75 PA. CONS. STAT. § 3802(a)(1) is a "While Driving" Offense: *Commonwealth v. Segida*

DRIVING UNDER THE INFLUENCE – The Supreme Court of Pennsylvania held that the Commonwealth does *not* have to prove that a defendant did not imbibe alcohol after driving in order to charge with DUI under 75 Pa.C.S.A. § 3802.

Commonwealth v. Segida, 985 A.2d 871 (Pa. 2009)

I. THE *SEGIDA* DECISION

At about 12:20 a.m. on September 19, 2004, Officer Hillyard ("Hillyard") arrived at the scene of a one-car accident.[1] Hillyard found two brothers standing near a car that was at the top of a hillside and rotated 180 degrees from the direction of the road.[2] One of the brothers, Paul A. Segida ("Segida"), disclosed to Hillyard that he owned the vehicle, was driving and lost control while arguing with his brother.[3] Hillyard detected a strong odor of alcohol coming from Segida and proceeded to question Segida, who then confessed to consuming alcohol at a local establishment prior to driving home that night.[4] Following Segida's poor performance on three field sobriety tests, Hillyard determined Segida was unable to drive safely, arrested him and took him to the hospital to have his blood alcohol level ("BAL") tested.[5] The test results revealed a BAL of .326 percent, more than four times the legal limit.[6]

The Commonwealth charged Segida with two counts of Driving Under the Influence (DUI) under 75 PA. CONS. STAT. § 3802(a)(1)[7] and 75 PA. CONS. STAT. § 3802(c)[8] and a bench trial was held on October 20, 2005.[9] The Honorable Judge Cheryl Allen found Segida guilty of both charges based on the testimony of the only witness, Hillyard.[10] Judge Allen sentenced Segida to 180 days of intermediate punishment on electronic monitoring and three years

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1. Commonwealth v. Segida, 985 A.2d 871, 873 (Pa. 2009).
2. *Segida*, 985 A.2d at 873.
3. *Id.*
4. *Id.*
5. *Segida*, 985 A.2d at 873.
6. *Id.* Under 75 PA. CONS. STAT. § 3802 (2009), the legal limit for blood alcohol level is .08%.
7. (a)(1) GENERAL IMPAIRMENT - An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.
8. (c) HIGHEST RATE OF ALCOHOL- An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is 0.16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.
9. *Segida*, 985 A.2d at 873. Segida was also charged with summary careless driving under 75 PA. CONS. STAT. § 3714 (2009). His conviction on that charge was not at issue on appeal. *Id.* at 874.
10. *Id.*

probation.[11]

Segida appealed his conviction to the Superior Court, arguing that the Commonwealth did not produce sufficient evidence to prove when he consumed alcohol or drove, nor did it put forth enough information to determine the time of the accident.[12] The Superior Court reversed the conviction under § 3802(a)(1) based on the Commonwealth's failure to establish when Segida was driving, thus failing to meet its burden that he was incapable of driving safely when operating the car.[13] The Commonwealth admitted it could not prove the time that the blood was taken, and therefore, failed to meet its burden under § 3802(c).[14] The majority found that the Commonwealth also failed to rule out the possibility that Segida drank the alcohol after the accident.[15] The Supreme Court of Pennsylvania then granted the Commonwealth's petition for certiorari.[16]

The Supreme Court of Pennsylvania was faced with two legal issues regarding interpretation of § 3820(a)(1): (1) whether the statute was a "while driving statute"[17] and (2) what elements the Commonwealth needed to prove in order to obtain a conviction.[18] A majority of the court held that § 3802(a)(1) is an "at the time of driving" crime and the Commonwealth must prove that the defendant was driving, operating, or in actual control of the movement of the automobile during the time he or she was incapable of safely operating an automobile due to impairment.[19]

The interpretation of § 3802(a)(1) was a question of first impression.[20] The *Segida* majority began with reviewing principles of statutory construction starting with the plain meaning of the language, consideration of the title, consideration of the mischief remedied by the statute, and the General Assembly's intent as expressed in § 3802.[21] The Supreme Court also compared the language of the repealed § 3731 with the newly enacted § 3802.[22]

The court looked at *Commonwealth v. Duda*[23] for a starting point in analyzing the statute.[24] In *Duda*, the court upheld § 3802(a)(1) in the face of a constitutional challenge and, in doing so, noted that the statute prohibits driving while impaired.[25]

The Supreme Court then turned to previous Superior Court cases addressing §

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11. *Id.* at 873-74.
12. *Id.* (citing Commonwealth v. Segida, 912 A.2d 841, 844 (Pa. Super. Ct. 2006)).
13. *Id.* at 850.
14. *Id.* at 845.
15. *Id.* at 848-49.
16. *Segida*, 985 A.2d at 874.
17. *Id.* at 875. "While driving" refers to the fact that the Commonwealth would have to prove the blood alcohol level of the motorist at the time he or she was operating the vehicle. *Id.*
18. *Id.* at 879.
19. *Id.* "At the time of driving" means that a trial court is focusing on the driver's inability to drive safely due to ingesting alcohol, instead of a particular blood alcohol level. *Id.*
20. *Id.* at 876.
21. *Segida*, 985 A.2d at 874-75. (citing Commonwealth v. Hoke, 962 A.2d 664, 666 (Pa. 2009); Commonwealth v. Fithian, 961 A.2d 66, 74 (Pa. 2008); Commonwealth v. Bavusa, 832 A.2d 1042, 1050 (Pa. 2003)).
22. *Id.* at 875.
23. 923 A.2d 1138 (Pa. 2007) (stating that "it is now unlawful, not only to drive while under the influence . . . but also to ingest a substantial amount of alcohol and then operate a motor vehicle before the alcohol is dissipated to below a defined threshold (here, .08%) . . . at the actual moment of driving.") The Court recognized that, though dicta, *Duda* was still instructive. *Segida*, 985 A.2d at 876.
24. *Id.* at 875-76.
25. *Id.* at 876.

3802(a)(1), specifically in the context of applying the statute as an "at the time of driving" crime.[26] In *Commonwealth v. Kerry*[27], the Superior Court found that under § 3802(a)(1), the Commonwealth may prove in any sufficient manner it deems necessary that the accused was operating a vehicle after drinking enough alcohol to render him incapable of driving safely.[28] The *Segida* court also looked at *Commonwealth v. Williams*[29] where sufficient evidence was found that the defendant was in control of the automobile while incapable of safely driving.[30] While not directly addressing the issue presented by *Segida*, the Supreme Court stated that both cases supported an application of an "at the time of driving" offense theory, despite the Commonwealth's argument that the time of driving by the accused is irrelevant to § 3802(a)(1).[31] The Supreme Court noted that the Superior Court also applied this precedent to reach its ruling.[32]

The Supreme Court then moved to the language of the statute itself and contrasted § 3802(a)(1) to § 3802(a)(2), (b), and (c).[33] The *Segida* majority stated that in light of the obvious time requirements in the other subsections, declining to imply a time requirement in subsection (a)(1) would be irrational.[34] When considering factors such as the plain meaning of the statute and the goals desired, the court found that it is rational and sensible that operating a vehicle is prohibited only during the time after consumption in which one cannot safely drive.[35]

The *Segida* majority then turned to the elements necessary to prove guilt under § 3802(a)(1) and the types of evidence that may be used in the prosecution.[36] BAL may be used in a § 3802(a)(1) case to prove the defendant's inability to drive safely, however, the two hour time limit specified in § 3802 (a)(2), (b), and (c) do not apply.[37] The court also stated that the Commonwealth must prove that the defendant was driving or in actual physical control of the automobile while he or she was unable to operate the automobile safely because of consuming alcohol.[38]

The Supreme Court flatly declined to require the prosecution to prove that the defendant did not consume any alcohol after an accident.[39] The court relied on the language of the statute and stated that there is no foundation to require proof that the defendant consumed no alcohol after an accident.[40]

The court concluded by analyzing the sufficiency of evidence of the case.[41] In light of

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26. *Id.*
27. 906 A.2d 1237 (Pa. Super. Ct. 2006).
28. *Segida*, 985 A.2d at 876-77.
29. 941 A.2d 14 (Pa. Super. Ct. 2008).
30. *Segida*, 941 A.2d at 877. Williams appealed on the grounds that the police could not prove she had become inebriated or had operated her vehicle in an inebriated state after finding her in the back seat of her car while it was still running and stopped across railroad tracks. Commonwealth v. Williams, 941 A.2d 14 (Pa. Super. Ct. 2008).
31. *Id.* at 877-78.
32. 912 A.2d 841 (Pa. Super. Ct. 2006); *Segida*, 985 A.2d at 878.
33. *Id.*
34. *Id.*
35. *Segida*, 985 A.2d at 878-79.
36. *Id.* at 879 (listing the offender's actions and behavior, including performance on sobriety tests, manner of driving, attitude toward the officer, appearance, speech patterns, and odor of alcohol as methods that can be used in proving guilt).
37. *Id.*
38. *Id.*
39. *Id.* at 880 n. 6.
40. *Segida*, *supra*, at 880.
41. *Id.* at 880-81.

Segida's admissions, the position of the car, the failed field sobriety tests, the officer's professional opinion, and the defendant's high BAL, the court concluded that the evidence was sufficient to support a conviction and vacated the Superior Court order.[42]

Madame Justice Greenspan wrote a concurring opinion.[43] Unlike the majority, Justice Greenspan interpreted § 3802(a)(1) as disallowing driving *after* drinking alcohol in an amount leaving the driver unable to safely drive a vehicle. Using the same principles of statutory construction,[44] she pointed to the clear use of the word "after" in the statute, which she believed demonstrated the legislature's intent to prohibit driving within a "reasonable time after" drinking enough alcohol to impair an individual's ability to safely operate a vehicle.[45] Justice Greenspan noted the legislative intent to eliminate the need for expert opinions on BAL as evidenced by the change in the statutory language, and if the legislature had meant to simply punish driving while intoxicated, the language would have remained the same. [46] In her view, the change in the language of the statute confirms the intent to punish those who operate a vehicle *after* drinking.[47]

Justice Greenspan's interpretation would require the Commonwealth to show that (1) the defendant drank an amount of alcohol, which made the him unable to drive safely and (2) that the defendant was driving an automobile within a reasonable amount of time after ingesting alcohol.[48] She joined the majority in declining to require proof by the prosecution that the defendant did not drink after the accident.[49]

Justice Eakin also wrote a concurring opinion.[50] He relied on the rules of statutory construction much like the majority and Justice Greenspan, but reached a different conclusion about § 3802(a)(1).[51] He found that the word "after" is ambiguous, compelling the court to look to various sources for definition of the word in order to accurately interpret the statute.[52] Justice Eakin concluded that "after" in this context clearly means "next," and therefore, the operation of the vehicle must be "temporally proximate" to drinking alcohol to the level of legal impairment.[53]

Justice Eakin stated that the statute only requires proof of operating a vehicle after consuming alcohol, thus eliminating the requirement for proof of intoxication at the time of driving and expert testimony.[54] He took the facts of the case, contrasted the old statutory requirements against the new statute, highlighted the legislature's intent to eliminate the need for expert testimony, and allowed common sense to play a role in cases under §3802(a)(1).[55] Justice Eakin would require the prosecution to prove that consuming alcohol occurred before driving and that the consumption caused the inability to drive safely, thus eliminating the need to prove

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42. *Id.* at 880-81.
43. *Id.* at 881.
44. *Id.* at 882-83 (citing 1 PA. CONS. STAT. § 192(b).).
45. *Segida,* 985 A.2d at 883.
46. *Id.* at 883 (citing COMMONWEALTH OF PA. LEGIS. J. – HOUSE, Sept. 29, 2003, at 1889; Commonwealth v. MacPherson, 752 A.2d 384, 387 n. 3 (Pa. 2000)).
47. *Id.* at 883-84.
48. *Id.* at 884.
49. *Id.*
50. *Segida,* 985 A.2d at 884.
51. *Id.*
52. *Id.* at 884-85 (citing WEBSTER'S NEW UNIVERSAL ABRIDGED DICTIONARY 34 (2d. deluxe ed. 1983)).
53. *Id.* at 885.
54. *Id.*
55. *Segida*, 985 A.2d at 885.

the exact time of driving.[56]

II. THE HISTORY BEHIND THE *SEGIDA* DECISION

Pennsylvania's current DUI statute was enacted on September 30, 2003 and became effective on February 1, 2004.[57] Throughout its period of enactment, former DUI statute 75 PA. CONS. STAT. § 3731[58] survived various attacks on its constitutionality but was still subject to other suits and challenges.[59] The legislature made several failed attempts to modify the former DUI statute in order to eliminate the need for expert testimony.[60] The new statute was intended to be an improvement on the previous statute by clarifying the law and lessening the importance of expert testimony on blood alcohol levels and tests.[61]

Evidentiary issues with 75 PA. CONS. STAT. § 3731 were addressed in *Commonwealth v. Kelley*,[62] where the Superior Court addressed the elements that the Commonwealth needed to prove in a § 3731(a)(1) case.[63] The majority stated that the Commonwealth had to prove that the defendant was (1) driving the vehicle and (2) doing so while under the influence of alcohol to a point that left him unable to drive safely.[64] Proof that the defendant had not ingested alcohol after driving was mentioned as another element although it was not explicitly labeled a necessary requirement.[65] The court then reversed Kelley's conviction and sentencing under § 3731(a)(1) due to the Commonwealth's failure to prove the time of the accident and whether the defendant consumed alcohol before or after the accident.[66]

Commonwealth v. Loeper[67] highlighted the difficulties with evidence when proving a prima facie case for any subsection of § 3731 other than (a)(1).[68] In *Loeper*, the defendant was

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[56]. *Id.*

[57]. 75 PA. CONS. STAT. § 3802.

[58]. 75 PA. CONS. STAT. § 3731.

> (a) Offense defined.--A person shall not drive, operate or be in actual physical control of the movement of a vehicle in any of the following circumstances: (1) While under the influence of alcohol to a degree which renders the person incapable of safe driving; (2) While under the influence of any controlled substance, as defined in the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, to a degree which renders the person incapable of safe driving; (3) While under the combined influence of alcohol and any controlled substance to a degree which renders the person incapable of safe driving; (4) While the amount of alcohol by weight in the blood of: (i) an adult is 0.10˜ or greater; or (ii) a minor is 0.02˜ or greater.

[59]. *See* Commonwealth v. Rishel, 658 A.2d 352 (Pa. Super. Ct 1995) (upholding § 3731(a)(5) against a constitutionality challenge); Commonwealth v. Mikulan, 470 A.2d 1339 (Pa. 1983) (upholding the validity of 3731(a)(4)); Commonwealth v. Feathers, 660 A.2d 90 (Pa. 1995) (upholding the permissibility of reviewing a judgment of acquittal based on insufficiency of evidence to uphold jury conviction).

[60]. *See* Commonwealth v. Barud, 681 A.2d 162, 165 (Pa. 1996) (holding § 3731(a)(5) was constitutionally infirm).

[61]. *See* Commonwealth v. Duda, 923 A.2d 1138, 1147 (Pa. 2007). *See also* Commonwealth v. McCoy, 895 A.2d 18, 28 (Pa. Super. Ct. 2006).

[62]. 652 A.2d 378 (Pa. Super. Ct. 1994).

[63]. 652 A.2d at 378. Kelley was charged under §3731(a)(1) after he was found unconscious in his car and smelling of alcohol. *Id.* at 382-83. He was found to have a blood Alcohol level of .18% one hour and forty minutes after the accident but no evidence he was intoxicated at the time he was driving. *Id.*

[64]. *Id.* at 382.

[65]. *Id.* at 382-83.

[66]. *Id.* at 383.

[67]. 663 A.2d 669 (Pa. 1995).

