IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 542 – 2013
	:	
vs.	:	CRIMINAL DIVISION
	:	
BRYAN YAGGIE,	:	
Defendant	:	Post-Sentence Motion

OPINION AND ORDER

Before the Court is Defendant's Post-Sentence Motion, filed December 23, 2013. Argument on the motion was heard January 13, 2014.

After a jury trial on November 1, 2013, Defendant was convicted of one count of Driving Under the Influence (Incapable of Safe Driving). The jury also found that Defendant had refused to submit to a chemical blood test. A non-jury trial which immediately followed resulted in Defendant's conviction of one count of Driving While Operating Privileges are Suspended or Revoked. On December 13, 2013, Defendant was sentenced to 18 months to five years incarceration on the DUI charge and a consecutive sentence of six to twelve months incarceration on the DUS charge. In the instant motion, Defendant contends the evidence was insufficient to support the convictions, the convictions were against the weight of the evidence, and the sentence was excessive. These issues will be addressed seriatim.

Defendant contests his conviction of DUI by arguing that the Commonwealth failed to show that he did not drink *after* the accident,[1] and that the evidence showed that he was drinking after the accident. While Defendant did testify that he had an accident and then began drinking while waiting for someone to come along, and also testified that he had a cooler of beer in the vehicle, the responding officer testified that during a cursory flashlight search of the interior of the vehicle he did not see a cooler. The jury was free to disbelieve Defendant's testimony and to infer from the fact of the accident that he had been drinking prior to the

[1] The evidence showed that police were called to the scene of a one-vehicle accident and when they responded, they found Defendant seated in the driver's seat of the vehicle, the vehicle was hung up on a guardrail along the side of a road, the back tires were blown out and the smell of burnt rubber hung in the air. The officer also testified that the hood of the vehicle was warm and it was a cool November night.

accident. The court thus finds that the Commonwealth presented sufficient evidence to support the jury's verdict.

Defendant also contests the DUS conviction, arguing that since the officer advised him that if he refused to submit to the chemical test of his blood his operating privilege would be suspended but never advised him that under Section 1547(i) he had the right to request a breath test instead, the Commonwealth did not prove that he refused the chemical test, an element of the particular section of which he was convicted.[2] This argument is without merit. In Doolin v. Commonwealth, Department of Transportation, 537 A.2d 80 (Pa. Commw. 1988)(citing Department of Transportation, Bureau of Traffic Safety v. Schauer, 465 A.2d 101 (Pa. Commw. 1983), the Court reiterated its prior holding that a motorist's right to request chemical testing under Section 1547(i) is limited to the situation where no test has been requested by the arresting officer. The Court also rejected the same argument Defendant is making in the instant case, and held that the defendant's refusal to submit to blood or urine testing was not vitiated by his request to submit to a breath test. Therefore, even if Defendant did consent to a PBT at the scene of the accident, such did not affect his later refusal to submit to a blood test. The evidence that he so refused was thus sufficient to support his conviction of DUS.

A "weight of the evidence" claim contends the verdict is a product of speculation or conjecture, and requires a new trial only when the verdict is so contrary to the evidence as to shock one's sense of justice. Commonwealth v. Dougherty, 679 A.2d 779 (Pa. Super. 1996). Here, in light of the evidence that Defendant 's vehicle was found stuck on a guardrail with two blown-out rear tires and the smell of burning rubber in the air, the court is not shocked that the jury concluded that Defendant had the accident as a result of having become intoxicated prior to driving. It would not have been at all speculative for the jury to have concluded that Defendant's desperate attempt to get his vehicle off the guardrail (by spinning the tires to the extent that they would blow out) evidenced a guilty conscience. Further Defendant's story, that he began drinking only after the accident, while he waited for someone to arrive, was not supported by the other evidence. The arrest was recorded by the camera in the patrol car and that recording, played for the jury at trial, clearly showed the officer shining his flashlight

---

[2] 75 Pa.C.S. Section 1543(b)(1.1)(ii).

throughout the car. No cooler or empty beer cans were spotted by the officer. The officer testified that had there been empty beer cans in the car it would have been noted. The verdict was not at all contrary to the evidence.

Finally, with respect to the sentence, Defendant contends such was excessive "to perform the duties that sentences are designed to perform", specifically "to punish, to rehabilitate, and to teach lessons and personal responsibility." See Post-Sentence Motion at paragraphs 26-27. The court acknowledges that it sentenced Defendant at the top of the standard range, but notes that it did so based on the fact that this was his third DUI in 10 years and his fourth in his lifetime, and apparently Defendant has not been taught a lesson or personal responsibility. The court also based the sentence on the fact that Defendant provided false testimony at trial; the court found his story about drinking after having the accident to be not only not believable, but an insult to the jury's intelligence. The court does not believe the sentence to be excessive under all of the circumstances presented herein.

ORDER

AND NOW, this 22nd day of January 2014, for the foregoing reasons, Defendant's Post-Sentence Motion is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson