

IN THE COURT OF COMMON PLEAS OF THE 22<sup>ND</sup> JUDICIAL DISTRICT  
COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF WAYNE

COMMONWEALTH OF  
PENNSYLVANIA

VS.

ALEX WILLIAM VERSTEEG  
Defendant

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NO: 100-CRIMINAL-2010

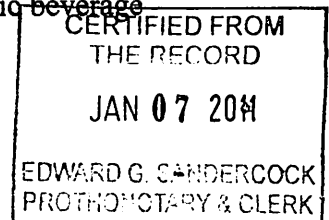
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OPINION AND ORDER  
RE: MOTION TO QUASH THE INFORMATION AND  
PETITION FOR WRIT OF HABEAS CORPUS

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Before the Court at this time is the Defendant's Omnibus Pre-Trial Motion to Quash the Criminal Information as to Count I: Driving Under the Influence of Alcohol or Controlled Substance, (alternatively Petition for Writ of Habeas Corpus). Hearing was held on December 2, 2010 and each party submitted a brief in support of its position.

The relevant procedural history follows. Defendant was charged with Driving Under the Influence of Alcohol or Controlled Substance and Careless Driving following an incident in Lehigh Township, Wayne County on July 10, 2009. Trooper Frank Naughton was on patrol at 2:48 a.m. when he received a dispatch regarding a one-vehicle accident. Trooper Naughton arrived on the scene within thirty minutes of the dispatch and observed a red Honda Accord off of the roadway and into the woods. Further investigation led Trooper Naughton to Community Medical Center where he spoke with the Defendant who admitted to being the driver of the car. While the Trooper was interviewing the Defendant, the Trooper observed a strong odor of an alcoholic beverage.



emanating from the Defendant and bloodshot eyes. The Defendant admitted to having five or six beers. The Defendant initially cooperated with the Trooper, but as the interview progressed the Defendant became insulting and obstinate. The Trooper asked the Defendant to perform a field sobriety test. Additionally, the Defendant was informed of the consequences of refusing a blood alcohol test, nevertheless the Defendant refused testing. Trooper Naughter subsequently obtained a search warrant for medical records. These records included a blood-alcohol test which revealed a blood-alcohol level of .179%

### DISCUSSION

This Court now addresses the requirement for Habeas Corpus relief.

Although a habeas corpus hearing is similar to a preliminary hearing, in a habeas corpus proceeding the Commonwealth has the opportunity to present additional evidence to establish that the defendant has committed the elements of the offense charge.

A *prima facie* case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime. The Commonwealth need not prove the defendant's guilty beyond a reasonable doubt. Rather the Commonwealth must show sufficient probable cause that the defendant committed the offense and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury.

“In determining the presence or absence of a *prima facie* case, inferences reasonably drawn from the evidence of record that would support a verdict of guilty are to be given effect, but suspicion and conjecture are not evidence and are unacceptable as such.”

*Commonwealth v Hendricks*, 927 A.2d 289 (Pa. Super. 2007). *Citing to: Commonwealth v. Keller*, 823 A.2d 1004, 1010-11 (Pa. Super. 2003) and *Commonwealth v. Packard*, 767 A.2d 1068, 1071 (Pa. Super. 2001).

No preliminary hearing was held as the Defendant waived, but this Court conducted a hearing where testimony was heard from Trooper Frank Naughton of the Pennsylvania State Police.

This Court will now examine the charges alleged by the Commonwealth of Driving Under the Influence of Alcohol or Controlled Substance:

75 Pa. C.S.A. § 3802(a)(1) states in pertinent part:

**§ 3802. Driving under influence of alcohol or controlled substance**

**(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.

Additionally, the Commonwealth correctly cites to Commonwealth v. Segina, 604 Pa. 103 (2009). In Segina, the Supreme Court of Pennsylvania held:

The types of evidence that the Commonwealth may proffer in a subsection 3802(a)(1) prosecution include but are not limited to, the following: the offender'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; odor of alcohol, and slurred speech. Blood alcohol level may be added to this list, although it is not necessary and the two hour time limit for measuring blood alcohol level does not apply. Blood alcohol level is admissible in a subsection 3801(a)(1) case only insofar as it is relevant to

and probative of the accused's ability to drive safely at the time he or she was driving. 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. Regardless of the type of evidence that the Commonwealth proffers to support its case, the focus of subsection 3802(a)(1) remains on the inability of the individual to drive safely due to consumption of alcohol-not on a particular blood alcohol level.

Thus, in sum, we hold that subsection 3802(a)(1) is an “at the time of driving” offense, requiring that the Commonwealth 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.

Upon examination of the evidence in light of Segina, supra, the Commonwealth has failed to show any evidence of the time of driving. Although 75 Pa.C.S.A. 3802 provides that that the alcohol concentration in the Defendant’s blood be at least .08% within two hours after the individual has driven, and there is proof that the Defendant was intoxicated when Trooper Naughton responded, there is no direct or circumstantial evidence regarding his condition “at the time of driving”. In fact, there is no evidence whatsoever concerning what time the Defendant drove, operated or was in actual physical control of the vehicle. The record is devoid of any information regarding: where or when the Defendant imbibed alcohol; the time of the accident compared to the time of dispatch of Trooper Naughton; any evidence that the Defendant was in physical control of the vehicle when Trooper Naughton arrived; or the Defendant’s location prior to the Trooper’s arrival. Any of this evidence may have constituted circumstantial evidence

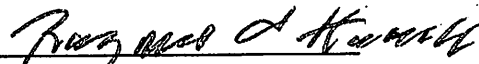
regarding the Defendant's state at the time of driving. The failure to produce the same is fatal to the Commonwealth's case.

When the Commonwealth fails to establish a key element of the charged crime, it has failed to establish a *prima facie* case<sup>1</sup>. Therefore, this Court must conclude that Count #1, Driving under the Influence of Alcohol must be Dismissed<sup>2</sup>. Accordingly, this Court enters the following:

**ORDER**

AND NOW, to wit, this 7 day of January, 2011, it is the ORDER of this Court that the Defendant's Petition for Habeas Corpus is HEREBY GRANTED and Count #1: Driving Under the Influence of Alcohol is DISMISSED.

BY THE COURT

  
RAYMOND L. HAMILL  
PRESIDENT JUDGE  
22<sup>ND</sup> JUDICIAL DISTRICT

cc: District Attorney  
Joseph D'Andrea, Esq.  
Linda Malakin, Admin. Ass't.

AF/SR

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<sup>1</sup> Commonwealth v. Hock, 728 A.2d 943 (Pa. Super. 1999).

<sup>2</sup> This Court notes that the summary offence of Careless Driving as described in the Information is not related to the Driving Under the Influence charge and therefore shall remain pending.