

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>No. 1577-2010</b>
<b>v.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>JOHN DIMASSIMO,</b>	:	<b>APPEAL</b>
<b>Defendant</b>	:	

**OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)**  
**OF THE RULES OF APPELLATE PROCEDURE**

The Defendant appeals the Order of Court dated October 18, 2011, which sentenced the Defendant on his conviction for Driving Under the Influence of Alcohol. The Defendant filed a Notice of Appeal on November 17, 2011 and on November 21, 2011, this Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty days a concise statement of matters complained of on appeal: the Court thereafter received the Defendant's concise statement on January 5, 2011. For purposes of this Opinion, the Court hereby incorporates its Opinion and Order dated March 7, 2011.

In his concise statement, the Defendant contends that the Court erred in denying the Defendant's Motion to Suppress evidence and allowing the officer to testify regarding the VASCAR unit and the readings from the equipment supporting the reason for the officer's stop without the statutory required paperwork or references showing that the unit was tested for accuracy by an approved individual at an approved site within the required time period.

In the Defendant's Motion to Suppress, a hearing on which was held February 14, 2011, Defense Counsel argued that as the basis for the initial stop of the Defendant was that he was speeding, probable cause rather than reasonable suspicion was the appropriate standard to justify a stop of his vehicle. Defense Counsel further argued that if the Court did not consider the

evidence from the VASCAR system, as the police officer who effectuated the stop, Office Robert Cochran (Cochran) of the Old Lycoming Police Department, failed to present the appropriate certification for the VASCAR unit at the time of the suppression hearing, probable cause for the stop did not exist and that the evidence stemming from the stop demonstrating that the Defendant was driving under the influence should therefore be suppressed.

Defense Counsel's argument appears to rest on the reasoning depicted in the Pennsylvania Supreme Court's decision in Commonwealth v. Chase, 960 A.2d 1087 (Pa. 2008) requiring probable cause to effectuate traffic stops based solely on offenses which are not "investigatable," as opposed to traffic stops with an investigatory purpose which merely require reasonable suspicion pursuant to 75 Pa.C.S. §6308(b). As the Defendant was initially stopped for violating 75 Pa.C.S. §3362, which establishes maximum allowable speeds, the Court finds that Defense Counsel is correct that probable cause was required to effectuate the stop, as the Court finds no investigatory purpose existed to determine whether the offense was committed. However, as the Court indicated in its Opinion and Order dated March 7, 2011, the Court finds that Cochran's observations, coupled with the information provided by his VASCAR system, did provide the required probable cause at the time of the questioned stop. Importantly, the Defendant was not ultimately charged under 75 Pa.C.S. §3362, but was instead charged and convicted with Driving Under the Influence under 75 Pa.C.S. §3802. Therefore, the Court finds that whether or not certification for the VASCAR system was provided to the Court was immaterial to the Defendant's conviction under 75 Pa.C.S. §3802.

***Conclusion***

As the Defendant's argument is without merit, it is respectfully suggested that this Court's Order of October 18, 2011 be affirmed.

DATE: \_\_\_\_\_

By the Court,

Nancy L. Butts, President Judge

xc: DA  
Michael C. Morrone, Esq.  
Gary L. Weber, Esq. (LLA)