

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Steven L. Lutz,	:	
Appellant	:	
	:	
v.	:	No. 1519 C.D. 2009
	:	SUBMITTED: February 26, 2010
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge
 HONORABLE ROBERT SIMPSON, Judge
 HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: April 29, 2010

Licensee Steven L. Lutz appeals from the June 24, 2009 order of the Court of Common Pleas of Clarion County denying his statutory appeal and reinstating the one-year suspension of his operating privilege imposed by the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (Department) for refusing to submit to chemical testing pursuant to Section 1547(b)(1)(i) of the Vehicle Code, *as amended*, 75 Pa. C.S. § 1547(b)(1)(i).¹ The sole issue is whether the common pleas court erred in

¹ Section 1547(b)(1)(i) provides:
 If any person placed under arrest for a violation of section
 3802 [driving under the influence] is requested to submit to
(Footnote continued on next page...)

determining that the arresting police officer had reasonable grounds to believe that Licensee had been driving while under the influence of alcohol.² We conclude that the common pleas court did not err in finding reasonable grounds and, therefore, we affirm.³

Upon Licensee's appeal from the Department's notice of suspension, the common pleas court held a *de novo* hearing in June 2009 and subsequently

(continued...)

chemical testing and refuses to do so, the testing shall not be conducted but upon notice by the police officer, the department shall suspend the operating privilege of the person . . . for a period of 12 months.

² Section 1547(a) of the Vehicle Code provides:

Any person who drives, operates or is in actual physical control of the movement of a vehicle in this Commonwealth shall be deemed to have given consent to one or more chemical tests of breath, blood or urine for the purpose of determining the alcoholic content of blood or the presence of a controlled substance *if a police officer has reasonable grounds to believe the person to have been driving, operating or in actual physical control of the movement of a vehicle.*

75 Pa. C.S. § 1547(a) (emphasis added)

³ The standard of reasonable grounds to support a license suspension is not a demanding one and "is a lesser standard than the probable cause standard needed to support a DUI conviction." *Marone v. Dep't of Transp., Bureau of Driver Licensing*, ___ A.2d ___, ___ (Pa. Cmwlth. No. 826 C.D. 2009, filed January 5, 2010), slip op. at 6 (citations omitted). As we held in *Marone*:

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 the vehicle while under the influence of an intoxicating substance. . . . This is determined by examining the totality of the evidence, including the location of the vehicle, whether the engine was running, whether there was evidence that the licensee had driven the vehicle before the arrival of the police, the licensee's general appearance, and the licensee's behavior. . . . Reasonable grounds do not require that other possible explanations or inferences that the officer could have made be unreasonable.

Id. at ___, slip op. at 6-7 (citations omitted).

found the following facts. In the course of investigating a hit-and-run accident, State Trooper William Craddock learned from Mr. Colton Shirey that an older blue or greenish pickup truck had sideswiped his car at about 8:30 p.m. on December 24, 2008 and that Shirey had followed the truck in order to obtain the license plate number. After checking the number and ascertaining that the owner was Licensee, Trooper Craddock proceeded to Licensee's residence at 9:14 p.m. where he saw a truck matching Shirey's description parked outside the residence with a fresh metal scrape on the right front bumper. Upon going to the door of the residence, Trooper Craddock spoke with Licensee's son Bradley. In response to the trooper's questions, Bradley related that his father had been driving the truck and that he was asleep on the couch. Bradley allowed Trooper Craddock to enter the house and as he did so, Licensee awoke and arose from the couch. At that time, Trooper Craddock observed that Licensee's eyes were bloodshot and extremely glassy, his speech was slurred and he emitted an odor of alcohol. When the trooper asked Licensee for his driver's license, Licensee refused to give it to him. Licensee stated that he had just backed out of a driveway and that there was nothing wrong. Upon concluding that Licensee was in no condition to operate a vehicle, Trooper Craddock placed him under arrest for DUI. Following a scuffle, the trooper took Licensee to the hospital for a blood test.

At the hospital, Licensee twice refused to submit to chemical testing. Consequently, by official notice dated and mailed January 14, 2009, the Department notified Licensee of a twelve-month suspension of his operating privilege as a result of his December 24, 2008 chemical test refusal. Licensee

appealed and the common pleas court upheld the suspension. Licensee's timely appeal to this Court followed.⁴

On appeal, Licensee argues that Trooper Craddock did not have reasonable grounds to arrest him and request chemical testing because no one witnessed him drive, the trooper arrived at his home nearly one hour after the alleged driving and found Licensee asleep on his couch and there is uncontroverted evidence that he drank at his home well after any alleged driving. In support of his position, Licensee cites three cases where this Court ultimately concluded that there were no reasonable grounds primarily due to timeliness issues. *Stahr v. Dep't of Transp., Bureau of Driver Licensing*, 969 A.2d 37 (Pa. Cmwlth. 2009) (no reasonable grounds in the absence of any time frame between an accident involving a car hung up over a guardrail and the time the officer encountered the owner of the vehicle at his home exhibiting signs of intoxication and admitting that he had been driving the vehicle when he allegedly had to swerve to miss a deer); *Fierst v. Commonwealth*, 539 A.2d 1389 (Pa. Cmwlth. 1988) (no reasonable grounds where officer arrived at the scene of the accident, witnesses told him that Fierst had been driving but one hour elapsed before officer arrived at Fierst's house and observed him with a bottle of beer in his hand and exhibiting signs of intoxication); *Dep't of Transp., Bureau of Driver Licensing v. Mulholland*, 527 A.2d 1123 (Pa. Cmwlth. 1987) (no reasonable grounds where officer investigating accident did not see Mulholland drive, did not observe his demeanor at the time of

⁴ The determination of whether a police officer had reasonable grounds to believe that a licensee was operating or was in actual physical control of the movement of a vehicle while under the influence of alcohol or a controlled substance is a question of law, subject to our plenary review.

the accident and only saw him twenty-five minutes later drinking in a tavern and exhibiting signs of intoxication).

The Department maintains that those three cases are distinguishable. *Stahr* involved a victimless accident with no witnesses, whereas in the present case, Shirey was able to describe Licensee's vehicle and follow it in order to get a license number. Also, the damage to Licensee's truck was consistent with Shirey's version of the events and Trooper Craddock was able to establish a very definite time line. Additionally, in contrast to *Fierst* and *Mulholland*, the Department maintains that there was no objective evidence that Licensee did not start drinking until after he returned home, *Fierst*, or to a fixed location, *Mulholland*. While it is true that Licensee testified six months after the investigation that he only started drinking after he returned home,⁵ neither Trooper Craddock nor Licensee testified that Licensee made such a representation to the trooper at the time of the Christmas Eve investigation.⁶ In addition, there is no dispute that when Trooper Craddock arrived at Licensee's residence, Licensee was asleep on the couch and definitely not drinking. Licensee's son Bradley testified that his father was sound asleep on the couch when Trooper Craddock came in the house. Bradley stated that he had to shake his father a few times before he awakened. N.T. at 25; R.R. at 25.

⁵ At the June 2009 hearing, Licensee acknowledged that he had been driving his pickup truck on the night in question. He represented, however, that he only started drinking after he returned home, consuming four to five beers in his shed for about forty-five minutes before going into his house to lie down on the couch. In any event, the common pleas court accepted Trooper Craddock's version of the evening's events and found that the trooper had reasonable grounds to believe that Licensee had operated his truck earlier in the evening while under the influence of alcohol.

⁶ Trooper Craddock testified that he did not believe that he asked Licensee whether or not Licensee had been drinking after returning home. June 12, 2009 Hearing, Notes of Testimony ("N.T.") at 21; Reproduced Record ("R.R.") at 21.

Moreover, the Department points out that Trooper Craddock need not have seen Licensee actually driving the pickup truck in order for reasonable grounds to be present. Recently in *Marone v. Department of Transportation, Bureau of Driver Licensing*, ___ A.2d ___ (Pa. Cmwlth. No. 826 C.D. 2009, filed January 5, 2010), the common pleas court found reasonable grounds where the police officer had seen Marone at another location earlier in the evening and later found him passed out in the driver's seat of his vehicle with his body slumped over the center consol, his head inside a McDonald's bag on the passenger seat with half-eaten food in his mouth and three open pill bottles with their contents strewn about the interior. Additionally, upon being revived, Marone was belligerent, violent, had trouble standing, bloodshot eyes and slurred speech.

In the present case, despite the fact that Trooper Craddock did not observe Licensee driving his truck while intoxicated, a combination of factors led the trooper to believe that Licensee had been doing so. The common pleas court listed those factors: 1) Mr. Shirey's statement to the trooper that an older blue or greenish pickup truck with a certain license number had sideswiped his car at approximately 8:30 p.m.; 2) the presence of such a truck at 9:14 p.m. parked in front of Licensee's house with a fresh metal scrape on the front bumper; 3) son Bradley's front-door contemporaneous statement to the trooper that his father had been driving the truck that evening and was now sleeping on the couch; and 4) Licensee's exhibition of traditional indicia of intoxication.

Additionally, as the common pleas court pointed out in its opinion, a police's officer's reasonable grounds can be based on information received from third parties. *Schlag v. Dep't of Transp., Bureau of Driver Licensing*, 963 A.2d

598 (Pa. Cmwlth. 2009). Here, the information that Trooper Craddock received from third parties proved to be consistent with his investigation of the evening's events. Shirey's provision of the license plate number and description of the truck led the trooper to Licensee's residence. There, Trooper Craddock encountered only two individuals. One of them told him that, on the evening in question, Licensee had been driving the truck currently in front of the house with the fresh scrape on its bumper. The other was asleep on the couch, awoke exhibiting signs of intoxication and became defensive upon questioning.

All that is required for reasonable grounds is that a person in the position of Trooper Craddock, viewing the facts and circumstances as they appeared at the time, could have concluded that Licensee was operating the vehicle while under the influence of an intoxicating substance. *Marone*. Trooper Craddock's conclusion that Licensee was driving his pickup truck while intoxicated, sideswiped a car and then went home and fell sleep on the couch was reasonable. The existence of other explanations does not vitiate a police officer's reasonable grounds. *Id.* Accordingly, we conclude that the facts as found by the common pleas court, taken as a whole, are sufficient as a matter of law to constitute reasonable grounds for Trooper Craddock's belief that Licensee had been driving while intoxicated. Accordingly, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

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ORDER

AND NOW, this 29th day of April, 2010, the order of the Court of Common Pleas of Clarion County in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge