

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 457 - 2005
:
vs. : CRIMINAL DIVISION
:
LUANN K. SAGAN, :
Defendant : Motion for Reconsideration

OPINION AND ORDER

Before the Court is Defendant’s Motion for Reconsideration of Order Denying Post-Sentence Motion, filed July 6, 2006. Argument on the motion was heard August 4, 2006.

Defendant was convicted of DUI and related summary offenses and by Order dated April 4, 2006, was sentenced on the DUI to 90 days incarceration and ordered to pay a \$1500 fine. In a Post-Sentence Motion, Defendant argued, inter alia, that the Court erred in considering her refusal to submit to a blood test and applying Section 3804(c) of the Vehicle Code, thereby imposing a greater penalty than had she submitted to the test, based on her contention the warning read to her at the time of the test (PennDOT Form DL-26) inadequately explained the consequences of a refusal. In an Opinion and Order dated June 12, 2006, this Court held the warning sufficient, based on Commonwealth v. Weaver, 873 A.2d 1, 2 (Pa. Commw. 2005), *appeal granted* in Commonwealth v. Weaver, 890 A.2d 1061 (Pa. 2005). In the instant motion, Defendant contends the recent case of Commonwealth v. Jagers, 2006 Pa. Super. LEXIS 1514, requires this Court reconsider its decision.

In Jagers, the trial court had determined that the warning provided by Form DL-26 was insufficient under the Implied Consent Law, and held that evidence of the refusal was consequently inadmissible. The Superior Court agreed that the warning was inadequate, but reversed the lower’s courts ruling regarding admissibility. In doing so, however, the Court went on to state: “because a defendant may still be convicted of DUI without a blood test, the remedy in these cases is to impose sentence as if the defendant had not refused chemical testing.” Jagers, *supra*, at p. 5. In light of this statement, this Court feels constrained to vacate Defendant’s sentence and re-sentence without considering Defendant’s refusal.

ORDER

AND NOW, this 7th day of August 2006, for the foregoing reasons this Court's Order of April 4, 2006, is hereby vacated and the matter is hereby scheduled for re-sentencing on **August 29, 2006 at 11:00 a.m.** in Courtroom Number 2 of the Lycoming County Courthouse.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Peter T. Campana, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson