

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

COMMONWEALTH : No. 05-00,127  
VS :  
ROBERT L. BARGER : License Suspension

**OPINION**

Appellant, Robert L. Barger, has appealed his license suspension for refusal to submit to chemical testing in violation of 75 P.A.C.S 1547. Barger raises two narrow legal issues:

1. Should the consent be invalidated because the O'Connell warning was given at the DUI Center rather than on the highway at the time of the stop;
2. Should the consent be invalidated because the standard warnings were given with no explanation of the specific enhancements for defendants with multiple prior offenses.

Initially, the statute itself does not require that the warning be given at the time of the stop. It does not make sense to require the O'Connell warning before the request to submit is made and neither does the case of Commonwealth v. Scott, 684 A.2d 539 (Pa Commonwealth 1996) cited by defendant, Barger, support that requirement. Even if an earlier warning was required, our courts have held that an untimely or defective warning can be cured. Commonwealth v. Zeltinas, 614 A.2d 349, (Pa Commonwealth 1992). Additionally, neither the request nor the warnings need be given at the sight of the equipment, id. at 353, suggesting that the location of the

warning is not crucial. Here, Commonwealth's Exhibit 1, the chemical testing warning form, was read to Barger and he acknowledged receiving the warning by his signature. Nothing more is required.

As to the second issue, Judge Anderson, writing for our court, has already held that a detailed warning beyond those found on Exhibit 1 is not required. Commonwealth v. Rickard, No. 04-00,800 (July 11, 2004). To require a more detailed explanation to an allegedly intoxicated driver appears to be counterproductive and not required by law.

**AND NOW**, this 21<sup>st</sup> day of April, 2005, Mr. Barger's appeal is **DISMISSED** and the suspension of Mr. Barger's operating privileges is **AFFIRMED**.

By The Court,

Hon. Richard A. Gray, Judge

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Hon. Richard A. Gray, Judge  
Judges  
(RAG/eb)