

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA :
 :
 vs. :
 :
SCOTT KELLY, :
 Defendant :

No: 273 CR 11

Michael S. Greek, Esquire
Assistant District Attorney Counsel for the Commonwealth
James R. Nanovic, Esquire Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - December 9, 2011

Here before the Court is the Defendant's "Petition for Writ of Habeas Corpus." For the reasons that follow, we will deny the Defendant's Petition.

FACTUAL AND PROCEDURAL BACKGROUND

On December 7, 2010, the Commonwealth, through Trooper Anthony Doblovasky, filed a Criminal Complaint against the Defendant, charging him with one count of Fleeing or Attempting to Elude Officer (F3), one count of DUI-General Impairment, 1st offense (M), one count of DUI-high rate of alcohol, 1st offense (M), two counts of Careless Driving (S), six counts of Disregard Traffic Lane (S), two counts of Reckless Driving (S), two counts of Stop Signs and Yield Signs (S), two counts of Driving at Safe Speed (S), one count of Use of Improper Class of License (S),

one count of Not Wearing Proper Headgear on Motorcycle (S), and two counts of Duties at Stop Sign (S)¹.

In support of the charges, the Affidavit of Probable Cause provides that, on October 17, 2010 at approximately 8:36 p.m., in Towamensing Township, Carbon County, Pennsylvania, Trooper Doblovasky observed Defendant's motorcycle traveling northbound on Spruce Hollow Road at a high rate of speed and entering the southbound lane of Spruce Hollow Road more than five (5) times. Another motorcycle was also observed travelling with the Defendant. The Trooper attempted to stop the Defendant's vehicle, but he accelerated and failed to stop at several stop signs. The Trooper also observed the Defendant's vehicle enter the southbound lane of travel on Trachsville Hill Road while travelling northbound. The Defendant then pulled over, and a traffic stop was conducted.

When the Defendant was taken into custody, Trooper Doblovasky detected an odor of an alcoholic beverage coming from the Defendant's breath and/or person. The Defendant also had glossy, bloodshot eyes and spoke with slurred speech. The Defendant was eventually transported to the Pennsylvania State Police's Lehighton Barracks for a breath test, where the Defendant consented to the test. The Trooper obtained a breath

¹ 75 Pa. C.S.A. §§ 3733(a), 3802(a)(1), 3802(b), 3714(a), 3309(1), 3736(a), 3361, 1504(a), 3525(a) and 3323(b), respectively.

sample from the Defendant at approximately 9:23 p.m., which indicated that his Blood Alcohol Content was .138 percent.

On April 6, 2011, a Preliminary Hearing was held before Magisterial District Judge Bruce F. Appleton. Following said hearing, each of the charges, except the stop sign violations, was held for court. On April 21, 2011, the Commonwealth charged the Defendant by Information with the offenses which were held for court.

On June 7, 2011, the Defendant filed a "Petition for Writ of Habeas Corpus." The Defendant avers that the Commonwealth did not present competent evidence to establish that the Defendant committed the offenses with which he is charged. He also avers that the Commonwealth did not present sufficient evidence to sustain the charges of Fleeing and Eluding, as well as the other crimes charged, and that the arresting officer did not have sufficient cause to stop the Defendant. Accordingly, the Defendant requests that a Writ of Habeas Corpus be issued to determine whether the aforementioned charges should be dismissed.

On August 30, 2011, the parties appeared for oral argument and indicated that they desired the Court to consider the matter on the record alone, namely the transcript of the preliminary hearing, a video recording of the pursuit of the Defendant from the dashboard camera in Trooper Doblovasky's vehicle, and any

briefs submitted by the parties. On August 31, 2011, this Court issued an Order directing the Defendant to submit proposed findings of fact, proposed conclusions of law, and a memorandum of law to the Court on or before September 15, 2011, and directing the Commonwealth to file the same in response on or before September 30, 2011.

On September 7, 2011, the Defendant filed a Brief in Support of the Petition². The Defendant avers that there is insufficient evidence to establish a prima facie case for the offenses of Fleeing or Attempting to Elude Officer (F3), Careless Driving (S), Disregard Traffic Lane (S), Reckless Driving (S), and Driving at Safe Speed (S). As to the charge of Fleeing and Eluding, the Defendant argues that he stopped his vehicle, per the Trooper's instructions, within one minute and three seconds after the Trooper activated his lights and siren, and in a place where it was safe to do so. Thus, the Defendant

² While the Defendant's Petition argued that the Commonwealth did not present sufficient evidence to support all of the crimes charged, the Defendant's Brief does not set forth any argument regarding the charges of DUI-General Impairment, 1st offense (M), DUI-high rate of alcohol, 1st offense (M), Use of Improper Class of License (S), and Not Wearing Proper Headgear on Motorcycle (S). The Defendant's Petition also does not present any argument challenging the validity of the traffic stop. Accordingly, we believe that all the issues included in Defendant's Petition which have not been briefed are abandoned and, therefore, we shall not address those issues. See Commonwealth v. Barnes, 565 A.2d 777, 779 (Pa. Super. 1989) (holding that the failure to present argument or brief on issues raised in motions before the trial judge resulted in the waiver of those issues); Collins v. Cooper, 746 A.2d 615, 619 (Pa. Super. 2000) (holding that "[w]here an appellant has failed to cite any authority in support of a contention, the claim is waived").

submits that he did not willfully fail to stop for the Trooper, and as a result the aforementioned charge should be dismissed.

As to the remaining summary charges, the Defendant argues that the evidence does not establish that crossing the center line could not be made safely, because there were no oncoming cars on the road on the night of the incident. The Defendant also argues that the charges of Careless Driving, Reckless Driving and Driving at Safe Speed appear to stem from the stop sign violations that were dismissed by the Magisterial District Judge following the preliminary hearing. Thus, the Defendant requests that the aforementioned charges be dismissed. The Commonwealth declined the opportunity to submit proposed findings of fact, proposed conclusions of law, and a memorandum of law in support of its position.

DISCUSSION

The principal function of a preliminary hearing is to protect an individual's right against an unlawful detention. Commonwealth v. Mullen, 333 A.2d 755, 757 (Pa. 1975). At this hearing the Commonwealth bears the burden of establishing at least a *prima facie* case that a crime has been committed and that the accused is the one who committed it. Commonwealth v. Prado, 393 A.2d 8, 10 (Pa. 1978); Pa. R. Crim. P. 542(d). It is not necessary for the Commonwealth to establish, at this stage, the defendant's guilt beyond a reasonable doubt. Commonwealth v.

Rick, 366 A.2d 302, 303-304 (Pa. Super. 1976). Additionally, the weight of the evidence and the credibility of witnesses are not factors in pre-trial proceedings. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983)

In order to meet its burden at the preliminary hearing, the Commonwealth is required to present evidence with regard to each of the material elements of the charge and to establish sufficient probable cause to warrant the belief that the accused committed the offense. Wojdak, 466 A.2d at 995-996. Such evidence will be read in the light most favorable to the Commonwealth. Commonwealth v. Keller, 823 A.2d 1004, 1010 (Pa. Super. 2003). The Commonwealth is also entitled to any [i]nferences reasonably drawn from the evidence of record which would support a verdict of guilty." Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001). Indeed, the Court is neither required nor authorized to determine guilt or innocence at this stage of the proceedings. Commonwealth v. McBride, 595 A.2d 589, 592 (Pa. 1991). "The evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury." Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003)

"It is well settled in this Commonwealth that a petition for writ of *habeas corpus* is the proper vehicle for challenging a pre-trial finding that the Commonwealth presented sufficient

evidence to establish a *prima facie* case." Commonwealth v. Carbo, 822 A.2d 60, 67 (Pa. Super. 2003) (internal quotations omitted). "In such instances, the habeas court acts in the capacity of a reviewing court to assess whether a *prima facie* case was presented at the preliminary hearing, that is, whether sufficient evidence exists to require the defendant to be brought to trial. Commonwealth v. Carmody, 799 A.2d 143, 146-147 (Pa. Super. 2002). Thus, "the focus of the habeas corpus hearing is to determine whether sufficient Commonwealth evidence exists to require a defendant to be held in government 'custody' until he may be brought to trial." Keller, 823 A.2d at 1011.

"In a pretrial habeas corpus proceeding, as in a preliminary hearing, the Commonwealth has the burden of establishing a *prima facie* case, offering some proof to establish each material element of the offense as charged." Commonwealth v. Lyons, 13 Pa. D. & C. 5th 33 (C.P. Lawrence 2010), citing Commonwealth v. Owen, 580 A.2d 412 (Pa. Super. 1990). "Our function is to take the facts proven by the Commonwealth at the preliminary hearing and to determine whether the sum of those facts fits within the statutory definition of the types of conduct declared by the Pennsylvania legislature in the Crimes Code to be illegal conduct." Commonwealth v. Snyder, 483 A.2d 933, 935 (Pa. Super. 1984). "If the proven facts fit the definition of the offenses with which the

[defendant(s)] are charged, then a *prima facie* case was made out as to such offense or offenses." Id. "If the facts do not fit the statutory definitions of the offenses charged against the [defendant], then the [defendant is] entitled to be discharged." Id.

"[T]he scope of evidence which a trial court may consider in determining whether to grant a pretrial writ of habeas corpus is not limited to the evidence as presented at the preliminary hearing." Keller, 823 A.2d at 1011. "On the contrary,...the Commonwealth may present additional evidence at the habeas corpus stage in its effort to establish at least *prima facie* that a crime has been committed and that the accused is the person who committed it." Id. "[T]he trial court should accept into evidence the record from the preliminary hearing as well as any additional evidence which the Commonwealth may have available to further provide its *prima facie* case." Id.

A. Fleeing or Attempting to Elude Officer

"Any driver of a motor vehicle who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police officer, when given a visual and audible signal to bring the vehicle to a stop, commits an offense...." 75 Pa. C.S.A. § 3733(a). "[T]he elements necessary to trigger its violation [are] an operator's 'willful' failure to bring his/her vehicle to a stop in the face of an

audibly or visually identifiable police officer's signal to do so." Commonwealth v. Scattone, 672 A.2d 345, 347 (Pa. Super. 1996).

The element of willfulness "is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears." 18 Pa. C.S.A. §304(g). A person acts "knowingly" with respect to a material element of an offense "when(,) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist." 18 Pa. C.S.A. §304(b)(2)(i). An actor's willfulness can be established through either direct or circumstantial evidence. Commonwealth v. Bellini, 482 A.2d 997, 1000 (Pa. Super. 1984). "[C]ommon sense indicates that momentary delay does not constitute willful failure or refusal to stop, flight, or attempt to elude a police officer." Commonwealth v. Lewis, 15 Pa. D. & C. 5th 233 (Pa.Com.Pl. 2010).

In this case, the video of the pursuit shows that the Trooper activated his lights and sirens at 20:32:41. Defendant applied his brakes in preparation for stopping his vehicle about one minute later, at 20:33:43. Defendant activated his right turn signal in preparation for stopping his vehicle eight seconds later, at 20:33:51. Defendant's vehicle came to a full stop at 20:34:00, one minute and 19 seconds after the Trooper

activated his lights and siren. However, while the pursuit lasted for a short time and the Defendant eventually stopped his vehicle, the Trooper testified that both defendants sped up after he activated his lights and siren. (N.T., Preliminary Hr'g, 4/6/11, p. 12). He also testified that he was a normal and reasonable distance behind the Defendant when he activated his lights and siren. (N.T., Preliminary Hr'g, 4/6/11, pp. 13, 38, 73).

Trooper Doblovasky further testified that the Defendant did not stop at a stop sign, and could have pulled over in a driveway before he reached the point where he eventually stopped. (N.T., Preliminary Hr'g, 4/6/11, pp. 43-44). The video recording of the pursuit confirms that the Defendant could have stopped in a number of locations before he reached the point where he eventually stopped, and that the Trooper's vehicle was close to the Defendant's vehicle numerous times with its lights and siren activated.

Accordingly, the evidence appears sufficient, at least circumstantially, to establish *prima facie* that the Defendant willfully failed or refused to bring his vehicle to a stop, or fled or attempted to elude the Trooper, when the Trooper activated his lights and siren in an attempt bring the Defendant's vehicle to a stop. Thus, Defendant's Petition as to Count 1 of the Information must be denied.

B. Careless Driving

A defendant commits the offense of careless driving if he or she drives a motor vehicle in careless disregard of the safety of property and/or persons. 75 Pa. C.S.A. § 3714(a). The *mens rea* requirement of "careless disregard" "implies less than willful or wanton conduct, but more than ordinary negligence or the mere absence of care under the circumstances." Commonwealth v. Gezovich, 7 A.3d 300, 301 (Pa. Super. 2010). "Actual injury is not an element of [care]less driving." Commonwealth v. Glassman, 518 A.2d 865, 869 (Pa. Super. 1986). "The Commonwealth need only demonstrate that a defendant's actions showed a 'careless disregard of the rights or safety of others.'" Id. In Glassman, the Court determined that the Commonwealth met its burden of proof under Section 3714, because the defendant "drove his car on the wrong side of the street, through stop signs, with no lights on and at high rates of speed." Id. The Court further determined that "[t]his total disregard for all rules of safety exhibits a shocking indifference to persons or other vehicles which might have happened by during appellant's flight." Id.

Here, according to Trooper Doblovasky's testimony, the Defendant crossed the center line at least five times, and drove on the wrong side of a curvy, windy road at night. (N.T., Preliminary Hr'g, 4/6/11, pp. 9-10). He also drove at a high

rate of speed on his motorcycle. (N.T., Preliminary Hr'g, 4/6/11, pp. 7-8). While there were no cars in Defendant's vicinity during the incident (N.T., Preliminary Hr'g, 4/6/11, pp. 9, 56), actual injury or danger to others is not an element of the offense, and Defendant's conduct clearly presented a danger to himself or others, in light of the fact that his co-defendant crashed his motorcycle not long after Defendant stopped. A motorist may be stopped for reckless driving even if the only concern is for the motorist's own safety. Commonwealth v. Lindblom, 854 A.2d 604, 608 (Pa. Super. 2004).

Therefore, there is sufficient *prima facie* evidence to demonstrate that the Defendant drove a motor vehicle with a careless disregard for the rights or safety of both himself and other persons. Accordingly, the Defendant's Petition as to Counts 4 and 5 of the Information must be denied.

C. Disregard Traffic Lane

"Whenever any roadway has been divided into two or more clearly marked lanes for traffic...a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety." 75 Pa. C.S.A. § 3309(1). In Lindblom, the Court concluded that the defendant's "actions in, *inter alia*, crossing the center, double yellow lines on four or five occasions, at times straddling

them, and crossing the berm line four or five times" was sufficient to create a safety hazard." 854 A.2d at 608.

In Commonwealth v. Chernosky, 874 A.2d 123, 128 (Pa. Super. 2005), the Court concluded that the defendant "created a risk of harm to others by traveling across the double yellow line and swerving back over to the right side of the roadway on more than one occasion." In Chernosky, the defendant was followed for approximately five minutes over the course of several miles, during which the officer observed her continually cross over onto the berm and on at least two occasions cross into the oncoming lane of travel. Id. The Court concluded that this conduct created a clear risk to oncoming traffic, and given the length of time and distance, that public risk was also created even though the officer could not recall specifically seeing other vehicles on the road. Id. Accordingly, we do not believe that an officer observing an erratic driver is required to wait until another motorist approaches.

In Commonwealth v. Klopp, 863 A.2d 1211, 1214-1215 (Pa. Super. 2004), the Court concluded that probable cause existed for the trooper to stop the defendant's vehicle, based on the fact that "he observed her for a minimum distance of 1.6 miles, and watched as she wove side to side four times, each time crossing the double yellow and fog lines, and once interfering with oncoming traffic." However, "where a vehicle is driven

outside the lane of traffic for just a momentary period of time and in a minor manner, a traffic stop is unwarranted." Commonwealth v. Garcia, 859 A.2d 820, 823 (Pa. Super. 2004). Thus, the Court noted that, while the crossing of the berm line on two occasions for a second or two would be inadequate to support a traffic stop, the repeated weaving by a driver within his or her lane, coupled with his or her driving over the center double lines and the berm line four or five times, would provide probable cause to support a lawful traffic stop. Id.

In this case, while there were no cars travelling southbound on the roads on the night of the incident, Trooper Doblovasky testified that he observed the Defendant cross the center line five (5) times, and then stopped counting. (N.T., Preliminary Hr'g, 4/6/11, pp. 10, 49, 56). He also testified that the Defendant almost left the road in the southbound lane on Trachsville Hill Road, while travelling northbound, and almost crashed. (N.T., Preliminary Hr'g, 4/6/11, p. 11). He specifically acknowledges seeing the Defendant's tires right around the white line in the southbound lane of Trachsville Hill Road. (N.T., Preliminary Hr'g, 4/6/11, p. 45). The Trooper further testified that there was a possible danger to others because of the blind curves on the roads. (N.T., Preliminary Hr'g, 4/6/11, pp. 7, 56). He also indicated that, while the pursuit lasted approximately 1-2 minutes from when he activated

his lights and siren, he observed the Defendant for a longer period of time. (N.T., Preliminary Hr'g, 4/6/11, pp. 25, 29).

Accordingly, the facts in this matter are akin to those in Lindblom, Chernosky, and Klopp, in that the Defendant was observed crossing the center line at least five times, as well as crossing the fog line one time. Given the repeated lane changes and weaving engaged in by the Defendant, we conclude that his conduct constitutes more than the "momentary and minor" transgression that the Court in Garcia determined was insufficient to support a traffic stop. Therefore, the Commonwealth presented sufficient *prima facie* evidence to demonstrate that the Defendant's conduct created a safety hazard posing a risk to himself or others in violation of Section 3309. As a result, the Defendant's Motion as to Counts 6-11 of the Information must be denied.

D. Reckless Driving

A defendant commits the offense of reckless driving where he or she drives a vehicle in willful or wanton disregard for the safety of persons or property. 75 Pa. C.S.A. § 3736(a). "The phrase 'willful and wanton' means the driver grossly deviates from ordinary prudence and creates a substantial risk of injury." Commonwealth v. Carroll, 936 A.2d 1148, 1151 (Pa. Super. 2007). "The phrase also envisions a callous disregard for the danger created by the driver's conduct." Id. Proof that the

defendant was exceeding the speed limit does not necessarily prove reckless driving. Commonwealth v. Bullick, 830 A.2d 998 (Pa. Super. 2003). "[D]riving under the influence of an intoxicating substance does not establish recklessness *per se*; there must be other tangible indicia of unsafe driving to a degree that creates a substantial risk of injury that is consciously disregarded." Commonwealth v. Jeter, 937 A.2d 466, 468 (Pa. Super. 2007). Additionally, a motorist may be stopped for reckless driving even if the only concern is for the motorist's own safety. Lindblom, 854 A.2d at 608.

In Jeter, the Court concluded that there was sufficient evidence of recklessness because Jeter's car weaved in and out of the roadway for several miles; there were other drivers on the roadway at that time; Jeter had a BAC of 0.21 within two hours of driving, demonstrating a high level of intoxication; and Jeter ultimately lost control of his car, striking the center barrier with enough force to blow out his front tire." 937 A.2d at 469. In Commonwealth v. Matroni, 923 A.2d 444, 448 (Pa. Super. 2007), the Court determined that evidence that the defendant was speeding, tailgating, and erratically changing lanes was sufficient to show that he acted in a reckless and grossly negligent matter to support a conviction for Reckless Driving. In Commonwealth v. Greenberg, 885 A.2d 1025 (Pa. Super. 2005), the Court reversed a reckless driving conviction where

there was no evidence that defendant had difficulty negotiating the roadway or that he came close to striking other vehicles before losing control of his vehicle.

Here, as previously discussed, there is evidence to indicate that the Defendant crossed the center line back and forth at least five (5) times on a curvy and winding road at night. There is also evidence to indicate that the Defendant was speeding, as well as driving while under the influence of alcohol, in that he had a blood alcohol content of .138 percent within two hours of driving. (N.T., Preliminary Hr'g, 4/6/11, pp. 14-15). As previously discussed, there is also evidence to indicate that the Defendant violated Section 3714, Careless Driving.

Consistent with the above-cited cases, we conclude that there is sufficient *prima facie* evidence to demonstrate that the Defendant's conduct was willful or wanton, and evinced a callous disregard for danger, as well as a substantial risk of injury to himself or other persons. Therefore, while there were no other vehicles on the road at the time of the incident, and the Defendant was not involved in an accident, there is nevertheless sufficient *prima facie* evidence to allow the reckless driving charges to proceed to trial. As a result, the Defendant's Petition must be denied as to Counts 12 and 13 of the Information.

