NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. ERIC A. HICKLEN Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1329 EDA 2013

Appeal from the Judgment of Sentence of December 18, 2012
In the Court of Common Pleas of Chester County
Criminal Division at No.: CP-15-CR-0003766-2011

BEFORE: FORD ELLIOTT, P.J.E., WECHT, J., and MUSMANNO, J.

MEMORANDUM BY WECHT, J.: **FILED MAY 09, 2014**

Eric A. Hicklen ("Hicklen") appeals from his December 18, 2012 judgment of sentence. We affirm.

The trial court has summarized the factual and procedural history of this case as follows:

> [On July 9, 2011,] at approximately 1:00 am, [Pennsylvania State Police Trooper Zachary Fronk] was travelling south on Route 202 . . . when he observed a white SUV driving in an erratic manner. Trooper Fronk observed the vehicle cross over the dotted white line multiple times and observed the vehicle cross over the white fog line. Trooper Fronk observed [Hicklen] driving for approximately five miles prior to pulling him over. Trooper Fronk radioed ahead for assistance from Trooper [Alan] Zulick[,] who was sitting in the construction zone further up on Route 202. Trooper Fronk was transporting a prisoner from Philadelphia and could not leave his vehicle. Once Trooper Fronk contacted Trooper Zulick, Trooper Fronk initiated a traffic stop of [Hicklen's] vehicle.

> Trooper Zulick parked behind Trooper Fronk's police car and proceeded to approach [Hicklen's] vehicle. As Trooper Zulick approached [Hicklen] on the driver's side of the vehicle, he noticed a strong odor of alcohol. Trooper Zulick observed that [Hicklen] had a nervous demeanor, he seemed confused and a little shaken. Trooper Zulick then took [Hicklen's] keys from him and asked him to get out of the car in order to perform field sobriety tests.
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> Hicklen consented to the field sobriety tests and Trooper Zulick administered the walk and turn test as well as the one-legged stand. Standing directly next to Hicklen, Trooper Zulick noticed a strong smell of alcohol. Trooper Zulick testified that [Hicklen] failed both field sobriety tests. [Hicklen] did not listen to the instructions given by Trooper Zulick regarding the walk and turn test, failed to walk heel to toe, failed to turn around correctly, swaying while raising his leg on the one-legged stand and put his leg down before a full [twenty] seconds had elapsed.
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> [A]t that point, [Trooper Zulick] concluded [Hicklen] was incapable of safe driving and administered a [preliminary breath test ("PBT")], confirming the presence of alcohol in [Hicklen's] system. [Hicklen] was taken to the hospital where he consented to having his blood drawn. The blood was analyzed and found to contain 0.1143% alcohol by weight . . . .

Trial Court Opinion ("T.C.O."), 4/4/2013, at 7-8, 9.

Hicklen was "fingerprinted and processed" at the Pennsylvania State Police barracks in Embreeville. ***See*** Affidavit of Probable Cause, 10/7/2011. Thereafter, Hicklen was released pursuant to Pa.R.Crim.P. 519(b). ***Id.*** On October 7, 2011, a criminal complaint was filed alleging that Hicklen had committed various misdemeanors and summary offenses. Specifically, Hicklen was charged with three counts of driving under the influence of alcohol ("DUI"), disregarding a traffic lane, careless driving, and reckless

driving.[1] Prior to trial, the Commonwealth withdrew the DUI charge related to the highest rate of alcohol intoxication. ***See*** 75 Pa.C.S. § 3802(c). Following a non-jury trial on October 24, 2012, Hicklen was found guilty of two DUI counts, disregarding traffic lanes, and careless driving. T.C.O. at 1. Hicklen was found not guilty of reckless driving. ***Id.*** On December 18, 2012, Hicklen was sentenced to an aggregate term of forty-eight hours' to six months' imprisonment. Hicklen also was ordered to participate in a drug and alcohol treatment program.

