NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
	:	
JASON DANIEL QUIGLEY,	:	No. 433 MDA 2013
	:	
Appellant	:	

Appeal from the Judgment of Sentence, February 1, 2013,
in the Court of Common Pleas of Luzerne County
Criminal Division at No. CP-40-CR-0001759-2012

BEFORE: FORD ELLIOTT, P.J.E., SHOGAN AND PLATT,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED DECEMBER 24, 2013**

Appellant, Jason Daniel Quigley, appeals from the judgment of sentence of 90 days' house arrest with electronic monitoring, a fine of $1,500, drug/alcohol assessment and treatment, and highway safety school, imposed after he was convicted at a bench trial of driving under the influence of alcohol in violation of 75 Pa.C.S.A. § 3802(a)(1) and careless driving.[1] We affirm.

The evidence presented at appellant's trial was recounted by the trial court as follows:

> Testifying at time of trial on behalf of the Commonwealth was 16 year veteran Plains Township

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* Retired Senior Judge assigned to the Superior Court.

[1] An additional fine of $25 was imposed on the summary careless driving conviction.

> police officer, Sergeant Dale Binker. Sergeant Binker and Officer Smith were dispatched by the Comm Center to a one-car motor vehicle accident where they found only the Defendant inside the vehicle that was at rest over an embankment with its air bags deployed. The Defendant was in the driver's seat behind the wheel, the keys were in the ignition and the Defendant was bleeding from his face. (Transcript of Proceedings of December 10, 2012, hereinafter "N.T." at pp. 8-11.) Sergeant Binker further testified that the Defendant had a strong odor of alcoholic beverage on his breath, his speech was slurred, his eyes were glossy and red and where the Defendant exhibited poor balance as he fell going up the hill. (N.T. at pp. 12-13.)
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> Officer Michael Smith from the Plains Township Police Department also testified on behalf of the Commonwealth. Officer Smith corroborated the testimony of Sergeant Binker in that he identified the Defendant as the person he found in the vehicle in the driver's seat behind the wheel with the keys in the ignition. (N.T. pp. 19-21.) Notably however, the Defendant told Officer Smith that he was at Gentleman's Club 10 and did not know what had happened causing him to drive over the curb and down the embankment. (N.T. p. 22.)
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> Additionally, Officer Smith observed a strong smell of an alcoholic beverage emitting from the Defendant's breath; his eyes were red and glossy and his speech was slurred and mumbled. Having experienced between 100 and 150 DUI arrests in his career, and based upon said officer's training and experience, Officer Smith testified unequivocally that the Defendant was in fact intoxicated at the time of this incident. (N.T. pp. 23-24.)
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> The record is also clear that the Defendant refused to submit to a chemical test of his blood.

Trial court opinion, 4/19/13 at 3-4.

Essentially, appellant challenges the sufficiency of the evidence to convict him of driving under the influence of alcohol pursuant to 75 Pa.C.S.A. § 3802(a)(1).

> When reviewing a challenge to the sufficiency of the evidence, we must determine if the Commonwealth established beyond a reasonable doubt each of the elements of the offense, considering the entire trial record and all of the evidence received, and drawing all reasonable inferences from the evidence in favor of the Commonwealth as the verdict-winner. The Commonwealth may sustain its burden of proof by wholly circumstantial evidence.

Commonwealth v. Segida, 604 Pa. 103, 117, 985 A.2d 871, 880 (2009) (citations omitted).

Section 3802(a)(1) of the Vehicle Code, 75 Pa.C.S.A. §§ 101-9805, provides:

> **(a) General Impairment**
>
> (1) 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 individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

75 Pa.C.S.A. § 3802(a)(1). In order to be found guilty of DUI-general impairment, "the Commonwealth [must] prove the following elements: the accused was driving, operating, or in actual physical control of the movement of a vehicle during the time when he or she was rendered

incapable of safely doing so due to the consumption of alcohol." ***Segida***, ***supra*** at 116, 985 A.2d at 879.

Appellant argues that "the Commonwealth failed to present evidence that [appellant] was incapable of safe driving ***at the time he was allegedly driving***." (Appellant's brief at 4 (emphasis in original).) Both appellant and the Commonwealth rely on our supreme court's ***Segida*** decision to support their positions.

In ***Segida***, our supreme court addressed the sufficiency of the evidence required to sustain a DUI conviction pursuant to Section 3802(a)(1). The facts are as follows. A police officer received a call of a one-car accident. ***Segida***, ***supra*** at 106, 985 A.2d at 873. Upon arriving at the scene, the police officer noticed a strong odor of alcohol coming from the defendant. ***Id.*** The defendant admitted he had been drinking that night and that he lost control of his vehicle. ***Id.*** The officer arrested the defendant after he performed "very badly" on three field sobriety tests. ***Id.*** The defendant was taken to a hospital to have his blood alcohol level tested. ***Id.*** The test results revealed a blood alcohol content of 0.326%. ***Id.***

The defendant was convicted under 75 Pa.C.S.A. § 3802(a)(1), but this court reversed. ***Id.*** at 106-107, 985 A.2d at 873-874. We reasoned that "because the Commonwealth had failed to establish any temporal connection between the time of the accident and the time that the officer

arrived at the scene, it had not been proven beyond a reasonable doubt that [the defendant] was incapable of safely driving at the time he was driving." ***Id.*** at 107, 985 A.2d at 874.

Our supreme court vacated the superior court order. ***Id.*** at 118, 985 A.2d at 881. Although the supreme court agreed that the statute requires proof of the defendant's "inability to drive safely due to intoxication at the time he was driving," it reasoned that this court improperly applied the statute. ***Id.*** at 116-117, 985 A.2d at 880. After noting the evidence of the defendant's one-car accident, strong odor of alcohol, poorly performed field sobriety tests, high blood-alcohol content, and his admission that he had been drinking, the supreme court held the evidence was sufficient to sustain his conviction. ***Id.*** at 117-118, 985 A.2d at 880-881. Although the officer "had not observed the accident and did not know exactly what time it had occurred, he opined that it was 'doubtful' that the accident had occurred two or three hours or even ten minutes prior to his arrival on the scene 'due to traffic on the road.'" ***Id.*** at 118, 985 A.2d 880. As such, the evidence was sufficient to establish a "rational and reasonable temporal link between drinking and driving . . . ." ***Id.*** at 114, 985 A.2d at 878.

Herein, appellant argues that the evidence in this matter is lacking when compared to ***Segida***. Appellant contends he never admitted he had been drinking and lost control of his vehicle. There is no evidence of his

blood alcohol content on the record, and both police officers testified they did not know when the accident occurred. (Appellant's brief at 7.)

The Commonwealth maintains the circumstantial evidence establishes that appellant was driving, was intoxicated, the accident did not occur long before the officers arrived since appellant was still bleeding from "little facial" injuries, and the accident itself demonstrated that appellant was incapable of driving safely. (Commonwealth's brief at 5.)

The ***Segida*** court outlined the types of evidence that the Commonwealth may proffer to sustain a conviction pursuant to Subsection 3802(a)(1). That evidence includes, the defendant's actions and behavior, including manner of driving and ability to pass field sobriety tests; demeanor, including toward the investigating officer; physical appearance, particularly bloodshot eyes and other physical signs of intoxication; the odor of alcohol and slurred speech; and BAC "insofar as it is relevant to and probative of the accused's ability to drive safely at the time he or she was driving." ***Segida***, ***supra*** at 115-116, 985 A.2d at 879. Our supreme court also instructed, "The weight to be assigned these various types of evidence presents a question for the fact-finder, who may rely on his or her experience, common sense, and/or expert testimony." ***Id.*** at 116, 985 A.2d at 879.

Instantly, the trial court described the evidence as follows:

> [I]n the facts of the present case of Defendant Quigley, sufficient circumstantial evidence was

> presented to prove beyond a reasonable doubt that he was incapable of driving safely due to ingestion of alcohol "at the time he was driving." Particularly, even more compelling than the facts in ***Segida*** (where defendant Segida was already out of the vehicle at the time the police arrived), Defendant Quigley was found in the driver's seat of the vehicle, behind the wheel with the keys in the ignition and the air bags deployed. Both Sergeant Binker and Officer Smith testified that the Defendant had a strong odor of alcoholic beverage on his breath, his speech was slurred, and his eyes were glossy and red. Both police officers observed ***active*** minor facial bleeding. Sergeant Binker testified the Defendant exhibited poor balance and Officer Smith testified that the Defendant stated he did not know what had happened causing him to drive over the curb and down the embankment, nonetheless an admission to driving and being behind the wheel.
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> Utilizing the Supreme Court's rational[e] in ***Segida***, Defendant Quigley was [in] a single vehicle accident and where the accident itself shall constitute evidence that he drove when he was incapable of doing so safely. More emphatically, and after having experienced between 100 and 150 DUI arrests in his career, and based upon said officer's training and experience, Officer Smith testified unequivocally that the Defendant was in fact intoxicated at the time of this incident.

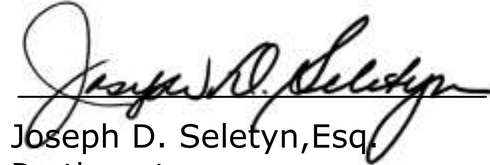
Trial court opinion, 4/19/13 at 5 (emphasis in original).

Given the foregoing, the trial court could infer from the cumulative testimony of the two police officers that the time of the accident was recent and appellant was "incapable of safe driving" "after imbibing a sufficient amount of alcohol." 75 Pa.C.S.A. § 3802(a)(1). We therefore conclude there was sufficient evidence to support the trial court's determination that

appellant was guilty of DUI -- general impairment, and affirm appellant's judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn,Esq.
Prothonotary

Date: 12/24/2013