E. Driving at Safe Speed

Under 75 Pa. C.S.A. § 3361, "[n]o person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, nor at a speed greater than will permit the driver to bring his vehicle to a stop within the assured clear distance ahead." "Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions." Id.

"[S]peeding alone does not constitute a violation of this section." Commonwealth v. Heberling, 678 A.2d 794, 795 (Pa. Super. 1996). "There must be proof of speed that is unreasonable or imprudent under the circumstances (of which there must also be proof), which are the "conditions" and "actual and potential hazards then existing" of the roadway." Id. at 795-96. "These circumstances may include not only the amount of traffic, pedestrian travel and weather conditions, but also the nature of the roadway itself (e.g., whether four-lane, interstate, or rural; flat and wide, or narrow and winding over hilly terrain;

smooth-surfaced, or full of potholes; clear, or under construction with abrupt lane shifts.)" Id. at 796.

"It is these circumstances under which one's speed may be found sufficiently unreasonable and imprudent to constitute a violation of section 3361, even if the driver has adhered to the posted speed limit." Id. In Heberling, the Court determined that sufficient evidence existed to sustain the defendant's conviction, where he was observed driving at an extreme rate of speed in a 45 m.p.h. zone, nearing an intersection and the crest of a hill, in normal weather conditions and without any risk to pedestrians. Id. at 794-95.

However, "to sustain a conviction...on a charge of driving too fast for conditions, it is not necessary to allege or prove any specific speed at which defendant was driving." Commonwealth v. Hoke, 298 A.2d 913, 915 (Pa. Super. 1972). "Whether one is driving too fast for conditions is a relative matter, dependent not on any specific speed but on all the existing circumstances, which circumstances are for the fact-finder to consider in determining whether or not defendant is guilty as charged."

Here, the Trooper testified that he attempted to clock the Defendant's speed, but he could not do so. (N.T., Preliminary Hr'g, 4/6/11, pp. 8, 52). He indicated that he was travelling approximately seventy (70) miles per hour at one time, and that the Defendant was still gaining in distance from him. (N.T.,

Preliminary Hr'g, 4/6/11, p. 8). The Trooper had to accelerate to speeds exceeding seventy-five (75) miles per hour in an attempt to catch up to the Defendant. (N.T., Preliminary Hr'g, 4/6/11, p. 8). He testified that he believed that the speed limit on Spruce Hollow Road is forty-five (45) miles per hour (N.T., Preliminary Hr'g, 4/6/11, pp. 7-8). In the video of the pursuit, the Defendant can be observed braking for long periods each time he navigates a curve, and travelling about halfway across the southbound lane of Trachsville Hill Road at one point. As for the circumstances of the incident, the video demonstrates that the roads involved were two lane rural roads, both with no traffic on them other than the parties involved. It was nighttime and the road is not illuminated by street lights. The video does not appear to show any adverse weather conditions, such as rain or fog. The roads did encompass some hilly, curvy terrain and blind curves. There is no indication that the roads were in disrepair.

Based on the fact that the Defendant was travelling at a high rate of speed on dark, windy rural roads that have many blind curves and hills, it appears that the Defendant was driving too fast for the conditions at the time. As this is a rural area, the potential hazards include animals running across the road. Therefore, there is sufficient *prima facie* evidence to support the charges of Driving at Safe Speed. As a result, the

Defendant's Petition as to Counts 14 and 15 of the Information must be denied.

CONCLUSION

Based upon the foregoing, we conclude that the Commonwealth has presented sufficient *prima facie* evidence to demonstrate that the crimes charged in this matter occurred and the Defendant committed said crimes. As a result, the Defendant's "Petition for Writ of Habeas Corpus" must be denied.

BY THE COURT:

Steven R. Serfass, J.

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	No: 273 CR 11
	:	
SCOTT KELLY,	:	
Defendant	:	

Michael S. Greek, Esquire	
Assistant District Attorney	Counsel for the Commonwealth
James R. Nanovic, Esquire	Counsel for the Defendant

ORDER OF COURT

AND NOW, to wit, this 9th day of December, 2011, upon consideration of the Defendant's "Petition for Writ of Habeas Corpus," the Defendant's brief in support thereof, and following a review of the record in this matter, it is hereby **ORDERED and DECREED** that the Defendant's "Petition for Writ of Habeas Corpus" is **DENIED**.

BY THE COURT:

Steven R. Serfass, J.