

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| COMMONWEALTH OF PENNSYLVANIA | : NO. 00-11,258 |
| | : |
| | : |
| vs. | : CRIMINAL DIVISION |
| | : Habeas Corpus |
| RICHARD WILLIAM WRECSICS, | : |
| Defendant | : |

OPINION AND ORDER

Before the Court is Defendant's Petition for Writ of Habeas Corpus, filed November 21, 2000. Argument on the Petition was heard January 22, 2001.

Defendant has been charged with driving under the influence of a controlled substance (cocaine) and four (4) summary motor vehicle offenses. A preliminary hearing was held on August 7, 2000, after which Defendant was held for Court on all charges. In the instant Petition for Writ of Habeas Corpus, Defendant contends the evidence introduced at the preliminary hearing was insufficient to establish a prima facie case that Defendant's use of cocaine¹ rendered him incapable of safe driving.

To establish a prima facie case, the Commonwealth must show that a crime has been committed and that the accused is probably the perpetrator of that crime. Commonwealth v Allbeck, 715 A.2d 1213 (Pa. Super. 1998). The Commonwealth need not prove that an accused committed the crime beyond a reasonable doubt at the preliminary hearing stage, but must present evidence of the existence of each and every element of the crime charged. Commonwealth v Lopez, 654 A.2d

¹That Defendant had used cocaine sometime prior to his arrest was not in dispute as the Commonwealth presented chemical test results which showed Defendant had cocaine in his system at the time of his arrest.

1150 (Pa. Super. 1995). With respect to the charge involved in the instant matter, driving under the influence of a controlled substance, the Commonwealth must show that Defendant drove (not in dispute here) and that while driving, he was under the influence of a controlled substance which rendered him incapable of safe driving. Commonwealth v Dunne, 690 A.2d 1233 (Pa. Super. 1997).

At the preliminary hearing, the Commonwealth presented the testimony of the arresting officer, Lieutenant Kenneth Hill. After testifying regarding his experience and training in narcotics investigations, Lieutenant Hill testified, in relevant part, as follows:

Q. In your opinion, how would you characterize the Defendant's driving?

A. He was driving under the influence of cocaine.

Q. And also in your opinion, how would you, say, characterize his driving, safe, unsafe?

A. Unsafe.

N.T. December 1, 2000 at p. 8. Defendant argues that because Lieutenant Hill did not specifically say that because Defendant was, in his opinion, driving under the influence of cocaine he was incapable of safe driving, there was insufficient evidence to establish the second element of the crime. While the Court agrees with Defendant that Lieutenant Hill did not speak "the magic words," the Court believes that considering all of the evidence regarding Defendant's behavior and driving,² sufficient evidence was introduced at the preliminary hearing stage to establish a prima facie case.³

²The testimony established that Defendant was pulled over because he very quickly came up on Lieutenant Hill and then passed him, he was clocked at 81 miles per hour and when pulled over, exhibited confused, rambling and slightly slurred speech, glassy eyes, and dilated pupils.

³The Court acknowledges that on cross-examination, Lieutenant Hill admitted that he did not know how much Defendant's medical problems might have been contributing to his actions and affect. This goes to the weight of Lieutenant Hill's opinion, but does not negate that opinion.

ORDER

AND NOW, this day of January, 2001, for the foregoing reasons Defendant's Petition for Writ of Habeas Corpus is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA's Office
 Eric Linhardt, Esq.
 Gary Weber, Esq.
 Hon. Dudley N. Anderson