

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SHAWN M. RHINEHART,	:
Petitioner	:
vs.	: No's. 17-1236 and 17-1237
	:
COMMONWEALTH OF	:
PENNSYLVANIA DEPARTMENT	: Appeal from Suspension of
OF TRANSPORTATION	: Operating Privileges/Appeal
	: from Disqualification of Commercial
	: Driving Privileges

OPINION AND ORDER

These consolidated appeals arise from July 17, 2017 notices to the Petitioner by the Commonwealth of Pennsylvania, Department of Transportation (PennDOT).

Under 17-1237, Petitioner was notified of the disqualification of his commercial driving privileges as a result of an alleged chemical test refusal on June 30, 2017.

Under 17-1236, Petitioner was notified of the suspension of his driving privileges as a result of his alleged refusal to submit to a chemical test on June 30, 2017.

Petitioner filed timely appeals from these notices of suspension/revocation and a hearing was held before the court on February 14, 2018.

The testimony at the hearing established that on June 30, 2017, Petitioner was operating his dump truck, a commercial vehicle, and was involved in a two-vehicle accident. Sergeant Fioretti of the Tiadaghton Regional Police Department was dispatched to the accident scene. Sergeant Fioretti determined that Petitioner was the driver and had a commercial license. Sergeant Fioretti decided to take Petitioner to the emergency room to

give blood because Petitioner “was a commercial driver and there was personal injury” to the other driver. At the scene, Petitioner agreed to give blood. As he and Sergeant Fioretti, however, were exiting the patrol unit in the parking lot of the hospital, Petitioner asked Fioretti: “If I smoked pot the night before, would it show up today.” Fioretti indicated that it probably would. Petitioner then stated that he was going to refuse the test.

While Fioretti was “leaning” toward a controlled substance DUI given Petitioner’s statement, he took Petitioner into the emergency room to read him the warnings and have Petitioner formally decide if he was going to give blood. Despite Petitioner refusing in the parking lot, he was taken inside to have the warnings read because that was the manner in which Fioretti had “always done it.” Significantly, Fioretti planned on reading the section 1613 Commercial Motor Vehicle Chemical Test Warnings form to Petitioner but did not have the form. Accordingly, he read the section 1547 DUI Chemical Test Warnings form. Petitioner signed the form as did Fioretti. Again, Petitioner refused to give blood.

At this point, Fioretti decided to contact Trooper Kirk of the Pennsylvania State Police to see if Kirk was available to administer a DRE evaluation of Petitioner. According to Fioretti, Petitioner was not free to leave at that point. Kirk was available and conducted the DRE, apparently at police headquarters. Petitioner admitted to smoking two bowls the night before at approximately 10:00 p.m. Fioretti was present during the admission by Petitioner. Kirk also told Fioretti that there were signs of impairment. Kirk and Fioretti asked Petitioner if he would submit to a blood test. Petitioner refused.

The Court will first address the revocation issue. In accordance with 75 Pa.

C.S.A. § 1613 (a), a person who drives a commercial motor vehicle is deemed to have given consent to take a test for tests of that person's breath, blood or urine for the purpose of determining the person's alcohol concentration or the presence of other controlled substances. Further, in accordance with § 1613 (c), a person requested to submit to a test as provided in subsection (a) shall be warned by the police officer requesting the test that refusal to submit to the test will result in the person being disqualified from operating a commercial vehicle.

Finally, under § 1613 (d.1), PennDOT shall disqualify the person who refuses the testing.

In this particular case and as Fioretti testified, because Petitioner was operating a commercial vehicle and was involved in an accident, he intended on requesting Petitioner to give blood pursuant to the implied consent provisions of the Uniform Commercial Driver's License Act, 75 Pa. C.S.A. § 1601 et seq. He intended on warning Petitioner that if Petitioner did not submit to the test, he would be disqualified from operating a commercial motor vehicle for a period of time. In fact, the section 1613 warnings form intended to be utilized by Fioretti states as follows:

Because you are operating a commercial vehicle, if you refuse to submit to the blood test, your commercial driving privilege will be disqualified for at least one year, and it could be disqualified for a life. (petitioner's Exhibit 1).

Instead of utilizing this form, however, Fioretti utilized the §1547 form which fails to reference any potential disqualification of the individual's commercial driving privileges. (Commonwealth's Exhibit 1, No. 2; 17-01237).

By not informing Petitioner that the refusal to submit to the test might result in his disqualification from operating a commercial vehicle as required by § 1613 (c), PennDOT cannot base a disqualification on said refusal. It cannot be said that Petitioner knowingly or intelligently waived his right to be free from “invasive bodily procedures.” *Missouri v. McNeely*, 133 S. Ct. 1552 (2013).

More specifically and as set forth in the well-reasoned Opinion of Judge Daniel J. Ackerman of the Court of Common Pleas of Westmoreland County at *DOT, Bureau of Driver’s Licensing v. Hayden*, 2013 Pa. D. & C. LEXIS 2005 (July 16, 2013): “The omission of disqualification in the warning amounts to a bait and switch, albeit unintentional.” *Id.* at *6. Further, where an arresting officer knows the motorist’s status as a commercial licensee, “it is both reasonable and required [under the law] that a disqualification warning be given, and the failure to give it deprives the motorist of the opportunity to make a knowing and intelligent decision as to whether he should waive his rights. Disqualification may not be imposed where the motorist was not informed that it would be one of the costs of refusal.” *Id.* at *8.

Accordingly, the revocation of petitioner’s operating privileges or the disqualification of petitioner’s commercial driving privileges is set aside.¹

¹ The court also notes that at the time the officer made the first request to submit to a blood test, he did not have a basis for doing so under Pennsylvania law. The officer admitted that the sole reason he asked Petitioner to submit to a blood test was because he was a commercial driver who was involved in an accident. He did not have reasonable grounds to believe that Petitioner had alcohol or drugs in his system. 75 Pa. C.S. §1613(b); see also *Commonwealth v. Kohl*, 615 A.2d 308 (1992)(implied consent provision of former 75 Pa.C.S. §1547(a)(2) which authorized the search and seizure of a person’s blood based solely on the fact that a police officer has reasonable grounds to believe the person was operating a vehicle that was involved in an accident in death or an injury requiring medical treatment found unconstitutional under both the Federal Constitution and the

The court will next address the suspension of Petitioner's operating privileges under 17-1236. Petitioner argues that the suspension is invalid because there was not reasonable cause to request the test at the time it was requested.

In order to establish that the suspension of an operating privilege under the Pennsylvania Implied Consent Law was proper, PennDOT must prove that the licensee:

- 1 Was arrested for driving under the influence by a police officer who had reasonable grounds to believe that the licensee was operating a vehicle under the influence of alcohol or a controlled substance;
- 2 Was asked to submit to a chemical test;
- 3 Refused to do so; and
- 4 Was warned that a refusal would result in a license suspension.

Kachurak v. DOT, Bureau of Driver Licensing, 913 A.2d 982, 985 (Pa. Commw. 2006).

An officer may acquire reasonable grounds to believe that the person was driving the vehicle under the influence of alcohol or a controlled substance at any time during the traffic stop if a reasonable person in the position of the police officer, viewing the facts and circumstances as they appeared to the officer at the time, could conclude that the driver drove his car while under the influence of alcohol or a controlled substance.

Osselburn v. Commonwealth, 970 A.2d 534 (Pa. Commw. 2009).

The test for determining if reasonable grounds exist is not very demanding.

Kachurak, id.

An officer may acquire reasonable grounds to believe that a licensee was

Pennsylvania Constitution because it did not require any individualized suspicion of alcohol or drug use by the driver). In fact, it appears that Petitioner was not arrested until after he refused the blood test.

driving under the influence of alcohol at any time during the course of interaction between the officer and the licensee.

Kachurak, id. (citing *DOT, Bureau of Traffic Safety v. Stewart*, 527 A.2d 119, 120 (Pa. Cmwlth. 1987)).

Finally, regardless of the propriety of requesting numerous tests, where the driver declined to submit to any testing, his license must be suspended. *Millili v. Commonwealth*, 727 A.2d 120 (Pa. 1999).

In this case, Officer Fioretti had reasonable grounds to believe that Petitioner was operating a vehicle while under the influence of a controlled substance.

Petitioner was involved in a two-vehicle accident which apparently could not be explained by the objective circumstances. While being brought to the parking lot of the hospital, Petitioner made, at the very least, an implied admission asking that if he smoked pot the night before, would it show up.

After the chemical test warnings form was read to Petitioner, he refused but Fioretti's interaction with Petitioner continued. Trooper Kirk told Fioretti that there were signs of impairment. Both Kirk and Fioretti asked Petitioner again if he would submit to a blood test but Petitioner refused.

The accident, Petitioner's implied admission, signs of impairment and express admission all constituted reasonable grounds for Fioretti to conclude that Petitioner was under the influence of marijuana at the time he had been operating the dump truck.

Accordingly, PenDOT's suspension of Petitioner's driving privileges under

17-1236 shall be sustained.

ORDER

AND NOW, this ___ day of June 2018 following a hearing and argument and the submission of case law, the court REVERSES and VACATES the disqualification of Petitioner's commercial driving privileges under 17-1237 but SUSTAINS the suspension of Petitioner's driving privileges under 17-1236.

By The Court,

Marc F. Lovecchio, Judge

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