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

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 966-CR-2014
	:	
CATHRYN J. PORAMBO,	:	
	:	
Defendant	:	

Cynthia Dydra-Hatton, Esquire — Counsel for the Commonwealth
Assistant District Attorney

Michael P. Gough, Esquire — Counsel for Defendant

MEMORANDUM OPINION

Serfass, J. - November 22, 2017

Cathryn J. Porambo brings before this Court "Post-Sentence Motions Submitted by the Defendant" seeking entry of a judgment of acquittal. For the reasons stated hereinafter, we will deny the aforesaid motions.

FACTUAL AND PROCEDURAL BACKGROUND

On June 11, 2014, the Carbon County Communications Center received an anonymous 911 phone call in which the caller reported her suspicion that Cathryn Porambo (hereinafter "Defendant") was driving her tan Cadillac sedan while intoxicated. The caller further stated that Defendant was heading toward Mauch Chunk Bank

on North Street in the Borough of Jim Thorpe[1]. Connie Brown (hereinafter "Informant") testified during the omnibus hearing that she was the individual who made the anonymous tip.[2] Informant testified that she is familiar with Defendant because she works for a law firm located in the same building as Defendant's insurance agency. She further testified that she had observed Defendant display signs of intoxication while at work and watched Defendant "stagger" into her vehicle on the day in question. Informant stated that she knew Defendant "should not be driving because of the alcohol," and feared for her personal safety as well as the safety of others. N.T. 3/14/16 at 15. On this basis, she made the 911 phone call. After placing the phone call, Informant drove to the Jim Thorpe police station to ascertain whether her concerns were being addressed. Officer Harry Brown, who had received the information from dispatch and was leaving the station to investigate the situation, briefly spoke with Informant in the adjacent parking lot. According to the officer, Informant identified herself as the tipster and conveyed the same information she had related during the 911 phone call. Officer Brown testified

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[1] It is our understanding that the caller was referring to the Mauch Chunk Trust Company which is located at 1111 North Street in Jim Thorpe. However, because all of the witnesses testifying on behalf of the Commonwealth made reference to the "Mauch Chunk Bank", we will also use that designation throughout this memorandum opinion.

[2] Informant previously made two (2) other phone calls to the Jim Thorpe Police Department (May 30, 2014 and June 10, 2014) informing the police of separate incidents where she believed Defendant was driving while intoxicated.

that he already knew the identity of the caller based upon her prior phone calls and what he characterized as an "ongoing problem" of Defendant being suspected of driving under the influence of alcohol. *Id.* at 30-31.

The officer then drove to the Mauch Chunk Bank. He testified that he saw a tan Cadillac sedan, which he recognized as Defendant's vehicle, pull out of the bank's parking lot. He proceeded to follow the vehicle for "several blocks," during which time he observed Defendant driving at a rate of approximately ten (10) miles per hour in a posted twenty-five (25) mile per hour zone. Id. at 31-32. He noted that there were no vehicles directly in front of Defendant's Cadillac. Officer Brown also observed several vehicles lined up behind him, which he described as "bumper to bumper" and causing a traffic jam. *Id.* at 32-33. At that time, he activated his overhead lights and initiated a traffic stop.

Officer Brown approached the defendant's vehicle and asked Defendant for her driver's license, vehicle registration, and proof of insurance. The officer testified that he immediately detected a strong odor of alcohol emanating from Defendant's facial area and noticed that her eyes were bloodshot and glassy. Officer Brown further testified that he asked Defendant if she had been drinking that day and Defendant responded that she had not, but that she did consume alcohol the night before and that the odor

was probably from the drinks "seeping out" of her pores. *Id.* at 34.

Officer Brown then asked Defendant to step out of her vehicle to perform standardized field sobriety tests. He had Defendant perform a series of sobriety tests during which the officer observed clues of driver impairment.[3] Consequently, he contacted Jim Thorpe Police Officer Eric Schrantz for further assistance. Officer Schrantz arrived at the scene shortly thereafter and attempted to have Defendant perform an additional field sobriety test. After failing this test, both Officer Brown and Officer Schrantz took Defendant into custody and transported her to Gnaden Huetten Memorial Hospital for a blood test.

Officer Brown testified that he advised Defendant of the implied consent warning, which Defendant acknowledged. Once they arrived at the hospital, Defendant signed a consent form to have her blood drawn. The test revealed that Defendant had a blood alcohol content ("BAC") level of .087%. Consequently, Defendant was charged with one (1) count of DUI: General Impairment/Incapable of Driving Safely,[4] one (1) count of DUI: General Impairment (BAC .08-.10),[5] and one (1) count of Driving Too Slow for Conditions.[6]

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[3] Officer Brown testified that he instructed Defendant to perform two (2) tests, but had to stop and restart instruction of these tests several times due to Defendant's inability to comprehend and perform them.

[4] 75 Pa.C.S.A. § 3802(a)(1).

[5] 75 Pa.C.S.A. § 3802(a)(2).

[6] 75 Pa.C.S.A. § 3364(a).

On December 18, 2014, Defendant filed "Omnibus Pre-trial Motions" seeking, *inter alia*, to suppress evidence obtained as a result of the traffic stop. A hearing on that motion was held on March 14, 2016, and reconvened on May 16, 2016.[7] Briefs were submitted by counsel for Defendant and counsel for the Commonwealth on June 13, 2016, and June 23, 2016, respectively. This Court issued an Order with an accompanying memorandum opinion denying Defendant's "Omnibus Pre-trial Motions" on November 10, 2016.

On November 29, 2016, Defendant filed a petition seeking admission into the Accelerated Rehabilitative Disposition (hereinafter "ARD") Program. A hearing thereon was held on February 13, 2017, at the conclusion of which the petition was denied by our Order of that same date.

On April 7, 2017, a non-jury trial was held in this matter, and on April 12, 2017, this Court entered a verdict of guilty on all charges. On July 24, 2017, Defendant was sentenced to county-supervised probation for a period of six (6) months.

On July 31, 2017, Defendant filed the instant post-sentence motions which include a "Motion in Arrest of Judgment Pursuant to

[7] In the intervening period between the filing of Defendant's Omnibus Pre-Trial Motion and the hearing, Defendant filed a Motion for Recusal on June 26, 2015. On October 5, 2015, this Court entered a memorandum opinion and order denying Defendant's Motion for Recusal. Defendant then sought review of this matter by the Pennsylvania Superior Court. On January 15, 2016, the Superior Court entered an order denying Defendant's "Petition for Review and Stay of Proceedings" and the Omnibus Pretrial Motion was scheduled for an evidentiary hearing on March 14, 2016.

Pennsylvania Rule of Criminal Procedure Number 720(B)(1)(iii)", a "Motion for Judgment of Acquittal Pursuant to Pennsylvania Rule of Criminal Procedure Number 606(A)(6) and Rule Number 720(b)(1)(ii)", and "Miscellaneous Motions". In her "Miscellaneous Motions", Defendant raises a claim that this Court erred in determining that Officer Brown had probable cause to initiate a stop of Defendant's vehicle and a claim that the Commonwealth improperly placed an unreasonable condition as a prerequisite to Defendant's participation in the ARD Program with no means of appeal.

DISCUSSION

Essentially, Defendant raises three (3) issues in her post-sentence motion: 1) Whether the evidence presented at trial was sufficient to support conviction on all charges; 2) Whether there was sufficient probable cause to initiate a traffic stop of the vehicle operated by Defendant; and 3) Whether the Commonwealth improperly placed an unreasonable condition as a prerequisite to Defendant's participation in the ARD Program. We will address each issue in turn.

