

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT
OF
PENNSYLVANIA

v.

MARTHA YVETTE TAYLOR

Appellant

No. 852 EDA 2017

Appeal from the Judgment of Sentence February 7, 2017
In the Court of Common Pleas of Monroe County
Criminal Division at No(s): CP-45-CR-0001111-2016

BEFORE: LAZARUS, J., RANSOM, J., and PLATT, J.*

MEMORANDUM BY RANSOM, J.:

FILED MARCH 02, 2018

Appellant, Martha Yvette Taylor, appeals from the judgment of sentence imposed February 7, 2017, following a bench trial resulting in her conviction for driving under the influence of a controlled substance, impaired ability, first offense; disregarding a traffic lane (single); and careless driving.¹ We affirm.

On October 27, 2015, at approximately 10:30 p.m., Pennsylvania State Trooper Mark Puopolo received a radio dispatch regarding a gray Jeep Cherokee SUV that was driving on Hollow Road in Smithfield Township, Monroe County, Pennsylvania. **See** Notes of Testimony (N.T.), 11/23/16, at 6-7, 16. Upon encountering this vehicle, Trooper Puopolo observed it cross

* Retired Senior Judge assigned to the Superior Court.

¹ 75 Pa.C.S. §§ 3802(d)(2), 3309(1), and 3714, respectively.

the double yellow line in the center of the road. **Id.** at 8. After moving his police car to the right to avoid being struck by the other vehicle, Trooper Puopolo conducted a traffic stop and made contact with Appellant. **Id.** at 8-9.

Appellant's eyes were red, bloodshot, glassy, and had constricted pupils. **Id.** at 9. Her movements were slow and sluggish. **Id.** Trooper Puopolo asked Appellant if she was on any prescription medications or if she had taken anything that would affect her driving ability. **Id.** at 10. Appellant informed Trooper Puopolo that she had taken prescription phenobarbital earlier that day. **Id.** at 11. Appellant walked with a cane, was unsteady and swaying on her feet, and appeared disoriented when walking outside of the vehicle. **Id.** at 12, 14. Due to Appellant's mobility issues and age, Trooper Puopolo administered only a horizontal gaze nystagmus test. **Id.** at 12-13. Following the test, he took Appellant to the Monroe County DUI Processing Center. **Id.** at 13, 16.

Police Sergeant Eric Smith processed Appellant later that night.² **Id.** at 27. He observed that Appellant was disheveled and her clothing disorderly. **Id.** at 30. She was sleepy and slow in her speech and responses but talkative,

² Appellant was read the DL-26 implied consent form prior to being given a warrantless blood draw. **Id.** at 28. However, pursuant to recent case law, such blood draws not based upon a warrant, case-specific exigency, or actual consent absent coercion of criminal consequences, are banned pursuant to **Birchfield v. North Dakota**, 136 S. Ct. 2160 (2016). **See Commonwealth v. Ennels**, --- A.3d ---, at *3-5, 2017 Pa. Super. 217 (filed July 11, 2017). However, the results of the warrantless blood draw were not admitted into evidence.

polite, and cooperative. **Id.** at 30. She informed Sergeant Smith that she was prescribed phenobarbital, cyclobenzaprine, and tramadol and had last taken her medication at 12:00 p.m. **Id.** at 30. In Sergeant Smith's observation, it was unusual that Appellant was talkative but still experiencing bouts of sleepiness. **Id.** at 30-31. During the interview, Appellant sporadically burst into tears. **Id.** at 31. Appellant was arrested. **Id.**

Appellant timely appealed and filed a court-ordered Pa.R.A.P. 1925(b) statement of errors complained of on appeal. The court issued a responsive opinion. Prior to the instant disposition, we vacated Appellant's sentence and remanded for resentencing based upon errors in the certified record. The trial court has complied with our order, resentenced Appellant, and corrected the certified record.

On appeal, Appellant raises the following issues for our review:

1. Was there sufficient evidence beyond a reasonable doubt to convict the [Appellant] of driving under the influence while impaired when the only evidence of her impairment was her admission that she had used her prescription drug that day?
2. Was there sufficient evidence beyond a reasonable doubt to convict [Appellant] of driving under the influence, impaired ability?
3. Did the [c]ourt incorrectly admit [Appellant's] statement that she took her prescription that day, in violation of the corpus delicti rule?
4. Was it necessary for the Commonwealth to call an expert witness to support that the supposed signs of impairment exhibited by the defendant were consistent with impairment from taking phenobarbital?

Appellant's Brief at 4.³

Appellant's third and fourth issues are waived for failure to include them in her Pa.R.A.P. 1925(b) statement of errors complained of on appeal. **See Commonwealth v. Castillo**, 888 A.2d 775, 780 (Pa. 2005); **see also** Pa.R.A.P. 1925(b)(4)(vii) ("Issues not included in the Statement and/or not raised in accordance with the provision of this paragraph (b)(4) are waived.").

Appellant's remaining issues challenge the sufficiency of the evidence to support her conviction for driving under the influence. **See** Appellant's Brief at 9. Appellant claims the evidence was insufficient to support her conviction because the only evidence of her impairment was her admission that she had taken her medication and a single incident of driving over the line. **Id.** at 9. Appellant contends that all of the signs of impairment were only side effects of the medication she takes and consistent with her mobility issues. **Id.** at 11-12.

We review a challenge to the sufficiency of the evidence as follows.

In determining whether there was sufficient evidentiary support for a jury's finding [], the reviewing court inquires whether the proofs, considered in the light most favorable to the Commonwealth as a verdict winner, are sufficient to enable a reasonable jury to find every element of the crime beyond a reasonable doubt. The court bears in mind that: the Commonwealth may sustain its burden by means of wholly circumstantial evidence; the entire trial record should be evaluated and all evidence received considered, whether or not the trial court's rulings thereon were correct; and the trier of fact,

³ In her brief, Appellant has not numbered her questions; we have added numeration for ease of analysis.

while passing upon the credibility of witnesses and the weight of the evidence, is free to believe all, part, or none of the evidence.

Commonwealth v. Diggs, 949 A.2d 873, 877 (Pa. 2008) (citations omitted).

The applicable section of the Motor Vehicle Code defines DUI – general impairment in the following manner:

(d) Controlled substances.--An individual may not drive, operate or be in actual physical control of the movement of a vehicle under any of the following circumstances:

(2) The individual is under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

See 75 Pa.C.S. § 3802(d)(2); ***see also Commonwealth v. Griffith***, 32 A.3d 1231, 1239-40 (Pa. 2011) (finding evidence sufficient to support conviction where defendant was having trouble standing, failed sobriety test, and the defendant told officer she had taken a drug).

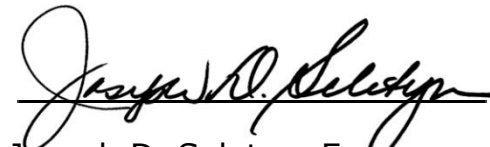
Here, the evidence was sufficient to support Appellant's conviction. Appellant was driving the vehicle at the time that she was stopped. Trooper Puopolo observed her cross the median line once and nearly strike his vehicle. Upon effectuating a traffic stop, Trooper Puopolo observed that Appellant's eyes were red, bloodshot, glassy, and had constricted pupils. She was slow, sluggish, and unsteady on her feet. Appellant appeared disoriented and failed a horizontal gaze nystagmus test. She informed Trooper Puopolo that she had taken phenobarbital earlier that day. Sergeant Smith, who observed Appellant in custody, noted that she was disheveled, had disorderly clothing, was sleepy and slow, but polite, cooperative, and talkative. Appellant was emotional and

cried sporadically. Appellant admitted to having taken phenobarbital, cyclobenzaprine, and tramadol. Based on his experience, Officer Smith believed Appellant was intoxicated. All of this evidence supports the contention that Appellant was intoxicated at the time she was pulled over and was unable to safely operate her vehicle.

Thus, the evidence was sufficient to support the conviction, as the Commonwealth proved beyond a reasonable doubt that Appellant 1) was not able to drive safely, and 2) her inability to drive safely was a result of having taken a controlled substance. **See Griffith**, 32 A.2d at 1239-40; 75 Pa.C.S. § 3802(d)(2). Appellant's argument that the evidence was insufficient because the drugs were prescribed is of no moment: the statute does not provide an exception for prescribed medication. Accordingly, we affirm the conviction. **Diggs**, 949 A.2d at 877.

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/2/18