IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1882 – 2007
	:	
vs.	:	CRIMINAL DIVISION
	:	
ANDREW RITTER,	:	
Defendant	:	Post-Sentence Motion

OPINION AND ORDER

Before the Court is Defendant's Post-Sentence Motion, filed April 21, 2008. Argument on the motion was heard May 29, 2008.

After a non-jury trial on March 3, 2008, Defendant was found guilty of one count of DUI, and on April 18, 2008, he was sentenced to 72 hours incarceration and fines. In the instant post-sentence motion, Defendant contends the verdict was against the weight of the evidence, and that the evidence was insufficient to support the conviction. The Court disagrees with both contentions.

As to both claims, Defendant argues that the evidence could equally support either a finding that Defendant drank, drove, ran out of gas, or that Defendant ran out of gas, then drank, then got a ride back to his car, rendering a finding that he drove after drinking merely conjecture.[1] The Court believes, however, that the evidence was sufficient to find beyond a reasonable doubt that Defendant drank and then drove, and then ran out of gas. If Defendant had not been drinking before he ran out of gas, it makes little sense that he would seek help in getting gas but then drink to the point of intoxication before he had the person helping him return him to his car, or that he would then return to his car rather than to a place where he could stay until no longer intoxicated. The Court also notes that although the officer testified that Defendant answered the officer's questions regarding where he was coming from and

[1] At trial, the arresting officer testified that he came upon two vehicles parked side by side in a restaurant parking lot at about 1:30 a.m. on August 13, 2007, that Defendant was sitting in the driver's seat of one of the vehicles (someone else was in the driver's seat of the other vehicle), that Defendant got out of the vehicle and indicated he had run out of gas, and that there was a gas can in the back seat of Defendant's car. The other officer testified to seeing a puddle under the fill spout on Defendant's car, and opined that gasoline had just been put into the car.

going to, and where and when he drank, there was no testimony elicited from the officer that Defendant explained that he had been drinking only after running out of gas and that he had been given a ride back to his vehicle. The Court was not required to engage in conjecture in reaching its verdict; Defendant's argument actually seeks to have the Court do so at this point and the Court finds such to be without merit.[2]

ORDER

AND NOW, this 5th day of June 2008, for the foregoing reasons, Defendant's Post-Sentence Motion is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson

The arresting officer also testified that Defendant was intoxicated to the point that he would not have been capable of safe driving.

[2] Defendant's argument that the parking lot was not a roadway or trafficway simply because the restaurant was closed at the time need not be addressed as the Court did not find Defendant guilty based on his being in the parking lot, but, rather, based on a conclusion that he must have driven while intoxicated *to* the parking lot. In any event, the argument is without merit. *See* Commonwealth v. Proctor, 625 A.2d 1221 (Pa. Super. 1993) (court found mall parking lot to be a road way or trafficway under DUI law even though the mall was closed at the time).