

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	No. 99-10,815
	:	
vs.	:	
	:	
	:	
STEVEN KOCH,	:	
Defendant	:	1925(a) Opinion

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

This opinion is written in support of this Court's Judgment of Sentence dated February 3, 2000 and docketed February 10, 2000. The relevant facts are as follows: On October 2, 1998 at approximately 2:47 a.m., Trooper Robert Tobias and Trooper Barry Huey were on routine patrol when they observed a vehicle on the berm of State Route 2014 near the Antler's Club with its engine running, headlights on, and dome light illuminated. Trooper Tobias pulled in behind the vehicle, because he thought the vehicle may have broken down or the occupants may have needed assistance. When he pulled in behind the vehicle, Trooper Tobias activated the cruiser's light bar for safety precautions. Trooper Tobias and Trooper Huey then exited the cruiser and approached the vehicle. Trooper Tobias approached the driver's side of the vehicle and Trooper Huey approached the passenger's side. Trooper Tobias observed the defendant sitting behind the steering wheel and another individual in the passenger seat. Trooper Tobias also

noticed that the dome light was on because the passenger had his door slightly ajar and was kind of leaning out of the vehicle.

When Trooper Tobias came in contact with the driver, Steven L. Koch, he asked him if everything was okay. The defendant responded that he pulled over to let his brother spit and indicated he was driving because his brother was too drunk to drive. While the defendant was making these statements, Trooper Tobias noticed the following: 1) an odor of alcohol coming out of the vehicle; 2) the defendant had very blood shot eyes; and 3) the defendant's speech was slurred. Trooper Tobias then asked the defendant to step out of the vehicle. When he did so, the defendant stumbled and was very unsteady on his feet. Trooper Tobias asked the defendant to perform field sobriety tests, which he failed. Trooper Tobias then took the defendant into custody and transported him to the DUI Processing Center at the Williamsport Hospital.

At the DUI Center, the defendant was informed of the implied consent law and asked to submit to a blood alcohol test. Although the defendant stated he would submit to a blood test, when the technician attempted to draw his blood, the defendant jerked his arm away. After two such attempts, the technician determined it was not safe for anyone involved to continue attempting to draw the defendant's blood. Therefore, the police officers at the DUI Center recorded a refusal on the implied consent paperwork.

The defendant was charged with Driving Under the Influence of Alcohol to a degree which rendered him incapable of safe driving (DUI) and driving while his operating privileges were suspended or revoked due to a previous DUI (DUS-DUI related).

A jury trial was held on the DUI charge.¹ On November 10, 1999, the jury found the defendant guilty of DUI. On February 3, 2000, the Court found the defendant not guilty driving under suspension-DUI related, but guilty of driving under suspension as a habitual offender. The Court also sentenced the defendant on February 3, 2000. On the DUI conviction, the Court sentenced the defendant to undergo incarceration in the County Prison for a minimum of six (6) months and maximum of twenty-four (24) months less one (1) day, pay fines and costs, receive treatment and attend Alcohol Highway Safety School. On the driving under suspension conviction, the Court sentenced the defendant to undergo incarceration at the County Prison for two (2) months and pay a fine of \$500.00.

On February 9, 2000, the defendant filed a Notice of Appeal.

The defendant asserts the Court erred in denying his Motion to Suppress Evidence. The Court's rationale for denying the defendant's motion can be found on the record at the close of the Suppression Hearing. N.T., September 27, 1999, at pp. 12-14. Basically, the Court disagreed with the defendant's contention that when the troopers activated the light bar on the cruiser, they stopped the defendant. Instead, the Court found that the troopers' initial contact with the defendant to inquire whether he needed assistance was a mere encounter. In their brief conversations with the defendant, the troopers developed reasonable, attributable grounds to believe that the defendant was driving under the influence of alcohol, which developed into probable cause to arrest the

¹Since driving under suspension is a summary offense, the defendant was not entitled to a jury trial on that charge.

defendant for that offense. Therefore, the Court found no violation of the defendant's constitutional rights against unlawful searches and seizures and denied the suppression motion.

The defendant also contends the evidence was insufficient to sustain the verdict and the verdict was against the weight of the evidence. Such boilerplate assertions, however, do not preserve these issues for appellate review and, in fact, result in waiver. Commonwealth v. Rogers, 419 Pa.Super. 122, 138, 615 A.2d 55, 63 (1992); Commonwealth v. Grekis, 411 Pa.Super. 513, 529, 601 A.2d 1284, 1292 (1992); Commonwealth v. Whiteman, 336 Pa.Super. 120, 485 A.2d 459 (1984).

DATE: _____

By The Court,

Kenneth D. Brown, J.

cc: Daniel E. Holmes, Esq. (ADA)
Public Defender
Work file
Superior Court (original & 1)
Judges
Gary Weber, Esquire (Lycoming Reporter)