

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

COMMONWEALTH	:	
	:	
v.	:	No.: 03-11,096
	:	
GEORGE HUTCHINSON,	:	
Defendant	:	

OPINION AND ORDER

Before the court is Defendant’s Petition for Writ of Habeas Corpus filed January 12, 2005. The Defendant has been charged with Driving Under the Influence pursuant to 75 Pa.C.S.A. § 3802(a)(1). A preliminary hearing was held on November 23, 2004 before District Magistrate, James Carn. The above charge was bound over for trial following the preliminary hearing. Defendant now argues that the Commonwealth’s evidence was insufficient to establish a prima facie case of Driving Under the Influence. The Court has reviewed the preliminary hearing transcript and finds the following facts relevant to the motion.

Officer Jason Bolt (Bolt) testified that in the early morning hours of September 25, 2004, he and another officer observed an SUV traveling at a high rate of speed. The officers caught up with the vehicle and conducted a traffic stop. Bolt witnessed and testified to the interaction between his partner, Officer Snyder (Snyder) and Defendant pursuant to the stop as follows. Snyder asked Defendant for his operator’s license and identification. Defendant “fumbled about, grabbed his wallet, and pulled out every piece of plastic/paper within his wallet, unable to locate his operator identification, did so very slowly.” (N.T. November 23, 2004, p. 6). Snyder then asked Defendant to exit the vehicle to perform field sobriety testing. Bolt related signs of intoxication that were apparent by this point in the traffic stop: “He was - - his movements were

very slow. He had difficulty walking and standing, just standing vertically. As he walked to the rear of the vehicle, he was pretty much leaning on the SUV that he drove. I could also smell, from about a distance of eight feet away from him, I could smell the odor of alcoholic beverage coming from him as he spoke.” (Id., p. 7). Defendant was asked and admitted to consuming alcoholic beverages prior to driving. Defendant performed poorly on two of the three field sobriety tests administered. Bolt and was of the opinion that Defendant was unable to safely operate a motor vehicle. Defendant was placed under arrest and transported to the DUI Center. Defendant refused to submit to a chemical test of his blood.

The issue before the Court is whether the Commonwealth established a prima facie case of Driving Under the Influence. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). The evidence should be such, “that if presented at the trial in court, *and accepted as true*, the judge would be warranted in allowing the case to go to the jury.” Id. at 368; citing *Commonwealth ex rel. Scolio v. Hess*, 149 Pa.Super. 371, 374-75, 27 A.2d 705, 707 (1942) (Emphasis in original). Under 75 Pa.C.S.A. § 3802(a)(1), a person is guilty of Driving Under the Influence if he drives, operates or is in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle. In the instant case, the Defendant argues that the evidence presented by the Commonwealth was insufficient to establish the crimes of Driving Under the Influence. The Court disagrees.

The Commonwealth established a prima facie case. Bolt, an experienced officer at the scene, testified that Defendant was driving the vehicle in question. Evidence that Defendant

imbibed alcohol was also sufficient. Bolt testified that the odor of alcohol was recognizable on Defendant and that Defendant admitted to drinking prior to the stop. The effect of the alcohol was evidenced by Defendant's fumbling around for identification, difficulty walking and standing, and poor performance on the field sobriety tests. These effects evidence both the consumption of alcohol by Defendant as well as Defendant's capacity to safely drive a vehicle. The Court finds the evidence sufficient to establish that a Driving Under the Influence was committed and the probability the Defendant could be connected with the crime.

ORDER

AND NOW, this _____ day of March, 2005, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is hereby DENIED.

By The Court,

Nancy L. Butts, Judge

cc.
M. Rudinski, Esq.
DA (HM)
Hon. Nancy L. Butts
Law Clerk
G. Weber, Esquire