

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 00-10,175

VS :

JAMES L. BENSON :

OPINION AND ORDER

Before the Court is a Motion to Dismiss the charges of Driving Under the Influence. A hearing on the Motion was held March 24, 2000. The Commonwealth presented the testimony of Officer Womer of the Williamsport Bureau of Police. Officer Womer testified that on November 7, 1999, at approximately 3:00 a.m., he received a call reporting a loud noise on Academy Street in Williamsport. He stated that he heard the noise about a block away that sounded like an engine “screaming.” He turned onto Academy Street and noticed a parked truck with smoke billowing out of the engine. Moments later, the engine stopped running. The truck was legally parked on the right side of the street.

Upon approaching the truck, Officer Womer could see the Defendant sitting up in the driver’s seat. Officer Womer made contact with the Defendant and requested identification. He asked the Defendant where he was going, and the Defendant replied that he was “going home.” The Defendant attempted at that time to turn the engine over, but could not. Officer Womer made a comment about the smoke coming from the engine, and the Defendant replied that the smoke was coming from the “stove.” Officer Womer stated that the Defendant’s speech was slurred and he seemed disoriented.

The Defendant took the stand and testified that he had gone to the six pack store on Basin Street around 9:00 p.m.. While at the store, he spoke to a couple who lived a few blocks away on Academy Street. The couple invited him to their apartment to play cards, and the Defendant agreed. After some time, the couple asked if the Defendant wanted to stay the night. The Defendant stated that he felt uncomfortable about staying in the house because the couple had been fighting, so he went to his truck to sleep. He testified that he started the truck, turned on the heat, and fell asleep. He testified that he was awakened by the noise of the truck shortly before the officer arrived. He stated that he was disoriented at that time. He testified that he did not attempt to move the vehicle.

The crime of driving under the influence of alcohol requires that the Commonwealth prove two elements beyond a reasonable doubt: (1) defendant was driving, operating, or in actual physical control of the automobile; (2) while under the influence of alcohol to a degree which renders him incapable of safe driving. 75 Pa. C. S. A. § 3731(a)(1). The issue before the Court is not whether the Defendant was under the influence, but whether he was operating a motor vehicle. The Defendant argues that his conduct of sitting in a legally parked truck, with the engine on, but without the headlights on, is not enough to prove that he was operating a motor vehicle. The Defendant cites Commonwealth v. Byers, 437 Pa. Super. 502, 650 A.2d 468 (1994), and Commonwealth v. Yearicks, Lycoming County 99-11,356 in support of their argument.

In Byers, supra, the defendant was found asleep in his parked car in a bar parking lot. The car had the headlights on, but the car was not moving. The defendant

appeared intoxicated to the police officer and was given field sobriety tests. After failing the field sobriety tests, the defendant was arrested and charged with operating a vehicle while under the influence of alcohol. The Superior Court held that the Commonwealth failed to meet its burden of proving beyond a reasonable doubt that the defendant was in actual physical control of his vehicle when the Commonwealth had only presented evidence that the defendant's car was running when the trooper found it. The Court found that "the cases support the conclusion that a showing that an intoxicated defendant started a parked car, without more, is not enough to prove actual physical control. The Commonwealth must show some additional facts to illustrate that defendant was a danger to public safety." Byers, 650 A.2d at 470. The Court reasoned that the defendant "never got onto the road and was not a threat to public safety." The Court added that the "Commonwealth is trying to encourage intoxicated people to 'sleep it off' before attempting to drive, yet it want[ed] to punish [the defendant] for doing just that" Byers, 650 A.2d at 471.

In Commonwealth v. Yearicks, the defendant was found in her parked car in a bar parking lot, with the engine running. The defendant testified that she had planned on giving the keys to the bartender, but she fell asleep with the engine running. Judge Brown held that "although the engine was running, neither the location of the vehicle nor any other evidence indicated the defendant drove the vehicle prior to the arrival of the police in this case." Yearicks at p.2.

Based on the decisions of Byers and Yearicks, the Court finds that the Commonwealth has not provided sufficient evidence to prove actual physical control. Although the Defendant's car was not found in a bar parking lot like the defendants in

Byers and Yearicks, the Court found the Defendant's testimony credible with regard to him being at a private home that evening, and having gone out to his car to sleep. Additionally, there was no evidence that the car had been moved. The car was in a legally parked location, with no headlights on. The car had been parked at that location with the engine "screaming" long enough for one of the area residents to call the county dispatch center. Under the totality of the circumstances in this case, the Court finds that the Commonwealth did not present sufficient evidence to indicate that the Defendant's vehicle had been moved prior to the arrival of the police that evening. The Defendant's motion is therefore Granted.

ORDER

AND NOW, this 17th day of April 2000, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Motion to Dismiss is GRANTED and the charges filed against the Defendant in the above captioned matter are DISMISSED.

By The Court,

Nancy L. Butts, Judge

cc: CA
William Miele, Esquire
Daniel Holmes, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire