop was not justified by reasonable suspicion.

Since Defendant has established a basis for his Motion by showing that a warrantless search took place, the burden shifts to the Government to establish, by a preponderance of the evidence, that the shotgun is admissible under one of the recognized exceptions to the warrant requirement. *Johnson*, 63 F.3d at 245. The Government maintains that the shotgun was discovered during a permissible search following a valid investigatory stop and, thus, it need not be suppressed as fruit of the poisonous tree. Under

the Fourth Amendment, brief investigatory stops, commonly referred to as Terry stops, are permissible if they are based on "reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). Reasonable [*9] suspicion is "a less demanding standard than probable cause," although it requires, at least, "a minimal level of objective justification for making the stop." *Id.* at 123 (citing *United States v. Sokolow*, 490 U.S. 1, 76 (1989)). To make a showing that he or she has reasonable suspicion to make a stop, "[t]he officer must be able to articulate more than an 'inchoate and unparticularized suspicion or hunch of criminal activity.'" *Wardlow*, 528 U.S. at 123-24 (quoting *Terry*, 392 U.S. at 27). When we assess whether a Terry stop was reasonable, we consider "the totality of the circumstances, which can include [the defendant's] location, a history of crime in the area, [the defendant's] nervous behavior and evasiveness, and [the officer's] 'commonsense judgments and inferences about human behavior.'" *Johnson v. Campbell*, 332 F.3d 199, 206 (3d Cir. 2003) (quoting *Wardlow*, 528 U.S. at 124-25). Our "reasonable suspicion analysis is objective; subjective motive or intent is not relevant." *United States v. Goodrich*, 450 F.3d 552, 559 (3d Cir. 2006) (citing *Terry*, 392 U.S. at 21-22). Moreover, our reasonableness assessment "must be measured by what the officers knew before they conducted their search." *Florida v. J.L.*, 529 U.S. 266, 271 (2000).

Defendant argues that the officers could not have had reasonable suspicion to support stopping him because Officer Filler could not have seen the shotgun in the back of the van as he drove the patrol car towards Defendant. Defendant maintains that the lighting conditions on the street were too poor to enable the officers to view the inside of the van from their position in the patrol car. Defendant also relies on the 7548(a) post-incident report in which Officer Lane details the officers' reasons for the investigatory stop:

Vehicle parked illegally on the sidewalk with the owner Rolando Perez-Boscana and another male at the rear with both doors open. The driver looked in the direction of police and slammed the rear doors shut and began walking southbound on Water Street away from the van. Owner reached into his pocket, discarded two shotgun shells onto

the highway. The van was running and was registered to the male police had stopped. Police observed in plain view in the rear of the van a shotgun. (Def.'s Ex. 6.; see also 9/22/16 N.T. at 117.) Defendant argues that it is significant that Officer Filler's viewing of the gun is not one of the initial sentences in Officer Lane's report. He argues that if Officer Filler had truly seen the gun, this important fact would have appeared in the first sentence of the report. We are not persuaded that the order of the events transcribed in the report carries any controlling significance.

The Government maintains that the evidence of record establishes that the officers had reasonable suspicion to support their investigatory stop of Defendant. As we discussed above, the officers testified at the Hearing as follows: (1) Officer Filler saw what he believed was the stock of a shotgun in the back of the van, which was illuminated by the headlights of the officers' patrol car (9/22/16 N.T. at 21, 23); (2) the van was parked illegally on the sidewalk (*id.* at 20); (3) Defendant acted suspiciously by abruptly closing the doors to the van upon the officers' arrival (*id.* at 22, 54, 94, 98); (4) Defendant dropped shotgun shells onto the ground as the officers approached (*id.* at 28-29, 59, 130); and (5) Defendant was outside, at night, in a high crime area near the site of a recent double homicide (*id.* at 12-14, 90).

We conclude, based on this evidence, that the officers had a "reasonable, articulable suspicion that criminal activity [was] afoot." *Wardlow*, 528 U.S. at 123 (citation omitted). Nervous or evasive behavior can be a "pertinent factor" in an officer's reasonable suspicion calculus. *Id.* at 124 (citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 885 (1975); *Florida v. Rodriguez*, 469 U.S. 1, 6 (1984) (per curiam); *Sokolow*, 490 U.S. at 8-9. Presence in a "high crime area" is also a relevant consideration when assessing reasonable suspicion. *Id.* (quoting *Adams v. Williams*, 407 U.S. 143, 144, 147-148 (1972)); see also *Goodrich*, 450 F.3d at 561-62

(explaining that a defendant's presence in a high crime area, at night, near the scene of a crime, and the general absence of other people in the area, has also been found to justify reasonable suspicion to conduct an investigatory stop). Moreover, hand gestures consistent with the type of behavior that

would accompany a criminal transaction, coupled with presence in a high crime area at night, is sufficient to justify an investigative stop. The Third Circuit concluded in *United States v. Whitfield*, 634 F.3d 741 (3d Cir. 2010), that the defendant's "presence in the evening hours after 9:00 o'clock . . . in a high crime area where there's been drug transactions, arrests for drug transactions, shootings, [involvement in] what appears to be a hand-to-hand exchange, followed by a movement away from one another, and from the officers" supported a finding that the police officers had reasonable suspicion of criminal activity, particularly where the defendant made "furtive gestures," put his hand in his pocket in "an effort to conceal something or secure something," and refused to stop and show his hands. *Id.* at 745 (internal quotation omitted); see also *United States v. Lopez*, 441 F. App'x 910, 913 (3d Cir. 2011) (stating that the district court ruled correctly that the police officers had reasonable suspicion when "[t]he officers, while working a nighttime shift, observed [defendants] [walk] toward each other while continually surveying their surroundings, and . . . saw them exchange a small article without first shaking hands. The . . . area . . . was a high-crime area, and they suspected . . . a hand-to-hand narcotics transaction").⁴

⁴The Government argues that the fact that the van was parked illegally on the sidewalk, in violation of 75 Pa. Cons. Stat. Ann. 3353(a)(1)(ii), was one of the factors contributing to the officers' reasonable suspicion. Not only is this factor relevant to a finding of reasonable suspicion under Terry, but, it alone, may have also provided the officers with adequate justification to detain Defendant in a traffic stop. "The Supreme Court [has] established a bright-line rule that any technical violation of a traffic code legitimizes a stop." *United States v. Mosley*, 454 F.3d 249, 252 (3d Cir. 2006) (citing *Whren v. United States*, 517 U.S. 806 (1996)). To conduct a traffic stop, officers need only have a reasonable suspicion to believe that an individual has violated the traffic laws. *United States v. Delfin-Colina*, 464 F.3d 392, 397 (3d Cir. 2006) (holding that "the Terry reasonable suspicion standard applies to routine traffic stops.") Where, as here, the officers observed the van on the sidewalk, they plainly had a reasonable suspicion to believe that the driver had violated a traffic law, namely, 75 Pa. Cons. Stat. Ann.

3353(a)(1)(ii). Thus, at a minimum, it appears that the officers could, consistent with the Fourth Amendment, stop Defendant to investigate the apparent traffic violation.

We conclude, based on the totality of the circumstances, that the Government has established by a preponderance of the evidence that the officers had reasonable suspicion to conduct an investigatory stop of Defendant pursuant to Terry, 392 U.S. at 30. Moreover, even if we did not credit Officer Filler's testimony that he saw what appeared to him to be the stock of a shotgun as he drove towards Defendant, the aggregation of other factors nonetheless supports reasonable suspicion to support the Terry stop of Defendant. Defendant's nervous behavior of hastily shutting the door to the van and dropping shotgun shells on the ground, at night, near the scene of a recent crime, in a high crime area, is at least as suspicious, if not more suspicious, than similar scenarios in which a finding of reasonable suspicion was upheld. See *Whitfield*, 634 F.3d at 745; *Lopez*, 441 F. App'x at 913.

Thus, insofar as the Defendant seeks to suppress evidence as fruit of the poisonous tree based on the illegality of the initial investigatory stop, we conclude that, because the investigatory stop of Defendant was valid, the subsequently discovered shotgun may not be suppressed on this basis. Accordingly, we deny Defendant's Motion to Suppress with regard to this argument.

