

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR SUSSEX COUNTY**

MATTHEW HOLTON	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. CPU6-10-002707
	)	
	)	
JENNIFER COHAN,	)	
DIVISION OF MOTOR VEHICLES	)	
	)	
Appellee.	)	

Submitted: December 19, 2011  
Decided: January 31, 2012

*William Wilgus, Esq., Attorney for Appellant*  
*Frederick Schranck, Esq., Attorney for Appellee.*

**DECISION ON APPEAL**

For the reasons discussed below, Appellant’s Motion for Reconsideration of the Commissioner’s Order is **DENIED**. The October 3, 2011 Order of Commissioner Maybee is therefore affirmed.

**Facts**

The Division of Motor Vehicles suspended the driver’s license of Appellant Matthew Holton pursuant to 21 *Del. C.* § 2733(a)(2):

The Department may immediately suspend the license and driving privileges or both of any person without hearing and without receiving a record of conviction of such person of crime whenever

the Department has reason to believe that such person: Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person or serious property damage.

The facts in the case at hand are uncontroverted and were stipulated by both parties at the DMV hearing. On the night of January 10, 2010, Appellant was the driver of a car involved in a fatal motor vehicle accident. While attempting to locate a certain address, Appellant missed a stop sign, entered the intersection and collided with an oncoming vehicle driven by Alfred Jones. Jones' wife, a passenger in Jones' car, was killed and pronounced dead at the scene. Mr. Jones, Appellant and the passengers in Appellant's vehicle were "Medi-Vac'd" for treatment.

Following the accident, a police investigation ensued. On June 21, 2010, five months after the accident, the Sussex County Grand Jury indicted Appellant on charges of Vehicular Homicide Second Degree and three counts of Vehicular Assault Second Degree. By letter dated July 28, 2010, the Delaware Department of Justice requested the Department of Motor Vehicles to revoke Appellant's license because he had been indicted on charges as a driver that was involved in a fatal accident. On August 23, 2010, the Department of Motor Vehicles notified Appellant that his license would be suspended for twelve months effective August 27, 2010 and provided him the opportunity to request a post-suspension administrative hearing pursuant to 21 *Del. C.* § 2733(b). On October 6, 2010, before the hearing took place, Appellant plead guilty to death by motor vehicle, in violation of 21 *Del. C.* § 4176A(a).<sup>1</sup> The administrative hearing occurred on October 14, 2010. On November 4, 2010 the Department of Motor Vehicles upheld the suspension of Appellant's license. Appellant timely appealed the suspension to the Court of

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<sup>1</sup> Appellant was not sentenced on this plea until November 12, 2010. Appellant received 1 year of Level V suspended for 1 year at Level III probation, and was ordered to pay \$38,342.08 in restitution.

Common Pleas on November 30, 2010. The Commissioner of the Court issued a report recommending that the suspension be upheld. The current appeal from that order followed.

### *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.”<sup>2</sup> In the case at hand, it is clear and uncontroverted that Appellant recklessly or unlawfully operated a motor vehicle in such a manner that caused death and injury to others. Those facts were stipulated to at the Department of Motor Vehicles hearing. The Commissioner’s application of the law to the facts is the basis for the appeal under consideration here.

When an appeal has been taken from a Commissioner’s Findings of Fact and Recommendations the reviewing Judge shall make a *de novo* determination to the objections made. The reviewing Judge may accept, reject or modify the findings and recommendations made by the Commissioner. CCPCR 112(4) (iv) The Appellant raises two main objections:

1)The Commissioner committed error of law by finding that Appellant’s due process rights were not violated by the State’s suspension of his driving privileges pursuant to 21 *Del. C.* § 2733(b) seven months after the accident and prior to affording him a hearing on the matter.

2) The Commissioner committed error by not finding a due process violation of Appellant’s rights had occurred when the Department of Motor Vehicles hearing officer relied on the July 28, 2010 letter from the Department of Justice to the Department of Motor Vehicles requesting suspension of Appellant’s driving privileges. Appellant argues that the letter was not

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<sup>2</sup> *Eskridge v. Voshell*, 593 A.2d 589, 1991 WL 78471 (Del. 1991).

provided to him, that he had no opportunity to meet this evidence and that it should not have been considered by the hearing officer because it was never made part of the evidentiary record.

### **Procedural Due Process**

The issue before this Court is whether the seven months that passed between the accident (January 10, 2010) and the license suspension (August 23, 2010) violates Appellant's procedural due process rights. It is the holding of this Court that under the facts and circumstances of this case it does not.

Appellant's first argument relies upon the "emergency exception" found in *Bell v. Burson*, 402 U.S. 535 (1971). In *Bell*, the Supreme Court held that "except in emergency situations...due process requires that when a State seeks to terminate an interest such as [a driver's license], it must afford notice and opportunity for hearing appropriate to the nature of the case before the termination becomes effective."<sup>3</sup> 21 *Del. C.* § 2733(a)(2) is Delaware's statutory equivalent of the "emergency exception," in that by alleging that a driver by unlawful operation of a motor vehicle caused death to another the State satisfies its burden of proving an emergency existed. The death of another caused by recklessness or unlawful operation of a vehicle is sufficiently tragic and potentially dangerous enough to others using the roads to create the emergency allowing an immediate suspension prior to a hearing as the statute sets forth. It is important to note that while the statute permits the Department of Motor Vehicles to immediately suspend a license, it must also schedule a hearing for review of the immediate suspension, if requested by the suspended driver, to determine if the emergency sanction of suspension should

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<sup>3</sup> *Bell*, 402 U.S. at 542.

continue. This Court is satisfied that the statutory scheme contained in 21 *Del. C.* § 2733(a) and (b) protected the procedural due process rights of the Appellant while promoting public safety and punishing unlawful behavior.

Appellant's second due process argument is centered on the issue of "timeliness." Appellant argues that if an emergency did in fact exist, then his license should have been suspended immediately after the accident.<sup>4</sup> 21 *Del. C.* § 2733(a)(2) gives the Department of Motor Vehicles the discretion to "immediately suspend the license and driving privileges or both of any person without hearing...whenever the Department has *reason to believe* that such person...has, by *reckless or unlawful operation* of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person."<sup>5</sup> In the case at hand, the Department of Motor Vehicles did not have "reason to believe" Appellant had recklessly or unlawfully operated a motor vehicle in a manner that caused death or injury to others until it was so notified on July 28, 2010. It was on this date that the Department of Justice sent the Department of Motor Vehicles letter requesting Appellant's license be suspended due to unlawful operation of a vehicle resulting in death. Furthermore, while the statute gives the Department of Motor Vehicles the authority to immediately suspend it does not require the Department of Motor Vehicles to suspend or outline a time frame when they must do so.

In support of this "timeliness" argument, Appellant cites the Superior Court's decisions in *Reynolds v. Shahan*, 2009 WL 2219953 (Del. Super. Ct. 2009) and *Stong v. Voshell*, 1995 WL

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<sup>4</sup> In essence, Appellant has requested that this Court interpret "emergency" as mandating a license suspension immediately following the underlying incident. While the Court acknowledges the "emergency exception" as set forth in *Bell* and its application to the case at hand, the Court declines to graft onto 21 *Del. C.* § 2733 such a definition.

<sup>5</sup> 21 *Del. C.* § 2733(a)(2) (emphasis added).

156260 (Del. Super. Ct. 1995). This Court holds that the facts surrounding *Reynolds* and *Stong* are sufficiently anomalous so as to distinguish them from the case at hand.

In *Reynolds*, the Department of Motor Vehicles revoked Mr. Reynolds' license in October 2004, based upon evidence that he operated a motor vehicle while intoxicated.<sup>6</sup> The case was appealed to the Court of Common Pleas, and was subsequently submitted for a decision on March 2, 2005.<sup>7</sup> For unexplained reasons, however, it took the Court of Common Pleas four years to issue the decision affirming the revocation. As Judge Graves stated in *Reynolds*, "for the reasons stated by the Court of Common Pleas, I would affirm the decision, but for the delay."<sup>8</sup> Addressing this four year delay, Judge Graves agreed with an argument put forth by Mr. Reynolds, stating:

Mr. Reynolds notes that he resolved the criminal charges on this matter by pleading to reckless driving-alcohol related at least prior to March 2005, and completed the rehabilitation required by the statute. He argues he has gotten on with his life and to now impose a one-year revocation is unconscionable.

*Reynolds*, 2009 WL \*1.

In the case at hand, Appellant's situation differs greatly from Mr. Reynolds'. Formal charges were not filed against the Appellant until June 21, 2010. It appears that most of delay complained of by the Appellant occurred between the accident date and the charging decision by the Department of Justice resulting in an indictment. During this time the investigation into the accident by the police ensued and the Department of Justice contemplated charges. In July 2010,

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<sup>6</sup> *Reynolds*, 2009 WL \*1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

a month after the indictment, the Department of Justice notified the Department of Motor Vehicles of the unlawful operation of a motor vehicle resulting in death and requested the suspension be imposed. In a timely manner, the Department of Motor Vehicles notified Appellant of their intent to suspend. The suspension went into effect on August 27, 2010. A hearing on the suspension was timely held on October 14, 2010. While Appellant had *pled* guilty to death by motor vehicle by the time of the Department of Motor Vehicles hearing, he had not yet been *sentenced* by a Court on the plea. On November 12, 2010, Appellant was sentenced to one year suspended for Level III probation and was ordered to pay \$38,342.08 in restitution. The Department of Motor Vehicles issued its decision on November 4, 2010 upholding the suspension. Thus, unlike the facts in *Reynolds*, Appellant cannot argue that at the time of his suspension he had paid his criminal “debt” for his conduct and that it would be unconscionable to penalize him again.

In *Stong*, the Attorney General requested the Department of Motor Vehicles suspend Mr. Stong’s license *seven months* after Mr. Stong had pled and been sentenced for his unlawful driving.<sup>9</sup> In the case at hand, the Attorney General requested the Department of Motor Vehicles suspend Appellant’s license on July 28, 2010, months prior to his plea and sentencing.

**Department of Justice letter to Department of Motor Vehicles**

Finally, the Court addresses Appellant’s argument regarding the July 28, 2010 letter sent from the Department of Justice to the Department of Motor Vehicles. Appellant’s argument that the letter contains substantive evidence outside the record and was illegally relied upon by the Department of Motor Vehicles Hearing Officer has no merit. The letter is nothing more than a

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<sup>9</sup> *Stong*, 1995 WL \*2.

procedural memorandum sent by the Department of Justice to the Department of Motor Vehicles requesting that Appellant's license be revoked pursuant to 21 *Del. C.* § 2733. Furthermore, even if the letter could be considered to contain substantive evidence, Appellant forfeited any ability to object to the letter by stipulating to exactly what is contained within the letter, that "[o]n January 10, 2010 while operating a motor vehicle on a public roadway, the [Appellant] was involved in a collision involving the death of another."

**Conclusion**

The Appellant stipulated to the fact that his reckless and unlawful operation of a motor vehicle caused death and injury to others. Instead of simply suspending Appellant's license immediately following the accident, the state completed its investigation and made charging decisions prior to putting the Department of Motor Vehicles on notice that they were requesting suspension. These steps occurred in a timely manner and support a conclusion that Appellant's procedural due process rights were promoted throughout the process. The clear and unambiguous language of 21 *Del. C.* § 2733(a)(2) has been satisfied, and the Appellant has not suffered any violation of his procedural due process rights. The suspension of Appellant's driving privileges is affirmed.

**IT IS SO ORDERED** this \_\_\_\_\_ day of January, 2012.

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The Honorable Rosemary Betts Beauregard