COMMONWEALTH OF PENNSYLVANIA:		IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
vs.	:	NO. 97-12,124
	:	
ROBERT J. DAYER,	:	
	:	
Defendant	:	1925(a) OPINION

OPINION IN SUPPORT OF THE ORDER OF AUGUST 31, 1999 IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Defendant has appealed the judgment of this Court wherein Defendant was convicted of violating 75 Pa.C.S. §1543(b), Driving while operating privilege is suspended or revoked, as set forth in Citation F0349426-0. The citation was filed by Trooper Curtis L. Albaugh of the Pennsylvania State Police after the Trooper observed Defendant driving on October 12, 1997, at which time Defendant's operating privilege was suspended for refusal to submit to chemical testing to determine the amount of alcohol or controlled substance in his system, pursuant to 75 Pa.C.S. §1547. We reaffirm our decision of August 31, 1999, for the reasons set forth on the record as supplemented by this Opinion.

At the summary trial, Trooper Albaugh testified that he was aware Defendant was under suspension as a result of a prior, unrelated investigation during which the Trooper ran a "name check" that indicated the suspension. N.T. 5-6. On October 12, 1997, the Trooper observed Defendant driving a vehicle on State Route 2014 in Loyalsock Township, an area commonly known as "the Golden Strip." N.T. 3. Defendant turned the vehicle into a shopping plaza. N.T. 3. The Trooper followed, watching Defendant park and exit the vehicle. N.T. 3. The Trooper then drove up to Defendant as he was walking down the main entranceway to the Giant Store. N.T. 5. The Trooper testified he did not call Defendant over to the police vehicle;

rather, he simply rolled down his window, at which time Defendant approached the cruiser. N.T. 5. Asked what he said to Defendant, Trooper Albaugh testified: "I asked him if he should be driving being he's under suspension and he stated no I shouldn't be driving." N.T. 5. Subsequently, the Trooper checked to ensure Defendant was under suspension; after confirming the suspension, Trooper Albaugh filed the citation October 13, 1997. N.T. 6. During this testimony, the Commonwealth introduced as Exhibit 1 Defendant's certified driving record, indicating a one-year suspension for a chemical test refusal effective July 29, 1996 to July 29, 1997. This was followed by a six-month suspension for a violation of 75 Pa.C.S. §3731, which would have been in effect during the date of the instant offense. Finally, a notation on the driving record indicates the operator's license was received (from Defendant) July 29, 1996. *See*, Commonwealth Exhibit 1; N.T. 7, 12, 14.

Defendant testified that, on the day in question, he was "a couple of steps away from the sliding glass doors" of the store when the Trooper called him over to the police vehicle. N.T. 17. Defendant continued that the Trooper then asked him if his license was under suspension for DUI, at which point he candidly admitted it was. N.T. 17. At that point, Defendant had not been advised of his rights. N.T. 17-18. According to Defendant, the Trooper then asked if Defendant knew the penalty (for driving under suspension, DUI related) was ninety days in jail, to which Defendant replied he did not. N.T. 18. Defendant stated he felt the need to go over to the vehicle when called because it was a Pennsylvania State Trooper who called him. N.T. 18.

On cross-examination, Defendant testified he was not taken into custody. N.T. 19. When asked if he believed the Trooper was going to arrest him, Defendant replied he did not know what the Trooper's intentions were. N.T. 19.

Defendant's Statement of Matters Complained of on Appeal, filed October 14, 1999, sets forth three bases for the appeal. First, that the evidence was legally insufficient to sustain the guilty verdict. Second, that the Court erred in defying Defendant's Motion to suppress the incriminating statements made by Defendant to the Trooper. Third, that the Commonwealth failed to prove Defendant had actual notice of the mandatory sentencing provisions provided in 75 Pa.C.S. §1543(b); therefore, this Court erred in imposing the mandatory sentence.

To sustain a conviction under 75 Pa.C.S. §1543(b), the Commonwealth must prove that the defendant had actual notice that his license had been suspended or revoked. ***Commonwealth v. Vetrini***, 734 A.2d 404, 407 (Pa.Super. 1999), *citing* ***Commonwealth v. Kane***, 333 A.2d 925 (Pa. 1975). "The Commonwealth must establish actual notice 'which may take the form of a collection of facts and circumstances that allow the fact finder to infer that a defendant has knowledge of suspension.'" *Id.* at 407, *citing* ***Commonwealth v. Crockford***, 443 Pa.Super. 23, 660 A.2d 1326, 1331 (Pa.Super. 1995). Here, the Commonwealth presented Defendant's certified driving record, which established the fact that Defendant was under suspension, DUI related, and had turned his license into the Pennsylvania Department of Transportation, received by the Department July 29, 1996. Moreover, on the day of the instant violation, Defendant admitted to the Trooper he knew he was under suspension. The evidence presented establishes actual notice of the suspension.

