

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rusty Lee Ronk :
 :
 v. : No. 1440 C.D. 2010
 : Submitted: February 4, 2011
 Commonwealth of Pennsylvania, :
 Department of Transportation, :
 Bureau of Driver Licensing, :
 Appellant :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE MARY HANNAH LEAVITT, Judge
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE LEAVITT

FILED: August 11, 2011

The Pennsylvania Department of Transportation, Bureau of Driver Licensing (PennDOT) appeals an order of the Court of Common Pleas of Lackawanna County (trial court) sustaining the appeal of Rusty Lee Ronk (Licensee) from a one-year disqualification of his commercial driver's license. PennDOT issued the suspension under authority of the Vehicle Code, 75 Pa. C.S. §1611, after Licensee was convicted in New York State for operating a vehicle without a license. Chapter 16, also known as the Uniform Commercial Driver's License Act, authorizes PennDOT to suspend a Pennsylvania commercial license where the licensee is convicted in another state of a violation that would authorize a commercial license suspension under Pennsylvania law. Discerning no error in the trial court's conclusion that Licensee's New York conviction was not for an

offense that would result in the loss of a commercial license in Pennsylvania, we affirm.

In April 2010, PennDOT notified Licensee that his commercial driving privilege would be suspended for one year, effective May 24, 2010, “as a result of your pre-adjudication, conviction, administrative adjudication, or refusal in NEW YORK.” Reproduced Record at 20a (R.R. ____). The notice explained that

[y]our driving record reflects one of the above adjudications on 04/09/2010 of B20 of the AAMVA Code Dictionary, DRVNG W/LIC WITHDRAWN on 11/21/2002. This violation is similar to violating Section 1606C1 of the Pennsylvania Statutes. The AAMVA Code Dictionary was developed to support the Commercial Motor Vehicle Act of 1986 and allows states to share conviction information.

*Id.*¹ Licensee appealed and the trial court held a *de novo* hearing on June 23, 2010.

¹ This Court has explained the AAMVA Code Dictionary as follows:

The genesis of the AAMVA Code Dictionary arises out of the Commercial Motor Vehicle Safety Act (CMVSA) of 1986, 49 U.S.C. Chapter 313, which provides, among other things, that a driver who has been disqualified from operating a [commercial vehicle] by his home state is unable to obtain a [commercial license] in another jurisdiction. To support the CMVSA, the AAMVA Code Dictionary was developed to assist states in exchanging conviction and withdrawal information between licensing authorities. The AAMVA Code Dictionary is used by many states to determine the comparability of out-of-state offenses with in-state offenses, and its primary function is to enable the Commercial Drivers’ License Information System (CDLIS) to exchange convictions and withdrawals. It is an interpretative tool for states involved in the Driver License Compact of 1961, 75 Pa.C.S. § 1581, to “translate” the nature of a conviction reported by a sister state. Because its origin and purpose make it the type of document of which judicial notice can be taken as it is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,” it was properly admitted. Pa.R.E. 201(b)(2).

(Footnote continued on the next page . . .)

At the hearing, PennDOT submitted into evidence Licensee's commercial driving record certified by its Director of the Bureau of Driver Licensing. This record included a reference to an "out of state [commercial driver's license] conviction" received by electronic transmission from the State of New York. R.R. 19a. New York's notice informed PennDOT that Licensee was cited for operating a motor vehicle without a valid license on November 21, 2002, and he was convicted of that offense on April 9, 2010.

In response, Licensee testified. He acknowledged that he was stopped by a police officer in New York State on November 21, 2002, while driving a commercial vehicle. He admitted that he received a citation for a logbook violation at that time, but he denied being cited for having a suspended license. Licensee testified that he was stopped by police in New York again in March 2010, for having a taillight out on his truck. At that time, the police told Licensee that his driving privileges were suspended in New York, but Licensee did not know why. Licensee told the trial court, "I didn't know that my license was suspended in New York." R.R. 15a. Thereafter, Licensee discovered that he had several unpaid tickets in New York. He had assumed that his ex-wife had paid the tickets, but, apparently, she did not. Licensee testified that New York did not advise him of the nature of the outstanding citations, and he did not inquire into them. He simply paid the fines.

Licensee also submitted into evidence documentation of the fine he paid on April 9, 2010, for two citations issued on November 21, 2002. One

(continued . . .)

Hyer v. Department of Transportation, Bureau of Driver Licensing, 957 A.2d 807, 810 (Pa. Cmwlth. 2008).

citation was for the logbook violation pursuant to New York Transportation Law Section 211,² about which Licensee testified. The other citation was for a violation of New York Traffic and Vehicle Law Section 511.1a, described as “A.U.O. – 3rd.”³ R.R. 39a.

The trial court sustained Licensee’s statutory appeal and reversed PennDOT’s disqualification of Licensee’s commercial license. The trial court explained that its holding was based on

the absence of a Certified Record of Conviction from the State of New York, as required by 75 Pa. C.S.A. §1611(h) and evidence that the violation occurring on November 21, 2002 was not comparable to an offense giving rise to disqualification in the Commonwealth.

R.R. 48a. PennDOT appealed, and the matter is now before this Court.⁴

On appeal,⁵ PennDOT raises two issues. First, it argues that the trial court erred in holding that New York State was required to submit a “certified” record of Licensee’s conviction in order for PennDOT to suspend a commercial license. Second, it contends that the trial court erred in concluding that PennDOT failed to prove that Licensee was convicted in New York of an offense similar to

² N.Y. TRANSP. LAW §211 (McKinney 2011).

³ Section 511 is entitled “Operation while license or privilege is suspended or revoked; aggravated unlicensed operation.” Section 511(1)(a) lists the elements of “aggravated unlicensed operation of a motor vehicle in the third degree,” which Section 511(1)(b) identifies as a misdemeanor. N.Y. VEH. & TRAF. LAW §511(1) (McKinney 2011).

⁴ The trial court did not issue a written opinion.

⁵ Our scope of review is limited to determining whether the trial court’s findings of fact were supported by competent evidence and whether the trial court committed legal error or abused its discretion. *Shewack v. Department of Transportation, Bureau of Driver Licensing*, 993 A.2d 916, 918 n.2 (Pa. Cmwlth. 2010).

one that would result in disqualification under Pennsylvania’s Vehicle Code. We address these issues in order.

PennDOT first contends that the trial court erred in holding that PennDOT needed a certified record of Licensee’s New York conviction before it could act on that information in accordance with Section 1611(a) of the Vehicle Code.⁶ PennDOT argues that it may rely on a copy of a conviction report from another state whether or not the report is certified. We agree.

Section 1611(h) of the Vehicle Code provides, in relevant part, as follows:

For the purposes of this section, *a copy of a report of conviction* or a copy of a report of administrative adjudication *from* a Federal court or *another state* for an offense similar to those offenses which would result in disqualification in this section shall be treated by the department as if the conviction had occurred in this Commonwealth.

75 Pa. C.S. §1611(h) (emphasis added). “The clearest indication of legislative intent is generally the plain language of a statute.” *Thorek v. Department of Transportation, Bureau of Driver Licensing*, 938 A.2d 505, 507 (Pa. Cmwlth. 2007), *appeal denied*, 597 Pa. 724, 951 A.2d 1168 (2008) (citing *Walker v. Eleby*,

⁶ Section 1611(a)(6) provides, in relevant part:

- (a) First violation of certain offenses. -- Upon receipt of a report of conviction, the department shall, in addition to any other penalties imposed under this title, disqualify any person from driving a commercial motor vehicle . . . for a period of one year for the first violation of:

* * *

- (6) section 1606(c) (relating to requirement for commercial driver’s license)

75 Pa. C.S. §1611(a)(6).

577 Pa. 104, 123, 842 A.2d 389, 400 (2004)). Here, the plain language requires only a “copy,” not a “certified copy.”

As originally enacted, Section 1611(a)⁷ and Section 1611(h)⁸ each required a certified copy of an out-of-state or federal conviction before PennDOT could act upon that conviction information. However, in 2005, Section 1611 was amended to eliminate the certification requirement. This Court explained the change in Section 1611 as follows:

[I]n a Chapter 16 disqualification of a commercial drivers license, the Department needs only to produce a “receipt of a report of conviction.” 75 Pa. C.S. §1611(a). The Department does not need to possess a “certified record of conviction” before suspending a commercial operator’s license, as is required under 75 Pa. C.S. §6501(c) for the suspension of a non-commercial operator’s license.

⁷ The former version of Section 1611(a) stated, in relevant part, as follows:

- (a) Upon receipt of a *certified copy* of conviction, the department shall, in addition to any other penalties imposed under this title, disqualify any person from driving a commercial motor vehicle for a period of one year for the first violation of:

* * *

- (6) section 1606(c) (relating to requirement for commercial driver’s license), while their driving privilege is suspended, revoked, cancelled or recalled

Section 1611 of the Vehicle Code, 75 Pa. C.S. §1611(a)(6) (1990), *amended by* Section 6 of the Act of July 5, 2005, P.L. 100 (emphasis added).

⁸ The former version of Section 1611(h) stated, in relevant part, as follows:

For purposes of . . . this section, *a copy of a certified record* of conviction . . . from a Federal court or another state for an offense essentially similar to those offenses which would result in disqualification in this section shall be treated by the department as if the conviction had occurred in this Commonwealth.

Section 1611 of the Vehicle Code, 75 Pa. C.S. §1611(h) (1990), *amended by* Section 6 of the Act of July 5, 2005, P.L. 100 (emphasis added).

Thorek, 938 A.2d at 508.

Section 1550(d) of the Vehicle Code, which addresses judicial review of license suspensions, states, in relevant part, as follows:

In any proceeding under this section, documents received by the department from the courts or administrative bodies of other states . . . shall be admissible into evidence to support the department's case. . . . In addition, if the department receives information from courts or administrative bodies of other states . . . by means of electronic transmission, it may certify that it has received the information by . . . electronic transmission and that certification shall be prima facie proof of the adjudication and facts contained in such an electronic transmission.

75 Pa. C.S. §1550(d)(1); *see also Bergen v. Department of Transportation, Bureau of Driver Licensing*, 785 A.2d 157, 165-166 (Pa. Cmwlth. 2001) (noting “[t]he Vehicle Code clearly permits electronic submissions from other states to support Pennsylvania license suspensions.”). PennDOT was entitled to rely upon the electronic report from the State of New York as *prima facie* evidence of Licensee’s conviction in New York and, thus, take action with respect to Licensee’s Pennsylvania commercial license.

Next, PennDOT contends that the trial court erred in concluding that Licensee’s New York conviction did not allow PennDOT to suspend Licensee’s Pennsylvania commercial license. Under Section 1611(h) of the Vehicle Code,⁹ a

⁹ It states:

For purposes of the provisions of this section, a copy of a report of conviction or a copy of a report of administrative adjudication from a Federal court or another state for an offense similar to those offenses which would result in disqualification in this section shall be treated by the department as if the conviction had occurred in this Commonwealth.

75 Pa. C.S. §1611(h).

Pennsylvania licensee will be disqualified from holding a commercial license where he is convicted “in another state for an essentially similar offense” *Aten v. Department of Transportation, Bureau of Driver Licensing*, 649 A.2d 732, 734 (Pa. Cmwlth. 1994). In effect, the out-of-state conviction will be treated as a Pennsylvania conviction.

Here, Licensee was convicted of aggravated unlicensed operation of a motor vehicle in the third degree in violation of Section 511(1)(a) of the New York Vehicle and Traffic Law. The New York statutory provision provides, in relevant part, as follows:

A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the third degree when such person operates a motor vehicle upon a public highway *while knowing or having reason to know that such person’s license or privilege of operating such motor vehicle in this state . . . is suspended, revoked or otherwise withdrawn by the commissioner.*

N.Y. VEH. & TRAF. LAW §511(1)(a) (McKinney 2011) (emphasis added). The relevant Pennsylvania statute, Section 1606(c)(1) of the Vehicle Code states as follows:

(1) No person shall drive a commercial motor vehicle or a school vehicle during any period in which:

. . . .

(ii) his operating privilege is suspended, revoked, canceled or recalled until the person’s operating privilege has been restored

75 Pa. C.S. §1606(c)(1)(ii). PennDOT argues that the above-listed statutory offenses in New York and Pennsylvania are similar.

Both New York and Pennsylvania prohibit an individual with a suspended license from driving a motor vehicle. However, we disagree with PennDOT that the statutes of each state are similar. The Pennsylvania statute prohibits a driver with a suspended commercial license from operating a commercial vehicle.¹⁰ The New York provision, by contrast, applies with equal force to commercial and non-commercial licenses and commercial and non-commercial vehicles. The scope of the New York statute is far broader than Pennsylvania's.

Indeed, the legal argument PennDOT offers in this case has already been adjudicated by this Court. In *Shewack v. Department of Transportation, Bureau of Driver Licensing*, 993 A.2d 916 (Pa. Cmwlth. 2010), PennDOT suspended a commercial license after the licensee was arrested in Maryland for operating a commercial vehicle after his operating privileges were suspended in New York. *Id.* at 920-921. The Maryland statute did not mention a commercial vehicle or commercial license; it prohibited a licensee from driving a motor vehicle while his license was suspended under another state's traffic laws. By contrast, Pennsylvania's statute prohibited a licensee from driving a commercial vehicle while his operating privilege was suspended—an offense that would result in the suspension of his commercial license. This Court explained that the “relevant comparison is between the elements of the foreign state's statute and the elements of Pennsylvania's statute,” and not the conduct that led to the conviction. *Id.* at 919. This Court held that the Maryland statutory offense was broad in scope and,

¹⁰ Section 1606(c)(1)(ii) of the Vehicle Code refers to “operating privilege” which could mean any kind of license; however, PennDOT does not argue this point.

thus, not similar to the Pennsylvania statutory offense. *Shewack* is dispositive here.

PennDOT offers no discussion of *Shewack*. Instead, it argues that *Hyer*, decided before *Shewack*, is dispositive. In *Hyer*, the licensee was convicted in Maine for driving a commercial vehicle with a suspended commercial license, an offense which corresponded to B20 of the AAMVA Code Dictionary. *Hyer*, 957 A.2d at 808. PennDOT argued that the B20 violation was similar to a violation of Section 1606(c)(1) of the Vehicle Code. The trial court upheld the disqualification. This Court affirmed, holding that the licensee

was convicted of driving a [commercial vehicle] without a [commercial license] and that such an action is akin to a violation of 75 Pa. C.S. §1606(c)(1), relating to driving without a [commercial license], and this violation requires that the Bureau suspend the violator's license.

Id. at 811. However, this Court also noted that the licensee did not raise the issue of whether the Maine statute was similar to Pennsylvania's Chapter 16. *Id.* at 811 n.6. Here, Licensee has raised the issue. Thus, we must compare the elements of each state's statute, as laid out in *Shewack*, 993 A.2d at 919. It leads us to the conclusion that the elements of the New York and Pennsylvania convictions are dissimilar.

Because the elements of the New York statute by which a commercial license may be suspended are dissimilar from the elements of 75 Pa. C.S. §1611(a), (h), we conclude that PennDOT lacked grounds to suspend Licensee's commercial license.

Accordingly, we affirm the trial court.

MARY HANNAH LEAVITT, Judge

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ORDER

AND NOW, this 11th day of August, 2011, the order of the Court of Common Pleas of Lackawanna County dated June 23, 2010, in the above captioned matter is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge