

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>: No. 99-11677</b>
	<b>:</b>
<b>vs.</b>	<b>: CRIMINAL DIVISION</b>
	<b>:</b>
<b>GERALD SMITH,</b>	<b>: Motion in Limine</b>
<b>Defendant</b>	<b>:</b>

**ORDER**

AND NOW, this 15<sup>th</sup> day of June 2000, after argument concerning the admissibility of evidence or argument to the jury that the defendant was not aware that the prescribed narcotic controlled substances he was taking could affect his ability to safely drive a motor vehicle, the Court finds any such evidence of lack of knowledge is inadmissible in evidence. 18 Pa.C.S.A. §3731(b), entitled "authorized use not a defense", indicates that the fact any person charged with violating this section was legally entitled to use the controlled substance is not a defense to a charge of Driving Under the Influence. Thus, it would not be a defense to this charge that the defendant was under the influence of prescribed narcotic medication.

Once a defendant is aware that he has taken a controlled substance and that he is driving a vehicle he is obligated to be aware of the effects of the controlled substance on his ability to safely drive an automobile. Therefore, the Court does not believe it would be a defense to this charge to show that the defendant was not given this awareness by his doctor or pharmacist or any labeling on the prescription bottle or container. Such a defense would severely undercut §3731(b) and would be inconsistent with the reasonable safety of the motoring public.

The Court does not find the proffered defense similar to a situation where an individual involuntarily consumes a controlled substance, as argued by defense counsel, such as where a drink is spiked with a drug unknown to one consuming the drink. In such a scenario, the party consuming the controlled substance has no knowledge of the consumption, and thus, has no ability to monitor the effect of such on his system.

In the instant case, the knowing use or consumption of the controlled substance whether by prescription, or otherwise, logically puts the user on notice of introduction of the substance into his system. Therefore, the user is responsible to monitor the effects of such consumption on his ability to safely operate a motor vehicle.

Thus, evidence that the defendant was not warned about the effects of the prescribed narcotic controlled substance that he was voluntarily taking is not relevant to this case, and the defense is precluded from introducing such evidence or making such an argument to the jury.

By The Court,

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Kenneth D. Brown, J.

cc: Michel Dinges, Esq., (ADA)  
George Lepley, Esq.