

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 99-10,992

VS :

DOUGLAS E. HOSTRANDER :

OPINION IN SUPPORT OF ORDER  
IN COMPLIANCE WITH RULE 1925(A)  
OF THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court's Order dated February 10, 2000, wherein the Defendant was placed under the supervision of the Adult Probation Office for a period of twenty four (24) months under the Intermediate Punishment Program, with the first three (3) months to be served at the Pre-Release Center. The Defendant was also Ordered to pay fines totaling \$800.00. This sentence was imposed after he was found guilty of Driving Under the Influence and Driving Under Suspension following a jury trial held on December 9<sup>th</sup> and 10<sup>th</sup>, 1999. On appeal, Defendant argues that the verdict was against the weight of the evidence. The following is a summary of the evidence presented at trial.

Mr. Morris M. Sponhouse testified that the Defendant approached the Old Lycoming Fire Company at approximately 2:20 a.m. on April 9, 1999. The Defendant, dressed in army fatigues, identified himself as a Staff Sergeant with an army reserve unit, and demanded that he tell him where Misner Road was. (N.T. 12/9/99, p. 9) As the Defendant approached Mr. Sponhouse, he tripped over a bumper block. When Mr. Sponhouse showed some hesitation, the Defendant replied that he was "not an asshole and you need to tell me where Misner Road is now." (Ibid.) The Defendant explained

further that he was after a person that was absent without leave (herinafter “AWOL”), and that he was going to get him, “no matter what.” (Id., p 21)

As Mr. Sponhouse gave the Defendant directions to Misner Road, he noticed that the Defendant’s speech was slurred, and that he had a hard time keeping his balance. While talking with the Defendant, Mr. Sponhouse formed the opinion that the Defendant was under the influence. (Id., p.11) Their conversation lasted approximately 45 seconds. (Id., p. 22) After he observed the Defendant leave in his vehicle, Mr. Sponhouse called the police department. Mr. Sponhouse testified that he was concerned that the Defendant was under the influence, and was also concerned by the way the Defendant stated that he was “going to get someone.”

Officer Matthew McCormick, a patrolman with the Old Lycoming Township Police Department, testified that he was on duty and had passed the firehouse only moments prior to receiving the call from Mr. Sponhouse. Officer McCormick saw the Defendant’s vehicle moments later on Misner Road. Officer McCormick immediately stopped the Defendant’s vehicle. (Id., p. 26) As the Defendant exited his vehicle, Officer McCormick acknowledged that the Defendant fit the description given by Mr. Sponhouse. (Id., p. 27) Officer McCormick immediately recognized the Defendant as one of his former high school classmates. (Ibid.) As the two of them spoke, Officer McCormick detected a strong odor of alcohol emanating from the Defendant’s breath. (Ibid.) Officer McCormick also noted that the Defendant swayed as they spoke, and that his eyes were red and glassy. Once Officer Hope arrived on the scene, Officer McCormick pulled him aside, explained that he had known the Defendant for several years, and he asked that Officer Hope handle the stop. (Id., p. 28). From that point on, Officer

McCormick stood several feet away and observed the communication between the Defendant and Officer Hope.

Officer Joseph Hope testified that after arriving on the scene, and agreeing to take over the stop, he asked the Defendant several questions with regard to his position in the National Guard and who he was looking for. In the course of speaking with the Defendant, Officer Hope observed a strong odor of alcohol coming from his breath. (Id., p. 62) He also noticed the Defendant swaying as he stood in place. After requesting that he perform field sobriety tests, the Defendant admitted that he had been drinking, but stated that the officers could not arrest him because he was on “official duty” with the National Guard. (Id., p. 65) The Defendant failed the field sobriety tests administered by Officer Hope. Officer Hope developed the opinion that the Defendant was under the influence to a degree that rendered him incapable of safe driving, and informed the Defendant that he was being arrested for driving under the influence. (Id., p.73) The Defendant was handcuffed and transported to the DUI processing center approximately two miles away.

Field sobriety tests were administered again at the DUI processing center. Officer Hope testified that he observed the tests as they were administered at the processing center. Officer Hope testified that the Defendant performed better on the tests at the center than he had done previously, but he still did poorly. He stated that in his opinion, the Defendant had failed two of the three tests administered. (N.T. 12/9, 12/10, p.24) Officer Raymond Kontz, of the Williamsport Bureau of Police testified that he was on duty at the DUI processing center that evening. He testified that the Defendant was belligerent and argumentative when he arrived at the center. The

Defendant argued that he had been unlawfully arrested. (Id., p. 34) Officer Kontz noted that the Defendant smelled of alcohol, and his eyes were red and glassy. (Id., p. 37) Officer Kontz explained and demonstrated the field sobriety tests while Officer Solomon scored them. It was Officer Kontz's opinion that the Defendant had passed the one leg stand, but had failed the finger to nose test, and the nine-step walk and turn test. (Id., p. 35) From his observations of the Defendant, he developed the opinion that the Defendant was incapable of safe driving.

