

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

: NO. CR – 2071 - 2008

vs.

SAMUEL T. HUFF,

Defendant

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OPINION IN SUPPORT OF ORDER OF JUNE 8, 2009,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court’s Order of June 8, 2009, which sentenced him on one count of DUI to ten days to six months incarceration , after a jury found him guilty on that charge. In his Concise Statement of Matters Complained of on Appeal, Defendant contends the Court erred in denying his motion for a mistrial.

The charge of DUI followed a traffic stop which was video-taped from the vehicle of the arresting officer. Prior to showing the tape to the jury, the officer was instructed to “let the video speak for itself” with respect to “that which is readily apparent from the video”. This instruction followed defense counsel’s objection to narration by the officer. Contrary to the Court’s instruction, however, while the tape was playing, the officer did narrate somewhat, making comments such as “I’m noticing that at this point the vehicle nearly strikes the curb there. Ran past the fog line. It’s now weaving past the center line”, N.T., May 8, 2009, at p. 5, and “I’m observing that the vehicle is continuing to go from line to line”, “I notice as he makes his turn he does it very slow, and methodically, and wide, is my opinion. He does cross over those yellow center lines which you saw there”, “He’s driving through their front lawn at this point. As you see there, his tracks through their front lawn”, and “Now he drives over the curbside, or curb as I call it, over the grassy area onto the road. He just drove through an area I couldn’t drive through. I probably would have bottomed out. It’s a grassy area. It’s not an area you can legally drive through. It’s another violation of the law.” *Id.* at p. 6-7. Defense counsel then moved for a mistrial, arguing that the police officer ignored the Court’s instruction.

While the officer did comment on things which were readily apparent from the video, the Court believes the narration did not unduly prejudice Defendant; it provided no evidence

which was inadmissible and the officer could have and did testify regarding his own observations which were similar to the actions seen on the video. Furthermore, the Court provided the jury with a cautionary instruction that it should base its decision on its own views of the tape, and the jury watched the video a second time during deliberations and without any narration. Therefore, the Court does not believe it erred in refusing the request for mistrial

Dated: August 24, 2009

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: DA
Richard Callahan, Esq.
Gary L. Weber, Esq.
Hon. Dudley Anderson