

Dawn

Q. Did the defendant also say that he didn't drink?

A. I believe he did. I believe he said he didn't drink at all.

Q. Didn't drink at all. Plus he had not been drinking?

A. Yes, sir.

Q. Any doubt in your mind you smelled alcohol on this guy?

A. No doubt in my mind, I smelled alcohol.

BY MR. COWLEY: Commonwealth would rest.

DAWN WAIKENIS: Sworn:

BY MR. BANIK:

Q. State your full name please?

A. Dawn Marie Waikenis.

Q. Where do you reside?

A. I reside at 755 Fall Street, Elmira, New York.

Q. You are married to Joe?

A. Yes.

Q. Were you married to him on March 9?

A. No, I wasn't.

Q. You were engaged to him?

A. Actually we were never really engaged. We were just dating at the time.

Q. Then you got married?

A. We eloped.

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Q. On May 9, when were you together with Joe?

March 9? Did I say May 9? I meant March?

A. It's March. We were together at work for probably a good five or six hours. And then we went to the house in Elmira. And we were there until 8:00 when he left to go back to Lawrenceville.

Q. And what, you were at work together?

A. Well, in a certain sense. We work the same hours and we saw each other on break time.

Q. Where do you work?

A. Sears. At the Arnot Mall in Horseheads.

Q. Where do you work?

A. Sears Roebuck.

Q. You were working from what time to what time?

A. Well, we started at 6:00 A.M. And in March, we might have been there until maybe ten or a little after ten. I could not tell you exactly.

Q. You only work in the morning?

A. Right.

Q. Where did you go from there?

A. Straight to my parents house in Elmira.

Q. And what else did you do together in the course of the afternoon?

A. We sat and we talked to my parents. Went in the

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kitchen and then we went to the t.v. room, and watched t.v. Probably about, I would say 5:00 or so we went to get Chinese food and came back and came back to the house and ate and then Joe went home.

Q. And home is 48 Main Street in Lawrenceville?

A. Right.

Q. How long would it normally take him to get there?

A. It should only take twenty minutes to a half hour.

Q. He left at 8:00?

A. Approximately 8:00, yes.

Q. So it's conceivable that he would have been in the Lawrenceville area about 8:27?

A. Yes.

Q. If he didn't stop anywhere?

A. Right.

Q. What had you been drinking? What had you observed him drinking during the day of March 9?

A. He always had soda. He would drink diet coke or ginger ale.

Q. Did he have any beer?

A. No.

Q. Not one?

A. None at all.

Q. Did he have any with him?

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- A. Not that I saw, no.
- Q. Were there any packages or garbage or things like that in the truck?
- A. Yes. He did have a garbage bag in the truck and I had some packages in the back of the truck. Because I was going to start moving in with him in Lawrenceville.
- Q. Were there any unopened containers of alcohol in the packages in the things that you were sending down with him?
- A. More than likely, yes. Because at one point Joe was going to fix us steak and he likes to marinate the steak in beer.
- Q. Do you normally get a case of beer or six pack of beer or anything on any occasion?
- A. Not normally. You know. Once in a blue moon we might pick up a quart and that will be that, but, it didn't happen that often.
- Q. Did it happen on this occasion?
- A. No.
- Q. Was there any plan to have a picnic, or something where he may have marinated the steaks in beer?
- A. Yes. In some of my stuff in the back of the truck, he had wine and beer. And that was all that I had in my property in Sayre. When I lived there. That was my

property.

- Q. The inside of the truck, where were the bags of garbage? Where were they specifically located?
- A. I think at the time he had a bag of garbage on the floor of the passenger side of the truck. It was all filled up with a twist tie or something like that.
- Q. When you went to get Chinese food, which vehicle did you take?
- A. We took my Ford Escort.
- Q. So you didn't take his truck?
- A. No. He didn't drive it much because it had a habit of breaking down a lot, so we didn't use it much to give it a rest.
- Q. Was the truck moved at all from the time you finished work at Sears, and drove to your house, until he left at 8:00?
- A. It stayed on the street from the time we got to my parents house until the time he left at 8:00.
- Q. Did he talk to you after he left at 8:00?
- A. No. He was suppose to call me as soon as he got to the house to let me know he arrived safely but I never got that phone call.
- Q. Did you ever speak to him about the events which led to him being arrested?

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A. The next day, yes.

Q. And how did you find out about it?

BY MR. COWLEY: Objection as to hearsay. I don't know how she would know except through someone communicating whether she's a fact witness....

BY THE COURT: I'll overrule the objection and allow him to ask how she found out.

BY MR. BANIK TO DAWN WAIKENIS:

Q. How did you find out about the incident?

A. We both had the day off. And I called and said is it okay for me to come over. He said, yes, and I drove to Lawrenceville, and I walked in the house and he's holding a cloth on his face. I said what happened to you and he then explained about how he got arrested the night before.

Q. Did you ask him what he had been cited for?

A. Yes. I said why did they arrest you. You know. What were you doing. He said he didn't do anything.

BY MR. COWLEY: Judge, I'd object as to hearsay. What the defendant told her. It's self-serving.

BY MR. BANIK: He is available for cross-examination.

BY THE COURT: I'll allow the question.

BY DAWN WAIKENIS: He told me they arrested him but they never said why he was arrested. They never said what he

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did.

BY MR. BANIK TO DAWN WAIKENIS:

Q. They never told him the charges?

A. No.

Q. Had no idea what he was stopped for?

A. No.

Q. Or what he would be charged with?

A. No.

Q. This was the next morning?

A. Yes.

Q. Did he appear to be hung over?

A. No.

Q. Did he discuss with you what had happened in the police presence? In the presence of the police officer?

A. Yes, he did.

Q. What do you recall his recollection to be?

BY MR. COWLEY: Judge, I'm objecting again. If he wants to testify, that's fine. But it's self-serving.

BY THE COURT: I'll sustain the objection.

BY MR. BANIK: Basically your Honor.....

BY THE COURT: I have sustained the objection.

BY MR. BANIK TO DAWN WAIKENIS:

Q. Have you known him to use alcohol on numerous occasions?

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A. Not on numerous occasions. Every now and then. It wasn't an every day habit.

Q. But specifically on this occasion?

A. He did not have any alcohol at that time, no.

Q. Would he have had any in the car, in the truck, which you would have been unaware of?

BY MR. COWLEY: Objection as to the form of the question. Would he have had any. How would she know?

BY THE COURT: I'm going to sustain the objection. You're asking her to speculate. She doesn't know.

BY MR. BANIK TO DAWN WAIKENIS:

Q. Within the half an hour before he was stopped, you were with him up until 8:00?

A. Yes, I was.

BY MR. COWLEY TO DAWN WAIKENIS:

Q. I just have a couple questions. Where do you live in Elmira or Horseheads?

A. On the South side. 755 Falk Street.

Q. Is that near Dunfield?

A. Yes. We're about four blocks from Dunfield I would say.

Q. Near Maple Avenue?

A. Yes. We're parallel to Maple Avenue.

Q. One or two blocks off Maple Avenue or...?

A. Two blocks.

Q. Towards the river or away from it?

A. We're away from the river.

Q. Now, you are married to this defendant is that correct?

A. Yes. We have been married three months now.

Q. And prior to March 9, how long had you known him?

A. Just about one year, I would say.

Q. A year. Now, I'm going to ask you to take a look at what's been marked and introduced as Commonwealth's exhibit one, and I would like you to look at the first three lines and see whose name that is? Whose name is stated there?

A. Joseph C. Waikenis.

Q. It's got a Dicks Hill, New York address. Are you familiar with that address?

A. Yes. That's his parents address. It's in Long Island.

Q. And do you know if that's his correct Social Security number? Do you know?

A. Yes, it is.

Q. Do you know if that's his correct date of birth?

A. Yes, it is.

Q. I would like you to read the first paragraph that is set forth under the black banner, section 1547, number one, and starts with please. Would you read

that first sentence please?

A. Please be advised you are now under arrest for driving under the influence of alcohol or a controlled substance pursuant to section 3731 of the Vehicle Code.

Q. Okay. What's paragraph two say?

A. I am requesting that you submit to a chemical test of blood, and it says breath, blood or urine. Officer chooses the chemical test.

Q. Okay. Your husband's signature is not on that form?

A. No, it is not.

Q. Now, the next day, you arrived at his residence in Lawrenceville about what time?

A. It might have been about ten o'clock in the morning.

Q. And ten o'clock in the morning, he informed you that he had been arrested?

A. Yes.

Q. But he didn't know why?

A. That's correct.

Q. And he didn't know what he was charged with? Is that correct?

A. Right. He said I have no idea why they pulled me over.

Q. But did he tell you he didn't know what he was charged with?

A. That's correct.

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Q. Now you said something about a cloth on his face.

I don't know what that was all about?

A. He had a wet cloth he was holding on the side of his face. I said what happened to you. He said when he was being handcuffed, his face was being pushed against the trunk of the police car.

Q. Trunk of the police car. Did you look at his face?

A. Yes. It was red.

Q. Red. Like a scrape or what kind of red? If you can tell?

A. More like if you were pressing against something. Like if you're in shorts and your legs are crossed, you will have a red mark on the underneath leg. Like there was pressure against it.

Q. Now he had a wash cloth on his face?

A. A wet wash cloth.

Q. Ice on it or what?

A. I really don't recall if he had ice or not.

Q. Did you take him to the Doctors?

A. I asked him, you know, are you okay.

Q. Did you take him to the Doctors?

A. He said there was no need to. He said it will go away.

Q. Okay. Now, on March 9, you spent pretty much the entire day with him. Although at work you weren't physically

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perhaps in his presence all the time?

A. Right.

Q. Is that right?

A. Right.

Q. Were you ever in the truck, his truck, on March 9?

A. No.

Q. Did he park the truck out in front of your folks house?

A. Across the street, yes.

Q. Across the street. You never were in the truck?

A. I walked him out to his truck at 8:00.

Q. Were you carrying anything?

A. No.

Q. Was he carrying anything?

A. Just his car keys.

Q. So when he left your house, you walked him to his truck? Right?

A. Yes, I did.

Q. You didn't give him anything to take back to Lawrenceville?

A. Just a can of ginger ale. Something to drink on the way. Sometimes his throat gets dry.

Q. A can of ginger ale. Well, what was this business about marinating steaks with beer? When did, what

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was, were you going on a picnic, Mr. Banik said you were going on a picnic and you were going to marinate steaks?

- A. Originally when I was housesitting in Sayre, Pa., I had the beer because Joe said sometime when I come down, I will fix you steak. He said he likes to marinate it in beer for a few hours before he cooks it. So I went out and bought the beer. And of course, due to circumstances, I moved out of Sayre so I packed it up with me and I was going to take it to his house. Since we were using his truck to load up all of my clothes and belongings, it was in his truck.
- Q. It was in the truck. In what kind of container? In a trash bag? Is that what you said?
- A. No. I believe it was in the back of the truck in a cardboard box.
- Q. Back of the truck in a cardboard box. Well what kind of beer was it? What kind of size was it, do you know?
- A. It was a quart of beer. I don't know. I really don't remember.
- Q. You bought this while you were in Sayre?
- A. Yes, I did.
- Q. How long was this before March 9? I don't expect you to remember exactly, but....

- A. I bought in back in December. Because the end of December was when I started moving out of Sayre. My roommate wasn't always there to unlock and let me in. So it took a few months to move out.
- Q. So you don't know when you put it in the truck?
- A. In the truck? No.
- Q. Okay. You don't know anything about any empty beer cans in the truck either, do you?
- A. If there were some in the garbage bag, it's possible. But I didn't know they were there.
- Q. This garbage bag wasn't actually full of garbage was it? Or was it?
- A. Yes, it was.
- Q. Garbage, to be thrown out?
- A. Yes.
- Q. But you had not put anything in the truck on March 9?
- A. No. Everything that was my property was already in there.
- Q. Now, I think you said that your husband always drank soda, is that right?
- A. Normally, yes.
- Q. And occasionally he drinks beer?
- A. Yes. And whenever he has alcoholic beverage, at my parents' house, I would make him spend the night. That

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was our policy. I don't care if it was one or two drinks. He spent the night. He has his own room there.

Q. So that was your policy? If you drink anything, he has to stay?

A. Yes.

Q. And he was aware of that policy?

A. Yes, he was.

Q. You made up that policy? You made that rule?

A. Yes, I did.

Q. But there were occasions when he did drink?

A. Yes. And when he did drink, he stayed at my parents house.

RAYMOND DUNLAP: Sworn:

BY MR. BANIK:

Q. State your name please?

A. Raymond Dunlap.

Q. Where do you reside?

A. 755 Wall Street, Elmira, on the south side.

Q. Dawn is your daughter?

A. Right.

Q. He is married to Joe?

A. Now. At that time she was not.

Q. Back on March 9, 1993, was he at your house?

A. Who?