

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daniel Wroblewski, :
Appellant :
v. : No. 1281 C.D. 2009
Commonwealth of Pennsylvania, : Submitted: February 12, 2010
Department of Transportation, :
Bureau of Driver Licensing, :
:

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY

FILED: March 26, 2010

Daniel Wroblewski (Licensee) appeals from an order of the Court of Common Pleas of Erie County (trial court) which dismissed his statutory appeal from an eighteen-month suspension of his operating privileges imposed by the Department of Transportation, Bureau of Driver Licensing (Department) for his refusal to submit to chemical testing pursuant to Section 1547(b)(1)(i) of the Vehicle Code, 75 Pa. C.S. § 1547(b)(1)(i). We affirm.

On January 22, 2009, Licensee was charged with driving under the influence of alcohol or a controlled substance in violation of Section 3802 of the Vehicle Code, 75 Pa. C.S. § 3802. The Department notified

Licensee by letter dated February 9, 2009, that his operating privileges would be suspended for eighteen months, as a result of his refusal to submit to chemical testing on January 22, 2009. Licensee filed a timely appeal to the trial court which conducted a *de novo* hearing.

The facts as found by the trial court are as follows. Licensee drove his vehicle into the back of another vehicle. Licensee got out of his vehicle and approached the driver of the other vehicle (Witness). When Licensee saw Witness use his cell phone to call police, Licensee panicked, got back in his car and drove away.

When Officer White arrived at the scene, Witness informed him that Licensee appeared to be intoxicated. Officer White testified that Witness told him that Licensee smelled of alcohol and had slurred speech. Witness also described Licensee's car, the license plate, Licensee's clothes and his physical features.

Approximately one hour after the accident, Officer White located Licensee at his home. As he approached the front door, Officer White observed Licensee through a window drinking a beer. Officer White knocked on the front door and although Licensee initially walked away from the door, Licensee eventually opened it and interacted with the officer.

When asked by Officer White if he had just been involved in an accident, the trial court found that Licensee lied and stated that he had been home all day. In fact, Licensee admitted at the hearing that he was involved in the accident. Officer White then asked Licensee for his registration and insurance documents. According to Officer White, Licensee was staggering, had glassy eyes, slurred speech and was very intoxicated.

Officer White informed Licensee that he believed that he had been driving his vehicle under the influence of alcohol and that he had been involved in an accident. Officer White then transported Licensee to the hospital for chemical testing, which Licensee refused.

The trial court observed that the sole issue before it was whether Officer White had reasonable grounds to believe that Licensee was operating his vehicle under the influence of alcohol. Concluding that Officer White did have reasonable grounds, the trial court dismissed Licensee's suspension appeal. This appeal followed.¹

With regard to a license suspension under 75 Pa. C.S. § 1547, the Department has the burden of showing: (1) that a licensee was arrested for driving under the influence by a police officer who had reasonable grounds to believe that the licensee was operating or in actual physical control of the vehicle while under the influence of alcohol; (2) the licensee was asked to submit to a chemical test; (3) refused to do so; and (4) the licensee was warned that a refusal would result in the suspension of operating privileges. Banner v. Department of Transportation, Bureau of Driver Licensing, 558 Pa. 439, 445, 737 A.2d 1203, 1206 (1999).

The only issue raised by Licensee is whether Officer White had reasonable grounds. "Reasonable grounds exist when a person in the position of the police officer, viewing the facts and circumstances as they appeared at the time, could have concluded that the motorist was operating

¹ This court's review is limited to determining whether the trial court's findings are supported by substantial evidence and whether the trial court committed an error of law or abuse of discretion. Dardozzi v. Department of Transportation, Bureau of Driver Licensing, 660 A.2d 205 (Pa. Cmwlth. 1995).

the vehicle while under the influence of intoxicating liquor.” Id. at 446, 737 A.2d at 1207. It is necessary only that the police officer’s belief be objectively reasonable in light of the surrounding circumstances. Keane v. Commonwealth, 561 A.2d 359, 361 (Pa. Cmwlth. 1989).

In arguing that Officer White did not have reasonable grounds, Licensee relies on this court’s decision in Fierst v. Commonwealth, 539 A.2d 1389 (Pa. Cmwlth. 1987). In that case, the motorist was involved in an accident and left the scene. When an officer arrived to investigate the scene, “the only information that the police officer had received from witnesses was that appellant [motorist] had been driving and the license number of the car.” Id. The officer then went to the motorist’s home an hour later and observed the motorist with a bottle of beer in his hand. The police officer noticed that the motorist staggered and had an odor of alcohol. Based on the above facts, this court concluded that the officer did not have reasonable grounds for believing that the motorist was operating a vehicle while under the influence of alcohol.

Licensee argues that the facts in this case are similar to those in Fierst, inasmuch as Officer White did not observe Licensee at the scene of the accident but saw him one hour later at his home consuming a beer. Licensee maintains that, like Fierst, the officer in this case did not have reasonable grounds for believing that he had been operating a vehicle while under the influence of alcohol.

We observe that reasonable grounds does not require a police officer to witness the driver driving the car. McCallum v. Commonwealth, 592 A.2d 820, 822 (Pa. Cmwlth. 1991). As acknowledged by Licensee, this

case differs from Fierst, in that the other driver involved in the accident with Licensee informed Officer White, when he arrived at the scene of the accident, that Licensee was intoxicated.² In addition to describing Licensee's car and identifying the license plate number, Witness gave Officer White a description of Licensee's physical features and clothes and informed him that Licensee appeared to be intoxicated and that he smelled of alcohol and had slurred speech. One hour after the accident, Officer White observed that Licensee had slurred speech, was staggering and had glassy eyes. "Although in McCallum and Keane the police officers did not see the motorists drinking ... the police had other evidence that the motorists were driving under the influence of alcohol at the time of the accident, either by way of an admission by the motorist or through information from witnesses to the accident." Department of Transportation, Bureau of Driver Licensing v. Hall, 666 A.2d 376, 378 (Pa. Cmwlth. 1985) (Emphasis added.)

Here, based on the information Officer White received from Witness that Licensee fled the scene of the accident, was intoxicated, smelled of alcohol and slurred his speech, we conclude that the trial court correctly determined that Officer White had reasonable grounds to believe that Licensee was operating a vehicle while under the influence of alcohol. In accordance with the above, the decision of the trial court is affirmed.

JIM FLAHERTY, Senior Judge

² Pennsylvania law accepts that intoxication is a condition within the understanding or powers of observation of ordinary citizens. Hasson v. Department of Transportation, Bureau of Driver Licensing, 866 A.2d 1181, 1186 n.5 (Pa. Cmwlth. 2005).

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Department of Transportation,	:	
Bureau of Driver Licensing,	:	
	:	

ORDER

Now, March 26, 2010, the order of the Court of Common Pleas of Erie County, in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge