

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1940-2005
 : (05-11,940)
 vs. :
 : CRIMINAL
 FRANK M. SCARFO, : Motion for Judgment of
 Defendant : Acquittal

ORDER

AND NOW, this day of February 2008, Defendant's Motion for Judgment of Acquittal is **DENIED**.

In viewing the evidence in a light most favorable to the Commonwealth, the Court finds there is ample evidence from which a jury could find Defendant guilty of Count 1, Driving Under the Influence – Incapable of Safe Driving.

The evidence is sufficient for a finding that Defendant drove his vehicle, consumed alcohol, and that the alcohol affected his ability to safely operate the vehicle. The case of Commonwealth v. Segida, 912 A.2d 841 (Pa.Super 2006), while having some factual similarity to this case is easily distinguishable. The Segida case concerned whether there was sufficient evidence for DUI based on a BAC result within two (2) hours of driving. The issue in the instant case is whether Defendant was incapable of safe driving. Also, in this case there is evidence that Defendant recently drove his vehicle, because the engine was warm when the tow truck driver and the Pennsylvania State police arrived at the scene. This kind of evidence was lacking the Segida case.

Defendant further argues that his statements to the police should not be considered because there was not sufficient evidence to show the corpus of the crime of DUI

apart from Defendant's admission to the police. The Court believes there is ample evidence of corpus delicti apart from Defendant's statements, such as: (1) the state police observations of Defendant's physical condition, including odor of alcohol, speech and coordination; (2) the location Defendant's vehicle with front end of the vehicle being stuck over an embankment; (3) the engine being warm when the tow truck driver arrived; (4) Defendant's failure of field sobriety tests; and (5) the positive preliminary breath test (PBT) at the scene.¹

Accordingly, Defendant's Motion is **DENIED**.

By The Court,

Kenneth D. Brown, P.J.

cc: Kenneth Osokow, Esq. (ADA)
Peter Campana, Esquire
Work File
Gary Weber, Esquire (Lycoming Reporter)

¹ See also page 6, footnote 3 of the Superior Court's memoranda decision in this case filed July 30, 2007, where the Superior Court panel found sufficient evidence to satisfy the corpus delicti rule stating: "... We conclude that evidence of crime was established by virtue of the vehicle's position over the embankment and by Appellee's clearly intoxicated condition."