I. The evidence presented at trial was sufficient to support Defendant's conviction

Defendant challenges her conviction through a "Motion in Arrest of Judgment Pursuant to Pennsylvania Rule of Criminal Procedure Number 720(B)(1)(iii)" and a "Motion for Judgment of

Acquittal Pursuant to Pennsylvania Rule of Criminal Procedure Number 606(A)(6) and Rule Number 720(B)(1)(ii)", averring that the evidence presented by the Commonwealth at trial was legally insufficient to support the verdict of guilty. Specifically, Defendant avers that the Commonwealth failed to establish that she was incapable of driving safely because the evidence, *in toto*, established that Defendant actually engaged in safe operation of the vehicle and that she overcame any presumption of being incapable of safe driving evidenced by her BAC level by presenting competent, credible, and reliable evidence of safe operation of the vehicle.

A motion in arrest of judgment challenges the sufficiency of the evidence produced at trial. Commonwealth v. Nocero, 359, 582 A.2d 376, 382 (Pa.Super. 1990). Similarly, a motion for judgment of acquittal challenges the sufficiency of the evidence on a particular charge and is granted only when the Commonwealth has failed to carry its burden regarding that charge. Commonwealth v. Xander, 14 A.3d 174, 177 (Pa.Super. 2011) (quoting Commonwealth v. Hutchinson, 947 A.2d 800, 805 (Pa.Super. 2008)). In sufficiency of the evidence claims, we must determine whether the evidence and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth, were sufficient to enable the factfinder to find every element of the crime charged beyond a reasonable doubt. Commonwealth v. Sullivan, 864 A.2d 1246, 1249

(Pa.Super. 2004) (citing Commonwealth v. Kling, 731 A.2d 145 (Pa.Super. 1999)). The Commonwealth may meet its burden of proving every element beyond a reasonable doubt through purely circumstantial evidence, and the factfinder is free to believe all, part, or none of the evidence presented. *Id.* (citing Commonwealth v. Long, 831 A.2d 737 (Pa.Super. 2003)).

Defendant argues that the evidence presented at trial, as a whole, established that Defendant actually engaged in safe operation of a motor vehicle at the time of the alleged incident and that such evidence of safe driving overcomes the presumption that she was incapable of driving safely as evidenced by her BAC level. We disagree.

With regard to 75 Pa.C.S.A. § 3802(a)(2), DUI: General Impairment (BAC .08-.10), Defendant was clearly found to have a blood-alcohol concentration of .087. Defendant acknowledged that her blood was properly drawn within two (2) hours and was collected by the phlebotomist in accordance with the statute at Gnaden Huetten Memorial Hospital, which is an approved facility. There is no dispute as to the chain of custody of the blood sample or as to the fact that the blood was properly tested at an approved laboratory. Thus, Defendant is guilty beyond a reasonable doubt under § 3802(a)(2).

With regard to 75 Pa. C.S.A. §§ 3802(a)(1) and 3364(a), the only dispute at trial was whether there was sufficient evidence

that Defendant had driven in an unsafe manner, namely too slow for conditions. At the trial, Officer Brown provided testimonial evidence that Defendant's slow driving caused traffic to back up behind her vehicle on North Street and on the side streets, as well as testimonial evidence concerning Defendant's clues of impairment observed during the field sobriety tests. Officer Schrantz also provided testimony that Defendant failed a field sobriety test that he had her perform multiple times. Additionally, Officer Brown offered testimony to rebut Defendant's claim that she was driving slowly due to a slow-moving vehicle in front of her. Specifically, Officer Brown stated that there was no such vehicle. As factfinder, this Court is free to believe the officers' testimony that Defendant was driving too slowly for conditions as a result of her impairment and not as a result of a slow-moving vehicle positioned in front of hers. Thus, Defendant is guilty beyond a reasonable doubt under both §§ 3364(a) and 3802(a)(1).

II. There was sufficient probable cause for Officer Brown to initiate the traffic stop of Defendant's vehicle

The issue of whether Officer Brown possessed sufficient probable cause to initiate the traffic stop of Defendant's vehicle was specifically addressed in our memorandum opinion of November 10, 2016. We incorporate herein by reference that portion of the aforesaid memorandum opinion, at pages five (5) through thirteen (13) thereof, which addresses this issue in detail. For the reasons

contained therein, we find Defendant's arguments regarding insufficient probable cause to be without merit.

