IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Claudio D. Rodas,	:	
Appellant	:	
	:	No. 1517 C.D. 2010
v.	:	
	:	Submitted: December 23, 2010
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: May 5, 2011

Claudio D. Rodas (Licensee) appeals from the June 28, 2010, order of the Court of Common Pleas of Luzerne County (trial court), which denied his appeal from a one-year suspension of his driver's license imposed by the Department of Transportation, Bureau of Driver Licensing (DOT), pursuant to section 1547(b) of the Vehicle Code (Code) for refusing to submit to chemical testing.[1]

Licensee is a native of Ecuador who has resided in the United State since 1995, and he is licensed by the Commonwealth of Pennsylvania to drive a motor vehicle. On September 16, 2007, James Senape, a police officer employed by the

[1] Section 1547(b) of the Code, commonly referred to as the "Implied Consent Law," authorizes the suspension of a licensee's driving privileges where the licensee is placed under arrest for driving under the influence of alcohol and refuses a police officer's request to submit to chemical testing. 75 Pa.C.S. §1547(b).

City of Hazelton Police Department, received a report that a person was driving erratically. Officer Senape found and then followed Licensee's vehicle, which he observed cross a double yellow line approximately four times in one block. Officer Senape initiated a vehicle stop and, when he approached Licensee, he detected a strong odor of alcohol and observed that Licensee had blood shot eyes and slurred speech. Officer Senape asked Licensee for his driver's license, which Licensee produced, along with his registration and insurance information. Officer Senape concluded that Licensee was intoxicated and placed him under arrest for driving under the influence of alcohol.

Officer Senape advised Licensee of the Implied Consent Law and asked Licensee to submit to a blood test at Hazelton General Hospital. Licensee, responding to the officer's question using broken English, refused to take the test. At that point, Officer Senape took Licensee to the police station, where he gave Licensee a second opportunity to take the test. The officer advised Licensee of the Implied Consent Law and read him the implied consent warning form.[2] Again, responding in English, Licensee refused to take the test and refused to sign a form to acknowledge receipt of the implied consent warnings.

By letter dated November 2, 2007, DOT notified Rodas that his driver's license was suspended for one year pursuant to section 1547(b) of the Code.

[2] In Department of Transportation, Bureau of Traffic Safety v. O'Connell, 521 Pa. 242, 555 A.2d 873 (1989), our Supreme Court required the police to provide warnings to motorists who are asked to submit to chemical testing. This is frequently referred to in the case law as an O'Connell warning. An O'Connell warning must include the following information: (1) the motorist must be informed that his or her driving privileges will be suspended for one year if chemical testing is refused; and (2) the motorist must be informed that his or her rights under Miranda v. Arizona, 384 U.S. 436 (1966), do not apply to chemical testing. Department of Transportation, Bureau of Driver Licensing v. Ingram, 538 Pa. 236, 648 A.2d 285 (1994).

Licensee appealed the suspension to the trial court, which conducted a hearing on April 27, 2009. The evidence and arguments presented at the hearing focused on Licensee's contention that he was unable to make a knowing and conscious decision to refuse the blood test because he does not understand the English language.

DOT presented the testimony of Officer Senape, who testified regarding Licensee's ability to communicate and understand the request to submit to chemical testing. Officer Senape testified that, when he asked Licensee for his driver's license, Licensee understood the question and produced the document. (Reproduced Record (R.R.) at 10a.) The officer testified that Licensee responded as follows to his first request for blood testing:

> Q. What did you tell him?
>
> A. That I requested that he take a blood test at Hazelton General Hospital, if he refused to take the test it would be considered a refusal and he could lose his license for a year….
>
> ….
>
> Q. What was his response?
>
> A. That he refused to take the test.
>
> Q. Was that in English?
>
> A. Broken English.
>
> Q. In broken English he responded that he didn't want to take the test?
>
> A. Correct.

(R.R.) at 11a.) Officer Senape testified that, when asked a second time to submit to the test, Licensee responded as follows:

> Q. What did he say after you asked him to take the test…?
>
> A. He refused to take the test and refused to sign the form.
>
> Q. When you say he refused, was it a verbal refusal?
>
> A. Yes.
>
> Q. Was it in English?
>
> A. Yes.
>
> ….
>
> Q. Did he have any questions or give any reason for why he was refusing?
>
> A. No.
>
> Q. Was he responsive to your questions …?
>
> A. Yes.
>
> Q. So when you say that he responded—so you read the warning form and then what would he say?
>
> A. He just refused to sign it.
>
> Q. So he also refused to acknowledge the form, to sign that he got the warnings?
>
> A. Yes.
>
> Q. But when you asked him that question, did he respond or not respond?
>
> ….

> A. He refused to sign the form. So, yes, he did acknowledge that he wasn't signing the form.
>
> Q. But he responded to your question?
>
> A. Yes.

(R.R. at 11a-12a.) Officer Senape testified on cross-examination that he could not state with certainty that Licensee understood exactly what he was saying; however, on redirect examination the officer testified that Licensee responded in English to his request to take a blood test. (R.R. at 13a.)

Licensee testified, through an interpreter, that he was from Ecuador, had completed only primary school, and did not study English in school. (R.R. at 14a.) Licensee stated that he came to the United States in 1995 and that he has never taken any classes in the English language. Regarding his discussion with Officer Senape after his arrest, Licensee testified as follows:

> Q. The officer testified that he informed you of his request to have you submit to a chemical test, and he informed you in English. Did you understand what he was saying to you?
>
> A. No. I didn't understand. I couldn't understand him.
>
> Q. …The officer testified that he read you this form. Are you able to read or understand anything on this form?
>
> A. I don't understand. I didn't go to school to learn how to read in English. I only know how to read Spanish.
>
> ….
>
> Q. At any time did Officer Senape or anyone explain what they were asking for … in Spanish?

> A. No. he wasn't able to explain that to me. Or perhaps he did explain it to me and I did not understand what he was saying to me. Because if I knew what he was saying I wouldn't have refused to do anything he asked me to.
>
> Q. At anytime during the course of the stop and the conversation with Officer Senape, did you understand that if you refused to submit to a chemical test that you would lose your license for a period of twelve months?
>
> A. I did not understand him. Because I would have known all the consequences that would have occurred. I would have done everything that he would have asked me to do.

(R.R. at 14a-15a.)

The trial court accepted the testimony of Officer Senape as credible and concluded that DOT satisfied its burden of proof. Further, the trial court concluded that Licensee failed to establish that his refusal was not a knowing and conscious one because, even assuming that Licensee did not understand English, a police officer has no duty to make certain that motorists understand the implied consent warnings.

On appeal to this Court,[3] Licensee contends that the trial court erroneously denied his appeal because he does not understand the English language and was unable to make a knowing and conscious decision to refuse chemical testing.[4]

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[3] Our scope of review is limited to determining whether necessary findings of the trial court are supported by substantial evidence and whether the trial court committed an error of law or abused its discretion. Martinovic v. Department of Transportation, Bureau of Driver Licensing, 881 A.2d 30 (Pa. Cmwlth. 2005). The question of whether a licensee refused to submit to chemical testing is a one of law. Id.