[68]. *Id.* at 674.

charged under § 3731(a)(4) for the operation of a motor vehicle while having a BAL of 0.10% or greater.[69] The Commonwealth attempted to use evidence from the arresting police officers about Loeper's physical signs of impairment, such as slurred speech and bloodshot eyes.[70]

The Pennsylvania Supreme Court held that § 3731(a)(4), as written, was limited to direct evidence as relevant to the defendant's BAL.[71] The majority held that any evidence of physical impairment when a defendant is not charged under § 3731(a)(1) is prejudicial and irrelevant.[72] The *Loeper* court stated that expert testimony on BAL would be appropriate evidence for the Commonwealth as well as proper cross-examination of any expert witnesses presented by the defendant.[73]

Changes to § 3731 by the legislature also produced various constitutional challenges under the due process clause of the United States Constitution as in *Commonwealth v. MacPherson*.[74] Pennsylvania added subsection (a.1)[75] to § 3731 in order to create an evidentiary instrument that allows the fact finder to utilize a permissive inference of a prima facie case through the BAL obtained from the defendant.[76] The Pennsylvania Supreme Court looked to previous cases where the defendants' respective BALs were significantly above the legal limit to approve usage of the permissive inference.[77]

The *MacPherson* court also corrected other errors by the lower courts in considering the constitutionality of the statute.[78] The majority stated that the lower courts' approach was incorrect, as it stated that (a.1) creates a rebuttal presumption and the courts and never clarified the term or the legal operation or affect of the subsection.[79] The Pennsylvania Supreme Court upheld the constitutionality of § 3731(a.1) and stated that the permissive inference created by the statute could be properly rebutted through competent evidence presented by the defendant.[80]

However, *Commonwealth v. McCoy*—one of the first cases after the enactment of the new statute, 75 PA. CONS. STAT. § 3802—was an appeal of a DUI conviction where the officer had charged the defendant under the old and rescinded statute, § 3731.[81] The defendant challenged his arrest and conviction due to the arresting officer's failure to cite the proper statute

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69. *Id.* at 670.
70. *Id.* at 673.
71. *Id.*
72. *Loeper*, 663 A.2d at 674.
73. *Id.*
74. 752 A.2d 384, 386 (Pa. 2000).
75. Section 3731(a)(1) states:

> Prima facie evidence. – (1) It is prima facie evidence that: (i) an adult had 0.10% or more by weight of alcohol in his or her blood at the time of driving, operating or being in actual physical control of the movement of any vehicle if the amount of alcohol by weight in the blood of the person is equal to or greater than 0.10% at the time a chemical test is performed on a sample of the person's breath, blood or urine; (2) For the purposes of this section, the chemical test of the sample of the person's breath, blood or urine shall be from a sample obtained within three hours after the person drove, operated or was in actual physical control of the vehicle.

75 PA. CONS. STAT. §3731(a)(1).
76. *MacPherson*, 752 A.2d at 392.
77. *Id.* at 389. (citing Commonwealth v. Jarman, 601 A.2d 1229 (Pa. 1992); Commonwealth v. Modaffare, 601 A.2d 1233 (Pa. 1992); Commonwealth v. Yarger, 648 A.2d 529 (Pa. 1994)).
78. *Id.* at 393.
79. *Id. See also* Commonwealth v. Lippert, 887 A.2d 1277 (Pa. Super. Ct.2005) (holding that a defendant with a BAC of .10% one hour after driving was insufficient proof of guilt for a conviction).
80. *Id.* at 392-93.
81. 895 A.2d 18, 23 (Pa. Super. Ct. 2006).

at the time of arrest.[82] The Superior Court stated that the initial use of the wrong statute was inconsequential because the same conduct was criminalized in both statutes, the arrest was proper, and the Commonwealth could proceed from that point with the proper statute.[83]

The defendant next challenged his convictions by stating that convictions under two separate subsections[84] violated his constitutional protections against double jeopardy.[85] The majority stated that double jeopardy protections are violated when a defendant receives multiple sentences under subsections of the same statute designed to punish one harm.[86] However, in *McCoy*, the defendant was only given one merged sentence under his convictions for separate subsections, which did not violate the double jeopardy protection.[87]

The accused then challenged § 3802 in its entirety as unconstitutional because it is "vague and overbroad and allows for arbitrary enforcement in violation of due process."[88] The Superior Court noted that it is quite obvious from the statute's language that the legislature created it with the clear intention of preventing people from driving while under the influence of alcohol.[89] The language of the statute gives a "person of ordinary intelligence" sufficient notice of the behavior expected of the individual.[90]

The court also upheld the ten-year look back[91] element of the statute, stating that the legislature has an interest in preventing repetitive offenders of statutes designed to prevent a serious harm to the public.[92] Lastly, the majority quickly dismissed appellant's equal protection challenge, stating that the legislature has an interest in treating offenders with different levels of alcohol in their respective systems differently due to the danger posed to the general public.[93] The time nexus elements of the statute, different treatment of individual with varying degrees of BALs, and the punishments regardless of presence of BAL test results were all upheld within the opinion.[94]

In *Commonwealth v. Thur*, the Superior Court once again addressed a constitutional challenge to the new DUI statute, along with various other issues raised on appeal.[95] The defendant was charged with driving under the influence under §§ 3802(a)(1), (c) and homicide by vehicle.[96] Thur challenged the constitutionality of both subsections of §3802 under which he was charged, arguing that they were vague and overbroad.[97] Citing *McCoy*, the court upheld the

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82. *McCoy*, 895 A.2d at 24. (Appellant argued that arresting officer citing defendant under old § 3731 after the enactment of § 3802 was improper and the case should be dismissed.)
83. *Id.* at 25.
84. 75 PA. CONS. STAT. § 3802(a)(1) and (c).
85. *McCoy*, 895 A.2d at 25.
86. *Id.* at 26 (citing Commonwealth v. Williams, 871 A.2d 254 (Pa. Super. Ct. 2005)).
87. *Id.*
88. *Id.* at 29.
89. *Id.* at 30-31.
90. *McCoy*, 895 A.2d at 31.
91. When prosecuting DUI cases, the Commonwealth will look back into the offender's criminal record for the designated amount of years, previously 7 and now 10 years, to see if there are any prior DUI convictions. If prior convictions exist, the punishment for the offender for the new conviction will be increased. *Id.* at 33.
92. *Id.* at 33-34.
93. *Id.* at 39.
94. *Id.* at 39-42.
95. 906 A.2d 552, 557 (Pa. Super. Ct. 2006).
96. *Thur*, 906 A.2d 557.
97. *Id.*

subsections against both challenges.[98] The statute also survived a due process violation claim.[99]

In *Thur*, the defendant also challenged the jury instruction given by the trial court and the inferences it allowed the jury to make as to BAL at the time he was driving.[100] On appeal, the majority stated that the jury is allowed to consider the BAL obtained through testing as well as testimony about the accused's physical signs of intoxication in evaluating his ability to drive at the time he was driving.[101] The jury instruction given by the trial court was appropriate and properly instructed the jurors to consider the weight of the BAL test and the changes the BAL undergoes over time in relation to the defendant's ability to drive safely.[102]

The Superior Court also addressed the specific elements that the Commonwealth must prove in order to obtain a conviction under § 3802 in *Commonwealth v. Kerry*.[103] In *Kerry*, the defendant was charged under § 3802(a)(1) for driving an all-terrain vehicle while under the influence of alcohol.[104] On appeal, Kerry raised two issues, the right to a jury trial under § 3802(a)(1) and the sufficiency of the evidence presented by the Commonwealth.[105]

The *Kerry* court looked to the guidelines set forth by the United States Supreme Court to determine whether defendants would be entitled to a jury trial under § 3802(a)(1).[106] Any crime with a sentence of more than six months is considered a serious crime and therefore warrants the guarantee of a jury trial.[107] Because the punishment for a first time offender under § 3802(a)(1) is less than six months, the court held that the defendant's right to a jury trial was not violated.[108]

With regard to the sufficiency of evidence, the *Kerry* court established that the Commonwealth must prove two elements in a DUI case: (1) the accused was driving a vehicle (2) after ingesting an amount of alcohol that rendered him or her unable to drive safely.[109] The court held that Commonwealth is allowed to prove these elements in any fair manner.[110] The majority upheld the conviction based on the sufficiency of the evidence presented at the time of trial.[111]

In *Commonwealth v. Duda*, the Supreme Court of Pennsylvania addressed the constitutionality of 75 PA. CONS. STAT. § 3802.[112] The majority stated that § 3802 could not be

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98. *Id.* at 562-64.

99. *Id.* at 566.

100. *Id.* at 567. The jury instruction stated:

> Consider the defendant's blood alcohol along with the other evidence relevant to his condition when you decide whether the defendant was incapable of safe driving. If there was a delay between the time the defendant was driving, operating or in control and the time when the sample was taken, then ask yourselves, did the defendant's blood alcohol level change in the interval?

Thur, 906 A.2d at 567. Thur maintained that this charge allowed the jury to impermissibly guess his BAL when he was driving in addition to whether he was incapable of driving at that time. *Id.*

101. *Thur*, 906 A.2d at 567.

102. *Id.* at 567-68.

103. 906 A.2d 1237, 1241 (Pa. Super. Ct. 2006).

104. *Kerry*, 906 A.2d at 1238.

105. *Id.* at 1238-39.

106. *Id.* at 1239.

107. *Kerry*, 906 A.2d at 1239 (citing Commonwealth v. Mayberry, 327 A.2d 86, 89 (Pa. 1974); Blanton v. North Las Vegas, 489 U.S. 538 (1974); Commonwealth v. Hargraves, 883 A.2d 616, 620 (Pa. Super. Ct. 2005).

108. *Kerry,* 906 A.2d at 1239-40.

109. *Id.* at 1241.

110. *Id.* (citing *Loeper*, 663 A.2d at 673-74).

111. *Id.* (stating that the testimony of the arresting officer of seeing the defendant on the ATV, his bloodshot eyes, slurred speech, and refusal to submit to a breath test was sufficient).

112. 923 A.2d 1138, 1139 (Pa. 2007).

ruled invalid under the reasoning used in *Commonwealth v. Barud*[113] because it was a wholly new statute and not simply a modification of § 3731.[114] The court stated that the new statute represented a complete rewriting of the DUI statute and restructured the proof required by the Commonwealth.[115] The court also upheld the statute in the face of vagueness and overbreadth challenges.[116]

In *Duda*, the Pennsylvania Supreme Court stated that under § 3802, the amount of blood absorbed in the bloodstream at the time of driving became less important and shifted the focus to the test BAL as long as the test was administered within the two hours as prescribed by the statute.[117] The majority described the two elements necessary for conviction: (1) the individual operated a vehicle after drinking and (2) did so after drinking an amount of alcohol which brought the individual's BAL between .08% and .10%.[118]

In *Commonwealth v. Williams*, the Superior Court of Pennsylvania upheld a conviction under § 3802(a)(1) as an offense of driving *while* the defendant was unable to drive safely due to consumption of alcohol prior to driving.[119] The defendant was found in the backseat of her car by a police officer, and the car was found stuck on railroad tracks with the keys in the ignition and engine running.[120] Williams filed an omnibus motion for pre-trial relief stating that the police lacked probably cause to arrest her for a DUI charge.[121] The court upheld the arrest, holding that given the facts of the case, probable cause existed to arrest the defendant for a DUI.[122]

III. AN ANALYSIS OF THE *SEGIDA* DECISION

The Supreme Court of Pennsylvania's decision in *Segida* was not surprising. The court historically defers to the legislature,[123] especially in areas of major societal importance such as preventing deaths or injuries due to drunk driving. DUI issues are complicated, and statutes have to be crafted carefully in order to ensure that the law does not impinge upon the rights of the individual. A court has to look to the construction and application of the statute in order to assess its validity. Additionally, it must determine the necessary factors that the Commonwealth must prove in order to meet its burden to obtain a conviction. The *Segida* court made a necessary decision in upholding § 3802, and was also correct in not requiring the Commonwealth to prove that the accused did not consume alcohol after an accident involving drunk driving.

In the cases leading up to *Segida*, the appellate courts continually upheld the

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113. *Barud*, 681 A.2d 162.

114. *Duda*, 923 A.2d at 1147 (reasoning that the redrafting of the statute showed an intent to red-define the offense and not simply add an alternative means of prosecuting under the existing DUI statute).

115. *Id.*

116. *Id.* at 1147-52.

117. *Duda*, 923 A.2d at 1147.

118. *Id.*

119. 941 A.2d 14, 29 (Pa. Super. Ct. 2008).

120. *Williams*, 941 A.2d at 19.

121. *Id.*

122. *Id.* at 27 (citing Commonwealth v. Woodruff, 668 A.2d 1158, 1161 (Pa. Super. Ct. 1995) (finding that a running motor, location of the vehicle, and other additional evidence is sufficient in determining physical control of the vehicle).

123. *Segida*, 985 A.2d at 874-75 (citing Commonwealth v. Hoke, 962 A.2d 664, 666 (Pa. 2009)).

constitutionality of Pennsylvania's DUI statutes.[124] Drunk driving is quite obviously the kind of harm that the legislature attempts to prevent by any means necessary. However, the wording required to construct the necessary statute has proved quite difficult throughout the development of DUI law. The original statute, § 3731, allowed many defendants to request a jury trial and then escape conviction by calling expert witnesses to exploit small gaps in the wording of the statute. This statute required the Commonwealth to prove the BAL of the defendant while driving. The police often had a difficult time obtaining a blood sample within the required time following an accident or a traffic stop. When a blood sample and a BAL were finally obtained, the Commonwealth would then have to take steps to prove to either the trial court or a jury that the defendant's BAL was above the legal limit when he or she was driving. The use of expert witnesses became overwhelming on the system and required the Commonwealth to counter complaints of excessive use of experts, thereby spending taxpayer money.

The legislature attempted to remedy this problem by enacting § 3802 to replace § 3731. The new statute was crafted to eliminate the need for expert testimony and lessen the burden on the Commonwealth for proving a DUI offense while setting clearer evidentiary guidelines for the offense. Yet, inevitably, the words of the statute fell short of perfect. The Supreme Court once again upheld the constitutionality of § 3802 in *Segida* but also clarified that § 3802(a)(1) is an at the time of driving offense.[125] The majority states that the focus of the subsection was to charge the defendant with driving while he or she was unable to do so safely due to the consumption of alcohol. The court stated that the statute's construction removes the burden of proving a specific BAL at the time of driving.[126] By making these statements, the court verified the validity of the new DUI statute and allowed the Commonwealth to continue to prosecute DUI offenders under the statute. The court had to uphold the statute because invalidating a DUI law would create a hole in the law that would allow drunk drivers to harm other individuals with no punishment or repercussions. The court acknowledges that while the statute is not perfect, the legislative intent is clear and the evidentiary requirements are constitutional.

The *Segida* court then went further and directly outlined the elements the Commonwealth must prove to obtain a conviction under § 3802(a)(1).[127] By doing so, the court simplified the requirements of the statute and the steps necessary for the Commonwealth to obtain a conviction. In Footnote 6 of the *Segida* case, the court finally bluntly states that the Commonwealth does not need to prove that the defendant did not ingest alcohol after an accident.[128] The new statute contains no language that would even hint at the need for evidence proving this factor. By so holding, the court addressed the issues in *Kelly*. The court decreased the risk that the defendant would be acquitted simply because the Commonwealth was unable to prove that the defendant had not consumed alcohol after his accident.

By formally eliminating the element, the court lessened the challenges faced by the Commonwealth and allowed the Commonwealth to accomplish the legislature's intent. *Segida* was a necessary statement the court. More importantly, the decision allows the state to prevent harm and destruction caused by drunk driving. If the court had continued to require the Commonwealth to prove that the defendant did not drink post-accident, many defendants would either receive an acquittal or dismissal, despite the presence of overwhelming evidence. The

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124. 75 PA. CONS. STAT. §§ 3731; 3802.
125. *Segida*, 985 A.2d at 879.
126. *Id.*
127. *Id.* at 878-79.
128. *Id.* at 880, n.6.

court found that this was never a requirement under § 3802 because it would have been rendered as full of flaws and shortcomings as its predecessor, § 3731. Additionally, a plain reading of the statute does not require such evidence. Further, if the court would have invalidated the new statute, the legislature would have been left to return to the drawing board to create a new DUI statute that likely would have been as flawed as its predecessors.

The *Segida* decision was a necessary and logical one. The court validated the legislature's attempt to improve DUI law and reduce taxpayer spending. In addition, the court interpreted the new statute as reducing the Commonwealth's burden of proof in DUI cases and confirmed the Commonwealth's responsibility and ability to prevent unnecessary harm by dangerous individuals who carelessly consume alcohol and then operate a vehicle at the risk of killing or injuring others.

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