

and recovery from injuries? Even if the comment was deemed improper, which it is not, it did not control the outcome of the case as would be necessary for a new trial. *Gildston v. Martin*, 29 Monroe L.J. 191 (1973), and could be said to be nothing more than an observation.

For a verdict winner to be successful in a request for a new trial, it must be demonstrated that the errors, even if proven, caused the alleged incorrect results and that the favorable verdict did not cure the errors. See *Nebel v. Mauk*, 434 Pa. 315, 253 A.2d 249 (1969) and *Granowitz v. Erie Redevelopment Authority*, supra. We are not convinced there were any errors, but even if there were, they did not affect the outcome and the verdict cured any defect. Plaintiffs' dissatisfaction with the outcome is an insufficient reason to sustain the exceptions and grant a new trial. *Reedy v. Brown*, 395 Pa. 382, 150 A.2d 717 (1959).

ORDER OF COURT

July 29, 1982, the plaintiffs' exceptions to the verdict are dismissed and the application for a new trial is denied.

COMMONWEALTH v. JOHNS, C.P. Franklin County Branch,
Misc. Docket Vol. Y, Page 103

Vehicle Code - Section 1542A - Habitual Offender

1. To be deemed an habitual offender, a person need only commit three of the offenses enumerated in Section 1532, within a 5 year period.
2. There is no requirement that the three offenses arise out of three separate incidents.

Jay H. Gingrich, Esq., Counsel for Appellant

Frank P. Bach, Esq., Counsel for Department of Transportation,
Bureau of Traffic Safety

OPINION AND ORDER

KELLER, J., August 5, 1982:

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This is an appeal from a 5-year revocation of the appellant's operating privileges as an habitual offender under Section 1542A of the Motor Vehicle Code. On May 21, 1978, a citation was issued to appellant for the offense of racing on the highway, Section 3367. He was convicted on September 11, 1978, and his operating privileges were suspended from December 13, 1978 to May 24, 1979. On May 17, 1981 citations were issued to the appellant for driving under the influence, Section 3731; and attempting to flee a police officer, Section 3733. He was convicted on September 9, 1981, of both offenses. His operating privileges were suspended for six months for the violation of Section 3731, and were revoked for five years under Section 1542A on the grounds that it was appellant's third conviction within 5 years.

The violations of Section 3731 and 3733 of May 17, 1981 were part of a single episode. The appellant contends that he should not be deemed to be an habitual offender under these circumstances. He testified that he was traveling on Route 16 from Mercersburg to Greencastle, when a police car signalled him to stop. He stopped after driving 2 or 3 more miles, and was charged with driving under the influence and failure to stop on the signal of an officer. Appellant contends Section 1542A is inapplicable in the case at bar. Briefs were submitted by the parties, and the matter is now ripe for disposition.

An "habitual offender" is a person who is convicted of three Section 1532 offenses, within a 5-year period, Section 1542 of the Vehicle Code, 75 Pa. C.S. Sec. 1542(a). Conviction of Section 1532 offenses result in the suspension or revocation of the operating privilege. They include the appellant's offenses of racing on the highway, Section 3367, driving under the influence, Section 3731; and attempting to flee a police officer, Section 3733. Since these 3 convictions arose from only two incidents, the appellant challenges the applicability of Section 1542(b), which provides:

"Three convictions, arising from separate acts of any one or more of the following offenses, committed either singularly or in combination, by any person shall result in such person being designated as an habitual offender."

Ordinarily, one would consider the term "habitual" as connoting a manner of behavior that occurs with frequent repetition. However, the term "habitual offender" as used by the Legislature, has been repeatedly given a different interpretation by the courts. In *Commonwealth Department of Transporta-*

tion v. McDevitt, 57 Pa. Cmwlth, 589, 427 A. 2d 280 (1981), the defendant was charged with driving under the influence of alcohol and driving without lights to avoid identification or arrest on April 8, 1978. On May 21, 1978, he was again charged with driving under the influence. Even though the defendant's three convictions stemmed from only two incidents, the Court overruled the defendant's argument that he had only committed two offenses and revoked his license for 5 years as an habitual offender. "Appellee mistakenly views his offenses of April 18 -- drunk driving and driving without lights -- as only one violation because both infractions occurred on one occasion as part of the same driving incident." *Commonwealth Department of Transportation v. McDevitt*, supra, at 593.

An habitual offender under the Vehicle Code, 75 Pa. C.S. Sec. 1542, is one who commits three offenses. Whether such offenses were committed on one or more occasions, arising from one or more acts or as part of one or more driving incidents is immaterial.

In another case involving only one incident, the defendant was convicted of driving under the influence, Section 3731; fleeing or attempting to elude a police officer, Section 3733, (the two offenses that Appellant Johns was convicted of); and leaving the scene of an accident, Section 3743. This defendant was also found to be an habitual offender. The Commonwealth Court held that it would not frustrate the clear legislative intent because the Legislature may provide definitions for the words and phrases it uses. *Weaver v. Com., Dept. of Transportation, Etc.*, 52 Pa. Cmwlth. 625, 416 A. 2d 628 (1980).

Again in *Brewster v. Commonwealth Department of Transportation*, 52 Pa. Cmwlth. 112, 415 A. 2d 922 (1980); the defendant was convicted of driving under the influence, Section 3731; fleeing or attempting to elude a police officer, Section 3733; and leaving the scene of an accident, Section 3743. These separate acts arose out of a single incident, and he was held to be an habitual offender. The Court held that the legislative intent was clear and that the requisite offenses for purposes of Section 1542 could be "committed either singularly or in combination."

In *Commonwealth v. Auman*, 59 Pa. Cmwlth. 468, 430 A. 2d 373 (1981); the defendant was found to be an habitual offender for his several offenses which arose out of the same incident. The Court concluded:

"We must also reject appellee's similar contention that his convictions did not arise from 'separate acts' since they were part of a single continuous episode."

Commonwealth v. Auman, supra at 470. It would appear that a motor vehicle operator may properly be found an habitual offender, although the multiple offenses committed for which he was convicted arose from a single continuous episode.

In the very recent case of *Nolt v. Commonwealth*, Pa. Cmwlth. , 439 A. 2d 874 (1982); the operator's offenses also arose from a single episode. The Commonwealth Court rejected arguments similar to those presented in the case at bar as being "meritless" (Page 876).

The offenses which the appellant herein committed occurred on two separate occasions. The controlling case law unequivocally establishes that whether these offenses occurred on two occasions, or even on one occasion is irrelevant to being an habitual offender. There is no requirement that the three offenses arise out of three separate incidents. To be deemed an habitual offender, a person need only commit three of the offenses enumerated in Section 1532, within a five-year period. The penalty may seem quite severe, but we must also note that the offenses are a serious threat to the safety of highway users. To operator a motor vehicle on the highways of the Commonwealth is a privilege, and the Legislature may exercise its discretion in regulating that privilege.

If this were a matter of first impression, we might have been inclined to sympathize with the defendant and rely upon the Statutory Construction Act of 1972, 1 Pa. C.S.A. Sec. 1501 et seq., for guidance in interpreting the pertinent provisions of the Motor Vehicle Code. However, all of the Commonwealth Court opinions are in accord on the matter, and we are compelled to follow that Court's guidance and conclude that the appellant is, indeed, an habitual offender under Section 1542A of the Motor Vehicle Code.

ORDER OF COURT

NOW, this 5th day of August, 1982, the appeal of Ronnie R. Johns is dismissed, and the stay of revocation of operating privileges is vacated. The Appellant shall forthwith deliver his operator's license to the proper authority for revocation.

Costs to be paid by Ronnie R. Johns, Appellant.

Exceptions are granted Appellant.

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