

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

RYAN F. HASTINGS, :
 :
 Petitioner : NO: 09-02762
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 vs. :
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 COMMONWEALTH OF :
 PENNSYLVANIA, DEPARTMENT OF :
 TRANSPORTATION, BUREAU OF :
 DRIVER LICENSING, :
 Respondent :

O P I N I O N

On September 30, 2009 the Petitioner, Ryan Hastings (hereinafter “Mr. Hastings”) was charged with driving under the influence of alcohol and public drunkenness. Mr. Hastings refused to submit to a blood alcohol test. By letter dated October 14, 2009, he was notified in writing by the Department that his operating privilege was being suspended for a period of one year, effective November 18, 2009 pursuant to 75 Pa.C.S.A. § 1547(b)(ii).

On November 12, 2009 Mr. Hastings filed a petition for appeal of the Order of the Department of Transportation suspending his operating privileges. A hearing was held on March 19, 2010. At the time of hearing, Officer Roy Snyder testified that while arresting two individuals for disorderly conduct at the Cell Block, his attention was directed by a Cell Block patron to a Ford truck parked across the street in the Career Link parking lot. Upon closer inspection, Officer Snyder observed Mr. Hastings asleep behind the wheel of the truck with the truck engine running and his foot on the brake pedal. After awakening Mr. Hastings, Officer Snyder called for

another Williamsport Police Officer to transport him to the DUI Processing Center. Officer Snyder testified that he never saw Mr. Hastings operating his vehicle that night, never stopped him while driving, and never received any reports from anyone else that he was driving his car that night while intoxicated. Officer Snyder additionally testified on cross-examination that the lot in which Mr. Hastings was parked was commonly used by Cell Block patrons for parking, and that the lot was located directly across the street from the Cell Block. The vehicle was legally parked, within the lines, facing the Career Link building.

Mr. Hastings testified that after arriving home from work on September 24, 2009 he showered, dressed, picked up a friend and went to the Cell Block. Mr. Hastings parked in the Career Link lot across the street. Mr. Hastings testified that remained at the Cell Block for approximately three (3) hours that night, and admittedly had too much to drink. Mr. Hastings unequivocally testified that he did not operate his motor vehicle at any point in the evening after consuming alcohol, but indicated rather that when he left the Cell Block he got into his truck and fell asleep. In summary, the record contains no objective evidence that Mr. Hastings was operating his vehicle while intoxicated. This was the issue presented on appeal.

75 Pa.C.S.A. § 1547(b)(1) provides:

If any person placed under arrest for a violation of section 3802 [driving under the influence] is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted but upon notice by the police officer, the department shall suspend the operating privilege of the person as follows: (i) except as set forth in subparagraph (ii), for a period of 12 months.

The Department must establish four elements to sustain a suspension of a licensee's driving privileges for refusing to submit to a chemical test: (1) the licensee was

arrested for driving under the influence by a police officer who had reasonable grounds to believe that the licensee was operating or was in actual physical control of the movement of the vehicle while under the influence of alcohol or a controlled substance; (2) the licensee 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. Banner v. Department of Transportation, Bureau of Driver Licensing, 737 A.2d 1203, 1206 (Pa. 1999). Elements two, three and four were established.

The central issue involves what constitutes “control” of a vehicle for license suspension purposes. The Commonwealth relies upon Marone v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, 2010 Pa.Comm. LEXIS 94, Polinsky v. Commonwealth of Pennsylvania, 569 A.2d 425 (Pa. 1990), and Gammer v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, No. 09-1629 (Pa.Comm. Feb. 12, 2010)¹.

In Marone, a police officer saw the licensee and a store security officer engaged in a verbal dispute at approximately 5:00 a.m. Approximately one hour later, the officer observed a car in another parking lot that was parked and running with its headlights on. Upon investigation, the officer found the licensee passed out in the driver’s seat with his body slumped over the center consol with his face inside a McDonald’s bag on the passenger seat with three pill bottles beside him. The licensee was placed under arrest for driving under the influence and then refused to submit to a blood test. As a result of his refusal to submit to the blood test, the Department suspended licensee’s driving privileges for one year pursuant to 75

¹ This is an Unreported Opinion.

Pa.C.S.A. § 1547(b)(1). In its appeal from the trial court's reversal of the license suspension, the Department asserted that the officer had reasonable grounds to arrest and request chemical testing and the Commonwealth Court agreed, affirming the trial court's order granting suspension.

In Polinsky, *supra*, a police officer found the licensee driver asleep behind the wheel of her vehicle. The ignition was in the "on" position, licensee was not easily aroused, smelled of alcohol and had empty alcoholic beverage containers in the vehicle. Licensee refused to submit to a blood alcohol test and her license was suspended for one year. Licensee appealed the trial court's suspension of her license asserting, among other things, that the officer lacked reasonable grounds because he did not see her operate her vehicle and there had been no report of erratic driving. The Commonwealth Court affirmed the license suspension.

In Gammer, *supra*, a police officer testified that he was conducting a routine patrol around 1:00 a.m. when he discovered the licensee's car running in the back of the parking lot of the Microtel Inn next to some dumpsters. Upon running the vehicle registration, the officer discovered that it belonged to the licensee, whom the officer had personally arrested twice before for DUI. Upon approaching the vehicle the officer observed that the vehicle was running with the licensee slouched over the passenger seat, appearing to be either unconscious or asleep. Following his extraction from the vehicle, the officers had to restrain licensee on the ground, hogtie him and Taser him due to his continued resistance. The Commonwealth Court affirmed the trial court's order affirming the license suspension.

As the Department correctly notes, all of these cases conclude that the officers involved had reasonable grounds to conclude that that the licensee was operating a motor vehicle while intoxicated, and that the license suspension was proper. Counsel for the Defendant, however, asserts that the facts supporting the reasonable grounds in the above-referenced cases are easily distinguishable from the facts presented in the case at bar. Following a careful review of these cases, this Court agrees.

In arriving at its holding affirming suspension in Marone, *supra*, the Commonwealth Court held:

Here, Officer Bennett found Licensee passed out in the driver's seat of his vehicle with his body slumped over the center consol and his head inside a McDonald's bag on the passenger seat with half-eaten food in his mouth. Upon being revived, he was belligerent, violent, had trouble standing, had bloodshot eyes and badly slurred his speech. He was surrounded by three open pill bottles that had their contents strewn about the interior of the vehicle. These facts are sufficient to have given Officer Bennett reasonable grounds to believe Licensee was intoxicated. Furthermore, Licensee's location in the driver's seat of his vehicle with the engine running and lights on, **coupled with Officer Bennett's knowledge that Licensee was at another location an hour-and-a-half earlier, is sufficient** to have given Officer Bennett reasonable grounds to believe that Licensee had been in operation or control of the vehicle while he was intoxicated. *Id.* at 8-9. (Emphasis added).

In Polinsky, *supra*, the Court held:

Appellant argues that the arresting officer lacked reasonable grounds on three bases: he did not see her operate the vehicle and there had been no report of erratic driving; he did not ask her to perform field sobriety tests; and he did not testify that her speech was slurred or that she exhibited a staggering gait. With respect to Appellant's first contention, there is no requirement that a police officer must actually observe the driver operating the motor vehicle...It was reasonable for Trooper Wagner here to draw that conclusion given that Appellant was alone in the vehicle and in the driver's seat, **and that her vehicle was next to the pick-up window with lights and ignition on, as opposed to being in the restaurant's lot.** *Id.* at 427. (Citations omitted)(Emphasis added).

Similarly, in Gamer, the Commonwealth Court stated:

The unusual location of the vehicle next to the dumpsters at the far end of the parking lot, coupled with Corporal Smith's two previous arrests of Licensee for DUI, only serves to solidify the conclusion that the officers had reasonable grounds to believe that Licensee was operating or in actual physical control of the movement of the vehicle while under the influence of alcohol. Id. at 7.

In each of these cases, additional facts existed which supported the officer's belief that a licensee had operated a motor vehicle while intoxicated. Primarily, the suspect location of the vehicle in each case supported an inference that it was driven. Such does not exist in this case.

Mr. Hastings asserts that the facts of Solomon v. Commonwealth of Pennsylvania, DOT, 966 A.2d 640 (Pa. Commw. 2009), *appeal denied* 982 A.2d 67 (Pa. 2009), are analogous to the present action.

In Solomon, *supra*, the Bureau suspended a motorist's license following his refusal to submit to a chemical test. On appeal from the trial court's reversal of the suspension, the Department argued that the trial court erred in finding that the officer did not have reasonable grounds to believe that Solomon was operating or was in actual physical control of the movement of his vehicle. In reviewing this issue, the Commonwealth Court stated:

In determining whether an officer had reasonable grounds to believe that a motorist was in 'actual physical control' of a vehicle, the court must consider the totality of the circumstances, **including the location of the vehicle**, whether the engine was running **and whether there was other evidence indicating that the motorist had driven the vehicle at some point prior to the arrival of the police.** Solomon, *supra*, 642 (citing Banner, *supra*, p. 1207). (Emphasis added).

Solomon was discovered by an officer at approximately 3:00 a.m. asleep in the driver's seat of his running vehicle. On cross-examination the officer admitted that it was common for cars to park where Solomon was parked. No objective evidence was

presented to indicate Solomon had driven the vehicle at any point prior to the arrival of the police. The Commonwealth Court accordingly held, “Given the totality of the circumstances, the evidence falls short to support PennDOT’s argument that Solomon had exercised control over the movement of the vehicle at the time he was intoxicated.” Id. at 642.

Counsel for Mr. Hastings argues that Commonwealth v. Byers, 650 A.2d 468 (Pa.Super. 1994) provides additional insight on the issue of what constitutes control of a vehicle. In Byers, *supra*, the Defendant was discovered by an officer at 3:00 a.m. asleep in his vehicle in a parking lot. The motor was running, and the headlights were on, but the car was not moving. After a two-day jury trial, Byers was found guilty of operating a vehicle while under the influence of alcohol. Although Byers did not contest the Court’s finding that he was under the influence of alcohol to a degree which rendered him incapable of safe driving, he asserted that the Commonwealth failed to introduce sufficient evidence to prove that he was “driving, operating, or in actual physical control of the automobile.” Id. at 469. In reversing the Defendant’s sentence, the Pennsylvania Superior Court stated:

This case requires us to examine th[e] minimum and determine whether the act of starting a parked car, by itself, is enough to prove actual physical control. A review of the case law indicates that the key factor in these cases is not the mere starting of the engine; rather, it is a combination of the motor running, the location of the vehicle, and additional evidence showing that the defendant had driven the vehicle. In a majority of cases, the suspect location of the vehicle, which supports an inference that it was driven, is a key factor in a finding of actual control.

* * * * *

Instead of focusing mechanically on whether the car’s motor is running or not running, the case law applies a common-sense approach to achieving the Legislature’s goal: public safety.

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The only evidence that the Commonwealth has offered, in addition to the running motor, is that the headlights were on.

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There are simply insufficient facts to prove that the defendant was a danger to public safety.

* * * * *

The Commonwealth is trying to encourage intoxicated people to ‘sleep it off’ before attempting to drive, yet it wants to punish Byers for doing just that...In light of the foregoing analysis we hold that a defendant is not in actual physical control of a vehicle merely because the vehicle has been started.”

Id. at 469 - 471.

As the evidence in the present action established, as in Solomon, that the licensee was parked in an area in which it was common for vehicles to park when frequenting the Cell Block, and there was no objective evidence presented to indicate that Mr. Hastings had driven his vehicle at any point while intoxicated, this Court finds that there was insufficient evidence to conclude that Mr. Hastings was in actual physical control of the movement of his vehicle while intoxicated.² The Court believes Solomon, *supra*, controls here and contains no material facts distinguishing it from the instant case. This is particularly true in light of Byers, *supra*, concluding that a running motor and headlights were not sufficient to establish control.³

² Although this Court is reluctant to conclude that an intoxicated motorist asleep behind the wheel of a running car does not pose a danger to society sufficient to suspend his driving privileges, this Court must defer to precedential holdings, as outline above, based upon the specific facts presented in this action.

³ The unreported Gamer case cannot be used to allow this Court to ignore the holding in Solomon.

ORDER

AND NOW, this 25th day of March, 2010, it is hereby ORDERED that the appeal of Ryan F. Hastings is SUSTAINED and the suspension which is the basis of this appeal shall be RESCINDED and set aside.

BY THE COURT,

Richard A. Gray, J.

cc: Beverly Points, Esquire
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E.J. Rymza, Esquire