IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
vs.	:	NO. 768-2008
	:	
FRANK WALDMAN,	:	
Defendant	:	1925(a) OPINION

Date: May 21, 2009

OPINION IN SUPPORT OF THE ORDER OF DECEMBER 15, 2008 IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

This order is entered in reference to Defendant Frank Waldman's appeal of this Court's order of December 15, 2008, in which we found Defendant guilty of violating 75 Pa.C.S. 3802(b) Driving Under the Influence with a High Rate of Alcohol, a misdemeanor in the second degree. N.T., December 15, 2008, p. 49. In his Statement of Matters Complained of on Appeal, Defendant asserted that this court erred in the above adjudication of guilt, specifically by failing to grant Defendant's demurrer at the close of the Commonwealth's case, and because the evidence at trial was insufficient. The Defendant's appeal should be denied and this Court's order of December 15, 2008 affirmed for the reasons we stated on the record in making our finding of guilt, in which we stated why we were convinced that the Defendant did in fact operate the automobile at the time in question. ***Ibid.*** This opinion will further articulate this Court's rationale in making that determination.

In evaluating a challenge to the sufficiency of the evidence, a court must determine whether, viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, together with all reasonable inferences therefrom, the trier of fact could have found that each and every element of the crimes charged was established beyond a reasonable doubt.

Commonwealth v. Little, 879 A.2d 293, 297 (2005). Although a conviction must be based on more than mere suspicion or conjecture, the Commonwealth is not required to establish guilt to a mathematical certainty. ***Commonwealth v. Thomas***, 867 A.2d 594, 597 (2005). If the record contains support for the conviction, then the fact-finder's decision may not be disturbed. ***Id***. The fact-finder is free to believe some, all, or none of the evidence. ***Id***.

The Defendant's violation of the law, according to the testimony, occurred in the small village of Ralston, Northern Lycoming County. At that time, the Court has found that the Defendant drove to the home of his former girlfriend and mother of his daughter, specifically, Delores Barlow. He had traveled there from his home a few miles away at Roaring Branch. Prior to his arrival, the Defendant had called Ms. Barlow to complain to her about custody issues. She was under the distinct impression he had called from his home. Five to ten minutes later she looked out the window and saw the Defendant's truck driving up the street approaching her home. She did not see him in the truck nor see him depart from the truck. However, momentarily after seeing the truck approaching her home the Defendant knocked on the door and walked into the home.

After an exchange of words between the parties, Ms. Barlow determined the Defendant was drunk and called for police assistance. She did not see anyone else in the vicinity of her home at the time that the Defendant arrived. The Defendant did not, in anyway, reference to her that anyone else had driven or brought him to the residence. The police arrived in a relatively short time after her call for assistance.

Another resident of Ms. Barlow's home, her mother's long term paramour, Mr. Howard Bohart, at the time, testified that he had seen the headlights of the Defendant's vehicle coming

up the street and heard the vehicle and, as the vehicle got to the home, he heard one vehicle door slam. Shortly after hearing the vehicle door close, Mr. Howard Bohart became aware that the Defendant had entered the house. He neither saw nor heard anyone else.

When the police arrived, they took note that the Defendant's vehicle was parked outside the home and that the engine was warm. The Defendant confirmed that it was his truck to the investigating officer. The Defendant further stated to the officer that he had walked from his home to Ms. Barlow's home. It had been raining fairly heavily during the time period that immediately proceeded Defendant's arrival at the home, his clothes, however, were dry. A blood test was taken of the Defendant within two hours of the time that he would have arrived at mother's home and it revealed a .13% blood alcohol.

The foregoing circumstantial evidence clearly leads us to the conclusion that the Defendant drove his vehicle upon a highway and that his blood alcohol level within two hours of driving exceeded the legal limit and in fact was a .13% blood alcohol justifying our finding the Defendant guilty of the charge.

Accordingly Defendant's conviction should be affirmed and his appeal denied.

BY THE COURT,

William S. Kieser, Senior Judge

cc: G. Scott Gardner, Esquire
DA
Judges
Gary L. Weber, Esquire (Lycoming Reporter)