On December 28, 2012, Hicklen filed a timely post-sentence motion that challenged both the sufficiency and the weight of the evidence. Specifically, Hicklen's motions challenged: (1) the failure of the Commonwealth to present testimony from "[t]he phlebotomist who collected the blood sample" from Hicklen on July 9, 2011; and (2) the alleged failure of the Commonwealth to present sufficient evidence to establish that Hicklen "was incapable of safely operating a vehicle." Hicklen's Post-Sentence Motions, 12/28/2012, at 4, 10, 13 (unpaginated). Following oral arguments on March 19, 2013, the trial court issued an opinion on April 4, 2013, denying Hicklen's motion.

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[1] 75 Pa.C.S. §§ 3802(a)(1), 3802(b), 3802(c), 3309(1), 3714, and 3736(a), respectively.

On May 6, 2013, Hicklen filed a timely notice of appeal.[2] On May 7, 2013, the trial court directed Hicklen to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On May 29, 2013, Hicklen timely complied.[3] On May 30, 2013, the trial court issued a Rule 1925(a) opinion, which referred back to the reasoning and legal arguments presented in the trial court's April 4, 2013 opinion.

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[2] "Ordinarily, if a defendant does not file a post-sentence motion, the defendant's notice of appeal shall be filed within 30 days of imposition of sentence." ***Commonwealth v. Green***, 862 A.2d 613, 618 (Pa. Super. 2004) (citing Pa.R.Crim.P. 720(A)(3)); ***see*** Pa.R.A.P. 903(a). However, if a defendant files a timely post-sentence motion, the notice of appeal shall be filed "within 30 days of the entry of the order deciding the motion." Pa.R.Crim.P. 720(A)(2)(a). Instantly, Hicklen filed a timely post-sentence motion on December 28, 2012. Consequently, he had thirty days from the entry of the trial court's April 4, 2013 opinion denying his post-sentence motions to file a timely notice of appeal. Furthermore, 1 Pa.C.S. § 1908 provides in relevant part that, with respect to computing statutory time period limits, "[w]henever the last day of any such period shall fall on Saturday or Sunday . . ., such day shall be omitted from the computation." Thirty days from April 4, 2013 is May 4, 2013, which is a Saturday. Hicklen filed his notice of appeal on Monday, May 6, 2013. Thus, Hicklen's notice of appeal was filed timely.

[3] It appears that Hicklen's Rule 1925(b) statement was filed one day late. "[I]n the event a Rule 1925(b) statement is filed late by a represented criminal defendant, such constitutes *per se* ineffectiveness so that the proper remedy is to remand for the filing of such a statement *nunc pro tunc*." ***Commonwealth v. Grohowksi***, 980 A.2d 113, 114 (Pa. Super. 2009) (citing ***Commonwealth v. Burton***, 973 A.2d 428, 433 (Pa. Super. 2009) (*en banc*)). "Furthermore, where the trial court has filed an opinion addressing the issues presented in the 1925(b) concise statement, we may review the merits of the issue presented." ***Id.*** The certified record indicates that Hicklen is represented by counsel. Therefore, as the trial court issued a responsive opinion in this case, we decline to remand, and we will address the merits of Hicklen's claims. ***Grohowski***; ***Burton***, *supra*.

Hicklen presents the following issues for our consideration:

> 1. Did the trial court commit an error of law when it denied [Hicklen's] post[-]sentence motion to vacate the finding of guilt as to both counts because [the] evidence adduced at trial specifically regarding the accuracy of the blood alcohol result was insufficient as a matter of law to support the verdict?
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> 2. Did the trial court abuse its discretion in denying the appellant's post[-]sentence motion requesting a new trial because the verdict of guilty was so contrary to the weight of the evidence as to shock one's sense of justice?

Hicklen's Brief at 4 (capitalization modified).

