

CITY OF CLEVELAND VS. MATTHEW J. LEWANDOWSKI

CASE NO. 2013 TRD 002588

JANUARY 23, 2013

On January 23, 2013, Defendant Matthew J. Lewandowski appeared in the Afternoon Traffic Arraignment Room, was advised of his rights, and entered pleas to the following charges: CCO 435.01A: License Required To Operate; CCO 435.15: Failure To Stop After An Accident On The Street; and CCO 431.34A: Failure To Control. Pursuant to the random lottery process, Defendant Lewandowski's case was assigned to the docket of Judge Angela R. Stokes. The Court's Central Scheduling Staff scheduled the first pre-trial for February 21, 2013 on Judge Stokes' docket. See the January 23, 2013 Journal Entry, and the Clerk of Court Cleveland Municipal Court Journal.

FEBRUARY 21, 2013

On February 21, 2013, Defendant Lewandowski appeared for his pre-trial. Judge Stokes informed Defendant Lewandowski of the maximum potential penalties for the License Required To Operate charge, and of his right to be represented by an attorney. Judge Stokes asked Defendant Lewandowski if had gone into the Public Defenders' Office, and he stated that he had not, and that he was trying to seek a job to "pay all fines and everything." Judge Stokes explained that if Defendant Lewandowski could not afford to hire an attorney that he could receive free legal representation from the Public Defenders' Office, or hire an attorney if he had the financial means to do so. Defendant Lewandowski replied "Yes" when Judge Stokes asked him if he wanted a continuance to seek legal representation. Defendant Lewandowski asked for and was given the address and phone number to the Public Defenders' Office. Thus, the case was continued at Defendant Lewandowski's request for a pre-trial on March 5, 2013. Judge Stokes noted on the record and the Journal Entry that "Defendant will go to the Public Defenders' Office." Judge Stokes reviewed the Uniform Traffic Citation and the case file, both of which noted that there was an accident involved in this case. See the January 9, 2013 Uniform Traffic Citation.

In addition, Judge Stokes advised Defendant Lewandowski that his Driver's License Form reflected that he had two (2) warrants for his arrest from the Police Departments of University Heights, Ohio and Ravenna, Ohio, and that the deputy bailiffs would take him into custody until the warrants could be verified and it was determined if either police department would take him into custody. Pursuant to standard Court procedures, since there was a shortage of deputy bailiffs in the courtroom, Defendant Lewandowski was placed in a holding cell until the warrants could be researched. Defendant Lewandowski was given a copy of his Driver's License Form for himself and to share with the Public Defenders' Office. A deputy bailiff informed Judge Stokes that the warrants for Defendant Lewandowski were good but that he was out of the pick-up range for each jurisdiction. Judge Stokes informed Defendant Lewandowski of this information, and he was able to leave the courtroom. Judge Stokes informed Defendant

Lewandowski that he should address those warrants before his next court date of March 5, 2013. See the February 21, 2013 Driver License History Form for Defendant Lewandowski, and the February 21, 2013 Transcript of Court Proceedings, pp. 1-7.

MARCH 5, 2013

On March 5, 2013, Defendant appeared and was represented by Public Defender Tina Tricarichi who informed Judge Stokes that he wanted to accept the plea offer by Prosecutor Ashley Garrett. Judge Stokes advised Defendant Lewandowski of the maximum potential penalties for the first degree misdemeanor charges of License Required To Operate and Failure To Stop After An Accident On The Street, and of all of his Rule 11 rights before she accepted his no contest pleas consenting to a finding of guilty with respect to both charges. The minor misdemeanor charge of Failure To Control was nolle as part of the plea agreement.

Judge Stokes stated that she would refer Defendant Lewandowski's case to the Probation Department to receive a Pre-Sentencing Report because of the accident involved, any potential restitution issues, and a copy of the accident report, obtained from Prosecutor Garrett, was placed in the case file so that the victims could be interviewed by the Probation Staff. Judge Stokes requested that Defendant Lewandowski submit to a urinalysis test because there was an accident involved and he purposely left the scene of the accident which could have been due to alcohol or drug reason. Attorney Tricarichi noted her objection on the record asserting "That's despite there's nothing to do with alcohol in the charge?" Judge Stokes stated that she did not know since Defendant Lewandowski left the scene of the accident without an explanation. As written on the Journal Entry, Judge Stokes noted that funds were available in the Probation Department to pay for the urinalysis test so that there would not be a cost to Defendant Lewandowski who was going to be escorted to the Probation Department. Judge Stokes noted that the case would be continued for sentencing on March 26, 2013, at the request of Defendant Lewandowski, and the Prosecutor who was to subpoena the accident victims. See the March 5, 2013 Journal Entry, the March 5, 2013 Transcript of Court Proceedings, pp. 1-12, and the Traffic Crash (Accident) Report.

MARCH 26, 2013

On March 26, 2013, Defendant Lewandowski was represented by Public Defender Scott Hurley at the sentencing hearing. Also present was Mrs. Sharon Ponomarenko, one of the accident victims who was emotionally distraught and crying because Defendant Lewandowski had taken her deceased husband's vehicle without her knowledge or permission, and "totally demolished" the vehicle which she had finished paying for and planned to give to her granddaughter. In addition, Mrs. Ponomarenko was distraught because she alleged that Defendant Lewandowski had been bragging about the destruction of her vehicle on Facebook. Mrs. Ponomarenko requested restitution for the deductible she paid in the amount of \$500.00 noting that her insurance carrier paid her for the totaled vehicle. See the March 26, 2013 Transcript of Court Proceedings, pp. 17-20, and Mrs. Ponomarenko's Restitution Form in the case file. The second victim, Mr. Timothy K. Ridings, was not present because his subpoena had an incorrect date and the Probation Staff had tried to reach him by telephone without success.

Prosecutor Garrett was able to reach Mr. Ridings who agreed to attend the April 16, 2013 Restitution Hearing regarding the damages to his vehicle. See the March 26, 2013 Transcript of Court Proceedings, pp. 7-11, 16-17.

Attorney Hurley stated on the record that Defendant Lewandowski agreed to pay restitution in the amount of \$500 to Mrs. Ponomarenko. In addition, Attorney Hurley stated that Defendant Lewandowski was going to make sure that there would be no alcohol or drugs in his system in the interim since he tested positive for marijuana on the March 5, 2013 urinalysis test. Attorney Hurley stated:

“My expectation is that there’s going to an assessment conducted, and this is, hopefully, going to be a chance for him to prove her [Mrs. Ponomarenko] wrong about him as a young man. And hopefully, he could demonstrate to her as well as the Court that he’s got his head screwed on straight about this, and he’s going to do what he can to show this Court and the lady whose car he damaged that he is never going to be in this situation again. Do you understand me?”

Defendant Lewandowski: “Yes”.

See the March 26, 2013 Transcript of Court Proceedings, pp. 6-7, 20-21.

For sentencing on the License Required To Operate charge, Judge Stokes suspended \$900 of \$1000, thereby imposing a fine of \$100 that was to be deemed satisfied based upon the days served. Judge Stokes ordered 180 days of jail time, and suspended all court costs due to Defendant Lewandowski’s unemployment and indigent status. With respect to the Failure To Stop After An Accident On The Street charge, Judge Stokes suspended all of the \$1000 fine, and ordered 180 days of jail time. In addition on both charges, Judge Stokes placed Defendant Lewandowski on 2 years of active probation with the following conditions: a formal alcohol/substance abuse assessment was to be conducted while Defendant Lewandowski was incarcerated at the Cleveland House of Corrections since he had an active warrant for his arrest from Portage County for a 2012 Theft offense with a \$3,500 bond. Judge Stokes ordered random urinalysis and breathalyzer testing, none of which was objected to by Attorney Hurley or Defendant Lewandowski. In fact, Attorney Hurley had stated that he expected that a formal assessment would be done, and he noted how Defendant Lewandowski desired to keep alcohol and drugs out of his system. Judge Stokes noted that Defendant Lewandowski agreed to pay restitution of \$500 to Mrs. Ponomareko for her deductible. Further, Judge Stokes noted that the case would be continued at the request of Defendant Lewandowski and the Prosecutor for a Restitution Hearing on April 16, 2013 so that the second victim, Mr. Ridings, could present his restitution issues. Judge Stokes noted that Prosecutor Garrett would subpoena Mr. Ridings.

Deputy Chief Probation Officer Dean Jenkins assured Attorney Hurley, Defendant Lewandowski, and Judge Stokes that the assessment recommendations would be available on April 16, 2013. Thus, Judge Stokes noted that Defendant Lewandowski was to come from the Cleveland House of Correction to the courtroom with his personal clothing and belongings so he would be released on that day. Judge Stokes noted Michael Negray’s name on the Journal Entry

so that he could assist in getting Defendant Lewandowski to court on the next court date since prisoners were not scheduled for that date, however Defendant Lewandowski was coming to be released following the Restitution Hearing and a review of the formal assessment recommendations.

It must be noted that Attorney Hurley brought Defendant Lewandowski's mental health issues to Judge Stokes' attention. When Judge Stokes asked Attorney Hurley if he wanted Judge Stokes to make a referral to the Court Psychiatric, on behalf of Defendant Lewandowski, Attorney Hurley: "If the Court is inclined to do that, I could understand why." Judge Stokes completed the Psychiatric Referral Evaluation form, for eligibility for the Mental Health Court, upon discussing the mental health issues with Attorney Hurley and Defendant Lewandowski, all of which took place at side bar. Attorney Hurley also clearly saw the need for Defendant Lewandowski needing assistance, and he noted that Defendant Lewandowski need to get "plugged into the right resources in the community..."

See the March 26, 2014 Transcript of Court Proceedings, pp. 36-42; 1-47; the March 26, 2013 Journal Entry; the Probation Report; and the March 26, 2013 Psychiatric Referral Form contained in the case file.

APRIL 16, 2013

On April 16, 2013, the April 8, 2013 Psychiatric Report entitled Testimony After Verdict To Mitigate Penalty was available for review by Judge Stokes and Attorney Hurley citing three diagnostic impressions for Defendant Lewandowski, one of which was substance abuse related. According this Report Defendant Lewandowski needed outpatient psychiatric treatment, and outpatient substance abuse treatment, but he did not meet the criteria to qualify for the Mental Health Docket. Attorney Hurley stipulated to the findings of this Report.

On April 16, 2013, the second victim, Mr. Ridings appeared to request restitution in the amount of \$50.00 for his deductible associated with the damage to his vehicle caused by Defendant Lewandowski. Attorney Hurley waived Defendant Lewandowski's appearance for the afternoon hearing and stipulated on the record that Defendant Lewandowski agreed to pay this restitution also. Defendant Lewandowski's case was continued at his request for a mitigation hearing on April 24, 2013 in order to receive his formal substance abuse assessment that was not scheduled to take place until April 17, 2013. See the Transcript of Court Proceedings, pp. 1-23, the April 16, 2013 Journal Entry, the Probation Report, and Mr. Riding's Restitution Forms.

APRIL 24, 2013

On April 24, 2013, the formal substance abuse assessment recommendations were still not available, and the Clerk's Office could not locate the case file. Thus, the case was continued, at Defendant Lewandowski's request, for a mitigation hearing on May 1, 2013. Attorney Hurley

appeared on behalf of Defendant Lewandowski. Judge Stokes noted that the assessment recommendations were needed. See the April 24, 2013 Journal Entry.

MAY 1, 2013

On May 1, 2013, Defendant Lewandowski was represented by Public Defender Scott Malbasa. Having finally received the substance abuse assessment recommendations, Judge Stokes mitigated the sentence by giving Defendant Lewandowski credit for 37 days served and suspending 143 days. Judge Stokes noted that active probation continued to March 26, 2015 with the following conditions: follow Intensive Outpatient Treatment recommendations which included 2 AA meetings per week and random substance abuse testing. The payment of restitution requirement to both victims remained in effect. See the May 1, 2013 Journal Entry, and the May 1, 2013 Transcript of Court Proceedings.

JULY 10, 2013

On July 10, 2013, Judge Stokes issued a Probation Capias with a no bond status based upon the Probation Report that reflected that Defendant Lewandowski had positive test results for marijuana on June 5, 2013, after failing to submit to testing on June 3, 2013. In addition, Defendant Lewandowski missed his July 2, 2013 probation appointment, failed to verify that he enrolled in Intensive Outpatient Treatment, and had not made any restitution payments. See the July 10, 2013 Journal Entry, and the July 10, 2013 Transcript of Court Proceedings.

NOVEMBER 13, 2013

On November 13, 2013, Defendant Lewandowski, having been arrested on another matter, appeared for a Probation Violation Hearing, and was represented by Public Defender James London. Defendant Lewandowski waived the hearing, and admitted his violations. Judge Stokes gave him credit for 44 days served, and suspended 136 days, noting that active probation continues to March 26, 2015 with the same conditions previously ordered. See the November 13, 2013 Journal Entry and November 13, 2013 Transcript of Proceedings, pp.1-7.

FEBRUARY 10, 2014

On February 10, 2014, Judge Stokes issued a Probation Capias with a no bond status based on the Probation Report that documented that Defendant Lewandowski stopped reporting to the Probation Officer, and was not in compliance.

JUNE 23, 2014

On June 23, 2014, after Public Defender Taylor filed a Motion To Recall Capias, Release Warrant Blocks, and Reinstate Original Bond, Judge Adrine, after discussing the history of the case while before Judge Stokes with Public Defender Rini, not previously involved in the matter, noted that Defendant waived the Probation Violation Hearing, found him in violation of Probation, re-suspended the sentence and terminated probation.

In this case there were two victims defendant had agreed to provide restitution, which he failed to do and Judge Adrine failed to address at this time although such agreement was clearly noted in the case file. None of the other conditions of probation were completed either. Neither the Defendant or the two victims were present at this final hearing.