

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNA.**

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF TRANSPORTATION	:	
	:	
V.	:	
	:	No. 03-01,822
PATRICIA HOFFMAN	:	
Defendant	:	

**OPINION AND ORDER**

This Appeal is before the Court on the sole issue of whether the Appellant, Patricia Hoffman, made a knowing and conscious refusal to take the chemical test as requested by the authorities. Appellant Hoffman has the burden to prove by competent evidence that she was unable to knowingly and consciously refuse chemical testing. Gombar v. Commonwealth of Pennsylvania, Department of Transportation, 678 A.2<sup>nd</sup> 843 (Pa. Cmwlth 1996). A driver's self serving testimony in a license suspension proceeding that she was incapable of providing knowing and conscious consent is generally not sufficient to meet this burden of proof. Expert testimony, while not per se a requirement, is generally required in order to validate the driver's testimony. Ostermeyer v. Commonwealth of Pennsylvania, Department of Transportation, 703 A.2<sup>nd</sup> 1075 (Pa. Cmwlth 1997).

In the case at hand, Appellant Hoffman has provided no expert testimony and the Court finds that she has not met her burden of proof. The Court would further note that after a review of the film done at the DUI Center that Appellant

Hoffman appeared to actively question and discuss the issues when she refused to take the test. She seemed agitated and argued about her right to counsel. However, on the other hand, her demeanor did not show lack of understanding, but to the contrary evidenced disagreement. In fact, Defendant stated in response to the police officer's warning about refusal to take the test that he should "go ahead and take my license."

In conclusion, based upon the law, the evidence is insufficient to meet Appellant's burden of proof.

**AND NOW**, this 12th day of April, 2004, the Appeal of Patricia Hoffman, is DENIED. The Stay is vacated and the Suspension Order issued by the Department of Transportation is reimposed.

BY THE COURT,

Richard A. Gray, Judge

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