

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PA,	:	CRIMINAL DIVISION
Plaintiff	:	
	:	
v.	:	NO. 1144-2006
	:	
JAMES HARTZEL,	:	
Defendant	:	

OPINION
Issued Pursuant to Pa. R.A.P. 1925(a)

The defendant has appealed this court’s sentencing order of November 16, 2007. The sole issue raised in defendant’s Concise Statement of Matters Complained of on Appeal is the court’s denial of the defendant’s two proposed jury instructions.

The defendant was convicted of Driving Under the Influence—Incapable of Safe Driving (75 Pa. C.S.A. §3802(a)(1)) and Driving Under the Influence—Blood Alcohol Content .16% or Higher (75 Pa. C.S.A. §3802(c)).

When evaluating jury instructions, the charge must be read as a whole to determine whether it was fair or prejudicial. The trial court has broad discretion in phrasing its instructions, and may choose its own wording so long as the law is clearly, adequately, and accurately presented to the jury for its consideration. Commonwealth v. Hawkins, 787 A.2d 292, 301 (Pa. 2001).

The court gave the standard charge for §3802(a)(1), which is found in the Pennsylvania Suggested Standard Criminal Jury Instructions. The court also gave one of the charges the defendant requested, which states the legislature “did not intend to make it a crime to merely sit in a parked vehicle intoxicated.”

The remaining two instructions requested by the defendant are: (1) A motorist may not be actual physical control of a vehicle merely because he is seated in the vehicle while it is parked with the engine running and the headlights on but the vehicle

is not moving, and (2) The act of starting a parked car by itself is not enough to show actual physical control of said vehicle.

Defense counsel cited Commonwealth v. Byers, 650 A.2d 468 (Pa. Super. 1994) in support of the offered instructions. While the court certainly agrees that both of the instructions offered are accurate statements of the law, the court found it entirely unnecessary to give them, because the points covered by those instructions were adequately covered in the standard instruction, which includes a definition and discussion of the terms “drive,” “operate,” and “actual physical control.” Moreover, the court gave the defendant’s first requested instruction, which stressed that merely sitting in a parked vehicle is not enough to convict a defendant of driving under the influence. For these reasons, the instructions given by the court presented the jury with a clear, adequate, and accurate statement of the law.

Defense counsel wanted the court to focus specifically on the fact that an intoxicated defendant found in a vehicle with a running engine *alone* is not enough to convict of driving under the influence. Those are the facts in Byers, *supra*. In the case before this court, however, there existed undisputed evidence over and beyond the defendant sitting in the vehicle with the engine running. Namely, the defendant was found intoxicated in the vehicle at 4:00 a.m., with the vehicle in drive and the break light on. The vehicle was parked in a stranger’s yard, on the wrong side of the street. Therefore, there was no prejudice to the defendant when the court denied the charge.

Defense counsel had a right to argue the defendant was not in actual physical control of the vehicle, and defense counsel strenuously made that argument. The defendant did not, however, have the right to a jury instruction tailor-made to his argument.

BY THE COURT,

Date: _____

Richard A. Gray, J.

cc: George Lepley, Esq.
District Attorney
Gary Weber, Esq.