[4] To sustain a suspension of operating privileges under section 1547 of the Code, DOT must establish that the licensee: (1) was arrested for driving under the influence by a police officer who had reasonable grounds to believe that the licensee was operating or was in actual physical control
(Footnote continued on next page…)

This Court addressed the language barrier issue in Martinovic v. Department of Transportation, Bureau of Driver Licensing, 881 A.2d 30 (Pa. Cmwlth. 2005), where we held that, even where the motorist does not understand the English language, the police have no duty to make certain that he or she understands the implied consent warnings:

> Because Licensee agrees that the Department satisfied its burden, the sole issue is whether Licensee met his burden of proving that his refusal (i.e., his failure to register a sufficient breath sample) was not knowing and conscious. Although some circumstances such as a language barrier might affect a licensee's ability to make a knowing and conscious refusal, see, e.g., Department of Transportation, Bureau of Motor Vehicles v. Kyong Rok Yi, 128 Pa. Commw. 117, 562 A.2d 1008 (Pa. Cmwlth. 1989) (upholding a finding by the trial court that licensee's inability to understand English prevented a knowing and conscious refusal), most cases hold that a failure to understand English provides no foundation for an argument that the licensee was unable to make a knowing and conscious refusal. See Balthazar v. Department of Transportation, Bureau of Driver Licensing, 123 Pa. Commw. 435, 553 A.2d 1053 (Pa. Cmwlth. 1989), appeal denied, 525 Pa. 586, 575 A.2d 116 (1990); Im v. Commonwealth Department of Transportation, 108 Pa. Commw. 206, 529 A.2d 94 (Pa. Cmwlth. 1987).

(continued…)

of the movement of the vehicle while under the influence of alcohol; (2) was asked to submit to a chemical test; (3) refused to do so; and (4) was warned that refusal might result in a license suspension. Kollar v. Department of Transportation, Bureau of Driver Licensing, 7 A.3d 336 (Pa. Cmwlth. 2010). Once DOT meets this burden, the licensee must then establish that the refusal was not knowing or conscious or that the licensee was physically unable to take the test. Id.; Pappas v. Department of Transportation, Bureau of Driver Licensing, 669 A.2d 504 (Pa. Cmwlth. 1996).

Licensee does not contend in this appeal that DOT failed to shoulder its burden of proof. The sole issue is whether Licensee established that his refusal of the blood test was knowing and conscious.

Although the trial court found that Licensee did not speak English sufficiently to have possibly understood the O'Connell warnings, *whether Licensee understands the O'Connell warnings or not is inconsequential*. An officer's sole duty is to inform motorists of the implied consent warnings; once they have done so, they have satisfied their obligation. Department of Transportation, Bureau of Driver Licensing v. Scott, 546 Pa. 241, 684 A.2d 539 (1996). Additionally, and not without significance in this case, *officers have no duty to make sure that licensees understand the O'Connell warnings or the consequences of refusing a chemical test.* As our Superior Court has stated:

> The implied consent law contained in Section 1547 of the Vehicle Code states that 'it shall be the duty of the police officer to inform the person that the person's operating privilege will be suspended upon refusal to submit to chemical testing.' 75 Pa. C.S. § 1547(b)(2). The implied consent law imposes the duty upon the officer only to apprise the motorist of the consequences of a refusal to take the breath test. No where does the law require the officer to make certain that the motorist understands that he could exercise a right to refuse a breathalyzer test[.]

Commonwealth v. Mordan, 419 Pa. Super. 214, 615 A.2d 102, 108-09 (Pa. Super. Ct. 1992). *It is equally not the officer's duty to enlist the assistance of an interpreter to make sure a motorist understands implied consent warnings*. See, e.g., Commonwealth v. Robinson, 2003 PA Super 383, 834 A.2d 1160, 1164 (Pa. Super. Ct. 2003) ('Requiring certified interpreters for every driver who may have difficulty understanding a police officer, whether due to a hearing impairment, language barrier or learning disability, is not only not required by the implied consent law, it is simply not feasible, particularly in the case of DUI investigations where temporal concerns are paramount.') (emphasis added).