Officer William Solomon, with the Old Lycoming Township Police Department, scored the field sobriety tests. The Defendant had passed the one leg stand with a total of one point. The Defendant had failed the finger to nose test, having missed three of five attempts. Officer Solomon had failed to complete the exam results with regard to the walk and turn test, because he had to attend to a telephone call. After reviewing the video shortly before trial, Officer Solomon found mistakes totaling three points, which would have been failing. (Id., p. 79) Officer Solomon testified that he also noted that the Defendant had red, glassy eyes, he smelled of alcoholic beverages, and his speech was slurred. (Id., p. 80)

Master Sargent Carl Shelter, the recruiting supervisor for the Central Pennsylvania Area for the Army National Guard testified that the Defendant was employed as a recruiter for the Williamsport area on the date of the incident. (Id., p. 95) He testified that he was not aware that the Defendant was on duty at the time of the alleged offense. The Defendant did not, however, have set work hours, and he would often leave as early as 4:00 a.m. to get a recruit to Mechanicsburg for a physical.

The Defense presented the testimony of Captain Bradley L. Gottschall, the Assistant S-3 for the Fifty-fifth Brigade. He testified that although he did not have personal knowledge of whether the Defendant had been searching for a person who was AWOL that evening, the Defendant is the kind of person who would have made the effort to find someone at any time of the day or night. (Id., p. 128)

The Defendant testified on his own behalf. He testified that the day before the incident, on April 8, 1999, he arose shortly after 2:00 a.m., to transport an enlisting person to the processing station in Mechanicsburg. Processing began in Mechanicsburg at 6:00 a.m.. The Defendant stayed near the processing station until approximately 3:30 p.m., when his enlistee was released to return home. Upon returning to Williamsport, the Defendant dropped his vehicle off at the armory, and proceeded to Mansfield to meet with a person he had enlisted to have some paperwork signed. (Id., p. 137) While there, he spoke with other students of the benefits of the National Guard. He left Mansfield at approximately 11:00 p.m. (Id., p. 139) On his way home, the Defendant stopped at the Crippled Bear Bar to eat, and to speak with one of his enlistees who had been having problems. He talked with the enlistee for approximately two hours. (Id., p. 141) The Defendant testified that while he was there, he consumed two mugs of Yuengling lager (Ibid.) He also learned that another enlistee who had been AWOL, was staying at a house on Misner Road.

The Defendant left the bar at approximately 1:30 a.m., with the intention of finding the AWOL enlistee on Misner Road. When he could not find Misner Road, the Defendant stopped first at the police station, but upon finding it deserted, he went to the fire hall. (Id., p. 146) The Defendant testified that when he finally found Mr. Sponhouse,

he looked at him as though he was a “lunatic.” The Defendant stated that he explained to Mr. Sponhouse that “I’m not an asshole, I’m an active duty Staff Sergeant in the National Guard I’m looking for an AWOL soldier and I would like to know where Misner Road was.” (Id., p. 148) Mr. Sponhouse finally gave the directions, and the Defendant left the fire house. Approximately three minutes later, Officer McCormick pulled him over on Misner Road.

The Defendant acknowledged that he was belligerent at the time of the incident, but testified that his agitated state was not attributable to the amount of alcohol he consumed, but attributable to the fact that he had been awake for a full 24 hours at that point. Additionally, he testified that he thought he had performed well on the sobriety tests. He attributed the points he received to improper instructions. For example, he testified that he was not told that keeping his leg up longer for the one leg stand would warrant a point. He thought that keeping his leg up longer was greater evidence that he was not under the influence of alcohol.<sup>1</sup> (Id., p. 157) As far as the finger to nose test, the Defendant testified that he touched his nose each time. He testified that the officer did not instruct him that he had to touch the *very tip* of his finger with the *very tip* of his nose, only that he had to touch the tip of his finger to his nose. (Id., p. 158)

The Defendant argues that the verdict of guilty of the charge of driving under the influence to a degree that rendered him incapable of safe driving was against the weight of the evidence. In reviewing such a claim, the test is not whether the Court would have decided the case in the same way, but whether the verdict was so contrary to the evidence as to shock one's sense of justice. Only in this situation is the award of a new

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<sup>1</sup> The Court notes that although the Defendant received a point for keeping his leg in the air longer than 30 seconds, he did not fail that test.

trial imperative, so that right may be given an opportunity to prevail. Id.; Commonwealth v. Taylor, 324 Pa. Super. 420, 471 A.2d 1228 (1984); Commonwealth v. Gonce, 320 Pa. Super. 19, 466 A.2d 1039 (1983).

Instantly, the Court cannot conclude that the verdict was so contrary to the evidence that the award of a new trial is imperative so that right may be given an opportunity to prevail. All of the Commonwealth's witnesses testified consistently with regard to the Defendant's demeanor and physical state on the night of the incident. The Defendant smelled strongly of alcohol, and had admitted having a couple of mugs of beer before driving his vehicle. Additionally, the witnesses testified consistently that the Defendant swayed as he stood, he had slurred speech, red glassy eyes, and he failed to complete field sobriety tests. The Court finds this testimony supports the conclusion that the Defendant was impaired from his alcohol consumption, and not merely from being exhausted. Additionally, it supports the conclusion that the Defendant was impaired to a degree that that rendered him incapable of safe driving. The Court therefore rejects the Defendant's argument.

Dated:

By The Court,

Nancy L. Butts, Judge

xc: Michael Morrone, Esquire  
Kenneth Osokow, Esquire  
Honorable Nancy L. Butts  
Law Clerk  
Gary Weber, Esquire  
Judges