IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
Plaintiff,	:	608 MDA 2014
vs.	:	
	:	DOCKET NO. CR-854-2013
JASON EDWARD BEAMER,	:	
Defendant.	:	CRIMINAL

Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)

This Court issues the following Order pursuant to Pennsylvania Rule of Appellate Procedure 1925(a). This is an appeal from the Court's nonjury verdict on January 15, 2014, following a trial that same day, finding beyond a reasonable doubt that defendant violated Section 3802 (a) (1) of the Motor Vehicle Code as charged in Count 1. The Defendant filed his supplemental statement of matters complained of on appeal on June 19, 2014 and his concise statement on April 15, 2014. Defendant identified the following 3 issues for appeal.

1. The evidence presented at trial was insufficient to sustain the Court's guilty verdict on the charge of Driving Under the Influence of Alcohol; specifically the evidence fails to establish that the alcohol consumed prior to driving caused defendant to be incapable of safe driving ass defined by the Courts.
2. The Honorable Judge Nancy L. Butts erred in denying defendant's motion to suppress evidence by Order and Opinion entered October 30, 2013.
3. This court erred in refusing to allow defendant to cross–examinine Commonwealth witness, Randall Harrison, concerning the witness's consumption of alcohol prior to the incident leading to defendant's arrest and conviction.

The Court will address defendant's issues in turn.

1. Sufficiency of the Evidence – Count 1 (Driving Under Influence of Alcohol or Controlled Substance - (Misdemeanor 1)(Refusal)

When evaluating sufficiency of the evidence claims, the evidence and all reasonable inferences are viewed in favor of the Commonwealth as verdict winner. *Commonwealth v. Solano*, 906 A.2d 1180, 1186 (Pa. 2006); *Commonwealth v. Chapney*, 832 A.2d 403, 408 (Pa. 2003).

75 Pa.C.S.A. § 3802(a)(1) provides as follows:

> (a) General impairment.
> (1) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

To convict under Section 3802(a)(1), "the Commonwealth must prove "the accused was driving, operating, or in actual physical control of the movement of a vehicle during the time when he or she was rendered incapable of safely doing so due to the consumption of alcohol." Commonwealth v. Karns, 2012 PA Super 154, 50 A.3d 158, 165 (Pa. Super. 2012), *quoting,* Commonwealth v. Segida, 604 Pa. 103, 116, 985 A.2d 871, 879 (2009).

In the present case, the Court respectfully submits that the evidence was sufficient to sustain the non-jury verdict of guilty for operating a motor vehicle while incapable of safely driving on April 9, 2013 under Count 1, Driving Under the Influence of Alcohol or Controlled Substance – (Misdemeanor 1) (Refusal) pursuant to 75 Pa.C.S.A. § 3802(a)(1). The Court specifically found the testimony of Officer Cpl. Morris S. Sponhouse credible. Based upon Cpl. Sponhouse's extensive training and experience, coupled with his observations of the defendant during field coordination exercises and the clues exhibited from them, the smell of alcohol from the defendant and the mannerisms of the defendant as he spoke during the interview, Cpl. Sponhouse opined that defendant was unable to drive a motor vehicle safely. (Tr. 36, l. 16.) Cpl. Sponhouse, observed that the defendant's gait and balance were compromised, that there was a sway to defendant's stance, and that defendant's eyes were red and blood shot. (Tr. 28, l. 23-24; Tr. 29, l. 8-10.) Defendant exhibited 2 out of 4 clues on the one leg stand test and 2 out of 8 clues on the walk and turn test. (Tr. 35, l. 11-12, Tr. 35, l. 24-25.) The court further specifically found that defendant refused the blood alcohol test, as could be seen on the video. *See, e.g.,* Tr. 37; Commonwealth, Exhibit #1 (video) and Exhibit # 2 (the DL 26 form).

Moreover, the Court noted that the testimony as a whole established defendant's unfitness to drive. Within the course of a 1 hour period – by defendant's admission - he drank 3 ten ounce drafts of Miller Lite at the Trail Inn, proceeded to drive a dump trunk to his home and became involved in a motor vehicle accident while turning into his driveway.[1] Defendant operated a dump truck traveling slowly on Northway Road Extension. (Tr. 4) Mr. and Mrs. Harrison rode a motorcycle behind the dump truck. Mr. Harrison signaled and attempted to pass the dump truck on its left, when the dump truck unexpectedly turned left to enter a driveway and came right in the path of the motorcycle. Mr. Harrison had "to veer strongly to the right which laid the bike down and skid across the highway. (Tr. 5, l6-8, 10, l 3-4) Mrs. Harrison was thrown off the bike. The Court could infer that, despite driving slowly, the defendant failed to see the motorcycle attempt to pass him. Upon exiting the truck, defendant looked at the Harrisons and then went into his house without saying anything or checking on them (Tr.5, l. 24).[2]

The testimony by the defendant and his girlfriend about the defendant's drinking was not credible. The defense claimed that the defendant drank 2-3 beers between the time of the accident and the time that Cpl. Sponhouse questioned him. The Court found this testimony not credible; it not credible that the defendant drank 2-3 beers after the encounter with the motorcycle in which the police were called and failed to mention it to Cpl. Sponhouse when questioned about his drinking. (Tr. 30, l. 21; Tr. 31, l. 17-19; Tr. 47, l. 10; Tr. 48, l. 9; Tr. 57, l. 25; Tr. 58, l. 1-2.)

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[1] Defendant testified that he left to stop at the Trail Inn around **5:45 p.m**. and drank 3 ten ounce drafts within half an hour, maybe 40 minutes. (Tr. 54, l1, 11, 13, 15). Cpl. Sponhouse was dispatched at approximately **6:39 p.m**. (Tr. 25). The Court did not find it credible that the defendant consumed no more than 3 ten ounce drafts of Miller Lite during the relevant period prior to driving, and notes that were no corroborating witnesses or documentation to that testimony. In response to questions about his drinking, defendant first told Cpl. Sponhouse that he had 3 drinks prior to getting home (Tr. 30, l. 21) and later defendant stated that he had two and the last one was an hour ago; Tr. 31, L. l7-19;

[2] The Commonwealth argued that this showed a consciousness of guilt; the defense argued that the defendant chose not to engage the Harrisons to avoid a confrontation.

In sum, the Court respectfully submits that the evidence presented at trial was more than sufficient to sustain the guilty verdict on the charge of Driving Under the Influence of Alcohol under Section 3802(a)(1).

2. Motion to Suppress

This Court respectfully relies upon the Opinion and Order entered by the Honorable Judge Nancy L. Butts on October 30, 2013 in support of the denial of defendant's motion to suppress evidence.

3. Lack of Foundation to Cross-Examine Commonwealth's Witness on Alcohol Consumption.

This court believes it correctly sustained the objection to cross-examination of the Commonwealth witness, Randall Harrison, concerning the witness's consumption of alcohol prior to the incident leading to defendant's arrest and conviction for lack of foundation. (Tr. 7.) "A trial court has broad discretion to limit the scope of cross-examination, and rulings doing so will not be reversed absent a showing that the court abused that discretion." In the Interest of M.M., 547 Pa. 237, 243, 690 A.2d 175, 178 (Pa. 1997); *citing,* Commonwealth v. Birch, 532 Pa. 563, 566, 616 A.2d 977, 978 (1992). "While a witness may be cross-examined as to whether he was intoxicated at the time of an occurrence to which he has testified, there must be, at a minimum, some factual basis upon which to conclude or to suspect that the witness was intoxicated before questions regarding alcohol consumption are permissible. In the Interest of M.M., 690 A.2d at 178; *citing* Commonwealth v. Drew, 500 Pa. 585, 591, 459 A.2d 318, 321-22 (1983).

In the present case, as in the case cited by the Commonwealth, In the Interest of M.M., *supra*, there was no evidence or testimony suggesting that the witness may have been intoxicated at the time of the accident. Absent foundation and a factual basis to suggest that the witness may

have been intoxicated, this Court believes it was correct to exclude cross-examination on that issue.

Conclusion

For these reasons, this Court respectfully requests that the verdict and sentence be affirmed.

BY THE COURT,

Date June 30, 2014

Richard A. Gray, J.

cc: District Attorney's Office (NI)
Peter T. Campana, Esq.
(Superior Court & 1)