

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RODNEY L. MARSHALL,	:	NO. 10 – 01,322
Petitioner	:	
	:	
vs.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF TRANSPORTATION,	:	
BUREAU OF DRIVER LICENSING,	:	
Respondent	:	License Suspension Appeal

OPINION AND ORDER

Before the Court is Petitioner’s appeal from the license suspension imposed by the Department of Transportation as a result of what the Commonwealth believed to be a refusal to submit to a blood test after Petitioner was arrested for DUI and transported to the DUI Center. Petitioner argues that he did not refuse the test, but the evidence presented convinces the Court that the Commonwealth was correct in classifying Petitioner’s actions as a refusal.

A videotape taken at the DUI Center showed that after Petitioner was read the Chemical Test Warnings, he indicated that he was willing to submit to a blood test, but as the phlebotomist was placing the tourniquet on his arm he interrupted the procedure and asked if he could wait a half hour. This led to a two minute argument with the processing officer during which Petitioner was asked again whether he was willing to have the blood test but he did not indicate that he was. The officer then told Petitioner he was calling it a refusal, and at that time, Petitioner said he would submit to the test. The test was not given.

It is well-settled in this Commonwealth that anything substantially less than an unqualified unequivocal assent to take a breathalyzer test constitutes a refusal. Hando v. Commonwealth, 478 A.2d 932 (Pa. Commw. 1984). Moreover, “the police are not required to spend time cajoling a suspect or waiting to see if that suspect will change his or her mind.” Commonwealth v. Hunsinger, 549 A.2d 973 (Pa. Super. 1988). Thus, the Court agrees with the

officer that Petitioner's actions constituted a refusal.¹ And, although Petitioner agreed to proceed once told the officer considered it a refusal, once there is a refusal, that initial response controls and no further examination of what a licensee later stated need be considered.

Commonwealth v. Stay, 539 A.2d 57 (Pa. Commw. 1988).

Accordingly, the Court enters the following:

ORDER

AND NOW, this 22nd day of September 2010, for the foregoing reasons, Petitioner's appeal of his license suspension is hereby DISMISSED and the suspension which is the basis of the appeal shall be reinstated.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley N. Anderson

¹ See also, Miele v. Department of Transportation, , 461 A.2d 359 (Pa. Commw. 1983)(motorist's request to see his attorney when asked to submit to the breathalyzer is considered dilatory and constitutes a refusal), and End v. Department of Transportation, 295 A.2d 196 (Pa. Commw. 1972)(motorist's request to have his physician summoned considered dilatory and constitutes a refusal).