

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DALE S. BARTLEY, JR.,

Plaintiff

vs.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Defendant**

: No. 02-01586

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: CIVIL ACTION - LAW

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: Appeal from Suspension of

: Operating Privilege

OPINION AND ORDER

Petitioner Dale S. Bartley, Jr. filed this appeal to the Commonwealth of Pennsylvania, Department of Transportation's (hereinafter "PennDot") suspension of his driving privilege for a period of one (1) year as a result of an alleged violation of Section 1547 of the Pennsylvania Motor Vehicle Code, 75 Pa.C.S. §1547.

The issue of the appeal is whether the arresting police officer, Officer Mathew McCormick of the Old Lycoming Township Police Department, had reasonable grounds to believe that Mr. Bartley was operating or in actual physical control of a motor vehicle while under the influence of alcohol.

The facts of the case are not in any real dispute. At the appeal heard before this Court on December 10, 2002, both the Petitioner and PennDot stipulated to the submission to the Court of a transcript of Officer McCormick's testimony against Mr. Bartley at his preliminary hearing held on October 9, 2002 before District Justice James Sortman. This testimony was presented in a criminal case,

Commonwealth of Pennsylvania v. Dale E. Bartley, Jr., Case No. 02-11746, where Mr. Bartley is charged in the Lycoming County Court of Common Pleas with driving under the influence of alcohol pursuant to 75 Pa.C.S.A. §3731.

In judging the sufficiency of evidence for the license suspension, PennDOT must establish that the Petitioner: (1) was arrested for driving under the influence by a police officer who has reasonable grounds to believe that the petitioner/licensee was operating or was in actual physical control of the movement of a vehicle while under the influence of alcohol; (2) was asked to submit to a chemical test; (3) refused to do so; and (4) was warned that refusal might result in a license suspension. See Banner v. Commonwealth Dept. of Transp., 737 A.2d 1203, 1206 (Pa. 1999).

The only issue of the license suspension appeal is whether Officer McCormick's testimony established that the officer had reasonable grounds to believe that Mr. Bartley was operating or in actual physical control of a motor vehicle while driving under the influence of alcohol. Case law clearly states that "[r]easonable grounds exist when a person in the position of the police officer, viewing the facts and circumstances as they appeared at the time, could have concluded that the motorist was operating the vehicle while under the influence of intoxicating liquor." Banner, supra at 1207. It must also be remembered that the standard of reasonable grounds to support a license suspension is less than probable cause required in a criminal prosecution. Id.

Keeping these concepts in mind, the Court will examine the testimony

provided by Officer McCormick.

At approximately 1:15 a.m. on August 2, 2002, Officer McCormick, while on patrol duty, was traveling on Route 973 when he observed a pick-up truck parked along the berm of the road almost directly underneath the State Route 15 underpass. The officer noticed that the interior dome light and the cargo lights in the bed area of the truck were illuminated. The officer observed a person seated in the driver's seat.

The officer pulled behind the truck, got out of his vehicle and approached the truck. He saw Mr. Bartley, seated in the driver's seat. Since the windows were rolled up, the officer knocked on the window to get the attention of Mr. Bartley. The officer had to knock several times before Mr. Bartley made any indication that the officer was there.

The officer could not get Mr. Bartley to roll the window down and the driver's door was locked. As a result, the officer walked to the passenger side of the truck and opened the door. At this time, the officer observed that the vehicle keys were in the ignition of the truck.

The officer testified that it was a warm evening and that he noticed the interior of the vehicle was cool, indicating that the air conditioning in the truck was recently turned off. The officer also noticed an overwhelming smell of alcohol. Mr. Bartley had a blank stare and his eyes seemed unable to focus.

The officer attempted to converse with Mr. Bartley and he asked him for identification. Mr. Bartley reached toward the glove compartment as if to get his

identification, but then he fell back into his seat and said something like I don't think so. The officer asked him for his name and date of birth. Mr. Bartley provided his name but provided the year of his birth as 1906.

About this time additional officers arrived at the scene, and Officer McCormick asked Mr. Bartley to step out of the vehicle to perform sobriety tests. After being asked several times, Mr. Bartley refused the request and said, "I'm getting out of here". Mr. Bartley reached up in an attempt to turn the vehicle ignition on, but Mr. Bartley was so impaired that he reached past the keys and struck the dashboard. He then fell back into his previous position in the driver's seat.

The officer, with the help of three other officers, physically carried Mr. Bartley from the driver's seat of the pick up truck to the front of the patrol vehicle. The officer placed him under arrest for driving under the influence of alcohol and handcuffed him. The officer was satisfied that Mr. Bartley was highly intoxicated and he noticed that Mr. Bartley had urinated in his pants.

Officer McCormick is an officer with eleven (11) years of experience who has made hundreds of stops for DUI. The officer felt Mr. Bartley was intoxicated and was totally incapable of safely operating a motor vehicle. He transported Mr. Bartley to the Williamsport Hospital DUI Processing center and he released Mr. Bartley to the custody of Corporal William Solomon.

On cross-examination by Mr. Bartley's counsel, Officer McCormick acknowledged that the vehicle engine was not running and the vehicle headlights were off when he approached Mr. Bartley's vehicle. He also agreed that Mr. Bartley

appeared to be sleeping in the driver's seat when he approached the truck. Officer McCormick once again opined that Mr. Bartley, shortly after being confronted by the officer, reached up to turn the ignition on to start the vehicle's engine and leave the area. However, he failed to touch the keys as he reached right by them and he then fell back into the seat.

In addition to the stipulated testimony of Officer McCormick, PennDOT, called Corporal Solomon of the Old Lycoming Township Police Department as a witness. Corporal Solomon advised Mr. Bartley of the appropriate warnings and asked Mr. Bartley to submit to chemical testing of his blood, which Mr. Bartley refused. Corporal Solomon opined that Mr. Bartley was highly intoxicated and was incapable of standing alone without help or support of others. He also was confused, his eyes were glassy and he had a strong odor of alcohol about him.

Mr. Bartley's father was then called to pick up his son. Upon his father's arrival, three (3) officers needed to escort him out to the pick-up truck because he was unable to walk due to his impairment of alcohol.

Counsel for Mr. Bartley cites to the case of Banner v. Commonwealth Dept. of Transp., supra, as being factually analogous to this case and requiring a finding that the license suspension should not be sustained as Officer McCormick did not have reasonable grounds to believe that Mr. Barley was operating or was in actual physical control of the motor vehicle while under the influence of alcohol. Although the Banner case does have some factual similarity to the instant case, the Court does not believe it controls this case or requires a finding that the license

suspension should not be sustained.

In Banner, the Pennsylvania State Police were called to check a suspicious vehicle in the area of Pennsylvania Route 130, near a Uni-Mart at approximately 4:20 a.m. Upon arriving on the scene, the trooper found Mr. Banner sleeping in a reclined position of the passenger seat of a white Cadillac Sedan parked along the roadway. Although the keys were in the ignition, the engine was not running and the lights were not on. When the trooper tapped on the window Mr. Banner awakened and reached for the keys in the ignition. Mr. Banner was given field tests, which he failed and he was arrested for driving under the influence. He refused to submit to chemical tests, which led to PennDOT imposing a one (1) year license suspension pursuant to Section 1547(b)(1) of the Motor Vehicle Code. Mr. Banner appealed his suspension. The lower court found that the trooper had reasonable grounds to believe Mr. Banner had been in control of his vehicle while under the influence of alcohol.

The Pennsylvania Supreme Court reversed, finding PennDOT had not met its burden of proof of showing reasonable grounds to believe Mr. Banner was driving or operating the vehicle while under the influence of alcohol. The Pennsylvania Supreme Court noted that Mr. Banner was in a reclined position in the passenger seat. It found the evidence too tenuous to afford reasonable grounds to conclude that Mr. Banner drove the vehicle to this location or that he was in actual control of the movement of the vehicle while intoxicated. The Court also felt under the facts of the case that Mr. Banner, in reaching for the keys in the ignition, merely

demonstrated his need to activate the power windows in order to hear the officer's directives. The Court concluded that the evidence only showed the motorist was physically present in the automobile after becoming intoxicated.

Cases such as this are determined by the unique facts presented by each case. While there are similarities of the Banner case to our case at bar, there are also differences. Mr. Banner's vehicle was parked near a Uni-Mart. Mr. Bartley's vehicle was parked along the berm of Route 973, a rural state route. Mr. Bartley was sitting in the driver's seat of the vehicle, while Mr. Banner was in the passenger's seat. When Officer McCormick approached Mr. Bartley's vehicle, the dome and cargo lights were on. When Officer McCormick opened the passenger door, he noticed the interior of the truck was cool as if the air conditioning had recently been utilized on this warm August night. From this, one could infer that the truck was probably driven recently. When Officer McCormick asked Mr. Bartley for his license and registration, Mr. Bartley reached tried to reach into the glove box to get this information. This evidence, as well as the fact that no one else was around, supports the inference that Mr. Bartley was the person who drove the vehicle to its location along Route 973. When Officer McCormick asked Mr. Bartley to exit the vehicle and perform field sobriety tests, Mr. Bartley tried to reach toward the keys in the ignition **to start the vehicle**, but was unable to do so because of his intoxicated condition.¹ While it is possible to imagine other scenarios which could explain Mr. Bartley's presence behind the steering wheel of this vehicle with the keys in the

¹ The Pennsylvania Supreme Court found Mr. Banner attempted to reach the keys to activate his power windows so he could hear the police officer's directives. In light of Mr. Bartley's statement "I'm getting

ignition, such explanations would appear to be less logical than the common sense inference that Mr. Bartley had driven the truck or controlled the operation of the truck while he was in an intoxicated condition. While the Commonwealth in the criminal prosecution for DUI may have difficulty in proving their case beyond a reasonable doubt, this Court is involved in a civil proceeding with a standard of proof that is less stringent than probable cause to arrest.

Based on the foregoing, the Court finds PennDOT has sustained the burden of proof required of them in this case.

ORDER

AND NOW, this ___ day of January 2003, the Court DENIES Mr. Bartley's License Suspension Appeal.

The Department of Transportation shall notify the Petitioner of the new effective time and date of the suspension of his driving privileges.

Counsel for Mr. Bartley may submit a written request for a stay of the suspension, which the Court would consider to allow him to appeal this decision based on the aforementioned case of Banner v. Commonwealth Dept. of Transp., supra.

By The Court,

Kenneth D. Brown, Judge

out of here", it is clear Mr. Bartley intended to start his vehicle and drive away.