Defendant argues, however, that the statements made by Defendant must be suppressed. *See* Statement of Matters Complained of On Appeal; N.T. 21-22. Defendant's position is that the statements made by Defendant to Trooper Albaugh were made during a "custodial interrogation" and as Defendant was not first advised of his rights, these statements must not be considered by the Court. N.T. 21. We disagree.

In the case of ***Commonwealth v. Mannion***, 725 A.2d 196 (Pa.Super. 1999), the Pennsylvania Superior Court stated that a law enforcement officer must administer *Miranda*[1] warnings prior to custodial interrogation. *Id.* at 200. "Custodial interrogation has been defined as 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his [or her] freedom of action in any significant way.'" ***Ibid.***, citing ***Commonwealth v. Johnson***, 541 A.2d 332, 336 (Pa.Super. 1988). The Court noted the appropriate test for determining whether a suspect is being subjected to custodial interrogation is as follows:

> The test for determining whether a suspect is being subjected to custodial interrogation so as to necessitate *Miranda* warnings is whether he is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation.

Mannion at 200, citing ***Commonwealth v. Busch***, 713 A.2d 97, 100 (Pa.Super. 1998). The ***Mannion*** Court continued: "Said another way, police detentions become custodial when, under the totality of the circumstances, the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of an arrest." ***Ibid.*** Factors considered in making the determination include the basis for the detention, its length and duration, whether

the suspected was transported against his will and if so, how far and why, whether restraints were used, whether the officer showed, threatened or used force, and the investigative methods employed to confirm or dispel suspicions. ***Ibid.***

At trial we found the Trooper did not summon Defendant to the police cruiser using the words "come here," as claimed by Defendant. N.T. 25. Nor did this Court find Defendant's testimony in any way convincing that he found himself under custody, nor that the Trooper's actions in any way intended to place Defendant in custody or create a circumstance wherein Defendant's degree of movement was restricted. N.T. 25-26. Even considering Defendant's own testimony, when asked if he thought the Trooper was ready to arrest him, he responded he did not know what the Trooper wanted. N.T. 19. He was not taken into custody, nor was he cited. The entire incident lasted three or four minutes. He was never asked to step into the police vehicle. N.T. 19-20. Clearly, under ***Mannion***, the factors here do not constitute a situation so coercive as to constitute the functional equivalent of an arrest. At most, the encounter was a "traffic stop," typically brief in duration and occurring in public view. ***Mannion*** at 202. "Such a stop is not custodial for *Miranda* purposes." ***Ibid.*** A traffic stop may become "custodial" if it involves coercive conditions including a suspect being forced into a patrol car, transported from the scene or if the suspect is physically restrained. ***Ibid.*** Factors such as these are not present in the case before us.

Finally, Defendant argues that "the Commonwealth has to provide the Defendant with actual notice, that if he were convicted of driving under suspension…he would face a mandatory 90 days imprisonment and $1,000 fine." N.T. 34-35. To support this

[1] ***Miranda v. Arizona***, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

argument, Defendant relies upon the cases of ***Commonwealth v. Taylor***, 649 A.2d 453 (Pa.Super. 1994) and ***Commonwealth v. Gamble***, 649 A.2d 453 (Pa.Super. 1994). However, *Taylor* dealt only with the Commonwealth's burden to prove actual notice of the suspension, not the penalty for driving under suspension. Similarly, in ***Gamble***, the Superior Court said it could not subject the defendant to the harsher sanctions imposed by the statute without proof the defendant had actual notice of his license *suspension*.

Having reviewed the evidence presented, the arguments of counsel and the guidance provided by the appellate courts, this Court finds Defendant was properly convicted of the offense charged.

BY THE COURT,

Date: November 10, 1999

William S. Kieser, Judge

cc: Robert W. Ferrell, III, Esquire (ADA)
Peter T. Campana, Esquire
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)

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