

04-1527-CD
SHANNON J. LINDHOLM vs. COMMONWEALTH OF PENNSYLVANIA

**Shannon Lindholm vs Comm of PA
2004-1527-CD**

SHANNON J. LINDHOLM,
Appellant

v.

COMMONWEALTH OF
PENNSYLVANIA,
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,
BUREAU OF DRIVER
LICENSING,
Appellee

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

: No. 04-1527-CD

: LICENSE SUSPENSION APPEAL

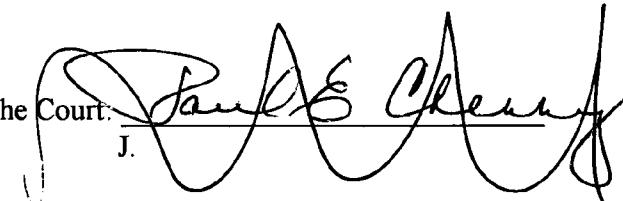
ORDER OF COURT

AND NOW, this 30th day of October, 2004, upon consideration of this
APPEAL FROM SUSPENSION OF OPERATOR'S PRIVILEGE, it is Ordered that a hearing on
the matter shall be held on the _____ day of _____, _____, at
o'clock ____ m. in Courtroom No. _____ of the Clearfield County Courthouse.

REC A ~~Supersedeas is granted pursuant to Vehicle Code Section 1550 (b) (1) until such time~~
~~that this Honorable Court resolves this appeal.~~

By the Court:

J.



Distribution:

PA Department of Transportation, Office of Chief Counsel, Third Floor, Riverfront Office Center,
Harrisburg, PA 17104-2516

Rominger, Bayley & Whare, 155 South Hanover Street, Carlisle, PA 17013
Karl E. Rominger, Esquire

SHANNON J. LINDHOLM,
Appellant

v.

COMMONWEALTH OF
PENNSYLVANIA,
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,
BUREAU OF DRIVER
LICENSING,
Appellee

: IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

: No. 04-1527-C

: LICENSE SUSPENSION APPEAL

FILED

M 10/4/04 8A 2004 Ltr
Aug 1st & Copy to CA
OCT 01 2004

William A. Shaw
Prothonotary

APPEAL FROM SUSPENSION OF OPERATOR'S PRIVILEGE

AND NOW comes the Appellant, Shannon J. Lindholm, by and through his attorney, Karl E. Rominger, Esquire, at Rominger, Bayley & Whare, respectfully avers the following:

1. Appellant resides at, 106 Denton Avenue, Du Bois, Pennsylvania, 15801.
2. Appellant received Notice dated September 7, 2004, stating that as a result of his alleged violation of Section 1547 of the Vehicle Code, Chemical Test Refusal, on July 31, 2004, his driving privilege was being suspended for a period of one year, effective October 12, 2004, at 12:01 a.m. A copy is attached hereto as Exhibit "A".
3. Suspension is improper in
 - (a) The implied consent warning was legally inadequate and incorrect as read.

4. The implied consent warning was mixed with a warning affecting the criminality of the statue and discussing enhanced criminal penalties and as such was confusing and misleading and contradictory.

5. The warning is incorrect where it says that an attorney and/or the right to remain silent do not apply insomuch as giving consent to a warrantless search which could or would enhance criminal penalties, and does implicate the Fifth and Sixth Amendments of the United States Constitution and Article I section Eight and section Nine of the Pennsylvania Constitution and thus the language as read was in whole or in part incorrect and thus has violated the ability of petitioner to consent knowingly, intelligently, and/or voluntarily.

6. The warning is incorrect where it says that an attorney and/or the right to an attorney and/or the right to remain silent do not apply insomuch as giving consent to a warrantless search which could or would enhance criminal penalties does implicate the Fifth and Sixth Amendments of the United States Constitution and Article I section Eight and section Nine of the Pennsylvania Constitution and thus the language as read was in whole or in part incorrect and it amounts to a violation of the Constitutional Rights and petitioner.

7. 75Pa.CS 1547 as amended violated petitioners Fifth and Sixth Amendment rights to counsel and against self incrimination, and is thus unconstitutional.

**WHEREFORE, your Appellant respectfully requests this Honorable Court to
schedule an evidentiary hearing on the matter and in the meantime to grant a Supersedeas
pursuant to the Vehicle Code.**

Respectfully submitted,



**Karl E. Rominger, Esquire
155 South Hanover Street
Carlisle, PA 17013
(717) 241-6070
Supreme Court ID # 81924
Attorney for Defendant**

Date: 9/29/04

SHANNON J. LINDHOLM,
Appellant

v.

COMMONWEALTH OF
PENNSYLVANIA,
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,
BUREAU OF DRIVER
LICENSING,
Appellee

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA

: No.

: LICENSE SUSPENSION APPEAL

CERTIFICATE OF SERVICE

I, Karl E. Rominger, Esquire, attorney for Defendant, do hereby certify that I this day served a copy of the Notice of Appeal upon the following by depositing same in the United States Mail, first class postage prepaid, at Carlisle, Pennsylvania, addressed as follows:

Pennsylvania Department of Transportation
Office of Chief Counsel
Third Floor, Riverfront Office Center,
Harrisburg, PA 17104-2516



Karl E. Rominger, Esquire
Attorney for Defendant

Dated: 9/29/04

Transmission Report

Date/Time 10-12-2004 11:31:45 a.m.
 Local ID 1 8147657649
 Local ID 2

Transmit Header Text COURT ADMINISTRATOR
 Local Name 1 fax
 Local Name 2

This document : Confirmed
(reduced sample and details below)
Document size : 8.5"x11"



OFFICE OF COURT ADMINISTRATOR
FOURTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
 SUITE 228, 230 EAST MARKET STREET
 CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
 COURT ADMINISTRATOR

MARCY KELLEY
 DEPUTY COURT ADMINISTRATOR

FACSIMILE MESSAGE

TO: Company _____

Attn: _____

FROM: Chad C

RE: Sharon J. Lincoln

DATE: 10-12-04

No. of Page(s) in Message cover of 4

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Abbreviations:

HS: Host send

PL: Polled local

MP: Mailbox print

TU: Terminated by user

HR: Host receive

PR: Polled remote

CP: Completed

TS: Terminated by system

G3: Group 3

WS: Waiting send

MS: Mailbox save

FA: Fail

RP: Report

EC: Error Correct



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

FACSIMILE MESSAGE

TO: Company _____

Attn: _____

FROM: Clfd. Cb

RE: Sharon J. Lindholm

DATE: 10-12-04

No. of Page(s) in Message cover of 4

Lic Susp

Lindholm

Fax 717-241-6878

717 241-6070

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

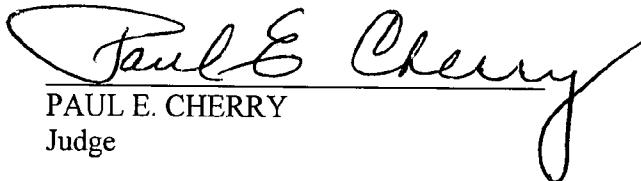
SHANNON J. LINDHOLM, :
Appellant :
:
vs. : No. 04-1527-CD
:
COMMONWEALTH OF PENNSYLVANIA, :
PENNSYLVANIA DEPARTMENT OF :
TRANSPORTATION, BUREAU OF :
DRIVER LICENSING, :
Appellee :
:

ORDER

AND NOW, this 20th day of October, 2004, upon consideration of this APPEAL FROM SUSPENSION OF OPERATOR'S PRIVILEGE, it is Ordered that the Court Administrator's Office is directed to place this matter on the next available License Suspension Appeal Hearing date.

A Supersedeas is granted pursuant to Vehicle Code Section 1550(b)(1) until such time that this Honorable Court resolves this appeal.

BY THE COURT:


PAUL E. CHERRY
Judge

FILED 1cc CIA
01/25/2004 2cc Atty Rominger
OCT 20 2004 1cc Atty Kuhar

William A. Shaw
Prothonotary Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SHANNON J. LINDHOLM,

Appellant

vs.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
BUREAU OF DRIVER LICENSING,

Appellee

: No. 2004-1527-CD
:
:
: License Suspension Appeal
:
:
: MOTION FOR TRANSFER OF APPEAL
:
: Filed on Behalf of:
:
: COMMONWEALTH OF PENNSYLVANIA
: DEPARTMENT OF TRANSPORTATION
:
: Counsel of Record:
:
: William A. Kuhar, Jr., Esquire
: Assistant Counsel
: Pa.I.D. No. 38885
:
: Department of Transportation
: Office of Chief Counsel
: Firm No. 052
:
: 1209 State Office Building
: 300 Liberty Avenue
: Pittsburgh, PA 15222
: (412) 565-7555

FILED
02-34 m No cc

OCT 29 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Shannon J. Lindholm,

Appellant

vs.

No. 2004-1527-CD

Commonwealth of Pennsylvania,
Department of Transportation,
Bureau of Driver Licensing,

Appellee

MOTION FOR TRANSFER OF APPEAL

AND NOW, comes the Department of Transportation and requests that the Court transfer the above-captioned appeal to the appropriate forum. Appellant was arrested for driving under the influence of alcohol in Clarion County. As such, Clearfield County Common Pleas Court is the improper venue for the appeal. In support thereof, the Department avers the following:

1. By a letter dated September 7, 2004, the Department of Transportation (Department) notified the appellant, Shannon J. Lindholm, that it was suspending his driving privilege for a period of one year, pursuant to Section 1547(b)(1)(i) of the Vehicle Code, 75 Pa.C.S. §1547(b)(1)(i), due to his reported refusal on July 31, 2004 to submit to chemical testing to determine his blood alcohol

concentration and/or the presence of a controlled substance in his bloodstream.

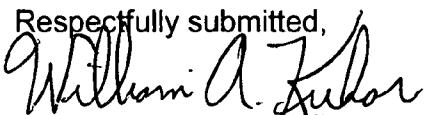
2. On July 31, 2004, the appellant was arrested in Clarion County for driving under the influence of alcohol by Officer Neil Kemmer of the Clarion Borough Police Department.

3. The appellant filed this statutory appeal from the notice of suspension referred to in Paragraph 1 with the Office of the Prothonotary of Clarion County.

Code lies only in the court of common pleas in the county where the licensee was arrested for driving under the influence of alcohol and/or a controlled substance. *Pass v. Department of Transportation, Bureau of Driver Licensing*, 804 A.2d 77 (Pa. Cmwlth. 2002). In this case, appellant was not arrested in Clearfield County on July 31, 2004 for driving under the influence of alcohol, and, therefore, Clearfield County Common Pleas Court is an improper venue for this appeal.

6. The proper venue for this appeal would be Clarion County Common Pleas Court because that is the county where the appellant was arrested for driving under the influence of alcohol on July 31, 2004.

WHEREFORE, the Department of Transportation requests the Court to transfer the present appeal to the Clarion County Common Pleas Court.

Respectfully submitted,

William A. Kuhar, Jr., Esquire
Assistant Counsel

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Shannon J. Lindholm,

Appellant

vs.

No. 2004-1527-CD

Commonwealth of Pennsylvania,
Department of Transportation,
Bureau of Driver Licensing,

Appellee

REC'D 10-29-2004
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OCT 29 2004

ORDER OF COURT

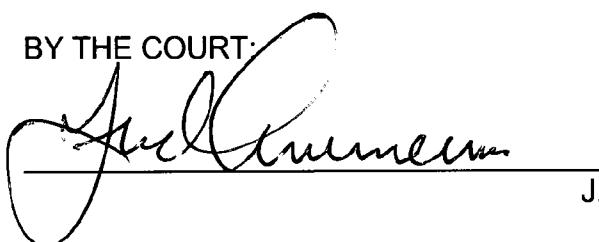
AND NOW, this 29 day of October, 2004, it is

ORDERED, ADJUDGED and DECREED that the Motion for Transfer of Appeal filed on behalf of the Department of Transportation is granted and the above-captioned appeal is hereby transferred to Clarion County Common Pleas Court.

It is further ORDERED and DIRECTED that transfer costs and filing fees, if any, are to be paid by the appellant, Shannon J. Lindholm, and he shall ensure the case is transferred to, and filed in Clarion County Common Pleas Court, and that a hearing date is obtained on this case, within 30 days of the date of this Order.

It is further ORDERED and DIRECTED that the Department of Transportation shall reinstate the suspension of operating privileges if the appeal has not been filed, and a hearing date not obtained, in accordance with this Order.

BY THE COURT:

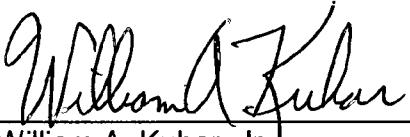

John J. Krumm

CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on the date set forth below, he served a true and correct copy of the foregoing Motion for Transfer of Appeal upon counsel for the appellant by regular United States first class mail, postage prepaid, addressed as follows:

Karl E. Rominger, Esquire
155 South Hanover Street
Carlisle, PA 17013

Date: 10/22/2004


William A. Kuhar
William A. Kuhar, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SHANNON J. LINDHOLM,

VS.

NO. 04-1527-CD

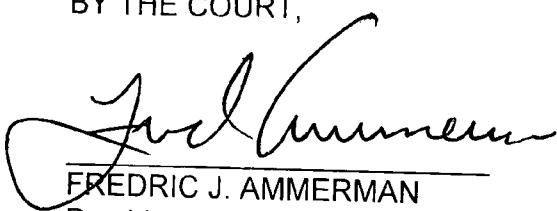
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION

ORDER

NOW, this 25th day of July, 2007, the Appellant, Shannon J. Lindholm, having failed to comply with the Court's Order of October 29, 2004, it is the ORDER of this Court as follows:

1. The Appellant's Appeal from Suspension of Operator's Privilege is hereby dismissed with prejudice;
2. The previously granted supersedes is hereby vacated; and
3. The Department of Transportation, Bureau of Driver Licensing is directed to reinstate the suspension of the Appellant's operating privilege.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
Original Copy
JUL 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

Attns:
Rominger
Kuhns
[initials]