IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	**:**	**No. 98-11,774**
	:	
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
RONALD MORGRET,	**:**	
Defendant	**:**	**1925(a) Opinion**

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

This Opinion is written in support of this Court's Order issued August 30, 1999, wherein the Court found the defendant guilty of driving under suspension, DUI related.

The relevant facts are as follows.

On or about July 21, 1998, the defendant was sentenced for a driving under the influence (DUI) offense which occurred on February 10, 1998. Shortly after sentencing, the defendant turned his license over to the Lycoming County Adult Probation Office.

On August 9, 1998, at approximately 11:52 p.m. the defendant was the operator of a motor vehicle involved in a one vehicle accident. The defendant and his passenger, both of whom were thrown from the vehicle, were taken to the Williamsport Hospital. Trooper Thomas Nettling investigated this accident. Trooper Nettling interviewed the defendant at the hospital on August 10, 1998, at approximately 2:00 a.m. During the interview, the defendant admitted he was the driver of the vehicle. When asked if he knew he was under suspension, the defendant replied, "yes, it's suspended for DUI".

The police charged the defendant with DUI driving under suspension DUI related, careless driving and roadways lane for traffic. The defendant pled guilty to DUI but requested a

summary trial on the suspension charge.[1]

On August 30, 1999, the Court held a de novo hearing on the driving under suspension, DUI related charge. Trooper Nettling testified for the Commonwealth. He stated he interviewed the defendant at the hospital and the defendant admitted he was the driver of the vehicle. When Trooper Nettling asked him if he knew he was under suspension, the defendant replied "yes, it's suspended for DUI". The defendant did not possess a valid driver's license.

The Commonwealth also presented the defendant's certified driving record, Commonwealths exhibit #1.

The certified driving record indicated the defendant received a one year suspension, which became effective July 24, 1998, for his prior DUI. It also indicated PennDOT received the defendant's license on July 24, 1998.

The defendant testified on his own behalf. He stated he pled guilty and was sentenced on or about July 21, 1998 for the February 10, 1998 DUI offense. Shortly thereafter he turned his license over to the Lycoming County Adult Probation Office. He stated that individuals in the Adult Probation Office told him he would receive a letter from PennDOT notifying him of the effective date of his suspension. On the Thursday or Friday prior to the accident the defendant received a letter from PennDOT indicating the effective date of his suspension as September 11, 1998, at 12:01 a.m. See defendant's exhibit #1.

The defendant testified that, based on the contents of the letter, he believed he could drive until September 11, 1998. The defendant admitted on cross examination he knew:(1)his license was going to be suspended as part of the previous DUI; and (2) he did not

[1]The remaining summaries were dismissed.

possess a license on August 9, 1998.

The Court found the defendant guilty and sentenced him to pay a $1,000.00 dollar fine and serve 90 days incarceration at the Lycoming County Prison.

On September 28, 1999, the defendant appealed the Court's ruling. The sole issue on appeal is whether the Commonwealth proved the defendant had actual notice that he was under suspension. In essence, this is a sufficiency of the evidence claim.

In assessing such a claim, the Court must view the evidence in the light most favorable to the verdict winner; here, the Commonwealth. There were several facts critical to the Courts verdict. First, the defendant turned his license over to the Adult Probation Office prior to the accident. This would connote to any reasonable individual that they cannot drive a vehicle. Second, the defendant was told he was going to be suspended as part of his previous DUI. Third, on the night of the accident, the defendant admitted to Trooper Nettling his license was suspended for DUI.

Moreover, the Court did not find the defendant testimony credible. For example, the defendant stated he received the letter from PennDOT on Thursday or Friday prior to the accident and, based on that letter, he believed he could drive until September 11, 1998. The Court does not believe a reasonable person would think he could drive when he does not possess a license. Further, it is questionable the Defendant received the letter on Thursday (August 6, 1998) or Friday (August 7, 1998) as the letter was dated August 7, 1998.

The case law of this Commonwealth indicates notice is a question of fact which can be established through a collection of facts and circumstances that allow the fact finder to infer that the Defendant has knowledge of suspension. Commonwealth vs Vetrini, 734 A.2d 404, 407(Pa. Super. 1999). The Court believes the defendant's lack of a license,his knowledge

he was going to be suspended and his admission to Trooper Nettling were sufficient to establish actual notice beyond a reasonable doubt.

DATE: 12/20/99

By The Court,

_____
Kenneth D. Brown, J.

cc: Robert Ferrell, Esquire (ADA)
Eric Linhardt, Esquire
Work file
Law Clerk
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)