IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
vs.	:	NO. CP-41-CR-1619-2008
	:	
KEITH RICHARD SNOOK,	:	
	:	
Defendant	:	1925(a) OPINION

Date: April 28, 2010

OPINION IN SUPPORT OF THE ORDER OF DECEMBER 14, 2009 IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Defendant Keith Richard Snook has appealed this court's imposition of sentence issued on December 14, 2009, following his conviction on charges of Driving Under the Influence of Alcohol or Controlled Substance; Driving Under the Influence with Highest Rate of Alcohol; and Driving While Operating Privilege is Suspended or Revoked with BAC.02% or Greater. Mr. Snook was convicted of these offenses at a non-jury trial held before this Court on October 14, 2009. At trial, as well as on appeal, Defendant, Mr. Snook contends that the evidence was insufficient to establish that his operation of a motor vehicle occurred upon a "traffic-way" as defined in the Motor Vehicle Code; that he was sentenced excessively; and that his driving under suspension offense was not a 1st degree misdemeanor but a 3rd degree misdemeanor.

The uncontradicted evidence at trial established that the road in question where the Defendant was driving consisted of a road open to use by the public as a matter of right or custom to allow the public to travel to one of many seasonal recreational "river lots" and was traveled "all of the time" by such vehicles, including by the Defendant at

the time in question when he drove into a stranger's river lot rather than the lot of the individual he intended to visit. The evidence was more than sufficient to establish the Defendant's guilt, as Mr. Snook did not contest that he had a BAC of .20% within two hours of driving on the traffic-way, the evidence established that he exhibited all of the physical signs of being under the influence of alcohol including it being the opinion of those who observed him that he was definitely under the influence of alcohol, and the evidence established that his operating privileges were under suspension due to a prior DUI-related offense at the time of his driving on the traffic-way. This was Mr. Snook's 7th Driving Under the Influence offense and his 5th offense within the last 10 years. Defendant's lengthy history of driving while under suspension together with the facts of this case justified this Court's sentence in the aggravated range.

This Court believes that its statement on the record at the time we denied a defense motion for judgment of acquittal based upon the Commonwealth's asserted failure to prove beyond a reasonable doubt that the road upon which Mr. Snook was observed driving was proven to be a traffic-way as defined by the Vehicle Code, aptly sets forth our findings and reasoning which address the issues raised on appeal. See N.T. 10/14/2009 pp. 51-55. Nevertheless, we will review the essentials of the testimony and the facts established by that testimony in relation to the insufficiency of the evidence claims.

At trial, there were very few contested facts. The evidence clearly established that on Saturday, July 5, 2008, at approximately 8:00 p.m., Mr. Snook drove his automobile on a road named Antlers Lane and turned from that road onto a privately-rented "river lot" near Linden in Lycoming County, Pennsylvania. ***Id.*** p. 10. This lot

was rented by the family of William Kemp. ***Id.*** p. 10, 11. The Kemps had not expected anyone to be driving onto their lot and their attention was immediately drawn to Mr. Snook's vehicle, particularly inasmuch as it clobbered a three-foot tall stump, then backed away from the stump and went forward into a lawn tractor and then again was drunkenly driven into the stump. ***Id.*** p. 11-15. Mr. Snook recognized at the time that the manner in which he had been driving was one that warranted people "calling the cops on him." ***Id.*** p. 17.

Antlers Lane is a dirt road in this area and is reached by people traveling on an obvious public road known as West Fourth Street, past a public boat launch and then onto this specific portion of the road that services a number of seasonal river lots. ***Id.*** p. 13. This road is not posted with any sign that says that it is a private drive; during the summertime, it is not gated or chained off in any way. ***Id.*** p. 13, 14. Mr. Snook had traveled down Antlers Lane in order to attempt to locate his brother's river lot. ***Id.*** p. 17. This particular road extends past the Kemp river lot along other lots approximately ¼ mile to where it ends at a dead end. ***Id.*** p. 18.

The real issue in this case is whether or not the dirt road that serves the numerous river lots is a traffic-way as defined by the Vehicle Code, Section 102, 75 Pa.C.S. A traffic-way is defined under that Section as a road which is "open to the public for purposes of vehicular travel as a matter of right or custom." ***Id.*** There is no question to this Court that Antlers Lane, in the vicinity where Defendant was driving, was obviously open to the public as a matter of custom, at least, if not also as of right. There was no specific testimony as to the number of river lots, which is contrary to our recollection of

evidence at the time we stated our reasons on the record for finding the Defendant had driven upon a traffic-way. ***Id.*** p. 53.

In any event, it is clear that there were numerous lots and that people were driving on this road all of the time and going to their lots or visiting the lots of others. This frequency was such that no notice was given to the Defendant driving on that road until he pulled onto the Kemp lot by mistake while looking for his brother's lot. ***Id.*** pp. 12, 13, 14, 18, 22, 29, 35. In fact, Mr. Snook's use of this roadway to go to his brother's lot without getting any specific permission. The fact that he, at the same time erroneously went to the Kemp lot, is evidence of the public, which would include Mr. Snook, having the customary right of passage over Antlers Lane in order to go to one or more of the river lots. Furthermore, there is a sufficient number of public individuals using this road to warrant it being a traffic-way where someone who drives under the influence of alcohol should be subject to prosecution because of the danger imposed to the public of a road that serves "quite a bit" of river lots where traffic and cars are using it "all of the time" ***Id.*** p. 12, 35. It is clear that the legislature has intended such roadways where the traffic laws of this Commonwealth should be enforced. In fact, Mr. Snook would have even anticipated that the traffic laws of this Commonwealth would be enforced at the location where he was driving because he repeatedly asked that those present would not "call the cops". ***Id.*** p. 17.

Secondly, Mr. Snook asserts his sentence to aggravated range sentence having a term of 19 months to 5 years under Count 2, Driving Under the Influence, and 6 months to 1 year under Count 3, Driving Under Suspension, to be served consecutively at a state correctional institution was excessive. This offense constituted the 7th lifetime Driving

Under the Influence offense for Mr. Snook. It was his 5th such offense within 10 years. This Defendant's habitual offending and habitual disregard of the severe penalties imposed upon him in the past for Driving Under Suspension and Driving Under the Influence obviously has had no deterrent effect on Mr. Snook. Mr. Snook's continual driving while under suspension and driving while under the influence not only justified, but mandated that this Court sentence the Defendant in the aggravated range in order to protect the public for as long as possible from the dangers of Defendant's driving creates. This danger was aptly demonstrated on the circumstances of this instant offense. Unfortunately, given his unrepentant attitude about driving, Mr. Snook will no doubt repeat these offenses in the future even after his 19th time of incarceration. Again, this Court has stated its reasoning on the record for our sentence and why we accepted the argument of the Commonwealth as to appropriate sentencing factors to be applied. See N.T. 12/14/2009 pp. 16-24.

Finally, Mr. Snook contents that the Court erred in finding that his conviction of the offense of driving under suspension DUI related should be regarded and graded as a misdemeanor of the third degree. This contention was raised at the sentencing hearing. See N.T. 12/14/2009 pp. 8-13. Mr. Snook contended at the time of sentencing that in order for his driving under suspension DUI related to be a misdemeanor of the third degree subject to mandatory six month sentence that two prior violations of Motor Vehicle Code Section 1543(b) was required, whereas this Court interpreted that the provisions of 1543(b) relating to grading of offenses related to prior violations of the Motor Vehicle Code Section 1543(a). By reasoning in this regard a response to Defendant's contentions is adequately set forth in the record referenced above, that is

from pages 8 through 13, the sentencing transcript of December 14, 2009. We rely upon that statement. See N.T. 12/14/2009, p. 8-13.

For the foregoing reasons, the sentence of December 14, 2010 should be affirmed and Defendant's appeal dismissed.

BY THE COURT,

William S. Kieser, Senior Judge

cc: Karen G. Muir, Esquire
DA
Judges
Gary Weber, Esquire (Lycoming Reporter)
Terra Koernig, Esquire-Law Clerk