

from the evidence presented you find that the crime has been committed and if so, do you find whether the defendant is guilty or is not guilty of having committed that crime. And that is all.

Each of you has a great responsibility as jurors which you can not shirk. You must do your very best throughout this trial to fulfill this great responsibility.

With that, I conclude my opening instructions to you and I trust you will follow them carefully throughout this trial.

The next step in the trial will be for the counsel to make their opening arguments to you and then we will begin taking evidence.

OPENING TO JURY BY JOHN COWLEY, ESQ.:

OPENING TO JURY BY STEPHEN BANIK, ESQ.:

KIRBY YOUNG: Sworn:

BY MR. COWLEY:

Q. State your name?

A. Kirby L. Young.

Q. How old are you?

A. I am twenty-one years old.

Q. Where are you employed?

A. I am employed by Lawrence Township Police Department.

Q. In what capacity?

Handwritten initials or mark in the top left corner.

A. I am a police officer.

Q. How long have you been employed as a police officer?

A. I have been employed by Lawrence Township since May 27, 1992.

Q. So a little over a year right now?

A. Right.

Q. Were you so employed on March 9, 1993?

A. Yes, I was.

Q. Now, in order to become a police officer, what type of education or training have you received?

A. I received an Associates Degree from Corning Community College in Criminal Justice. Also I attended the Municipal Police Officer's Academy at Lock Haven University.

Q. When did you graduate? Was that Act 120?

A. Correct.

Q. Okay. When did you graduate from Act 120?

A. August 27, 1992.

Q. Have you had the opportunity to observe people under the influence in both your professional life as a police officer and as a regular human being?

A. Yes, I have.

Q. What signs do you look for when you are an officer in terms of observations of a vehicle that may or may not

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be operated by a person under the influence?

- A. The speed of the vehicle. Whether it's excessive speed or unusually slow. That's perhaps ten miles per hour below the speed limit.
- Q. All right. Officer, I'm going to ask you to speak up. There is a fan here and I'm not sure if everyone... why don't you move up a little bit and try and speak up.

(Last question read back)

Do you remember the question?

- A. Yes.
- Q. Okay. What are the signs, what are some of the characteristics that, as an officer on duty, would look for?
- A. The speed, as I stated. The vehicle, who may signal inconsistently.
- Q. Move right up to the microphone.
- A. With his turning. If they signal to a left and make a left, and make a right. Weaving in the lane. Not driving consistent with the land markers. If they do not stay within their lane of travel. If they deviate from a direct course to the other lane of travel. Erratic breaking or turning. Failure to recognize signs, posted regular signs on the highway.

- Q. So those are kind of the clues that an officer uses to say that further investigation is needed?
- A. Correct.
- Q. Now, you have been a police officer over a year now. Have you made any motor vehicle stops for people you thought might be driving under the influence?
- A. Yes, I have.
- Q. About how many?
- A. Approximately twenty that I have suspected to be operating a vehicle under the influence of alcohol.
- Q. Did you have those folks, those twenty folks, perform field sobriety tests?
- A. Yes, I did.
- Q. How many arrests of the twenty that you had perform, I guess that's an inartful question, of the twenty folks you stopped and had perform field sobriety tests, of that number, how many resulted in the arrest for driving under the influence?
- A. Approximately eight or ten.
- Q. So, now, directing your attention to March 9, the evening of March 9, were you on duty?
- A. Yes, I was.
- Q. Were you in uniform?
- A. Yes.

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Q. Were you in a marked vehicle?

A. Yes.

Q. Would you describe the vehicle for these folks so they can get a feel for what it is?

A. The vehicle is a 1988 Chevrolet Caprice, blue in color. On both doors, being the driver's door and passenger door, on the front, there is an emblem with the seal of the Commonwealth of Pennsylvania in the middle, stating Lawrence Township. The vehicle is also equipped with a light bar, which has both red and blue lights on it.

Q. Where is the light bar located?

A. Directly above the operator's head. On the top of the vehicle. Also the vehicle is equipped with what we call grill lights. Two red and blue lights placed on the grill behind the radiator. Excuse me. In front of the radiator. That flash alternately when you turn them on. So the vehicle has what's known as a wig-wag system that alternates the headlights. They will flash from high beam to low beam, alternating back and forth from one side to the other.

Q. Are there any lights on the side of the vehicle?

A. On the light bar itself, it contains white lights. Other than the red and blue. Two white lights that

rotate from straight forward to a 90 degree angle off to the side, which are called intersection sweeps. They will light your area from 90 degree straight forward and then they swing back and forth, I would guess approximately 120 turns per minute. They are pretty fast. And also there are alley lights on the side. Which, if you turn them on, they will illuminate anything to either side of you at a 90 degree angle.

Q. Were you on duty alone or were you in the company of someone else?

A. I was with Officer Shutt. Chief Shutt.

Q. And how was he dressed? Was he in uniform?

A. Yes. He was in uniform.

Q. Directing your attention to some time after 8:00 P.M. on that night, were there any, what were the weather conditions?

A. There were no adverse conditions. It was cold. But it wasn't raining or snowing or foggy.

Q. Was the surface of the highway clear and dry?

A. Clear and dry.

Q. Now, I would like you to describe to the jury basically what took place when you observed the vehicle, pickup truck, with New York plates on it.

*Alford*

Where were you when this first happened?

- A. Chief Shutt and I were doing what we call security checks at Hall's. We drive in front of the building and shine the lights through the building, to be sure no one is in there or attempting to gain entry. There is a soda machine out front. There is a lot of rental equipment there that we check and be sure no one is attempting to gain entry. After completing this, we proceeded North on Route 15. We came upon a pickup truck. That was red and white, with a New York State plate. The pickup truck drew my attention because of the fact it was traveling 40 to 45 miles per hour in a 55 mile per hour zone. That is unusual in that area because the roadway is flat and you can see for a great distance. Approximately three-quarters of a mile, through that area. There seemed to be no outside reason why the vehicle would be traveling at such a slow speed in that area. The vehicle being a pickup truck we were following, crossed over the center line. Near the East Lawrence Road. On State Route 15. It crossed over into the other lane of travel, approximately half of the width of the vehicle, which would be three to four feet. I am not sure exactly how wide the vehicle is. And then returned to its correct lane of

travel. Again, between the East Lawrence Road, and the State cinder pile, which was less than one-quarter mile, the vehicle again crossed the center line. About half of the width of the vehicle, into the other lane. And then returned to the lane of travel still traveling at approximately 40 to 45 miles per hour. From the training I have had, the slow speed of the vehicle and the fact the vehicle deviated from the direct course and went into the other lane of travel, may have been an indication that the driver of the vehicle was under the influence of alcohol. The fact that the vehicle did travel into the other lane, when it was not a passing zone, nor was there a vehicle ahead of him to pass, is a violation of the vehicle code, which gives you probably cause to stop a vehicle.

Q. Okay. Did you attempt to stop the vehicle?

A. Yes.

Q. How did you do that?

A. Near the State cinder pile. But actually a very short distance south of the cinder pile, I activated the lights on top of the vehicle and also the wig-wags, which means the headlights were flashing from high beam to low beam. The headlights were on. The headlights



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were flashing from high beam to low beam. The grill lights, being two red and two blue lights, in the grill, were flashing. The red and blue lights on top of the vehicle were flashing also. What I referred to as the intersection sweeps, the white lights, that flash from 90 degrees off sideways to straight forward. I turned them on also.

Q. How far behind the vehicle were you when you first initiated the light situation?

A. Approximately 100 feet.

Q. Now, I don't think I asked this, were you driving or was Officer Shutt?

A. I was driving the patrol car.

Q. Okay. What did you observe after you had started all of this light business you described?

A. It seemed to have no effect on the operator. At first my thought was the operator of this vehicle didn't see the lights. I then closed the distance between the patrol vehicle and the vehicle I was attempting to stop and also turned on the siren.

Q. Now, is this, describe, is this a steady pitch, or is this an alternating pitch? What's the siren like?

A. It's what they call a whale. It's alternating between low and high.

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Q. Can you give some description of the loudness of this siren?

A. It's very loud. I consider it to be very loud. In the vehicle, it's sometimes, to talk on the radio, you have to turn the siren off. Because it's that loud.

Q. Speaking of radios, did you or either Chief Shutt call anything in and if so, when, in this chronology of events did that take place?

A. At the time that I activated the emergency lights on the vehicle, Chief Shutt radioed to the County Communications that we would be 1051, which means a vehicle stop on route 15, and he gave the Communications Center the license plate of the vehicle we were attempting to stop. It was a New York State commercial license plate, PJ4698. And they called back and requested to know our location. They do that in case, something goes wrong, they know where to send help. His reply to them was, I'm not sure. The vehicle hasn't stopped. Both he and I were anticipating that the vehicle would pull over when we activated the lights, is why he called the county and notified them we would be doing a vehicle stop. After I activated the siren and noticed the vehicle wasn't stopping and wasn't slowing down any, I took the microphone from Chief Shutt and remembering that Chief

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Beach, who works in Lawrenceville Borough, was also out on patrol that evening, I called him on the radio and told him we were proceeding north on 15, near the Buckwheat Hollow Road, attempting to stop a pickup truck that refused to stop, and asked him to help us get the vehicle stopped.

Q. Did you make contact with him?

A. Yes. He had an affirmative response that he would attempt to help us.

Q. Now, I would like you to identify the approximate location where you hit the sirens?

A. Somewhere near Dates Car Wash, which is probably 300 yards north of the State cinder pile on Route 15.

Q. About how, I think most people know where the viadock is going up and over before you go over the bridge. How far south of that is this car wash?

A. The car wash is probably a quarter mile south.

Q. Did you continue traveling north with the lights and siren on?

A. Yes.

Q. What, if anything, did the vehicle which you were following, do?

A. His speed did not vary much. Forty to forty-five mile per hour. It wasn't like he was taking off rapidly.

He didn't deviate his speed any. He was what I call weaving in his lane. That is, would, near the white line on the right hand side of the road and then back towards the yellow line to the center of the road. For the whole distance we followed him.

Q. Did you go over the bridge, or over the viadock and over the bridge? In the borough?

A. Yes.

Q. What happened when you got to the borough?

A. As we rounded the corner, near Schoonover's Restaurant, there's a left hand corner there, I could see the emergency lights on Chief Beach's patrol car. They were on the right hand side of the roadway. His car was parked diagonally to the roadway, facing the oncoming traffic that would have been traveling north. He had the red and blue lights on, what we call take downs. They are two white lights on the front of the right bar that are basically flood lights to illuminate the area in front of the patrol vehicle with the white light. Also the spot light on the windshield post was turned on and facing the oncoming traffic.

Q. Did the vehicle which you were following stop in front of Chief Beach's car or go past it?

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- A. He had passed it. He went out into the south bound lane, maybe one or two feet, and seemed to drive on around. Almost as if he didn't notice the other vehicle there.
- Q. Chief Beach's car was not in the lane, however?
- A. No. It wasn't in the lane.
- Q. What happened then?
- A. At that time, we were in front of the Quick Fill. There is a tractor trailer pulling out of the Quick Fill and proceeding north on route 15. There is no other traffic coming south. At that time Chief Shutt instructed me to pull around the vehicle and get in front of him.
- Q. How fast was the vehicle going?
- A. He had slowed down at that point when he entered the borough. The speed reduces to 35 miles per hour zone and he slowed down to about 30 miles per hour. I pulled up along side him. As we were proceeding north. Past the Quick Fill. And I turned on the right alley light which illuminated the right side of my vehicle, and I could see into the pickup truck and see the operator of the vehicle, was a white male. He had a hold of the steering wheel with both hands. He glanced at me quickly, and then returned his attention to the road

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ahead of him, and didn't slow down and didn't make any attempt to pull off the roadway and stop. All of the emergency lights and siren were still on at that time. I then pulled in front of the pickup truck and he gradually began to slow down. As I slowed down, I felt the bump from behind, turned around and looked, and the pickup truck was right against the back of the patrol car. I then pulled the patrol car forward and put it in park and got out of the driver's side.

- Q. If you could clarify, about how fast were you going when this bump took place? That he is behind you. How much had you slowed down to or what was the situation?
- A. Approximately 10 to 15 miles per hour.
- Q. Now, what did Chief Beach, if you know, what had Chief Beach done?
- A. When I got out of the patrol vehicle, Chief Beach was parked behind the pickup that we were attempting to stop. When I first saw Chief Beach, he was to the driver's side of the pickup truck we were attempting to stop. Somewhere near the back bumper. But off to the left maybe 10 to 15 feet.
- Q. So the stop was really effectuated in Lawrenceville Borough, is that right?

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A. Correct.

Q. All of this took place in Tioga County?

A. Yes.

Q. What happened, did you exit the vehicle?

A. Yes, I did.

Q. Did you see Chief Shutt exit your vehicle?

A. He got out of the patrol car the same time I did.  
We both got out as the vehicle was placed in park.

Q. At that time was Chief Beach out of the vehicle?

A. When I got out, he was out of the vehicle.

Q. Was the operator of the truck out of the vehicle?

A. No. He was still sitting in his truck.

Q. Did you see the operator of the truck at that time?

A. Yes, I did. That was where most of my attention was  
focused. On the operator of the truck.

Q. Describe what, if anything, he was doing?

A. Just sitting there.

Q. Where were his hands?

A. His hands were both on the steering wheel, and he was  
looking straight forward. I had been off to his left  
at that time. He was not looking at me. He was looking  
straight forward.

Q. Did he respond in any way?

A. No. I yelled to him to place his hands up where they

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could be seen. And keep them there. For my safety as well as others. I was concerned as to his intentions because of the fact he didn't stop.

Q. So what did you, did he do anything in response to that directive?

A. Negative. He just kept his hands on the steering wheel and looking straight forward.

Q. What did you or what did you see, what did you see, if anything, the other officers do?

A. Chief Beach directed the operator of the truck to get out. And he got no response from the operator. He again directed him to get out of the truck. Again no response. Chief Beach opened the driver's door of the pickup truck. Reached in and grabbed hold of the left arm of the driver. Attempted to bring him out of the truck. At that time I noticed the operator was wearing his seat belt. And wasn't going to come out that way. I reached inside the truck and across the operator and unbuckled his seat belt. At that time I noticed a strong odor of alcohol coming from the operator of the vehicle. Because of the fact that to unbuckle his seatbelt, I was within one foot of his face.

Q. Did you unbuckle the belt?



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A. Yes, I did.

Q. What happened then?

A. Chief Beach and I both removed Mr. Waikenis from the vehicle. And placed him against the side of the truck. At that time I noticed that the truck was rolling forward. I jumped in the truck, turned the wheel to the right, and put my foot on the brakes, stopping the vehicle. Placed it in park and then got back out.

Q. Was this an automatic or standard?

A. This is an automatic.

Q. Automatic. Where was the defendant at this time?

A. He was against the side of the truck. As it had only rolled five or six feet forward. Chief Beach still had him placed against the side of the truck.

Q. Now the individual who was removed from the truck, is he here in the court room today?

A. Yes, he is.

Q. Would you identify him for the record?

A. Sitting over here at the defense side with the black and white shirt and glasses.

Q. We ask the record to reflect the officer identified the defendant.

Was there any other person in the truck other than this

*Agency*

defendant here?

A. No.

Q. Now, you said he was handcuffed. Front or back or....?

A. The handcuffs were placed behind his back. That's the procedure we follow in Lawrence Township.

Q. Now, what took place then? What went by?

A. The handcuffs were placed on him by Chief Beach. They were my handcuffs. I handed them to Chief Beach. He placed the handcuffs on him. At that time we had the road blocked. My patrol vehicle was parked in the south bound lane. And we had the roadway blocked. No traffic could get through.

Q. Now, how far, at that point, how far are you from the New York State line?

A. We are just south of the red light near the Valley Outlet. Again by probably one-quarter mile south of the New York State border.

Q. So what did you do with this defendant after you got him handcuffed?

A. We took him away from the truck and over to the patrol vehicle, and as our procedure is, we search to be sure he didn't have any weapons on him. We asked him for identification. He stated his driver's license was in his wallet. Which was in his rear pocket. We brought

that out of his pocket and laid in on the trunk of the patrol care, and pulled out his driver's license.

Q. I assume the driver's license said Joseph Waikenis?

A. Correct.

Q. Did you have the opportunity to observe his eyes?

A. Yes. At the time that we took him back to the patrol car, after we searched him, and after I looked at the driver's license, I recognized the name from the vehicle stop that I had five weeks earlier. At that time I looked him in the eyes and face to be sure it was the same individual who I had stopped earlier, and in fact it was. At that time I noticed that his eyes were bloodshot and appeared to be glossy.

Q. Did you ask him to take a blood test along the way?

A. Yes. Any time that you stop an individual....

Q. I don't want you to get into that. Just, what did you do?

A. Yes. We did. He was asked to take a blood test.

Q. Did you advise him of the implied consent law of Pennsylvania?

A. Yes, I did.

Q. What did you tell him?

A. I told him that under the implied consent law in Pennsylvania, if you did not submit to a blood test, for

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intoxication, when you are requested to do so by a police officer, your driving privileges will be suspended in the Commonwealth of Pennsylvania for a period of twelve months.

- Q. How often did you ask him to take a blood test?
- A. While we were still in the roadway, on Route 15, approximately four to five times.
- Q. Did you, after you took him out of the vehicle, were you able, did you detect any odor about him? You said you detected an odor in the truck. How about outside the truck?
- A. Yes. Once when I was searching for weapons, I could smell alcohol from the person as I was searching.
- Q. And how, can you describe the strength of the odor?
- A. Very strong odor. Enough that I was behind him. And when he would breath, you could smell the alcohol from his breath.
- Q. You took him to the Municipal Building, the Borough Police Department, is that correct?
- A. Correct.
- Q. Is that where you conducted the field sobriety tests?
- A. Yes, it is.
- Q. Let's go into that. What tests, tell the jury what a field sobriety test is?

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A. A field sobriety test is an indicator to an officer to be used as probable cause in determining whether or not a defendant or the person that you are suspecting of being under the influence of alcohol, to determine whether or not they are under the influence, a coordination test, and you take many different factors into consideration with a field sobriety test.

Q. All right. How many did you give this defendant?

A. Three.

Q. Three. Would you describe in the order that you gave them, first, the test that you asked him to perform and his performance on the test?

A. I asked, first I asked Mr. Waikenis to stand with his feet shoulder width apart and his arms down to his side. I instructed him, I was trying to explain to him what I wanted him to do, and I was going to show him what I wanted him to do. And then after I was done explaining it, I would ask him to perform that. I asked him to stand with his hands down to his side, and then extend his right arm up to the side, and I showed him as I did it. To extend it straight out to the side like this. And then bend at the elbow and take his finger tip and touch it to the end of his nose. And I demonstrated it as I asked him to do

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it like that. I asked him to do that with both hands.

Q. Judge, for the record, I'd like the record to reflect that the officer has basically demonstrated in front of the jury that which he has just described.

BY THE COURT: That would be noted on the record.

BY MR. COWLEY TO KIRBY YOUNG:

Q. You asked him to do his right hand, left hand, is that correct?

A. Correct.

Q. What did he do in response to your instructions?

A. As I had instructed him, to do the test, after my instructions, as I put my arm out to the side, he put his arm out to the side. Instead of bringing, bending his elbow and bringing his finger to his nose, he brought his whole arm in and touched the tip of his nose with his right arm.

Q. All right. What about the left hand? Could he do that?

A. The left hand he did the same way. He brought his whole arm in. Instead of touching the tip of his finger to the tip of his nose, he touched the first knuckle to the center of his nose. It was off center from where it should have been.

Q. How, as you attempted to communicate with this defendant, how would you describe his ability to

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understand and how did he react to your instructions?

A. He would restate whatever you told him different than what you told him. As I stated, he did not follow the directions that I gave him. He went ahead and did it as I was showing him. He seemed to have a poor comprehension of what it was that I wanted him to do. Even though I had showed him.

Q. What was the second test you asked him to perform?

A. I asked him to stand on one foot. Stand again with his hands down to the side and keeping them there. With his feet approximately shoulder width apart somewhere where he felt comfortable, and then pick up one foot and hold it approximately six inches off the floor, and count to thirty out loud as he was doing that.

