

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1686 - 2013
:
vs. :
:
JEREMY KANSKI, :
Defendant : CRIMINAL DIVISION

OPINION IN SUPPORT OF ORDERS OF APRIL 22, 2015,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

After a non-jury trial on October 28, 2014, Defendant was convicted of one count of DUI- high rate of alcohol. He was sentenced on April 22, 2015, under the Intermediate Punishment Program to undergo supervision by the Lycoming County Adult Probation Office for a period of six months, the first thirty days to be served at the Lycoming County Pre-Release Center. Defendant raised two issues in a post-sentence motion and argument was heard May 28, 2015. As the second of the two issues questioned the denial of Defendant’s Petition to File an Omnibus Pre-trial Motion *Nunc Pro Tunc*, and since that motion had been denied by the Honorable Marc. F. Lovecchio, decision on the post-sentence motion was deferred to allow Judge Lovecchio to review a transcript of the argument and enter any supplementary opinion he believed necessary.¹ Judge Lovecchio issued a supplementary opinion and order on July 13, 2015, denying Defendant’s Post-Sentence Motion. Judge Lovecchio addressed only the omnibus motion issue, however, and therefore, the undersigned is issuing the instant opinion to address the remaining issue, the sufficiency of the evidence.²

1 Judge Lovecchio had issued an opinion in support of his order denying the motion, on August 5, 2014.

2 In light of the appeal, the court believes it cannot enter any further order on the post-sentence motion. A previous order had not been entered as the court was awaiting the preparation of a transcript of the trial, which was completed August 21, 2015.

At trial, the Commonwealth introduced testimony and documentation to establish that Defendant was stopped at a DUI checkpoint during the late evening of July 5, 2013, that Defendant was driving the vehicle and was alone in the vehicle, that the officer who interacted with Defendant smelled the odor of alcohol on his breath and observed that his eyes were glassy, that the officer inquired and was told by Defendant that he was coming from a river lot and had had four to five beers, that Defendant performed poorly (in the officer's opinion) on field sobriety tests, that Defendant was arrested and transported to the DUI Center where he consented to, and did, have blood drawn, and that the results of the blood test showed that he had a BAC of .14. Based on the test result, the court believed beyond a reasonable doubt that Defendant was guilty of DUI - high rate of alcohol.

The reasons for Judge Lovecchio's denial of Defendant's Petition to File an Omnibus Pre-trial Motion *Nunc Pro Tunc* may be found in Judge Lovecchio's opinions dated August 5, 2014, and July 13, 2015.

Dated: _____

Respectfully submitted,

Dudley N. Anderson, Judge

cc: District Attorney
Timothy Barrouk, Esq.
3601 Vartan Way, 2nd floor, Harrisburg, PA 17110
Gary Weber, Esq.
Hon. Dudley N. Anderson