

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 02-11,483
:
:
vs. : CRIMINAL DIVISION
: Motion to Dismiss
BRIAN LEE GREENAWALT, :
Defendant :

OPINION AND ORDER

Defendant has been charged with aggravated assault by vehicle while DUI, accident resulting in death or injury, driving under the influence (incapable of safe driving), accident involving damage to attended vehicle/property, duty to give information and render aid, and various related summary offenses, in connection with an accident which occurred at the intersection of Route 287 and Route 220 just east of Jersey Shore on May 4, 2002. In the instant Motion to Dismiss, filed November 8, 2002, Defendant seeks to dismiss the counts of aggravated assault while DUI and driving under the influence, contending the evidence presented at the preliminary hearing was insufficient to establish a prima facie case that Defendant was driving while intoxicated to a degree which rendered him incapable of safe driving. Argument on the Motion was held December 23, 2002, at which time counsel agreed the Court could base its decision on a transcript of the preliminary hearing.

A review of that transcript indicates that the accident occurred at approximately 9:00 p.m., May 4, 2002 when Defendant’s vehicle, traveling south on Route 287, came to the intersection with Route 220 and, proceeding through a green light, went straight over a concrete median strip rather than turning left as it should have. When it entered the far lane where traffic was going straight with its own green light, a motorcyclist who was traveling north on Route 220, hit the side of Defendant’s vehicle. According to the testimony, Defendant did pull his vehicle over shortly after the collision, but then returned to the roadway and left the scene. The

passenger traveling with Defendant testified they had been on a rafting trip earlier in the day, that Defendant had had “four, five beers” and Defendant’s last beer had been consumed “sometime after dinner or something like that”.

Considering all of this evidence, the Court finds sufficient evidence to establish a prima facie case of driving under the influence while intoxicated to a degree which rendered Defendant incapable of safe driving. Combined with the accident itself, which involved Defendant driving over a concrete median strip when he drove straight through the intersection rather than turning left even though the intersection was controlled by a traffic light and traffic in the far outside lane could be observed to be continuing traveling and not stopped, the Commonwealth also presented evidence Defendant had consumed four or five beers and that he had fled the scene of the accident, indicating a consciousness of guilt. While Defendant may be able to testify at trial and introduce evidence which establishes a reasonable doubt of his guilt, the Court nevertheless finds sufficient evidence to establish a prima facie case at this point.

ORDER

AND NOW, this 27th day of January, 2003, for the foregoing reasons, Defendant’s Motion to Dismiss is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Matt Zeigler, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson