

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: No. 99-10,742
	:
vs.	:
	:
	:
JAMES LETA,	:
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 January 31, 2000.

The relevant facts are as follows: On January 8, 1999, at approximately 11:13 p.m., Officer Raymond Kontz of the Williamsport Police observed the defendant driving in the area of High Street and Fifth Avenue in the city of Williamsport. It was snowy night and the roads were slippery. Officer Kontz observed the defendant's vehicle fishtail almost sideways when the defendant turned off High Street onto Fifth Avenue, a narrow brick road. The vehicle then straightened out and proceeded up Fifth Avenue. As the vehicle accelerated up Fifth Avenue, it fishtailed again, nearly striking another vehicle that was parked on Fifth Avenue. Officer Kontz then stopped the vehicle for driving too fast for conditions. During Officer Kontz' contact with the defendant, the officer noticed a strong odor of alcohol about the defendant's person, and that the defendant had glassy eyes and slurred speech. Two field sobriety tests were conducted and the defendant failed both.

Officer Kontz then transported the defendant to the DUI Processing Center so blood could be drawn. The results of the blood test showed the defendant had a blood alcohol content (BAC) of .11%. The defendant was arrested and charged with driving under the influence of alcohol to a degree which rendered him incapable of safe driving and driving under the influence of alcohol with a BAC of .10 or greater.

On November 8, 1999, the defendant filed a Motion in Limine challenging the constitutionality of 75 Pa.C.S. §3731(a.1) and the introduction of the defendant's BAC when the Commonwealth did not have expert testimony to relate the BAC back to the time the defendant was driving. In an Order dated December 3, 1999, the Court denied the defendant's motion. The defendant then waived his right to a jury trial and the matter proceeded non-jury as a case stated. The Court found the defendant guilty of driving under the influence of alcohol with a BAC of .10% or greater.¹ On January 31, 2000, the Court sentenced the defendant to incarceration in the county prison for forty-eight (48) hours to eighteen (18) months.

¹At the time the defendant waived his right to a jury trial, the Commonwealth dismissed the incapable of safe driving charge.

On February 22, 2000, the defendant filed the instant appeal. In his appeal, the defendant asserts the Court erred in denying his Motion in Limine. The Court relies on its Order of December 3, 1999. In addition, the Court notes the Pennsylvania Superior Court en banc found 75 Pa.C.S. §3731(a.1) constitutional in Commonwealth v. Murray, 749 A.2d 513 (Pa.Super. 2000).

DATE: _____

By The Court,

Kenneth D. Brown, J.

cc: Michael Dinges, Esq., (ADA)
Marc Lovecchio, Esq.
Work file
Superior Court (original & 1)
Gary Weber, Esquire (Lycoming Reporter)