Martinovic, 881 A.2d at 35 (footnote omitted) (emphasis added). Furthermore, the Martinovic court observed:

> …[W]hether Licensee fails to understand English is not automatically outcome determinative. As Balthazar, Im, and Robinson demonstrate, simply because Licensee spoke Serbo-Croatian and did not speak English does not mean that he cannot act knowingly and consciously. When motorists are unconscious from drinking, thereby allegedly preventing them from 'consciously' refusing the test, we still hold that those motorists 'consciously' refused the test absent some other verifiable impediment. Department of Transportation, Bureau of Traffic Safety v. Potter, 118 Pa. Commw. 524, 545 A.2d 979 (Pa. Cmwlth. 1988). The same is true for language barriers; when motorists are limited by their understanding of the English language, thereby allegedly preventing them from 'knowingly' refusing the test, we still hold that those motorists 'knowingly' refused the test absent some other verifiable impediment. Im; Balthazar. Otherwise, anyone who speaks little to no English can automatically claim that he or she did not understand the O'Connell warnings and avoid the consequences of refusing a chemical test, just as anyone who is drunk could automatically claim that he or she was too drunk to understand the O'Connell warnings and avoid the consequences of refusing a chemical test.

Id., 881 A.2d at 36.

In the instant case, the record establishes that Office Senape asked Licensee to submit to a chemical test of his blood and provided Licensee with the implied consent warnings. Although Licensee testified that he could not understand the officer's speech or read the implied consent form because it was written in English, Officer Senape did not have a duty to ensure that Licensee understood the implied consent warnings or the consequences of refusing a chemical test. Martinovic. Nor did Officer Senape have a duty to read the implied consent warning

in Spanish or to provide Licensee with translator. Id. Moreover, Officer Senape credibly testified that Licensee had the ability to respond to questions in English, acted appropriately in response to the officer's questions and directives, and spoke in the English language when he refused the test. The record also reflects that Licensee never indicated or signaled to Officer Senape that he did not understand what the officer was telling him. See id. (holding that where the licensee was able to respond to the police officer's questions and never communicated to the police officer that he did not understand the officer's statements regarding chemical testing); see also Im v. Commonwealth Department of Transportation, 529 A.2d 94 (Pa. Cmwlth. 1987) (holding that a Korean speaking motorist failed to show he was unable make a knowing and conscious decision regarding chemical testing, where the motorist had the ability to respond to questions in the courtroom unassisted by an interpreter, and, at the time of arrest, spoke to the police officer in English on a number of occasions and responded appropriately when asked by the police officer to see his driver's license and owner's card).

Licensee relies upon Department of Transportation, Bureau of Motor Vehicles v. Kyong Rok Yi, 562 A.2d 1008 (Pa. Cmwlth. 1989), where we held that a non-English speaker was unable to make a knowing and conscious refusal of the chemical test.[5] However, the trial court in Kyong Rok Yi accepted as credible the licensee's testimony, presented through an interpreter, that he had no understanding of the English language, and found as fact that the licensee was unable to make a knowing and conscious refusal. We concluded in that case that we were constrained

[5] Licensee also cites several cases from other states in support of his position. However, such decisions are not binding in Pennsylvania, but rather are merely persuasive. In re R.G, 11 A.3d 513 (Pa. Super. 2010). This is not a case of first impression and, in light of Martinovic, we are not persuaded by out-of-state cases suggesting a different result.

to affirm the trial court because its findings were supported by substantial evidence. In contrast to Kyong Rok Yi, the trial court here did not accept Licensee's testimony as credible and never found as fact that a language barrier rendered Licensee unable to make a knowing and conscious decision to refuse the test. Thus, we conclude that this case is control by our decision in Martinovic (even where the trial court found that the licensee could not speak English sufficiently to understand the O'Connell warnings, we held that the licensee failed to prove that he was unable to make a knowing and conscious refusal of chemical testing).

Accordingly, we affirm.

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PATRICIA A. McCULLOUGH, Judge

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Department of Transportation,	:	
Bureau of Driver Licensing	:	

ORDER

AND NOW, this 5th day of May, 2011, the June 28, 2010, order of the Court of Common Pleas of Luzerne County is hereby affirmed.

PATRICIA A. McCULLOUGH, Judge