

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF : No. 09-00845
PENNSYLVANIA :
DEPARTMENT OF :
TRANSPORTATION :
vs. :
 :
 :
SHAWN M. STOVER, :
Petitioner : License Suspension Appeal

OPINION AND ORDER

The Court heard testimony on Defendant's license suspension appeal on August 13, 2009. The only testimony presented was from Trooper Travis Doebler. Petitioner presented no testimony.

The trooper was dispatched on February 28, 2009 at about 3:00 a.m. to the scene of a crash where a Toyota Scion traveling on SR 3302 lost control, exited the roadway and went into a private yard after rolling over, landing approximately 15-20 feet from a private residence.

EMS personnel were at the scene when the trooper arrived and the trooper was informed the driver of the vehicle had been transported to the hospital. The trooper checked the registration of the vehicle and learned that the vehicle was registered to Petitioner Shawn Stover. The trooper obtained a JNet photo of Petitioner.

The trooper went to the hospital to follow up on his investigation. The trooper was told by a volunteer fireman that Petitioner was the driver of the car. At the hospital, the trooper saw Petitioner on a gurney and he identified Petitioner. Petitioner

initially was quiet, but became belligerent and irate when the trooper tried to talk with him.¹

The nurse told the trooper that Petitioner was acting very belligerently and that he kept taking off his cervical collar.

The trooper observed that Petitioner had a moderate to strong odor of alcohol on his person, his eyes were bloodshot and glassy, his speech was slurred, and he appeared to be intoxicated. He seemed to have some injuries since he had dried blood on his face, but he appeared to be coherent to the trooper.

Based on the trooper's observations, he determined that Petitioner drove under the influence of alcohol, so he proceeded to read to Petitioner the chemical test warnings contained on Form DL-26, which was admitted as Commonwealth Exhibit A. The trooper read the entire warning to Petitioner. After reading the warning to Petitioner, the trooper asked him if he understood the warning and Petitioner replied that he didn't understand the warnings. The trooper then asked Petitioner what part he didn't understand and Petitioner replied in a sarcastic manner that the trooper should read the warning again. When the trooper tried to get Petitioner to clarify what he didn't understand, Petitioner became irate and told the trooper to get out of the room.

The trooper construed Petitioner's conduct to be a refusal to submit blood. Based on this refusal, the Department sent Petitioner a Notice of License Suspension. Petitioner argues that the Department has not proven a refusal because the trooper was told by Petitioner that he didn't understand the warnings and asked the trooper to read the warnings again, which the trooper failed to do.

¹ The trooper's affidavit of probable cause in the criminal case for driving under the influence, Petitioner Exhibit 1, describes Petitioner's conduct. Petitioner denied being involved in a crash and when the trooper asked him why he was in the hospital, Petitioner refused to answer and told the trooper to "peace out" and get out of

The Court finds the testimony of Trooper Doeblер to be credible. Clearly, Trooper Doeblер’s testimony establishes that Petitioner was intoxicated and drove his vehicle off a roadway and into the yard of a private residence. The testimony also established that Petitioner was uncooperative and belligerent to hospital staff and he maintained this belligerence with the trooper. This belligerence continued when the trooper read the Petitioner the *O’Connell* warnings.

Case law makes it clear that anything less than an unqualified, unequivocal assent constitutes a refusal under section 1547 of the Vehicle Code. See *Hudson v. Commonwealth, Dep’t. of Transp.*, 830 A.2d 594, 599 (Pa.Commw. 2003)(“Moreover a motorist’s refusal to submit need not be expressed in words; rather a motorist’s conduct may demonstrate a refusal to submit to chemical testing.”).

When Trooper Doeblер, after carefully reading the warnings to Petitioner, was told by Petitioner that he didn’t understand the warnings, the trooper logically inquired of Petitioner what portion of the warnings he did not understand. Petitioner responded to the trooper in a sarcastic manner that the trooper should read the warnings again. When the trooper tried to clarify the Petitioner’s problem, Petitioner became irate and ordered the trooper to leave the room.

Clearly, Petitioner made it clear by his conduct that he would not cooperate with the trooper. When the trooper inquired of Petitioner what he didn’t understand in the warnings and Petitioner’s response was to kick the trooper out of the room, the trooper could do no more. In the case of *Marinovic v. Dep’t of Transp.*, the Commonwealth Court notes:

the room.

An officer's sole duty is to inform motorists of the implied consent warnings; once they have done so, they have satisfied their obligation. Additionally, and not without significance in this case, officers have no duty to make sure that licensees understand the O'Connell warnings or the consequences of refusing a chemical test.

881 A.2d 30, 35 (Pa.Comm. 2005)(citations omitted). Accordingly, the Court will deny Petitioner's appeal of his license suspension and enter the following Order.

ORDER

AND NOW, this ____ day of August 2009, the appeal filed in the above-referenced matter is dismissed and the suspension, which forms the basis of this appeal, shall be reinstated.

By The Court,

Kenneth D. Brown, P.J.

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