

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF TRANSPORTATION, :
Plaintiff :
 :
vs. : NO. 14-03224
 :
GABRIEL LOPEZ, :
Defendant :

Date: June 23, 2015

OPINION AND ORDER

I. PROCEDURAL HISTORY

Gabriel Lopez, (hereinafter “Defendant”) has appealed an Official Notice of Suspension issued by the Department of Transportation which suspended the Defendant’s driver’s license for a period of 12 months beginning December 29, 2014, due to his violation of Section 1547 of the Vehicle Code. A hearing was held on May 8, 2015. Both parties submitted supplemental briefs. At the time of the hearing, Kelly Solomon, Esquire, was present on behalf of the Commonwealth, and Francis Bach, Esquire, was present on behalf of Mr. Lopez.

II. FACTS

On May 8, 2015 during a de novo hearing of ***Commonwealth of Pennsylvania Department of Transportation v. Gabriel Lopez***, the following facts were determined to have occurred.

On October 30, 2014, Matthew McCormick of the Old Lycoming Police Department received a 911 call report of a suspected DUI driver. The caller indicated the vehicle was traveling the wrong direction on the road at approximately 2:30 a.m. Officer McCormick located the vehicle and began to follow it. Officer McCormick watched the vehicle cross over the white line into the passing lane on two occasions. Thereafter, Officer McCormick stopped the vehicle. Upon contact with the Defendant, Officer McCormick observed the Defendant had droopy eyes and he detected an odor of alcohol. Officer McCormick returned to his vehicle to check the status of Defendant's Pennsylvania driver's license. Officer McCormick observed the Defendant lose his balance and nearly fall out of his vehicle. Throughout the interaction, Officer McCormick and the Defendant experienced an alleged language barrier. Defendant was cooperative and respectful. Officer McCormick was not sure if Defendant was being deceitful in creating a language difficulty. Defendant informed Officer McCormick he was headed "home". Officer McCormick noted that vehicle was not headed in the direction of Defendant's home.

The Defendant was given a PBT and, upon the result of the PBT, the Defendant was transported to the DUI Center to submit to blood testing. Officer Jeffrey Hughes of the Old Lycoming Police Department advised the Defendant of the consequences of chemical test refusal pursuant to the DL-26 form. Defendant responded to biographical questions. Defendant rolled his sleeves up at one point, presumably to allow for the blood draw. Officer Hughes requested the Defendant submit to chemical testing. Officer Hughes believed Defendant knew he was being asked to submit to chemical

testing. Defendant was asked to submit to a chemical test, Defendant did not submit to the test, and Defendant was specifically warned that a refusal would result in the suspension of his operating privileges and would result in enhanced penalties if he was later convicted of violating *Section 3802 (a)(1)* of the Vehicle Code. At no point were any accommodations made to speak to the Defendant in Spanish. Defendant's requests to speak to his Wife were denied. Both officers' testimony was credible.

As a result of the events of that evening, Defendant received notification from the Pennsylvania Department of Transportation that beginning December 29, 2014, as a result of Appellant's violation of 75 Pa. C.S. § 1547, chemical test refusal, his driving privileges were being suspended for a period of twelve (12) months as mandated by 75 Pa. C.S. § 1547 (b) (1) (i).

II. DISCUSSION

The governing authority on license suspensions in relation to refusal to submit to a chemical blood test is 75 Pa. C.S. § 1547 which states:

Chemical testing to determine amount of alcohol or controlled substance.

(a) *General rule.* --Any person who drives, operates or is in actual physical control of the movement of a vehicle in this Commonwealth shall be deemed to have given consent to one or more chemical tests of breath, blood or urine for the purpose of determining the alcoholic content of blood or the presence of a controlled substance if a police officer has reasonable grounds to believe the person to have been driving, operating or in actual physical control of the movement of a vehicle:

(1) in violation of section 1543(b)(1.1) (relating to driving while operating privilege is suspended or revoked), 3802 (relating to

driving under influence of alcohol or controlled substance) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock); or

(2) which was involved in an accident in which the operator or passenger of any vehicle involved or a pedestrian required treatment at a medical facility or was killed.

(b) *Suspension for refusal.*

(1) If any person placed under arrest for a violation of section 3802 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.

(ii) For a period of 18 months if any of the following apply:

(A) The person's operating privileges have previously been suspended under this subsection.

(B) The person has, prior to the refusal under this paragraph, been sentenced for:

(I) an offense under section 3802;

(II) an offense under former section 3731;

(III) an offense equivalent to an offense under subclause (I) or (II); or

(IV) a combination of the offenses set forth in this clause.

(2) It shall be the duty of the police officer to inform the person that:

(i) the person's operating privilege will be suspended upon refusal to submit to chemical testing; and

(ii) if the person refuses to submit to chemical testing, upon conviction or plea for violating section 3802(a)(1), the person will be subject to the penalties provided in section 3804(c) (relating to penalties).

(3) Any person whose operating privilege is suspended under the provisions of this section shall have the same right of appeal as provided for in cases of suspension for other reasons.

75 Pa. C.S. § 1547 (b) (2) is referred to as the implied consent law.

Martinovic v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, 881 A.2d 30, 36 (Pa. Commw. Ct. 2005).

To issue a . . . suspension of Licensee’s operating privilege under *Section 1547 (b) (1)* of the Vehicle Code, the Department has the burden of proving that (1) Licensee was arrested for violating *Section 3802* of the Vehicle Code by a police officer who had “reasonable grounds to believe” that Licensee was operating or was in actual physical control of the movement of a vehicle while in violation of *Section 3802* (i.e., while driving under the influence); (2) Licensee was asked to submit to a chemical test; (3) Licensee refused to do so; and (4) Licensee was specifically warned that a refusal would result in the suspension of his operating privileges and would result in enhanced penalties if he was later convicted of violating *Section 3802 (a)(1)*. Once that burden is met, the licensee has the burden to prove that (1) he was physically incapable of completing the breath test or (2) his refusal was not knowing and conscious.

Martinovic at 34 (citing ***Department of Transportation, Bureau of Driver Licensing v. Boucher***, 547 Pa. 440, 691 A.2d 450 (1997)).

Defendant argues that Officer McCormick did not have reasonable grounds to request the Defendant submit to blood testing.

As to the issue of reasonable grounds:

“Whether evidence is sufficient to constitute 'reasonable grounds' can only be decided on a case-by-case basis. The test, however, is not

very demanding. We not[e] initially that, for 'reasonable grounds' to exist, the police officer obviously need not be correct in his belief that the motorist had been driving while intoxicated. We are dealing here with the authority to request a person to submit to a chemical test and not with the admission into evidence of the result of such a test. The only valid inquiry on this issue at the de novo hearing is whether, viewing the facts and circumstances as they appeared at the time, a reasonable person in the position of the police officer could have concluded that the motorist was operating the vehicle and under the influence of intoxicating liquor”

Bayshore v. DOT, Bureau of Driver’s Licensing, 27 A.3d 272, 275 (Pa. Comm. Ct. 2011)(internal citations omitted).

The facts and circumstances that were before Officer McCormick at the time he requested the Defendant to submit to chemical test were as follows:

- 1) Officer McCormick received a report of a suspected DUI.
- 2) The Defendant was operating a vehicle.
- 3) The Officer witnessed Defendant cross into the passing lane on two occasions.
- 4) Officer McCormick initiated a traffic stop at which time he noticed a smell of alcohol.
- 5) The Defendant told the Officer he was headed home even though he was traveling the wrong direction.
- 6) Defendant lost his balance and nearly fell from his vehicle.
- 7) The PBT detected alcohol.

A reasonable person in the position would have concluded that the Defendant was operating the vehicle and under the influence of intoxicating liquor.

Further, the legality of an arrest is immaterial in a civil license suspension proceeding. ***Nornhold v. DOT, Bureau of Driver Licensing***, 881 A.2d 59, 63 (Pa. Comm. Ct.2005).

Officer Hughes asked Defendant to submit to chemical testing, Defendant refused chemically testing. Officer Hughes specifically warned the Defendant, pursuant to the DL26 form, that his license would be suspended as a result of a chemical test refusal and of the potential enhanced penalties.

“An officer’s sole duty is to inform motorists of the implied consent warnings; once they have done so, they have satisfied their obligation.” ***Martinovic***, 881 A.2d 30, 35 (Pa. Commw. Ct. 2005) (citing ***Department of Transportation, Bureau of Driver Licensing v. Scott***, 546 Pa. 241, 684 A.2d 539 (1996)).

The Commonwealth has clearly met its burden in that all four elements have been proven: (1) Licensee was arrested for violating *Section 3802* of the Vehicle Code by a police officer who had “reasonable grounds to believe” that Licensee was operating or was in actual physical control of the movement of a vehicle while in violation of *Section 3802*; (2) Licensee was asked to submit to a chemical test; (3) Licensee refused to do so; and (4) Licensee was specifically warned that a refusal would result in the suspension of his operating privileges and would result in enhanced penalties if he was later convicted of violating *Section 3802 (a)(1)*.

Defendant’s attorney argues that the Defendant’s refusal was not knowing or conscious. The burden of proof shifts to the Defendant to prove he did not understand the refusal. Defendant offered no testimony on his own behalf. The Court has no

evidence regarding the Defendant's understanding of the arrest, request for chemical testing, refusal, or finally the Defendant's understanding of the potential consequences. Defendant's Wife testified that she often translates for Defendant. Despite this alleged language barrier, Husband appeared at the time of the de novo hearing with his attorney and did not request a translator.

Whether the refusal was knowing or conscious is a factual determination that is made by the trial court. ***Kollar v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing***, 7 A.3d 336, 340 (Pa. Commw. Ct. 2010). Where there is sufficient evidence to support the finding of the trial court the findings must be affirmed. ***Id.*** "If the motorist's inability to make a knowing and conscious refusal of testing is caused in whole or in part by consumption of alcohol, the licensee is precluded from meeting her burden as a matter of law." ***Id.*** (citing ***DiGiovanni v. Department of Transportation, Bureau of Driver Licensing***, 717 A.2d 1125 (Pa. Cmmw. Ct. 1998).

With no evidence to the contrary, the Court must find that Defendant's refusal was knowing and conscious. Defendant's counsel also argues that reasonable accommodations should have been made in order to ensure his client's understanding due to the alleged language barrier. Without the Defendant's testimony, through the use of a translator, the Court cannot determine whether language was even a barrier which may need addressed. Additionally, there is no legal authority for Defendant's position that he was entitled to reasonable accommodations.

CONCLUSION

The elements have been met for driver's license suspension pursuant to 75 Pa. C.S. § 1547. The Defendant's twelve month license suspension is reinstated.

BY THE COURT,

Joy Reynolds McCoy, Judge