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From The Morning Call

Judge rejects Whitehall man's bid to toss DUI charge

Says there is no proof radar gun used to clock speed was unreliable.

By Tyra Braden
Of The Morning Call

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A Whitehall Township man who argued that a state policeman used an unreliable hand-held radar gun to stop him has lost his bid to have a drunken driving charge thrown out.

Northampton County Judge Leonard Zito ruled Monday that Joshua H. Losito, 29, of 1303 N. 13th St., and his attorney, Jason Jenkins of Souderton, didn't prove the Genesis radar unit was faulty.

Cpl. Edgardo Colon was using the unit on Dec. 4, 2003, when he determined Losito was speeding on Route 22 in Hanover Township, near Route 512.

During the traffic stop, Colon smelled alcohol on Losito's breath, and a test showed Losito's blood-alcohol ratio was 0.149 percent, according to court records.

Jenkins contended the radar unit is unreliable and that state police had issued a moratorium on its use Sept. 3 through Dec. 12, 2003. To back that claim, Jenkins presented testimony from John T. Shingara, a technical support expert with the state police.

Shingara told Zito at a hearing in December that all state policemen had been notified via a memo that the Genesis units were faulty and not to be used.

Assistant District Attorney Abraham P. Kassis, however, asked for a second hearing, which was held Jan. 14, when he learned the memo on which Shingara had based his testimony had been followed by a second memo.

That second memo, sent Sept. 4, 2003, clarified that the Genesis radar units were barred from use only in model year 2003 or later Ford Crown Victorias. Colon was driving a 2001 Crown Victoria when he stopped Losito.

Shingara testified in December that the radar units, which are powered by being plugged into the car's cigarette lighter socket, were prone to giving false readings. He said the problem arose in Crown Victorias

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that had battery or alternator problems.

Shingara said supervisors told him not to talk about problems with the Genesis radar units and said he was moved to a different department after he offered testimony in a Cumberland County court case.

At the Jan. 14 hearing, Shingara acknowledged the Sept. 4, 2003, memo was authentic and agreed the moratorium did not apply to the Crown Victoria that Colon was driving when he stopped Losito.

In his court order, Zito wrote that Losito "offered no evidence that the specific ... Genesis radar gun used by" Colon "was defective, improperly used, unapproved, or untested."

The judge's order gives Losito 15 days to file a legal brief on several other, unrelated issues he raised in pretrial motions.

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