

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 vs. : NO. 03-10,816  
 :  
 LAURIE GUTHRIE, :  
 :  
 Defendant : 1925(a) OPINION

Date: September 24, 2003

**OPINION IN SUPPORT OF THE ORDER OF AUGUST 25, 2003 IN COMPLIANCE  
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Laurie Guthrie has appealed this Court's Order of August 25, 2003, which found her guilty of Driving while operating privilege is suspended in violation of 75 Pa. C.S. § 1543(b) (driving under suspension - DUI related) and imposed the mandatory sentence that she pay a fine of \$1,000 and serve ninety days (90) of incarceration in the Lycoming County Prison.

The sentence was imposed following a *de novo* summary trial.

The facts, which led to Defendant being arrested for driving under suspension, are not in dispute. Evidence was presented that on February 1, 2003, a Hughesville Borough Police Officer observed Defendant driving through the Borough and then park the motor vehicle in front of her home. At that time, the officer believed her operating privileges were under suspension. The officer confirmed Defendant's name, date of birth, and that she had not yet had her driver's license restored following a prior suspension. No citation was issued at that time; however, the officer sent for and obtained a certified record of Defendant's suspension from the Department of Transportation. After the officer received the certified

record, which confirmed that Defendant's privileges were under suspension and that they had not been restored following a suspension for driving under the influence, the officer filed the citation giving rise to the present charge. After presentation of this evidence by the Commonwealth, Defendant demurred. The Court denied the demur.

Thereafter, Defendant testified and acknowledged operating her vehicle. She further testified that she had received a one-year suspension for driving under the influence of alcohol followed by a subsequent one-year suspension for a non-DUI offense and that she was in the second year of that suspension. She admitted that her license had never been returned to her by the Department of Transportation. She also acknowledged she did not have a Pennsylvania operator's license, that she was aware that the prior suspension was for the driving under the influence offense, and that she had not had her license or operating privileges restored following the DUI suspension.

The sole issue presented by Defendant at trial was that since she had served the one-year suspension for driving under the influence she could not be convicted of violating 75 Pa. C.S. §1543(b), even though, at the time of the present offense, her operating privileges had not been restored following the DUI suspension. The Court found her guilty of violating §1543(b) Driving Under Suspension-DUI Related and sentenced Defendant to the mandatory sentence. In so doing, this Court stated on the record its reasoning for its findings and holding that Defendant's defense to the charge had no merit; nevertheless, the Court believes that, in light of the appeal,<sup>1</sup> this supplemental opinion to that reasoning is appropriate.

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<sup>1</sup> The Notice of Appeal was filed August 25, 2003. This Court issued an Order pursuant to Pa. R.C.P. 1925(b) directing Defendant to file a Statement of Matters Complained of on the Appeal. Defendant filed the Statement of Matters on September 16, 2003.

On appeal, Defendant contends that the Court erred in convicting her under 75 Pa. C.S. §1543(b). Defendant argues that she was not driving while her operating privileges were suspended because her suspension for a prior DUI offense had expired by the date of the citation. Defendant argues the mere fact that her license was not restored does not alter the fact that the one-year time limit on the DUI suspension had run. The Defendant further argues that convicting her under §1543(b) extends the penalties and consequences associated with her DUI-related suspension. Also, Defendant argues that this Court erred in denying her Petition for Bail Pending Appeal.

The Court did not err in convicting Defendant under §1543(b). 75 Pa. C.S. §1543(b) provides that a person who drives a motor vehicle on a highway or trafficway in this Commonwealth while his operating privileges are suspended because of a violation of 75 Pa. C.S. 3731 (driving under the influence of alcohol or controlled substance) is guilty of a summary offense and shall be sentenced to pay a fine of \$1,000 and imprisoned for not less than 90 days. Section 1543(b)(2) specifically provides that the subsection applies “. . . until the person has had the operating privilege restored.” This particular provision of 1543(b)(2) specifically addresses the situation, which now confronts this Court. Therefore, it is abundantly clear that an individual who operates a vehicle after the expiration of her suspension, but before the restoration of her license, is still guilty of violating 75 Pa.C.S. §1543(b). *Commonwealth v. Byrne*, 815 A.2d 637 (Pa. Super. 2002); *Commonwealth v. Paxson*, 825 A.2d 1285 (Pa. Super. 2003) (Applying logic of *Byrne* to 75 Pa.C.S. §1543(a) and stating that the position expressed in *Rossi v. Commonwealth of Pennsylvania, Dep’t of Trans.*, 798 A.2d 801 (Pa. Cmwlth. 2002) was not adopted by the Superior Court.).

At the time the citation was issued, Defendant's operating privileges had not been restored. It is immaterial that her prior DUI related suspension had expired. Under *Bryne, supra*, Defendant was driving her vehicle while her operating privileges were suspended for a violation of 75 Pa. C.S. §3731

Therefore, the contention that the Court was extending the penalties and consequences associated with the prior DUI related suspension is without merit.

An order from the Superior Court dated September 18, 2003 has addressed the issue raised in the assertion that this Court erred in denying Defendant's Petition for Bail Pending Appeal. Pursuant to that Order, Defendant's bail was reinstated.

Accordingly, the Court believes that the Appeal should be dismissed and the Order of August 25, 2003 affirmed.

BY THE COURT,

William S. Kieser, Judge

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Judges  
Christian Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)