

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-11,746
	:
	:
vs.	: CRIMINAL DIVISION
	: Non-Jury Trial
DALE S. BARTLEY,	:
Defendant	:

OPINION AND VERDICT

Defendant has been charged with one count of DUI (incapable of safe driving) and pursuant to his election to waive a jury trial, the matter was heard without a jury on May 9, 2003. At the time of trial, counsel stipulated to use of the evidence presented at the preliminary hearing in this matter. Defendant then argued that the Commonwealth failed to prove beyond a reasonable doubt that he was under the influence of alcohol to a degree which rendered him incapable of safe driving at the time that he drove, operated or was in actual physical control of the movement of a vehicle. The Commonwealth argues that sufficient evidence exists in the statement by the officer that at the time of Defendant’s arrest he was, in the officer’s opinion, highly impaired and totally incapable of operating a motor vehicle. A review of the case law, however, indicates that it is the time that Defendant drove, and not simply the time he was found in the vehicle, that must be examined, and a determination made regarding Defendant’s ability to drive safely at that time. Banner v DOT, Bureau of Driver Licensing, 737 A.2d 1203 (Pa. 1999).

In the instant case, the Court is convinced beyond a reasonable doubt that Defendant was under the influence of alcohol to a degree which rendered him incapable of safe driving at the time he drove the vehicle to its location on Route 973.¹ Considered by the Court in coming to this conclusion

¹ A complete review of the evidence presented at the preliminary hearing can be found in the Court’s

are the officer's statement that Defendant was so impaired that he was unable to stand or walk, and that in spite of the warmth of the August evening, the interior of Defendant's vehicle was cool, indicating that the air conditioning had been recently turned off, although at the time Defendant was discovered by the officer, he appeared to be sleeping. The Court believes this gives rise to a reasonable inference that Defendant drove the vehicle shortly before being discovered by the police, and considering his high level of intoxication at that point, the further inference that he had been nearly as intoxicated, if not more so, at the time he drove.

VERDICT

AND NOW, this day of May, 2003, after a bench trial on May 9, 2003, the Court hereby adjudicates Defendant as follows:

Count 1, driving under the influence, Guilty.

Sentencing is hereby deferred pending preparation of a CRN evaluation, to be prepared by Valley Prevention Services. Sentencing is hereby scheduled for Tuesday, July 15, 2003 at 10:00 a.m. in Court Room #5 in the Lycoming County Courthouse.

By the Court,

Dudley N. Anderson, Judge

cc: DA
 Peter Campana, Esq.
 Gary Weber, Esq.
 Hon. Dudley N. Anderson