B. The Exclusionary Rule

Defendant argues that, because the warrantless search of his van violated the Fourth Amendment, the shotgun must be suppressed pursuant to the exclusionary rule. As we discussed above, once Defendant has established that the shotgun was found during a warrantless search, the Government has the burden to prove, by a preponderance of the evidence that an exception to the warrant requirement applies. See *Johnson*, 63 F.3d at 245; see also *United States v. Donahue*, 764 F.3d 293, 300 (3d Cir. 2014) (citing *Herrold*, 962 F.2d at 1143; *United States v. Vasey*, 834 F.2d 782, 785 (9th Cir. 1987)).

1. Automobile Exception

The Government maintains that the automobile exception to the exclusionary rule applies in this case. The Supreme Court has explained the automobile exception as fol-

lows: "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (citing *California v. Carney*, 471 U.S. 386, 393 (1985)); see also *Donahue*, 764 F.3d at 299-300 ("The automobile exception permits vehicle searches without a warrant if there is 'probable cause to believe that the vehicle contains evidence of a crime.'" (quoting *United States v. Salmon*, 944 F.2d 1106, 1123 (3d Cir. 1991))). Although warrantless searches of property ordinarily require both [*16] probable cause and exigent circumstances, "the ready mobility of automobiles permits their search based only on probable cause." *United States v. Burton*, 288 F.3d 91, 100 (3d Cir. 2002) (citations omitted). Individuals enjoy a lower expectation of privacy in the contents of a vehicle if there is probable cause to believe that the vehicle contains contraband. *United States v. Ross*, 456 U.S. 798, 823 (1982) ("an individual's expectation of privacy in a vehicle and its contents may not survive if probable cause is given to believe that the vehicle is transporting contraband"). Thus, if there is probable cause "to search a vehicle, the search 'is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained.'" *United States v. Cobb*, 483 F. App'x 719, 723 (3d Cir. 2012) (quoting *Ross*, 456 U.S. at 809); see also, *Burton*, 288 F.3d at 100 ("The automobile exception to the warrant requirement permits law enforcement to seize and search an automobile without a warrant 'if probable cause exists to believe it contains contraband.'" (quoting *Labron*, 518 U.S. at 940)).

Police officers have probable cause to search a vehicle when the facts available to them would "'warrant a [person] of reasonable caution in the belief' that contraband or evidence of a crime is present." *Florida v. Harris*, 133 S. Ct. 1050, 1055 (2013) (alterations in original) [*17] (quoting *Texas v. Brown*, 460 U.S. 730, 742 (1983)). The Supreme Court has adopted a totality of the circumstances approach to determining the existence of probable cause, thereby

"reject[ing] rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach." *Id.* Moreover, while conducting an investigative

stop, a police officer may obtain additional information that causes his or her reasonable suspicion of criminal activity to blossom into a determination of probable cause that a vehicle contains contraband. See, e.g., *Colorado v. Bannister*, 449 U.S. 1, 4 (1980) (stating that the police officer's observation during a valid traffic stop of items matching the description of recently stolen items and of passengers matching the description of the suspects, provided probable cause to seize the items without a warrant); cf. *United States v. Navedo*, 694 F.3d 463, 470 (3d Cir. 2012) (noting that in *Wardlow*, "it was the information that the police obtained during the brief investigative stop that allowed the brief Terry detention to blossom into probable cause for arrest"). Moreover, police officers who conduct a Terry stop in a situation in which they face potential danger may shine a flashlight into a vehicle associated with the stopped individual. See *United States v. Tyson*, 307 F. App'x 664, 667 (3d Cir. 2009) (stating that, after [*18] police officers conducted a legitimate Terry stop in a high crime area at night, they were justified in shining their flashlights into a car when they discovered the handle of a firearm under a seat).

The Government maintains that the officers had probable cause to search the van pursuant to the automobile exception because the officers were in a high crime neighborhood, Defendant was holding shotgun shells, the officers had good reason to believe that there was a shotgun in the van, and the shotgun posed a threat to the public. Additionally, the Government asserts that because the officers could have reasonably concluded that their safety, and the public's safety, would be put at risk if they failed to search for the shotgun, the officers were permitted to look into the window of the van while conducting a valid investigatory stop. See, e.g., *Tyson*, 307 F. App'x at 667 (concluding that police officers were justified in shining their flashlights into the front seat area of a car that had previously been, and was soon to be, occupied by the two individuals the officers had stopped in an area in which gunfire had recently occurred, and the location of the gun remained unknown).

During the September 22, 2016 [*19] Hearing, Defendant testified that the shotgun was "invisible" after he hid it under his work bin beneath the third row seat of the van.

(9/22/16 N.T. at 161-63, 182.) He claims that, because the shotgun was hidden underneath these objects, Officer Filler could not have seen the shotgun through the window of the van. Defendant argues that if Officer Filler did not see the shotgun in the van, the officers lacked probable cause to believe that the van contained contraband, the search of the van was thus unreasonable, and the shotgun must be suppressed pursuant to the exclusionary rule. As we discussed supra note 1, we do not find Defendant's testimony to be credible. Thus, we do not credit Defendant's assertion that the officers could not have seen the shotgun because it was hidden under other items in the van.

As we discussed above, the officers had reasonable suspicion that criminal activity was taking place when they stopped Defendant. During the course of the investigatory stop, the officers learned two additional facts. First, the officers noticed, that the car was locked while its engine was running. (9/22/16 N.T. at 69.) Second, Officer Filler viewed the shotgun in the van by shining his flashlight [*20] into the windows of the van. (Id. at 67.) The officers' concern for their safety was significantly heightened after Officer Filler confirmed the presence of a shotgun in the van. See *New York v. Class*, 475 U.S. 106, 116 (1986) (finding the search of a car to be justified under the Fourth Amendment due to the danger to officer safety of allowing the defendant to immediately return to his car when there is a firearm in the car). The danger to the officers and the public was further exacerbated due to the fact that the van was left locked and running during the encounter. We find that these two additional factors, combined with the factors justifying the officers' reasonable suspicion to conduct the Terry stop of Defendant, established probable cause for the officers to believe that the van contained evidence of a crime and that the shotgun in the running van presented a potential danger to both the officers and the general public. We conclude, accordingly, that the automobile exception to the warrant requirement applies in this case.

2. Plain View Exception

The Government also argues that, in addition to the automobile exception, the plain view exception to the warrant requirement justified the search of the van and the seizure of the shotgun. Defendant [*21] argues that, because the officers were not in a lawful posi-

tion to view the shotgun when Officer Lane searched the van, the plain view exception does not justify the warrantless search of the van. Specifically, Defendant contends that because Officer Filler did not see the shotgun through the window of the van while shining his flashlight through the window, the incriminating character of the shotgun could not have been apparent prior to the search of the van. As previously stated, we do not credit Defendant's testimony regarding the visibility of the shotgun in the van.

Under the plain view doctrine, evidence that is inadvertently discovered by police officers may, under certain circumstances, be seized without a warrant. *Coolidge v. New Hampshire*, 403 U.S. 443, 466 (1971). Consequently, evidence that was seized when it was lying in plain view will not be suppressed pursuant to the exclusionary rule, provided that (1) the officers did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed, (2) the incriminating character of the evidence is immediately apparent, and (3) the officers have a lawful right to access the object seized. *Horton*, 496 U.S. at 136-37.

Thus, the plain view doctrine "is best understood 'not as an independent [*22] exception to the warrant clause, but simply as an extension of whatever the prior justification for an officer's access to an object may be.'" *United States v. Yamba*, 506 F.3d 251, 257 (3d Cir. 2007) (quoting *Texas v. Brown*, 460 U.S. 730, 738-39 (1983)). In this case, Officer Filler did not violate the Fourth Amendment in arriving at the place from which the shotgun could be plainly viewed since the officers were engaged in a valid investigatory stop. Moreover, Officer Filler credibly testified that the incriminating character of the shotgun was immediately apparent to him as he viewed the shotgun through the window of the van with his flashlight; and Officer Lane had a lawful right to access the seized shotgun pursuant to the automobile exception due to the presence of probable cause. See *Horton*, 496 U.S. at 136-37. Therefore, we conclude that the Government has established, by a preponderance of the evidence, that because Officer Filler saw the shotgun in plain view through the window of the van, the officers were justified in searching the van and seizing the shotgun. Thus, in addition to finding that the automobile excep-

tion applies, we also conclude that the plain view exception applies in this case. We further conclude, accordingly, that there is no basis to suppress the shotgun pursuant to the exclusionary rule, and we deny Defendant's Motion to Suppress on this basis.⁵

C. Post-Arrest Statements

Defendant argues that any incriminating statements he made while being transported to the police station must be suppressed. Although Defendant denies making any such statements to the officers during his ride to the police station, he argues that if such statements exist, they should be suppressed as fruits of the poisonous tree because they were made as a result of an invalid investigatory stop and an invalid search and seizure. As we discussed earlier, the Supreme Court has held that "evidence and witnesses discovered as a result of a search in violation of the Fourth Amendment must be excluded from evidence." *Oregon v. Elstad*, 470 U.S. 298, 305-06 (1985) (citing *Wong Sun*, 371 U.S. at 471). "The *Wong Sun* doctrine applies as well when the fruit of the Fourth Amendment violation is a confession." *Id.*

Defendant maintains that he did not make any incriminating statements to the police officers. However, Officer Lane and Officer Filler each testified to materially indistinguishable statements made by Defendant during the ride to the police station. (9/22/16 N.T. at 37-38, 106.)

Defendant argues that the search-incident-to-arrest exception to the warrant requirement is the only exception that could apply in this case and that, under the law governing that exception, as it is applied in the automobile context, the officers' warrantless search of the van was unreasonable. Defendant asserts that the search was unreasonable because he was not within reaching distance of the passenger compartment at the time of the search and the officers had no reasonable suspicion to believe that the van contained evidence of the offense of arrest. However, as we discussed above, we have concluded that both the automobile and plain view exceptions to the warrant requirement apply in this case. Accordingly, we need not analyze Defendant's arguments as to the search-incident-to-arrest exception.

Because we have found the officers' testimony to be credible, we accept that Defendant

made the incriminating statements he is now seeking to suppress. Defendant further argues that even if he did make incriminating statements, because the initial stop and the search and seizure were unlawful, any statements elicited as a direct result of the officers' unlawful conduct must be suppressed. Defendant contends that, but for the illegal stop and search and seizure, the incriminating statements would have never been made.

We have concluded that the investigatory stop of Defendant and the subsequent search and seizure did not violate the Fourth Amendment. We have also concluded that the police officers' recovery of the shotgun

did not violate the Fourth Amendment. Because only statements made as a result of a Fourth Amendment violation may be suppressed under the fruits of the poisonous tree doctrine, the statements made here need not be excluded. See *Wong Sun*, 371 U.S. at 471. Defendant's request to suppress the post-arrest statements made to the officers is, therefore, denied.

IV. CONCLUSION

For the foregoing reasons, we deny Defendant's Motion to Suppress evidence of the shotgun and the post-arrest statements. An appropriate Order follows

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COBRA.net Information Sharing in PA...

Over 1/3 of the population of PA across hundreds of law enforcement agencies and thousands of police officers are protected every day by the cross-agency information sharing that COBRA.net provides. With one search, law enforcement users can find instant information across COBRA.net participating agencies, on persons, incidents, vehicles, and other vital data, including officer safety alerts on people and other entities.



In PA alone, COBRA.net provides 'one-stop' search across...

- 35+ Million Records (and growing)
- Over 1/3 of the population in PA
- Half of the top 10 communities
- Hundreds of law enforcement agencies
- Instant access to: persons, incidents, vehicles, warnings, Jail data and more...

Join COBRA.net today...

- Keep your current RMS, with COBRA.net's data aggregation technology
- Maintain TOTAL control over your own data... share on your own terms
- Dramatically increase officer and citizen safety through broader awareness

For 35 years, CODY Systems has remained a strong, award-winning provider of records and information sharing solutions for law enforcement agencies of all sizes, including county-wide, region-wide, and state-wide systems serving agencies across dozens of different RMS providers. Please contact us to see how your agency can join this growing community of agencies and users who swear by their COBRA.net system.



CODY is a proud 4-Shield Partner
of the PA Chiefs of Police