[J-33-2011]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

JOHN K. WHALEN,	:	No. 41 WAP 2010
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court entered February
	:	17, 2010, at No. 1478 CD 2009, affirming
v.	:	the Order of the Court of Common Pleas
	:	of Mercer County entered July 1, 2009, at
	:	No. 2009-856.
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF TRANSPORTATION,	:	990 A.2d 826 (Pa.Cmwlth. 2010)
BUREAU OF DRIVER LICENSING,	:	
	:	
Appellant	:	ARGUED: April 13, 2011

DISSENTING OPINION

MR. JUSTICE EAKIN **DECIDED: NOVEMBER 23, 2011**

I respectfully dissent from the majority opinion, as I do not believe an agreement to enter Accelerated Rehabilitation Disposition (ARD) necessarily equates to admission of a violation of 75 Pa.C.S. § 3802. Here, the trial court found appellee was eligible for the ARD program after concluding the Florida charges did not constitute a prior DUI offense. See Majority Slip Op., at 2 n.1 (citing Trial Court Opinion, 12/15/08, at 1-2 (citation omitted)).[1] Once appellee was accepted into ARD, all criminal proceedings against him were stayed, and upon successful completion of the program, the charges

[1] As properly noted by the majority, this determination by the trial court is not before us. See id.

were dismissed and his arrest record was expunged. At no point during the criminal proceedings was appellee explicitly found to be in violation of 75 Pa.C.S. § 3802.

Despite this, the Department of Transportation considered his acceptance of ARD as determination there was a violation of § 3802. See Official Notice of Suspension of Your Driving Privilege, 2/25/09 ("Before your driving privilege can be restored you are required by law to have all vehicle(s) owned by you to be equipped with an Ignition Interlock System. This is a result of your conviction for Driving Under the Influence.") (emphasis added). Similarly, the majority concludes "for purposes of Section 3805 (the ignition interlock statute), a defendant who has accepted ARD to resolve a DUI charge is a person who has violated Section 3802." Majority Slip Op., at 13. No matter how simple or salient this result, it is one with which I cannot agree.

Too often considered the equivalent of a guilty plea, ARD is a device which specifically makes a guilty plea irrelevant. Merely charging someone with committing a violation does not constitute proof there was a violation – there must be more, but ARD does not require more. If it is to become more by presumption, the statute must say so.

ARD entry requires no admission of guilt by the accused nor proof thereof by the prosecution. Defendants facing DUI charges often request ARD, to be sure, for if available, acceptance eliminates mandatory incarceration, not an insignificant consideration. ARD limits costs to both sides, addresses legitimate societal concerns such as rehabilitation, restitution, and the like, but to state that every person who enters ARD has "violated" § 3802 is just not accurate. If it is to be that entry into ARD shall be treated as a finding of guilt sufficient to require interlock, the statute would say so, but it does not.

Thus, because I believe mere acceptance into the ARD program does not equate to a violation of § 3802, I respectfully dissent.

Mr. Chief Justice Castille and Mr. Justice Saylor join this opinion.