

Beach

Q. Do you know what happened to a micro-cassette recorder that was in the cab of the vehicle?

A. Never saw one.

Q. When you received the call from the officer, as he was proceeding into the borough, do you recall any discussion concerning him crossing the line?

A. There was, I received a call prior to him entering the borough. I received a call when the officers were on Route 15 near the Buckwheat Hollow Road. What they indicated to me, and, no, they just indicated they were pursuing a vehicle that failed to yield and stop for them. They didn't go into detail as far as what he had done. They just said they were pursuing a vehicle that would not stop.

Q. Was Mr. Waikenis wearing the glasses that he has on now or was he not wearing glasses?

A. He was wearing glasses. However, if they are the same ones he's wearing now, I have no knowledge of that.

Q. How did he return home after this interrogation?

A. I have no idea.

Q. You weren't instrumental in that?

A. No, I was not.

CHIEF SCOTT SHUTT: Sworn:

BY MR. COWLEY:

Shutt

Q. State your name?

A. My name is Scott Shutt.

Q. And are you a police officer in Tioga County?

A. I am.

Q. And where are you a police officer?

A. I am a police officer for the Lawrence Township  
Police Department.

Q. How long you been a police officer?

A. Fourteen years.

Q. And did you have to go through Act 120 to become a  
police officer?

A. Yes, sir.

Q. So you are certified under the Act, Municipal Police  
Training Act?

A. Yes, sir.

Q. What's your position with the Lawrence Township Police  
Department?

A. I am the Chief of Police there.

Q. You have been with that department for all of these  
years?

A. Yes.

Q. Do you know the gentleman seated to my left?

A. Yes.

Q. And who is he?

Shutt

- A. That's my assistant chief, Kirby Young.
- Q. Now, on March 9, was he working with you for the township?
- A. Yes.
- Q. Were you on patrol?
- A. Yes, we were.
- Q. Were you in uniform?
- A. Yes. Both of us were.
- Q. And you're in a marked car?
- A. Yes, sir.
- Q. Did you have occasion to see the gentleman sitting to the left of Mr. Banik on the evening of March 9?
- A. Yes, I have.
- Q. When you were at Hall's, did you have occasion...you weren't driving, is that correct?
- A. No, I wasn't.
- Q. As a passenger, did you see a red pickup truck going north on 15?
- A. Yes, I did.
- Q. Would you describe the speed and what you observed the vehicle do?
- A. We were doing a security check at Hall's. Officer Young and I. And I seen a pickup truck go by and we just pulled out. And the pickup truck was going slow.

Shutt

As we approached, we observed him when he crossed the center line.

Q. Not we, what did you observe? I just want to know what you saw?

A. What I seen was a pickup truck going north, after we pulled out, going slow. I seen it cross the yellow line. Which would be the middle line.

Q. Right.

A. From that point, it crossed again, someplace down near Kilmer's gravel pit.

Q. What did Officer Young do then?

A. Officer Young was the operator of the police car. He turned the red lights on. You have a wig wag system, which is alternating headlights.

Q. We've heard all about the lighting systems.

A. All right.

Q. Did there come a time when he put the siren on?

A. Yes, he did.

Q. Okay. Let's pick up. The lights and sirens are on. What does the truck do, if anything?

A. Nothing. He continued down the road.

Q. Did there come a time when you got to the borough of Lawrenceville?

A. Yes, we did. We radioed ahead. Officer Young did.

Shift

To Chief Beach, who was the borough police chief in Lawrenceville, and requested him to be prepared, we were coming into his area with a vehicle that failed to stop for us.

Q. Did Officer Young execute a move whereby he pulled up alongside and ultimately passed the truck?

A. In the borough, when he went past Chief Beach's vehicle, with his lights on too.

Q. All right.

A. All right. I advised Officer Young to go around the vehicle. He was doing 25, 30 miles an hour. When we got along side, Officer Young did hit the bright alley lights which flooded the driver's vehicle. Both of us looked over and Mr. Waikenis looked at both of us and then looked right back straight on the road. At that time Officer Young continued around his vehicle. Officer Beach came in from the rear. We slowed the vehicle down to a stop.

Q. Do you remember a bump?

A. Yes. I remember the defendant hitting the back of our car.

Q. It wasn't a big bump?

A. No.

Q. Did you ever look to see if there is any mark on

Shutt

the patrol car from the truck?

A. Yes. I believe there is a white strip or something on the back of the bumper.

Q. But no significant damage?

A. no. None at all.

Q. Describe what you saw after you exited the vehicle? With reference to this defendant getting out of the vehicle?

A. I exited the vehicle. Advised the defendant...I'm on the passenger side. I'm looking right at him. I advised him to put his hands in the air. I heard Officer Young over here advise him to put his hands in the air. And his hands went in the air. From that point, I remember Chief Beach opening the door and the defendant coming out. At that point in time....

Q. Did Chief Beach pull him out?

A. I believe so. From where I was positioned, the door was kind of blocking my view.

Q. Where were you in the truck? You weren't on the driver's side then?

A. No. I was like right in the middle looking right at him. Standing right in the middle of 15.

Q. Okay. Where were you when he was handcuffed?

A. When he was handcuffed, I went over top of the two

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vehicles. To get to that location.

Q. What did you do?

A. Didn't do anything other than after he was handcuffed, escorted him back to our car where Officer Young did the pat down and then we placed him in our car.

Q. And after a while, you took him over to the police department?

A. Yes, we did.

Q. Now, did you have an opportunity to get physically close to him or close proximity to this individual?

A. Yes, I did.

Q. When would that have been?

A. That would have been after I put him in the patrol car, I pulled the patrol car off the road, and I was writing in my log. And at that point in time, they were close enough.

Q. Did you, what, if anything, did you smell?

A. I smelled alcohol. He was in the cage behind me and I could smell it coming up through.

Q. I assume he's handcuffed in the cage?

A. Yes, sir.

Q. Is the individual that was in the cage, present in court today?

A. Yes, sir.

Shutt

- Q. Would you identify him please?
- A. it's the defendant sitting right beside Mr. Banik.
- Q. Now, were you present when they went over to the police department, the borough, the Lawrenceville Borough Police Department?
- A. Yes.
- Q. Were you present when Officer Young read the form to him concerning implied consent?
- A. Yes, sir, I was.
- Q. Did Officer Young ask this defendant to take a blood test more than once?
- A. Several, several times.
- Q. What, if any, was the response from the defendant?
- A. No.
- Q. Did he elaborate? Did he say anything?
- A. I know it was negative towards it.
- Q. Were you present when Officer Young had this defendant do some field sobriety tests?
- A. Yes, I was.
- Q. Do you recall what tests he was asked to perform?
- A. I believe he did the finger to the nose. Heel to toe. And then, extend the leg.
- Q. Now, this case was Officer Young's case?
- A. yes, it was.



Shutt

Q. I ask this be marked as Commonwealth's exhibit one.  
I hand you a form marked as Commonwealth's exhibit one.  
It says section 1547 at the top. First, the first  
question I'm asking you, do you recognize that?

A. Yes. This is a DL26.

Q. And is your signature on that?

A. Yes, it is.

Q. And what's the date?

A. The date is 3/9/93.

Q. And is that your signature that you signed on that  
date?

A. Yes, it is, sir.

Q. Is anyone else's signature on that?

A. Yes. Officer Young.

Q. Is there a spot for the defendant to sign?

A. Yes, there is.

Q. Did he in fact sign it?

A. No. He refused.

Q. Judge, at this time I move into evidence Commonwealth's  
exhibit one.

BY THE COURT: Any objection?

BY MR. BANIK: No objection.

BY THE COURT: Commonwealth's exhibit one will be  
admitted into evidence.

Shutt

BY MR. COWLEY TO SCOTT SHUTT:

Q. Now, Chief Beach testified he gave to either you or Officer Young two cans and a bottle of beer. Do you remember that?

A. Yes I do.

Q. Do you remember what they were?

A. There was a big glass one which was, I believe Budweiser. And there was two Piel's cans.

Q. Now, the Budweiser things was full, is that right?

A. Yes.

Q. And you took them with you, is that correct?

A. That's correct.

Q. What about, who made the decision to impound the car?

A. I did.

Q. Prior to March 9, did you know the defendant?

A. No, I didn't.

Q. Did you know that night where he lived?

A. No, I didn't.

Q. What was the basis of our decision to impound the car?

A. Basically to get it off Route 15 and to, so that he could not drive it that night.

Q. Did you want to drive the car?

A. No.

Q. Why wouldn't you want to drive the car?

A. If I was to get in and drive it and wreck it, it would be my responsibility. I didn't want that responsibility.

Q. So it's a township issue?

A. Right.

Q. Did you search the truck at all? Did you search the truck prior to its being impounded, let's say that?

A. No.

Q. When it was taken to the Mobil station, I assume it was, did you search it then?

A. Yes.

Q. What did you find if anything in it?

A. I don't believe we found anything, sir.

Q. Was there a micro-cassette recorded in that truck that you found?

A. I don't remember, sir.

Q. You don't remember finding one?

A. No.

Q. Did you have a chance to observe his eyes?

A. The defendant's?

Q. Yes.

A. Yes.

Q. What were the condition of his eyes?

Shutt

A. They were bloodshot and glossy.

Q. In your several years of being a police officer, have you made numerous vehicle stops?

A. Yes, sir.

Q. Have you made numerous vehicle stops because you thought the person might be driving while intoxicated?

A. Yes, sir.

Q. Have you conducted field sobriety tests?

A. Yes, sir.

Q. Have you arrested numerous people for driving under the influence?

A. Yes, sir.

Q. Do you have an opinion as to whether at the time that you saw the defendant, whether he was under the influence of alcohol?

A. He appeared to be under the influence of alcohol in my opinion.

Q. Do you have an opinion based on your experience and training and other matters, to render an opinion whether he was incapable of safe driving at that time?

A. Yes. I feel he was.

BY MR. BANIK TO OFFICER SCOTT SHUTT:

Q. The sobriety tests that were administered by Officer Young, would you describe each of them, and his

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procedure....and his performance on each of them?

BY MR. COWLEY: Judge, I don't have a problem with the question, but, I don't know...this witness did not conduct the test, as I understand it. So I ask that there be some foundation laid as to his participation in the instructions and whatever.

BY MR. BANIK TO OFFICER SCOTT SHUTT:

Q. Did you watch Kirby give him the tests?

A. Yes, I did.

Q. How did he perform on the tests that were administered by Officer Young?

A. How did your defendant perform?

Q. Yes.

Q. When he did the heel to toe, he kind of swayed on that one. And then when he turned around to come back, he staggered. On the leg lift, I believe he could only make it to five. Lifting it up and putting it back down.

Q. Did he try more than once?

A. I believe so.

Q. Was he ever successful on any of his attempts to do the thirty second stand?

A. I believe so.

Q. How did he accomplish that? How many tries, and when

Shutt

he did do it, did it look okay to you?

A. Yes. When he did it. When he finally did it.

Q. Did he indicate to you he had trouble standing on his one foot?

A. He made the comment about either a back injury or leg injury.

Q. And the other test that was administered, what was that and how did he perform?

A. The other injury, I mean the other examination that was done was the nose, finger...

BY THE COURT: They're not hearing you.

BY SCOTT SHUTT: The other examination that he did was the finger tip to the nose. He passed one and failed one.

BY MR. BANIK TO OFFICER SCOTT SHUTT:

Q. And what does it take to fail one?

A. Well, you can't put your finger tip on your nose, that's failing.

Q. And which did he fail? Did he fail the first and pass the second or was it the other way around?

A. I'm not sure.

Q. You were watching it?

A. Yep.

Q. On Route 15, how many requests were made for the submission to blood tests while out on Route 15?

Shute

A. Two or three.

Q. And how many total over the entire course of the evening?

A. Six.

Q. And the entire time of the investigation, took place from what time to what time? Approximately?

A. It started around 8:25 and I would have to say we were done probably around 9:40 maybe. I'm not sure on the time, I know the time it started was around 8:25.

Q. How did Joe get home?

A. Officer Young and myself took him home.

Q. Did you stop anywhere along the way?

A. No.

Q. You didn't stop to look at the truck

A. No.

Q. Where were the keys to his truck placed?

A. I believe they were at the home.

Q. Did you stop to get his house key so he could get in the house?

A. Yes, I believe we did.

Q. And where were they? Were they in the truck?

Did he leave his keys in the truck

A. I'm not sure if they were in the truck or whether Mr.

Officer  
Shutt

Wheeler, who owns the Mobile station, had them.

- Q. The station was open when you were there?
- A. The station was closed but Duane was there, I believe.
- Q. Duane?
- A. Mr. Wheeler.
- Q. Is that the normal place where you impound vehicles?
- A. That's where we impound them.
- Q. Is that the normal routine? Is that approved by the township or the borough, or is he a relative or friend?
- A. I believe that's up to the individual officer.
- Q. Now, the first time he crossed the center line, was at what point along Route 15?
- A. Down by Kilmer's gravel pile lot. Somewhere in that area.
- Q. How far is that from where you first got behind him?
- A. Half a mile, quarter mile.
- Q. So you followed him a half mile before he swerved?
- A. No. As we were approaching, we observed him.
- Q. And then how many other times did he cross the center line?
- A. I seen him cross twice.
- Q. The second time was when?



Officer  
Shute

- A. A little ways past the gravel pile lot.
- Q. And then what effort was made to pull him over?
- A. We activated the lights and the sirens. He failed to stop. We entered the borough. The borough police had their lights on. Still failed to stop. So we proceeded around him. And blocked him in. And stopped him on 15.
- Q. Whatever happened to the empty cans and the bottle?
- A. I believe they were destroyed.
- Q. Destroyed by whom?
- A. By me.
- Q. You threw them away or...?
- A. Yes, I did.
- Q. Do you recall when you took possession of them from Officer Beach, whether or not they were cold or wet or....?
- A. All I know is they were placed in the trunk and then Officer Young put them in the police department. I seen him put them in the trunk.
- Q. You didn't handle them personally?
- A. No.
- Q. Didn't touch any of them?
- A. Not to my recollection.
- Q. You recall discussing with Officer Young whether or

Shutt

not the cans were still wet and you could dump them?

A. No.

Q. Did you observe him dumping them to see if there was anything still in them?

A. I believe I asked if there was something in them, in the empty ones.

Q. What did he say?

A. I believe he said there was something. Not much. But there was something. Whether they were cold, I don't recollect.

Q. Did you search the cab of the pickup?

A. After it was impounded, yes.

Q. How long did that take?

A. Oh, ten minutes.

Q. Did you have a light?

A. Yes, I did.

Q. What all was in the interior of the pickup?

A. Mainly clothes. I believe a lunch box too.

Q. Was there a lot of clutter or not a lot of clutter?

A. Quite a bit of clutter.

Q. Not just a little bit of stuff on the floor? A lot?

a. Yes.

Q. Does this look like what was in there?

A. Yes. Pretty much.

Shutt

Q. Did Joe ever admit to having anything to drink at all?

A. No.

Q. Not even a little bit? Not, I just had one or anything?

A. He said he wasn't drinking.

Q. Did you smell anything else on his breath? Like garlic or bad breath?

A. No.

Q. Clorets?

A. No.

Q. Just beer?

A. Yes.

Q. Now, you have probably stopped a number of people in your career, I would imagine. And could you get an idea from how powerful the smell was, whether this guy is blasted or whether he just has beer on his breath?

A. Yes, sir.

Q. What did you think?

A. I smelled a moderate odor of beer.

Q. Moderate odor? Did he ever walk from point A to point B when you were transporting him from the vehicle to the squad car and from the squad car to the station and from the station back to the squad car and from the squad

Shutt

car to his home? Did you ever watch him walk?

A. No. I was pretty much escorting him.

Q. Holding his hand?

A. His arm, yes, sir.

Q. Is that necessary?

A. As far as I am concerned, it is.

Q. When he got out of your car, the final length to his house, did you observe him go up the sidewalk or the driveway or anything like that?

A. Yes.

Q. And how was his gate?

A. He walked all right to me. Basically I was just making sure he was going to his house.

Q. When he drove by, you drove by him to stop him, did he look at you?

A. Yes. He looked at us. Both. All right. We had the right alley light on. Which, the driver looked right at us and then faced right back around.

Q. Was he aggressive in any way?

A. He had a weird look to him.

Q. Do you think he was afraid?

A. No. It wasn't an afraid look.

Q. What kind of look was it?

A. I can't describe it. It was a weird look.

Shutt

Q. It was puzzling to you, wasn't it?

A. Yes.

Q. Other than refusing to submit to the blood tests and sign that, how was his demeanor? Compared to most people giving you a rough time?

Would you say he was giving you a rough time?

A. No. No. I think he was second guessing us quite a bit.

Q. So he didn't know what you were up to then?

A. Yes. I think he knew what we were up to. He kept on saying, so what you're saying is, and, yes, that's what we're saying.

Q. And when you would tell him one thing, then he would repeat it back to you or...?

A. Yes.

Q. Or turn it around and shoot it back at you?

A. Something like that.

Q. But largely he was not aggressive?

A. He was not aggressive, no.

BY MR. COWLEY TO OFFICER SCOTT SHUTT:

Q. I have a couple. I think Mr. Banik said something that the defendant said that he had not been drinking. Is that right?

A. Yes.

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.