Q. Did it matter which foot?

A. To me it did not matter which foot.

Q. Did it to him?

A. He stated that he had a back injury and that he could not do it with his left foot. So I said the right foot is fine with me. To me it didn't matter which foot he attempted to test with.

Q. So he lifted, which foot did he lift?

A. He lifted his right foot and stood on his left.

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Q. Stood on his left. Judge, could he just stand up and show the jury very briefly?

Why don't you come on down and just step right there.

A. I asked him to stand with his feet approximately shoulder width apart, with his hands down to his side, because I didn't want him to put his hands up to use as a balance. I asked him to place his hands down to his side and look straight forward. Pick up the right foot and count to thirty while he was doing that. Look at me and count out loud. Holding his foot off the floor.

Q. How did he do?

A. He picked up his right foot and counted very quickly. He counted one, two, three, four, five, and then stepped back down. After the third or fourth attempt he finally was able to count to thirty very rapidly but was swaying side to side rather than standing still. And completing the test.

Q. What about the third test? What was the third test?

A. The third test I asked him to perform was a heel to toe walk. To stand with his feet together, side by side, his hands down to his side. Again, I always demonstrate this so that there is no question. Or that my manner



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of telling the defendant is not confusing. I showed him that I wanted him to place his feet heel to toe and walk and walk ten paces one ahead of the other, and count the paces out loud as he went, meaning one step, two steps, and when he got to ten, turn around and come back ten paces.

Q. How did he make out?

A. The first step was heel to toe. The second step, instead of being heel to toe as it should have been, it was off to the side and he lost his balance.

Q. He crossed over?

A. Instead of being here, yes, he crossed over. Regaining his balance again and stepping sideways and then going ahead and walking on. In total he had three errors in his step as he walked the ten paces.

Q. Did you ask him to take a blood test again?

A. Yes.

Q. How many times, if you can recall, did you ask this defendant to take a blood test?

A. In total, including the written request, approximately eight to ten times.

Q. And did you show him the form?

A. Yes. I showed him the form DL26.

Q. Did he sign it?

*Young*

A. No.

Q. Did he refuse to sign it?

A. Correct.

Q. Now, about how long did it take, if you can recall, from the stop until you were finished with your field sobriety tests and asked him to take a blood test?

A. We engaged in pursuit at 27 minutes after 8:00. The vehicle was stopped at 8:30. And at 8:42, we were on route to the municipal building in Lawrenceville Borough. After we were completed there, at the municipal building, we again placed the defendant in the patrol car, drove to the mobil station in Lawrenceville where his vehicle had been impounded. Discussed with him and the owner of the mobil station, arrangements to get the vehicle the next morning. Returned him to his residence at 48 Main Street, Lawrenceville, and he was dropped off at his residence at 9:33. - after 10:30

Q. Okay. So 8:27, you started pursuit?

*before 11:00*

A. Correct.

Q. And he was home at 9:33?

A. Correct.

Q. So one hour and six minutes?

A. From the time we started our pursuit until he was returned to his house.

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Q. Okay. Did you ask if he had been drinking?

A. Yes.

Q. What did he say?

A. He stated he had not been drinking and he also stated he did not drink.

Q. Had not been drinking. Now, did you find anything in his truck? Did you or any other officer find anything?

A. Chief Beach while we were searching Mr. Waikenis, and getting his identification, searched the passenger compartment of the pickup truck that Mr. Waikenis was operating, and from the passenger compartment he removed a full 40 ounce bottle of Budweiser beer, which had not been opened. And he also removed two 12 ounce cans of Piel's beer, which were empty.

Q. Did you see those cans and that bottle?

A. Yes. Chief Beach brought them back to the patrol car and sat them on the trunk lid.

Q. Did you ask the defendant about them?

A. Yes, I did. He stated that he had no idea how they got in the vehicle.

Q. Based upon your education, training and experience, with defendants, suspected drunk drivers, do you have an opinion whether the defendant at the time you saw him, observed him, was under the influence of

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alcohol?

A. Yes.

Q. What is that opinion?

A. My opinion is that he was under the influence of alcohol.

Q. Again, based upon your education, training and experience, with suspected drunk drivers, and the observation of this defendant, and the way he operated the vehicle, do you have an opinion as to whether the defendant could operate his vehicle safely at that time?

A. I feel the defendant was incapable of operating his vehicle safely.

BY MR. BANIK TO KIRBY YOUNG:

Q. Does your office, your department, have video tape capabilities?

A. No, it doesn't.

Q. You indicated the entire matter from start to finish took 8:27 until 9:33 approximately?

A. Correct.

Q. Now, you were in the 328, Route 15, area for security check?

A. Correct.

Q. Did you see Mr. Waikenis pull from 328 on to 15?

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A. No.

Q. Where approximately did you catch up to him?

A. Between Foster's Auto Center, which is north of Halls on Route 15, and the East Lawrence Road.

Q. When you first came upon him, is that when you saw crossing the line?

A. Not when I first came upon him. The first thing that drew my attention was his speed.

Q. How long after you followed him, noticing the speed, did you first notice the vehicle cross the center line?

A. Approximately three to four hundred yards.

Q. And then the second time was near the cinder pile?

A. It was south of the state cinder pile, yes.

Q. Where is that in relation to the bridge into the borough?

A. It's 1.49 miles from where he stopped, in relation to the bridge in the borough. My guess would be it's about a mile.

Q. And where did you activate the siren?

A. Near Dates car wash. On Route 15.

Q. So it was between the two swerves that you activated it?

A. No.

Q. After both swerves?

Gouney

A. Correct.

Q. I guess that's a little longer distance. What was the total distance that you followed him from Hall's until the stop?

A. I didn't follow him from Hall's. I followed him from between Foster's and East Lawrence Road. I guess approximately two miles.

Q. So the entire time that you were following him, was how long?

A. However long it takes to travel two miles at forty miles per hour.

Q. And how long did you have your lights and sirens on for that period of time?

A. I had my lights on for 1.49 miles. Which was the distance from when I first activated my lights until the distance we stopped. The siren was activated perhaps a tenth of a mile past the light.

Q. So the total time you followed him, during which you expected him to stop, was about a mile and a half, three....?

A. Mile and a half, correct.

Q. And the entire time he was traveling at what, 45 miles an hour?

A. Approximately.

Young

Q. When you first stopped him, did you recognize him from the previous stop or did you recognize him from the license?

A. I recognized him from the name on the license.

Q. You didn't have any idea who was in this vehicle?

A. No. I knew from pulling up along side it was a white male. Other than that, I didn't know the identity.

Q. Did Mr. Beach know him?

A. After I, when he brought the bottles over and sat them on the trunk, he asked what's his name, and I handed Chief Beach his driver's license. Mr. Waikenis's drivers license.

Q. What was his reaction?

A. He looked at it and handed it back to me.

Q. That's it?

A. Yes.

Q. Did you examine the empty Piel's can personally?

A. Yes, I did.

Q. Were they recently emptied?

Or were they dry?

A. There was, in the bottom of them, a little bit of fluid.

Q. Did you determine whether it was beer or....?

A. It smelled like it was beer.

*Young*

Q. In the one?

A. In both.

Q. In both there were fluid in both?

A. Correct.

Q. Were you able to determine whether it was recently empties or whether it was just sitting around in the truck for a while?

A. I was not able to determine that.

Q. You didn't locate these? officer Beach did? So you don't know exactly where they came from?

A. Correct.

Q. When you reached in to pull the seat belt, did you see them then?

A. No. My attention was focused on Mr. Waikenis. And his actions.

Q. Now, of course you're looking while you're in there. You have your alley lights on. And you were illuminated or....?

A. No. I pulled ahead of him at that time so the alley lights did not illuminate the interior of the truck.

Q. How about the dome light inside the truck?

A. I don't remember whether the dome light was working or not. It seemed to be dark in there. It may have been on. I don't know.



Young

- Q. Wouldn't you have been looking for things that would be a danger to a police officer?
- A. Something that would have been in the defendant's hand, yes.
- Q. But not for something you could reach onto the floor and....?
- A. Yes. I knew where his hands were. At that point that was my concern.
- Q. And his hands, he kept them right there where you could see them on there?
- A. Correct.
- Q. On the steering wheel?
- A. Correct.
- Q. And you asked him to keep them where you could see them?
- A. Correct.
- Q. And he did?
- A. Correct.
- Q. He never made any quick movements or anything of that nature to cause you to be alarmed?
- A. No.
- Q. Did you discuss with him the reasons that he was stopped at that time?
- A. Not at that point, no.

Young

Q. Which Officer was the first to note the smell of this smell?

BY MR. COWLEY: Objection. I don't think he can testify as to, ....we're going to have the officers testify. He can testify whether he did and what he did, but, I'm not sure...

BY THE COURT: All right. I'll sustain the objection. If you want to try and rephrase that.

BY MR. BANIK TO KIRBY YOUNG:

Q. Did you discuss with the officers the potential for a DUI stop here?

A. Prior to the vehicle stopping, DUI was not mentioned.

Q. When was, was there ever a discussion among the three officers?

A. Yes.

Q. Concerning the potential DUI?

A. Yes.

Q. When did that take place?

A. Upon the defendant being removed from the vehicle and he was in the rear of our patrol car, being Lawrence Township Patrol Car, Chief Shutt and I were both there. We both noted the strong odor of alcohol.

Q. So you must have discussed it?

A. Not prior to that.

Young

Q. Not, but, at that point?

A. Yes, we did.

Q. You just indicated you both noticed it and who called it to whose attention?

a. I don't remember.

Q. Now at what point did Officer Beach arrive with these containers?

A. After Mr. Waikenis had been removed from the side of the vehicle, after we had obtained his driver's license from his wallet.

Q. Was there a discussion between the two of you and Officer Beach at that point in time, so that he would be looking for containers?

A. Are you asking if we told him to look for containers?

Q. Right. I want to know why Officer Beach is finding containers and bringing them back to you. You must have then also told him, look for containers?

A. I didn't tell him to look for containers.

Q. We smell something.

Did he have any indication that we were on to a DUI suspect? At this point?

BY MR. COWLEY: I object. I don't have any...I guess the concern I have, he's asking this witness to identify the thought processes and the conclusions drawn by

Chief Beach.

BY THE COURT: I'll sustain the objection. If you want to ask him if he knows, that's one thing. Chief Beach will be here and you can ask him those questions.

BY MR. BANIK: I understand but I want to know when....

BY THE COURT: Well, the proper foundation is, do you know.

BY MR. BANIK TO KIRBY YOUNG:

Q. Do you know when Officer Beach suspected a possible DUI?

A. No, I do not.

Q. Did you communicate that to him or did you and Officer Shutt communicate your observations with him prior to his search for the containers?

A. No.

Q. So I guess then his search for containers was completely removed from your observation of the smell?

A. Correct.

Q. Was he close enough to Joseph to smell anything, prior to his search for containers?

A. He removed Joseph from the truck. So my opinion is, yes, he was close enough.

Q. Did he communicate his observation to you or Officer Shutt at that point in time?

A. No. Because it was something that happened very

*Young*

quickly.

Q. Do you know specifically where the unopened bottle was found?

A. no, I do not. And to my knowledge, there was no unopened bottle.

Q. You mentioned an unopened bottle of beer?

A. A 12 ounce can.

Q. No unopened bottles?

*(see pg. 576)*

A. No unopened bottles, no. They were twelve ounce cans.

Q. Now, were there any other things around, any other unopened cans? In any other part of the car? A cooler? Any area where there had been anything spilled?

A. Not that I observed.

Q. Now, the truck was later impounded. Correct?

A. Correct.

Q. Why was that done?

A. That was the decision made by Chief Shutt.

Q. What was the reason for that decision?

A. That was his decision. I don't know.

Q. Was the area where the car will be impounded discussed?

A. No. That was completely his decision. It was not discussed with me.

Q. And ultimately it was where?

Young

A. The vehicle was placed in the Lawrenceville Mobil.

Q. And were arrangements made with the owner of the Lawrenceville Mobil to do that?

A. To place it there?

Q. Yeh.

A. Yes.

Q. And what time are they opened to? Are they opened at the time?

A. No, they were not open at that time.

Q. So how were arrangements made to impound the vehicle and store it there?

A. Chief Shutt made those arrangements.

Q. When you impound, is there inventory searched or anything like that done?

A. I did not have anything to do with the impounding.

Q. Were you observing a search of his vehicle, or was not a search done of his vehicle?

A. I did not observe a search of the vehicle.

Q. You didn't participate in the search in any way?

A. No, I did not.

Q. So you don't know what happened to a micro-cassette recorder that would have been in the cab of the vehicle?

A. No, I do not.

- Q. You said you stopped eight to ten, actually cited eight to ten DUI's?
- A. Correct.
- Q. And on the average, what time length...is this about average, an hour and six minutes? From start to finish on one of these?
- A. It depends on the individual case. I don't know as I have had, because of the travel required, because of the legal things you must follow, it's not something that you can do in thirty minutes. In my opinion.
- Q. Now, you knew his car, or you knew at some point, or did you know at some point he was one hundred yards from his house?
- A. At the time, somewhere at the end of January, beginning of February, at the time that we first had contact, Mr. Waikenis and myself. At that time he told me that he lived at 48 Main Street. At the time the vehicle was stopped, I had no idea who the operator of the vehicle was, other than it was a white male. So I did not know where it would be heading. The fact it was a New York State plate indicated to me that perhaps he was heading back to New York State.
- Q. You didn't put together that you stopped this guy, what, a few months earlier?

Young

- A. After I saw his identification. And his name. Then I did.
- Q. So at that point you knew he was only one hundred yards from his driveway?
- A. My estimation is that he was not that far from his driveway.
- Q. Was that ever taken into consideration? Was there any discussion amongst the officers, whether his truck could be just pulled in there rather than impounded?
- A. As I stated before, the decision to impound the vehicle was not made by me.
- Q. Was it discussed at all or was it just simply stated by a particular officer, we're going to impound the vehicle?
- A. The decision was not discussed with me.
- Q. Was any discussion made regarding a search of the vehicle?
- A. No one discussed searching the vehicle with me.
- Q. But the vehicle was searched?
- A. Yes.
- Q. When was it searched in relation to when Mr. Waikenis was returned home?
- A. The vehicle was searched while it was still on the roadway.



Young

Q. And none after? Never after that?

A. I never searched the vehicle after that.

Q. Do we know whether it was searched while it was in the Mobil Station?

A. I didn't search the vehicle after that.

Q. Do we know whether it was searched while it was in the Mobil station?

A. I didn't search the vehicle at the Mobil station.

Q. Do you know whether Officer Beach or Officer Shutt might have?

A. No, I do not.

Q. When you began to follow him, it was immediately that he swerved?

A. Within a few seconds.

Q. And you say that's a no passing zone entirely down through there?

A. Not entirely. There are passing zones there. But the section where he initially crossed over was a no passing zone because of the intersection of the East Lawrence Road there.

Q. When you were at Hall's, you were in the front, were you not?

A. Yes. In the front of Hall's.

Q. So if as he says he was coming from 328, he would have

Young

seen you there?

A. Very possible.

Q. And so then likely he would know you were behind him?  
Possible?

A. I can't speculate whether he did or did not know I was  
behind him.

Q. So it is inappropriate or is it illegal for a man to  
travel at less than 55 in a 55? Or....

BY MR. COWLEY: I object to the asking of the witness of  
what is legal or illegal. It's calling for a legal  
opinion, of which he can not render. He can ask what  
the speed limit is.

BY MR. BANIK TO KIRBY YOUNG:

Q. The speed limit is 55? Right?

A. In the stretch of roadway where I initially began  
following him, yes, the speed limit is 55.

Q. Is there a minimum travel speed?

A. No, there is not.

Q. Exactly what procedure was utilized to get Mr.  
Waikenis to exit his vehicle?

A. I am not certain what you're asking.

Q. When the vehicle was stopped, and you say he's got his  
hands on the steering wheel, and facing forward, again  
I would like to know what procedure you used to get him

Young

out of the vehicle? Whether it was entirely you or Officer Shutt that instructed him to do whatever.

BY MR. COWLEY: Judge, I'd object to the characterization of procedure. He can testify to what happened.

BY MR. BANIK: Well, that's procedure.

BY MR. COWLEY: Well, procedure has not been established.

BY THE COURT: Counsel indicated he's asking what happened.

BY MR. BANIK TO KIRBY YOUNG:

Q. Thank you.

A. What happened was, I instructed the operator of the vehicle to keep his hands where they could be seen. Chief Beach instructed the operator to get out of the vehicle. The operator did not comply with his request to get out of the vehicle. Chief Beach opened the door of the truck and took him by the arm. He wasn't coming out because his seat belt was on. That was an observation I made. I reached in at that time and I unbuckled the seat belt. So that the operator could get out.

Q. Do you recall any of the details of the previous stop that you had with him for something?

A. Yes.

Q. And how long before this was it?

A. The only way I can remember how long it was, was, the

Young

violation in which I cited Mr. Waikenis for, was his driver's license had expired. A short time prior to the vehicle stop. In New York State, the driver's license expires on your birthday. And on the driver's license, it states the year that it expires. It states expires on your birthday. In this case it said, 1993. His birthdate, I believe, is January 26. So it was a very short time after January 26, 1993. I am going to guess within a week.

Q. Now, you have been employed since May of 1992, as an Assistant Chief?

A. They employed me and sent me to the police academy. At the time I went to the police academy, my job title was patrolman.

Q. And you did, you were on patrol for approximately ten months by the time this occasion here? This DUI stop occurred?

A. From around September 1 until March.

Q. So you didn't patrol anything until you finished the August '92 Act 120 Schooling?

A. Correct. I rode with Chief Shutt doing an intern program at Corning Community College but I was not doing any actual patrol by myself.

Q. So we have six to seven months of actual patrolling?

Young

A. Correct.

Q. How many traffic stops did you make in that period of time?

Or is that too, that was a guess, wasn't it?

A. Yes, that's a tough question.

Q. On a weekly or daily basis?

A. A month, I would issue anywhere between thirty and sixty traffic citations. That does not mean that I issued traffic citations to every vehicle I stopped. I would say, fair guess, would be eighty to one hundred traffic stops per month.

Q. Do you plan to stay employed with the Lawrenceville Police Department for a period of time?

A. No.

Q. Are you moving?

A. Yes.

BY MR. COWLEY TO KIRBY YOUNG: ✓

Q. Just a couple. Wasn't there some discussion about a forty ounce bottle of Budweiser?

A. Correct.

Q. You said there were no bottles of beer?

A. The bottle...he was referring to the empty bottle. there was no empty bottle. There was a full bottle. The empties were cans.

Young

Q. Okay. Two empty cans and one full bottle?

A. Yes.

Q. Did you personally see the bottle?

A. Yes, I did.

Q. Did you personally see the two empty Piel's cans, I guess they were?

A. Correct.

Q. In your training, what is suggested when someone is traveling ten to fifteen miles below the speed limit with no visible reason, no adverse weather, or road conditions?

A. It may be an indication that the driver of the vehicle is under the influence.

BY THE COURT: Could I see counsel at side bar?

11:47 A.M. - SIDE BAR CONFERENCE:

BY THE COURT: Members of the jury, I believe at this point, even though it's about fifteen minutes before twelve, we will break and have an opportunity to find lunch. We will come back and start promptly at 1:00. So I'd ask you to please be back here at the jury room by ten minutes of or five minutes of. This way we won't have to interrupt the testimony of the next witness. So I caution you again about discussing the case with anyone. We will excuse the jurors. Take them back to the jury

Beach

room and then you will be excused for lunch, and return  
and commence right at one o'clock.

11:49 A.M. - Adjourn for lunch until 1:00 P.M.

1:10 P.M.

WALTER BEACH: Sworn:

BY MR. COWLEY:

Q. State your name?

A. My name is Walter J. Beach.

Q. Are you employed in the capacity of a police officer  
in Tioga County?

A. Yes, I am. I am employed by Lawrenceville Borough  
Police Department.

Q. What is your position there?

A. I'm Chief of Police.

Q. How long have you been a police officer for the Borough  
of Lawrenceville?

A. I have been a police officer for thirteen years. (since 1980)

Q. All with Lawrenceville?

A. All with Lawrenceville Borough.

Q. I assume you live in Lawrenceville?

A. Yes, I do.

Q. Directing your attention to March 9, the evening,  
somewhere around 8:30, somewhere in that neighborhood,  
were you on duty, of this year, were you on duty that