In his first claim, Hicklen asserts that the Commonwealth presented insufficient evidence at trial because it failed to introduce testimony from the phlebotomist that collected a blood sample from Hicklen at the Chester County Hospital following the at-issue arrest. Although the Commonwealth presented testimony from William Kupstas ("Kupstas"), the forensic scientist that analyzed Hicklen's blood sample at the Pennsylvania State Regional Crime Lab in Wyoming, Pennsylvania, Hicklen argues that Kupstas' testimony was insufficient to sustain a finding of guilty because it did not address questions concerning the phlebotomist's methods:

> The testimony of [Kupstas] makes clear that collection of [Hicklen's] blood, and more specifically the manner and process applied in its collection, has a direct and meaningful impact upon the accuracy of the results. . . . [A]bsent such information it is impossible to say with any degree of certainty that the results arrived at by [Kupstas] are trustworthy. Since the record is completely devoid of any testimony regarding the process used by the [p]hlebotomist in collection of the sample, the results of the blood alcohol concentration test provided by the Pennsylvania State Police laboratory were, and remains to be [*sic*], utterly unquantifiable and numerically meaningless.

> Moreover, because establishing a reliable blood alcohol concentration is an essential element of the crime charged, such a failure renders any evidence regarding testing insufficient as a matter of law to sustain the finding of guilt . . . .

Hicklen's Brief at 9.

In reviewing a challenge to the sufficiency of the evidence, our standard of review is well-established:

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the finder of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. LaBenne, 21 A.3d 1287, 1289 (Pa. Super. 2011) (quoting ***Commonwealth v. Brooks***, 7 A.3d 852, 856-57 (Pa. Super. 2010)). "[I]f the record contains support for the convictions they may not be disturbed." ***Commonwealth v. Hartle***, 894 A.2d 800, 804 (Pa. Super. 2006) (citing ***Commonwealth v. Coon***, 695 A.2d 794, 797 (Pa. Super. 1997)).

In his first claim, Hicklen specifically challenges the sufficiency of the evidence as it relates to his DUI conviction under subsection 3802(b).[4] ***See*** Hicklen's Brief at 8-9. The Pennsylvania Vehicle Code, 75 Pa.C.S. §§ 101, *et seq*., defines this offense as follows:

> **§ 3802. Driving under influence of alcohol or controlled substance**
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> * * *
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> **(b) High rate of alcohol.**—An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.10% but less than 0.16% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

75 Pa.C.S. § 3802. Hicklen essentially is arguing that, in the absence of testimony from the phlebotomist that actually drew Hicklen's blood at

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[4] Hicklen has included a separate sufficiency issue in his discussion of the first issue *sub judice*. Specifically, Hicklen argues that his conviction pursuant to subsection 3802(a)(1) was supported by insufficient evidence because Trooper Fronk's radio call to Trooper Zulick described Hicklen as an "erratic driver." Hicklen's Brief at 19. Hicklen argues that this statement created a "cognitive bias" in Trooper Zulick, such that his subsequent observations of Hicklen were invalid: "Trooper Zulick's preconceived conclusions regarding the possible intoxicated state of [Hicklen] rendered the results of the subsequent field sobriety test subjective and inconclusive." ***Id.*** at 19-20. However, Hicklen has not included this claim in his "Statement of the Questions Involved." ***Id.*** at 4. The only sufficiency claim listed relates solely to the blood test, and does not mention Trooper Zulick's alleged cognitive bias. Therefore, to the extent that Hicklen relies upon this claim for relief, it is waived for failure to include it in his statement of the questions. ***See Commonwealth v. Bryant***, 57 A.3d 191, 196 n.7 (Pa. Super. 2012) (citing Pa.R.A.P. 2116(a)).

Chester County Hospital, the Commonwealth could not demonstrate sufficiently that Hicklen's blood alcohol content ("BAC") was of an appropriate level to justify his conviction pursuant to subsection 3802(b):

> [C]ollection of the blood, and more specifically the manner and process applied in its collection, has a direct, meaningful, and unassailable impact upon the accuracy of the final result. Stated another way, the absence of such information makes the test result nothing more than an unsupported guess . . . . [S]uch a failure has the net effect of rendering any evidence regarding testing insufficient as a matter of law to sustain the finding of guilty as to this count and thus requiring dismissal [of Hicklen's conviction pursuant to 75 Pa.C.S. § 3802(b).]

Hicklen's Brief at 17. We disagree.

Although the Commonwealth did not present testimony from the phlebotomist that drew Hicklen's blood on July 9, 2011, Kupstas testified regarding his analysis of Hicklen's sample. With regard to his credentials, Kupstas testified that he had been employed by the Pennsylvania State Police since 1980, that he had been trained in forensic serology at the FBI Academy in Quantico, Virginia, and that he was a member of the American Academy of Forensic Sciences. Notes of Testimony ("N.T."), 10/24/2012, at 84-87. Ultimately, Kupstas was qualified as an expert in forensic testing for the purposes of establishing Hicklen's BAC by the trial court. ***Id.*** at 87-88. Kupstas offered a technical explanation of the process that he used to ascertain Hicklen's BAC, namely gas chromatography. ***Id.*** at 95-97. Thereafter, Kupstas testified, and the Commonwealth offered documentation confirming, that the two tests Kupstas conducted upon Hicklen's blood

produced results of 0.1143% and 0.1150% BAC, respectively. ***Id.*** at 97-104. In keeping with standard practice, Kupstas reported the lower of these two results as Hicklen's BAC. ***Id.*** at 100.

During cross-examination, Hicklen's counsel questioned Kupstas regarding the specifics of the processes associated with gas chromatography, and the potential for errors in the results. ***Id.*** at 107-134. The only portion of Kupstas' testimony that touched upon the actions of the phlebotomist is as follows:

> Hicklen's Attorney: Sir, I'm almost done here. I know it's kind of a silly question: You were not present during the time the blood was drawn?
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> Kupstas: No.
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> Hicklen's Attorney: You don't know if it was drawn properly?
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> Kupstas: No, I [do] not.
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> Hicklen's Attorney: Potentially, how the blood is drawn, how it is placed in the tube, can affect the ultimate outcome of your testing?
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> Kupstas: Yes.
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> Hicklen's Attorney: Meaning, that there are preservatives in the tube?
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> Kupstas: Yes.
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> Hicklen's Attorney: The tube has to be properly inverted to mix those preservatives?
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> Kupstas: Yes.

Hicklen's Attorney:	If that was not done, it could potentially elevate the test on your machine?
Kupstas:	I don't know if it would elevate it. It could go either way probably. It depends on so many factors.
Hicklen's Attorney:	It could create an inaccurate result?
Kupstas:	Yes. When you say inaccurate, what you want to do is say this: You will not be getting what the true value of the blood was at the time it was drawn. **An accurate example would be if I tested that blood, I would get the same result of both samples.**
Hicklen's Attorney:	Sure.
Kupstas:	So there is a -
Hicklen's Attorney:	And I appreciate the clarification. So with respect to that, without knowing how the blood was collected and whether it was collected properly, you don't know that the value you['re] getting on your machine is a good estimate of the true value?
Kupstas:	The only thing I can answer is that the tube of blood that was given to me had the amount of alcohol that was detected.

Id. at 136-37 (emphasis added).

Hicklen asserts that this line of questioning undermined the sufficiency of the Commonwealth's evidence related to Hicklen's BAC. The only basis for Hicklen's challenge to the sufficiency of the evidence is his assertion that Kupstas' inability to testify regarding the taking of Hicklen's blood, and the

lack of testimony from the phlebotomist, means that the results of the gas chromatography test in this case cannot be trusted. Hicklen misapprehends our standard of review. Viewing the evidence in the light most favorable to the Commonwealth, there was sufficient evidence to enable the trial court, sitting as a fact-finder, to conclude that Hicklen's BAC was between 0.10% and 0.16% on the night of July 9, 2011.

The Commonwealth offered testimony from Kupstas regarding the scope and nature of the gas chromatography tests that he personally conducted upon Hicklen's blood. In addition to Kupstas' testimony, the Commonwealth introduced the lab worksheets and test results used by Kupstas in conducting his analysis. Kupstas' testimony, and the attendant documentation, all indicated that Hicklen's BAC was approximately 0.144%[5] on the night in question. While Kupstas testified that phlebotomist errors during the collection of a blood sample may lead to inaccurate BAC results, Kupstas also testified that the potential effect of such errors is largely speculative. ***See*** N.T. at 136-37. Moreover, Kupstas testified that the touchstone of accurate testing in this context is consistent results. ***Id.*** ("An accurate example would be if I tested that blood, I would get the same result of both samples."). The certified record indicates that the two tests that Kupstas conducted upon Hicklen's blood yielded results that were the

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[5] It appears that Hicklen's BAC results were rounded to the nearest thousandth decimal place. This minor discrepancy is not dispositive.

same, to within one-hundredth of one percent. "The Commonwealth need not preclude every possibility of innocence or establish the defendant's guilt to a mathematical certainty." ***Commonwealth v. Brotherson***, 888 A.2d 901, 904 (Pa. Super. 2005) (quoting ***Commonwealth v. Williams***, 871 A.2d 254, 259 (Pa. Super. 2005)). Any factual disputes in this case were committed to the fact-finder for resolution. Although Hicklen raised questions regarding the actions of the phlebotomist, which Kupstas was unable directly to address, Kupstas testified, in his expert capacity, that consistent testing results typically indicate accurate results. As evinced by Hicklen's conviction, the finder of fact chose to believe that Hicklen's consistent BAC readings were accurate, and to disbelieve Hicklen's attempts to undermine confidence in those test results.

Viewing all of the evidence discussed above in the light most favorable to the Commonwealth as verdict-winner, we conclude that there was sufficient evidence for the fact-finder to conclude that Hicklen's BAC was between 0.10% and 0.16% pursuant to subsection 3802(b). Instantly, the trial court (siting non-jury) chose to credit the veracity of the Commonwealth's scientific evidence, and to disbelieve Hicklen's attempts to undermine confidence in that evidence. Precedent forbids us from substituting our judgment for that of the fact-finder. Although the question presented here is a close one, the well-established precedent in this context unambiguously indicates that the fact-finder is "free to believe all, part or

none of the evidence." ***LaBenne***; ***Brooks***, *supra*. Therefore, Hicklen's first claim fails.[6]

In his second claim, Hicklen challenges the weight of the evidence. Our standard of review in this context is well-established:

> [T]he weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the lower court's verdict if it is so

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[6] In its opinion denying Hicklen's post-sentence motion, the trial court relied upon this Court's holding in ***Commonwealth v. Shaffer***, 40 A.3d 1250 (Pa. Super. 2012). ***See*** T.C.O. at 3-4. In ***Shaffer***, this Court concluded that the Commonwealth's failure to provide testimony from a phlebotomist in a DUI case did not constitute a violation of the Confrontation Clause of the United States' Constitution. 40 A.3d at 1252-53; ***see*** U.S. Const. Amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ."). Instantly, Hicklen has not advanced a claim that implicates the Confrontation Clause. We note this distinction in order to draw the trial court's attention to the fact that our holding in ***Shaffer*** does **not** address "whether a phlebotomist's testimony is necessary to determine the reliability of a blood test" in the context of a sufficiency of the evidence claim. ***See*** T.C.O. at 3-4. In relevant part in ***Shaffer***, this Court applied the United States' Supreme Court's holding in ***Melendez-Diaz v. Massachusetts***, 557 U.S. 305 (2009), which held that "lab reports admitted to establish a defendant's guilt . . . constituted testimonial statements covered by the Confrontation Clause of the United States[']s Constitution." 40 A.3d at 1251. Ultimately, we held that ***Melendez-Diaz*** does not compel the Commonwealth "to call the phlebotomist who physically drew [the] defendant's blood at the hospital." ***Id.*** at 1252. Specifically, we concluded that the phlebotomist was "merely an individual involved in the chain of custody of Shaffer's blood sample." ***Id.*** However, that holding was based solely on a constitutional claim that did not implicate the sufficiency of the evidence. We note that "[a] ruling or decision of a lower court will be affirmed if it can be supported on any basis despite the lower court's assignment of a wrong reason." ***Commonwealth v. Fisher***, 870 A.2d 864, 870 n.11 (Pa. 2005) (quoting ***Commonwealth v. Terry***, 521 A.2d 398, 409 (Pa. 1987)).

> contrary to the evidence as to shock one's sense of justice. Moreover, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

Commonwealth v. Shaffer, 40 A.3d 1250, 1253 (Pa. Super. 2012) (quoting ***Commonwealth v. Champney***, 832 A.2d 403, 409 (Pa. 2003)). Consequently, we will only reverse a trial court's refusal to overturn a verdict when we find that the court abused its discretion in **not** concluding that the verdict was so contrary to the evidence as to shock one's sense of justice. In effect, "the trial court's denial of a motion for a new trial based on a weight of the evidence claim is the least assailable of its rulings." ***Commonwealth v. Ramtahal***, 33 A.3d 602, 609 (Pa. 2011).

Relying upon the same testimony from Kupstas regarding the phlebotomist reproduced above, Hicklen argues as follows:

> [B]ecause the Commonwealth failed to offer any evidence whatsoever regarding the procedures followed for the collection or handling of the blood specimen the verdict of guilt [pursuant to subsection 3802(b) was] contrary [to] the greater weight of the evidence. As was candidly stated by [Kupstas], the accuracy of the test result could and likely would be affected by the process used for the collection of the specimen. . . . [D]ue to the unique position of the [p]hlebotomist and her relationship with the evidence in question it stands to reason that she would be the only source able to provide this key evidentiary nexus. Absent such testimony, the trial court [was] left to rely wholly and completely on assumption and conjecture that in fact, the blood specimen was collected and handled correctly. Blind presupposition as to an essential and necessary element cannot and does not satisfy the standard of beyond a reasonable doubt necessary to uphold [Hicklen's] conviction.

Hicklen's Brief at 22. Much of Hicklen's argument in his second issue is directed at arguing that the Commonwealth failed to establish an "essential element of the crime." As such, his argument appears to challenge the sufficiency of the evidence, as opposed to its weight. ***See LaBenne***, ***Brooks***, *supra*. To the extent that Hicklen seeks to assert that his conviction was against the weight of evidence, we disagree.

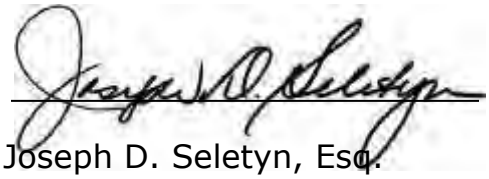
As set forth at length above, the evidence adduced by the Commonwealth relating to the laboratory test of Hicklen's BAC was thorough. It included extensive testimony from Kupstas regarding gas chromatography, the results of multiple tests of Hicklen's blood, and the attendant documentation and paperwork related to these tests. The Commonwealth also presented testimony from Trooper Fronk concerning Hicklen's erratic driving that immediately preceded the traffic stop in this case, which included Hicklen "crossing" the solid and dotted guidelines on the highway several times. N.T. at 55-56. Testimony from Trooper Zulick described Hicklen's demeanor and actions during the traffic stop, which included "a strong odor of an alcoholic beverage" coming from Hicklen's car and person. ***Id.*** at 11, 13. Additionally, Trooper Zulick described Hicklen's attempts at completing the field sobriety tests, which led Trooper Zulick to conclude that Hicklen "was incapable of safe driving." ***Id.*** at 13-15.

Succinctly stated, nothing in Hicklen's argument, or in our review of the record, suggests that the trial court's verdict should shock one's sense of

justice. Additionally, nothing indicates that the trial court abused its discretion in ruling that Hicklen had failed to establish the sort of injustice that would require a new trial. ***See Shaffer***, 40 A.3d at 1253 (holding that a challenge to the weight of the evidence from a DUI conviction failed where the Commonwealth presented testimony from the forensic scientist that tested the defendant's blood for BAC, the defendant was afforded the opportunity to cross-examine that scientist, and the trial court found the scientist's testimony credible). Consequently, Hicklen's challenge to the weight of the evidence fails.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/9/2014