III. The requirements for entry into the ARD program are entirely within the Commonwealth's discretion

Finally, Defendant challenges the Commonwealth's inclusion of the condition that she must agree to admit herself to an in-patient rehabilitation facility as a prerequisite to recommending her admission into the ARD Program. Defendant avers that this prerequisite is an unreasonable condition because a previous drug and alcohol evaluation had recommended that Defendant participate in out-patient treatment and that the Pennsylvania Rules of Criminal Procedure do not afford Defendant a means to challenge the Commonwealth's decision concerning the determination of conditions for submission of a case into the ARD program.

Admission into the ARD program is not a matter of right, but of privilege. Commonwealth v. Armstrong, 434 A.2d 1205, 1208 (Pa. 1981).

> [Courts'] restrictive approach to admission to ARD programs is intentional and purposeful, for it ensures that no criminal defendant will be admitted to ARD unless the party to the case who represents the interests of the Commonwealth, the district attorney, has made the determination that a particular case is best handled by suspending the prosecution pending the successful completion of a diversionary ARD program. Society has no interest in blindly maximizing the number of ARD's passing through the criminal justice system, and the criminal defendant has no right to demand that [s]he be placed on ARD. . . . Rather, society, for its own protection, has an interest in carrying out the

> penalties prescribed by the legislature for drunk driving, except in the cases where even society's representative in the case, the district attorney, acting in conjunction with the court . . . determines that ARD is preferable to conviction because of the strong likelihood that a given criminal defendant will in fact be rehabilitated by an ARD program.

Commonwealth v. Lutz, 495 A.2d 928, 933 (Pa. 1985). The judgment as to whether a particular defendant should be considered for admission into the ARD program rests in the sound discretion of the district attorney, and this discretion is justified by an open explanation of the reasons for each decision. *Id.* at 934. One such decision can only be overruled if it amounts to an abuse of discretion, and the district attorney is not to be faulted if he errs on the side of caution. *See Id.*

Here, the Commonwealth offered to move Defendant's admission into the ARD Program. Defendant declined this offer claiming that in-patient treatment was too onerous a condition. Defendant is, in essence, asking this Court to substitute Defendant's preference for out-patient treatment in place of the District Attorney's decision to proceed with an offer of ARD which was conditioned on an agreement for in-patient treatment. We decline to do so. This Court will not fault the district attorney for this cautionary requirement, which we find to be well within the sound discretion of that office. Moreover, if the Court were to intervene in this matter as proposed by Defendant, such action would constitute

improper judicial participation in the pre-trial negotiation process.

> In any event, the decision to submit the case for ARD rests in the sound discretion of the district attorney, and absent an abuse of that discretion involving some criteria for admission to ARD wholly, patently and without doubt unrelated to the protection of society and/or the likelihood of a person's success in rehabilitation, such as race, religion or other such obviously prohibited considerations, the attorney for the Commonwealth must be free to submit a case or not submit it for ARD consideration based on his view of what is most beneficial for society and the offender.

Lutz, 495 A.2d at 935.

CONCLUSION

For the foregoing reasons and the reasons stated in our memorandum opinion of November 10, 2016, the "Post-Sentence Motions Submitted by the Defendant" will be denied, and we will enter the following

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ORDER OF COURT

AND NOW, to wit, this 22nd day of November, 2017, upon consideration of the "Post-Sentence Motions Submitted by the Defendant" and for the reasons set forth in our Memorandum Opinion bearing even date herewith, it is hereby

ORDERED and DECREED that Defendant's Post-Sentence Motions are **DENIED**.

FILED
2017 NOV 22 PM 3:30
CARBON COUNTY
CLERK OF COURTS
M. C. McGINLEY

BY THE COURT:

Steven R. Serfass, J.