

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Allen Robert Hawk, :  
Appellant :  
v. :  
 : No. 2028 C.D. 2010  
 : Submitted: February 25, 2011  
Commonwealth of Pennsylvania, :  
Department of Transportation, :  
Bureau of Driver Licensing :

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

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE PELLEGRINI

FILED: March 21, 2011

Allen Robert Hawk (Licensee) appeals from the order of the Court of Common Pleas of Butler County (trial court) suspending his driver's license for 12 months for refusal to submit to chemical testing following a DUI arrest.<sup>1</sup> For the reasons that follow, we affirm.

---

<sup>1</sup> 75 Pa. C.S. §1547(b)(1)(i) provides:

If any person placed under arrest for a violation of section 3802 [DUI] is requested to submit to 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 as follows: (i) Except as set forth in subparagraph (ii), for a period of 12 months.

The Pennsylvania Department of Transportation (Department) suspended Licensee's license for 12 months effective August 9, 2010, following Licensee's arrest for DUI and refusal to submit to chemical testing. Licensee appealed to the trial court, which held a *de novo* hearing. Because Licensee did not testify, the only evidence before the trial court was the testimony of the arresting officer, Justin Welton (Officer Welton), of the Butler Township Police Department. According to Officer Welton, on June 10, 2010, he and another officer, Officer Palla, responded to a 911 call to investigate a man passed out in a GMC Yukon in front of 11 Penn Avenue in Butler Township. He found the vehicle parked along the curb with Licensee reclined in the driver's seat with the keys resting on his stomach. The officers knocked on the window, pounded on the door frame and shook the vehicle in an attempt to rouse Licensee. When Licensee woke up, he placed the keys in the ignition and turned the vehicle on and off multiple times in quick succession before finally leaving the vehicle's engine on. The officers yelled at Licensee through the closed windows to open the window so they could talk to him, but he refused. Instead, he fumbled for various controls, including the gear shift lever, which he grabbed and pulled towards him, prompting Officer Palla to move his car to block Licensee from driving away. The vehicle itself never moved. When Licensee continued to refuse to open the window, Officer Palla broke the passenger side window with his baton and unlocked the doors. Officer Welton then physically extracted Licensee from the vehicle.

Once the officers extracted Licensee from the running vehicle, they smelled alcohol, noted that he was unsteady on his feet, lacked balance, had slow and slurred speech and had glassy and bloodshot eyes. They also found a half-empty

gallon jug of beer behind the driver's seat. At that point, they placed Licensee under arrest for DUI and transferred him to the hospital. At the hospital, Officer Welton read the DL-26 form, including Section 1547 Chemical Testing Warnings, to Licensee. When asked if he would submit to chemical testing, Licensee refused. Following this testimony, the trial court sustained the 12-month suspension of Licensee's operating privilege. This appeal followed.<sup>2</sup>

On appeal, Licensee contends that the trial court erred in finding that he was operating or in control of the vehicle while under the influence and that the officers did not have reasonable grounds to arrest him for driving under the influence. The basis for Licensee's contention is that when the officers arrived, they found him sleeping with the keys on his stomach, not in the ignition.<sup>3</sup>

When the officers arrived, Licensee was sleeping in the driver's seat with the keys on his stomach. While it would have been problematic as to whether Licensee was operating or in physical control of the vehicle at that time, Licensee then operated the vehicle prior to his arrest. He put the keys in the ignition, turned on

---

<sup>2</sup> Our standard of review in a license suspension case is to determine whether the factual findings of the trial court are supported by competent evidence and whether the trial court committed an error of law or an abuse of discretion. *Department of Transportation, Bureau of Driver Licensing v. Boucher*, 547 Pa. 440, 691 A.2d 450 (1997).

<sup>3</sup> To sustain a suspension of operating privileges under Section 1547, the Department 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 of the movement of the vehicle while under 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. *Banner v. Department of Transportation, Bureau of Driver Licensing*, 558 Pa. 439, 737 A.2d 1203 (1999). Only the first prong of this test is at issue here.

the engine, defied orders to roll down the windows and attempted to put the vehicle in gear, prompting Officer Palla to move his own vehicle to block Licensee from driving away. The officers did not need to surmise whether Licensee had operated the vehicle; they watched him do it.

For the foregoing reasons, the order of the trial court is affirmed.

---

DAN PELLEGRINI, JUDGE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Allen Robert Hawk, :  
Appellant :  
 :  
v. : No. 2028 C.D. 2010  
 :  
Commonwealth of Pennsylvania, :  
Department of Transportation, :  
Bureau of Driver Licensing :

**ORDER**

AND NOW, this 21<sup>st</sup> day of March, 2011, the order of the Court of  
Common Pleas of Butler County, dated September 20, 2010, is affirmed.

---

DAN PELLEGRINI, JUDGE