

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CR-942-2015**  
 v. :  
 :  
 **CHRISTOPHER JAMES ATWOOD,** : **CRIMINAL DIVISION**  
 **Defendant** :

**OPINION AND ORDER**

On August 28, 2015, the Defendant filed a Petition for a Writ of Habeas Corpus. The Defendant did not offer argument besides the argument in the petition. In the petition, he argues that the Commonwealth did not establish a *prima facie* case of Driving Under the Influence of Alcohol – General Impairment.<sup>1</sup> The Commonwealth relies on the preliminary hearing transcript and video from a camera in a police car.

**I. Background**

**A. Trooper Adam Kirk’s Testimony During the Preliminary Hearing**

Adam Kirk (Kirk) has been a Pennsylvania State Police trooper for over eight years. On February 5, 2015, he saw a vehicle traveling on Fourth Street, which is a one-way street. The vehicle crossed the dotted line that separates the street’s two lanes. The vehicle stayed across the dotted line for three to four seconds.

The Defendant was driving the vehicle. He had bloodshot and glassy eyes. Kirk detected an odor of alcohol. The Defendant said that he had consumed two to three drinks. He showed several indicators of impairment during standard field sobriety tests.

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<sup>1</sup> 75 Pa.C.S. § 3802(a)(1).

## **B. Video from Trooper Kirk's Patrol Car**

The video shows the Defendant's vehicle traveling in the left lane of Fourth Street. The Defendant's vehicle moves towards the dotted line that separates the left lane from the right lane. Later, the vehicle moves left, away from the dotted line. The Defendant tells Kirk that he had two drinks.

## **II. Discussion**

“A prima facie case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime. In determining the presence or absence of a prima facie case, inferences reasonably drawn from the evidence of record that would support a verdict of guilty are to be given effect, but suspicion and conjecture are not evidence and are unacceptable as such.” Commonwealth v. Packard, 767 A.2d 1068, 1070-71 (Pa. Super. 2001) (citations omitted). “An individual may not drive . . . after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving . . . .” 75 Pa.C.S. § 3802(a)(1).

Here, the Commonwealth presented evidence sufficient to establish that the Defendant drove after imbibing enough alcohol to render him incapable of safe driving. Kirk testified that the Defendant's vehicle crossed the dotted line and stayed across the line for three to four seconds. From the video, the Court cannot determine with certainty whether the vehicle crossed the line, but the video does not disprove Kirk's testimony. Kirk testified that the Defendant had bloodshot and glassy eyes. The Defendant said that he had consumed two drinks. Kirk testified that the Defendant showed several indicators of impairment during standard field sobriety tests. The video does not disprove Kirk's testimony that the Defendant showed several indicators of

impairment. The above evidence is sufficient to establish a *prima facie* case of DUI – General Impairment.

### **III. Conclusion**

The Commonwealth presented evidence sufficient to establish a *prima facie* case of DUI General Impairment.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of December, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant’s Petition for a Writ of Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge