IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JONATHAN A. PARISAN,	)	
	)	
Defendant-Below	)	
Appellant,	)	
	)	
v.	)	**Case No.: CPU4-11-004298**
	)	
JENNIFER K. COHAN,	)	
DIRECTOR, DELAWARE	)	
DIVISION OF MOTOR VEHICLES,	)	
	)	
Plaintiff-Below	)	
Appellee.	)	

Submitted: March 10, 2012
Decided: March 29, 2012

Joseph Hurley, Esquire
1215 King Street
Wilmington, Delaware 19899
Attorney for Appellant

Frederick H. Schranck, Esquire
Deputy Attorney General
Department of Justice
P.O. Box 778
Dover, DE 19903
Attorney for Appellee

ON DEFENDANT-BELOW/APPELLANT'S MOTION FOR REARGUMENT

Jonathan A. Parisan, Defendant-Below/Appellant (hereinafter "Parisan") moves pursuant to Court of Common Pleas Civil Rule 59(e) for reargument of the Court's Decision of February 29, 2012. In the Decision, this Court affirmed the Division of Motor Vehicles ("DMV") hearing officer's determination of probable cause and held that the hearing officer's conclusions sufficiently supported and the product of an orderly and logical deductive process. This is the Court's decision on Plaintiff's Motion.

PROCEDURAL HISTORY

On September 10, 2010, Parisan was stopped and arrested by Sergeant Andrew Rubin ("Rubin") of the Newark Police Department for driving a vehicle while under the influence.[1] On June 17, 2011, Parisan appeared at the DMV Administrative Hearing pursuant to 21 Del. C. § 2742. During the hearing, Parisan's sole argument was that Rubin lacked probable cause necessary to detain and arrest him for a violation of 21 Del. C. § 4177. On June 27, 2011, the DMV hearing officer issued an opinion revoking Parisan's driver's license for twelve months pursuant to 21 *Del. C.* § 2742(b), finding that there was probable cause to believe Parisan was in violation of 21 Del. C. § 4177.

PRIOR DECISIONS BY THIS COURT

On July 12, 2011, Appellant filed Notice of Appeal from the administrative action revoking his driving privileges with this Court. On November 16, 2011, Appellant filed an opening brief with this Court. On December 13, 2011, Appellee filed an answering brief with this Court. On December 28, 2011, Appellant filed a reply brief with this Court.

On February 29, 2012, this Court issued its Decision on Appeal of the Administrative Officer's Notice of Revocation, finding that the hearing officer's determination of probable cause was sufficiently supported and was the product of an orderly and logical deductive process. On March 7, 2012, Appellant filed the instant Motion for Reargument with this Court. On March 9, 2012, Appellee filed a Response to Appellant's Motion for Reargument.

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[1] In violation of 21 Del. C. § 4177.

STANDARD OF REVIEW

The Court of Common Pleas Criminal Rules do not specifically address motions for reargument. However, Court of Common pleas Criminal Rule 57(b) provides: "[i]f no procedure is specifically prescribed by Rule, the Court may proceed in any lawful manner not inconsistent with these Rules or with any applicable statute." Motions for reargument are reviewable by this Court pursuant to Court of Common Pleas Civil Rule 59(e). The rule provides: "A motion for reargument is the proper device for seeking reconsideration by the Trial Court of its findings of fact, conclusions of law or judgment."[2] However, "a motion for reargument is not a device for raising a new argument, and will be denied unless the Court has overlooked a controlling precedent or legal principle or the Court has misapprehended the law or facts such as would have changed the outcome of the Court's decision."[3] A party seeking reargument must show the court misapprehended the law or facts in a manner that would change the outcome of its decision if it were correctly and/or fully informed.[4] A party seeking to have the trial court reconsider the earlier ruling must demonstrate newly discovered evidence, a change in the law or manifest injustice.[5] The trial court will generally deny a motion for reargument unless the underlying decision involved an abuse of discretion.[6]

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[2] *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del, 1969).
[3] *Beatty v. Smedley*, 2003 WL23353497, (Del. Super. Mar. 12, 2003).
[4] *Steadfast Ins. Co. v. Eon Labs MFG., Inc.*, 1999 WL 743982 (Del. Super. Aug. 18, 1999).
[5] *Bd. of Managers of the Del. Crim. Justice Info. Sys. v. Gannett Co.*, 2003 WL 1579170, at *1(Del. Super. Jan. 17, 2003) aff'd in part sub nom. *Gannett Co., Inc. v. Bd. of Managers of the Del. Crim. Justice Info. Sys.*, 840 A.2d 1232 (Del. 2003).
[6] *Id.*

DISCUSSION

"The scope of review of an appeal from an administrative decision of the Division of Motor Vehicles is limited to correcting errors of law and determining whether substantial evidence of record exists to support the findings of fact and conclusions of law."[7] Findings of the hearing officer will not be overturned by this Court on appeal as long as they are "sufficiently supported by the record and is the product of an orderly and logical deductive process."[8] Substantial evidence means such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[9] If substantial evidence exists in the record below, this Court "may not re-weigh and substitute its own judgment for that of the Division of Motor Vehicle."[10] However, "when the facts have been established, the hearing officer's evaluation of their legal significance may be scrutinized upon appeal."[11] Nonetheless, "the Division's understanding of what transpired is entitled to deference, since the hearing officer is in the best position to evaluate the credibility of witnesses and the probative value of real evidence."[12]

The hearing officer concluded that there was probable cause to believe that Parisan was in violation of 21 Del. C. § 4177 based on the following facts: (1) Parisan was observed

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[7] *Eskridge v. Voshell*, 593 A.2d. 589 (Del. 1991)(citations omitted)
[8] *Id.* (quoting *Levitt v. Bouvier,* 287 A.2d 671, 673 (Del. 1972)).
[9] *Howard v. Voshell*, 621 A.2d 804, 806 (Del. 1992)(citing *Quaker Hill Place v. State Human Relations*, 498 A.2d 175 (Del. 1985); 21 Del C. §2742(c)).
[10] *Wayne v. Div. of Motor Vehicles*, 2004 WL 326926, at *1 (Del. Com. Pl. Jan. 22, 2004) (citing *Barnett v. Div. of Motor Vehicles*, 514 A.2d 1145 (Del. Super. 1986); *Janaman v. New Castle County Board of Adjustment*, 364 A.2d 1241, 1242 (Del. Super. 1976)).
[11] *Voshell v. Addix,* 574 A.2d 264, *2 (Del. 1990) (TABLE).
[12] *Id.*

driving a vehicle that failed to pay a parking toll;[13] (2) there was a strong odor of an alcoholic beverage from within Parisan's vehicle; (3) Parisan's eyes were glassy; (4) Parisan removed his license from his wallet in a slow and very deliberate manner; (5) Parisan slurred some of his words together; and (6) Parisan refused all field sobriety testing.

In his Motion for Reargument, Parisan asserts that this Court failed to consider that there were two occupants in the vehicle when it was stopped the night of September 10, 2010. Parisan argues that the strong odor of alcoholic beverage was only coming from the vehicle and was never specifically attributed to him. Additionally, Parisan argues that the cases replied upon by this Court in its analysis[14] are distinguishable because, in all three cases, there was direct evidence of an odor of alcohol attributable to each respective defendant. For the foregoing reasons, this Court finds that each of Parisan's arguments are without merit.

First, the record indicates that Rubin "detected a strong odor of alcoholic beverage coming from within the vehicle"[15] when speaking with Parisan. There is nothing in the record to indicate that Rubin believed the strong odor of alcoholic beverage was attributed to the passenger in the vehicle. Therefore, based on the record before the hearing officer, the Court believes it was reasonable for the hearing officer to conclude that the odor of alcoholic beverage was coming from Parisan.

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[13] In violation of Newark, Del., C. § 20-120.
[14] *Church v. State,* 11 A.3d 226 (Del. 2010) (TABLE); *Higgins v. Shahan*, 1995 WL 108699 (Del. Super. Jan. 18, 1995); *State v. Breza*, 2011 WL 6946980 (Del.Com.Pl. Dec. 20, 2011).
[15] (T-4)

Second, Parisan asserts that there are a host of evidentiary factors contained in the record that support a finding that the officer lacked probable cause to believe that Parisan was in violation of 21 Del. C. § 4177. To establish probable cause, the totality of the facts and circumstances within the officer's knowledge at the time of the arrest must be sufficient to warrant a person of reasonable caution to believe that criminal activity has been or is presently being committed.[16] The possibility of hypothetically innocent explanations for each of the facts revealed during the investigation does not preclude a finding of probable cause.[17]

Even though Parisan points to several individual factors contained in the record that may not lead a reasonably trained police officer to conclude that Parisan was in violation of 21 Del. C. § 4177, the record *also* contains factors that, taken together and assessed under the totality of circumstances, could lead a reasonably trained police officer to believe that Parisan had committed a criminal offense in violation of 21 Del. C. § 4177. The hearing officer, being in the best position to evaluate the testimony offered during the administrative hearing, specifically concluded that the following factors were sufficient to establish probable cause to believe that Parisan was in violation of 21 Del. C. § 4177: (1) Parisan was observed driving a vehicle that failed to pay a parking fee[18]; (2) there was a strong odor of an alcoholic beverage from within Parisan's vehicle; (3) Parisan's eyes were glassy; (4) Parisan removed

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[16] *Lefebvre v. State*, 19 A.3d 287, 293 (Del. 2011) (citing *State v. Maxwell*, 624 A.2d 926, 928 (Del. 1993)).
[17] *Id.* at 930.
[18] *See supra*, note 14.

his license from his wallet in a slow and very deliberate manner; (5) Parisan slurred some of his words together; and (6) Parisan refused all field sobriety testing.

Finally, there is a nexus between Parisan's failure to pay a parking fee and being under the influence. Parisan contends that unlike moving violations, failure to pay his parking fee in no way suggests that he was operating his vehicle while under the influence. Additionally, Parisan's attempt to classify his violation as mere dishonesty ignores the manner in which he violated the Newark Code.

Parisan committed the violation while operating his vehicle in a municipal parking facility and exiting onto a city street. Rubin watched Parisan pulled his vehicle forward behind another vehicle and exit the parking facility without paying his fee and before the parking gate could close. Rubin immediately recognized Parisan's actions as a violation and proceeded to investigate further. Moreover, the manner in which Parisan committed his violation is similar to other odd/suspicious behaviors that *are* consistently taken into account during a totality of circumstances assessment such as failure to stop at a stop sign or red light. It was reasonable for the hearing officer to include this violation of the Motor Vehicle section of the Newark Code of Ordinances in the totality of circumstances evaluation.

CONCLUSION

Parisan has failed to demonstrate that the Court has overlooked a controlling precedent or legal principle or the Court has misapprehended the law or facts such as would have changed the outcome of the Court's decision of February 29, 2012. The record shows that the hearing officer could reasonably conclude that the odor of alcoholic beverage

observed by Rubin can be attributed to Parisan because Rubin detected the odor while speaking with Parisan. The record contains sufficient facts that would allow the hearing officer to find probable cause to believe that Parisan was operating his vehicle in violation of 21 Del. C. § 4177. *Therefore* the Court finds no basis to alter its previous decision holding that the hearing officer's determination of probable cause is sufficiently supported by the record and is the product of an orderly and logical deductive process. Accordingly, Parisan's motion for reargument is **DENIED**.

IT IS SO ORDERED

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Alex J. Smalls
Chief Judge