

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 01-10,873
:
:
vs. : CRIMINAL DIVISION
:
:
HAROLD E. GRIMES, Jr. :
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 Order dated January 16, 2003 and docketed January 23, 2003, wherein the Court denied the defendant's post-sentence motion. The relevant facts follow. In the mid-afternoon of December 16, 2000, the defendant was driving his purple Nissan truck north on State Route 87, a rural two-lane highway. It was raining lightly, but the rain was not accumulating or puddling on the highway. The defendant was weaving all over the roadway. He would cross the fog line and go into the berm and then weave across his lane of travel and into the southbound lane, forcing vehicles in the southbound lane to swerve to their right. Individuals who were traveling behind the defendant estimated that he went back and forth like this ten to twenty times.¹ The last time, the defendant struck William

¹ The individuals following the defendant could not call the police to

Waugh's Subaru, which was traveling in the southbound lane. The defendant never hit his brakes or attempted to avoid coming into contact with Mr. Waugh's vehicle. There were no potholes in the area or other obstruction to explain why the defendant proceeded into the southbound lane when he was traveling north. Mr. Waugh died of blunt force injuries from the vehicle accident.

The police arrested the defendant and charged him with vehicular homicide and numerous summary offenses. The defense filed a motion to quash the Information, which the Honorable Dudley N. Anderson denied in an Opinion and Order docketed August 7, 2001.

A jury trial was held on May 9, 2002. The jury convicted the defendant of vehicular homicide. On July 23, 2002, the Court sentenced the defendant to undergo incarceration at a state correctional institution for a minimum of 18 months and a maximum of 5 years. The defendant filed a post-sentence motion, which included a challenge to the Court's instructions to the jury on vehicular homicide and again asserted the issue in the motion to quash (albeit phrased as a lack of jurisdiction). The Court denied the

report the defendant's erratic driving because they did not have a cell phone.

post-sentence motion in its Order docketed January 23, 2003. The defendant filed a notice of appeal on February 11, 2003.

The first issue raised by the defendant is the lower court erred when it refused to quash the information against the defendant after the implied repeal of section 3732 of the Motor Vehicle Code, 75 Pa.C.S.A. §3732. This Court cannot agree and would rely on the well reasoned Opinion and Order issued by the Honorable Dudley N. Anderson on August 7, 2001.

The other issue raised by the defendant is the "lower court erred in its instructions to the Jury when it defined the elements of the offense in the words of the new Statute, thus resulting in a violation of the ex post prohibition of the Pennsylvania Constitution (Article 1, Section 17)." Again, the Court cannot agree. Although the Court used the phrases "recklessly" and "gross negligence" in its instructions to the jury, see N.T. at 19-23, the Court got these terms and their definitions from Suggested Standard Jury Instruction 17.3732, which was last revised in April 1991. SSJI 17.3732 is based on appellate court decisions that pre-date the "new Statute", such as Commowearth v. Heck, 517 Pa. 192, 535 A.2d 575 (1987) and In Interest of Hyduke, 371 Pa.Super. 380, 538 A.2d 66 (1988). Both these cases required that the defendant's conduct be reckless or a gross deviation from the standard of care. Therefore, as of the late

eighties, Pennsylvania case law has required recklessness or gross negligence to satisfy the mens rea for vehicular homicide. The Court instructed the jury in accordance with the law, as it existed on December 16, 2000, the date of the accident in question. The new statute simply codified the existing common law. Therefore, the Court did not violate the ex post facto prohibition contained in Article 1, Section 17 of the Pennsylvania Constitution.

DATE: _____

By The Court,

Kenneth D. Brown, Judge

cc: William C. Simmers, Esquire (ADA)
John P. Campana, Esquire
Law Clerk
Work file
Gary Weber, Esquire (Lycoming Reporter)