

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph C. Belmont, :
Appellant :
 :
v. : No. 24 C.D. 2011
 : Submitted: May 6, 2011
Commonwealth of Pennsylvania, :
Department of Transportation, :
Bureau of Driver Licensing :

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: August 2, 2011

Joseph Belmont (Licensee) appeals an order of the Court of Common Pleas of Montgomery County (trial court) that denied his appeal of an 18-month suspension of his operating privileges. The Department of Transportation, Bureau of Driver Licensing (PennDOT) took this action because Licensee had refused to submit to chemical testing. The trial court rejected Licensee's claim that the arresting officer lacked reasonable grounds to arrest Licensee for driving under the influence of alcohol. Discerning no error, we affirm.

On December 25, 2009, Licensee was arrested and charged with driving under the influence of alcohol in violation of Section 3802(a) of the Vehicle Code, 75 Pa. C.S. §3802(a),¹ after he was involved in a single vehicle

¹ Section 3802(a) provides:
(Footnote continued on the next page . . .)

accident. On February 9, 2010, PennDOT notified Licensee that because he refused to submit to chemical testing after his arrest, his operating privileges would be suspended for 18 months, pursuant to Section 1547 of the Vehicle Code, commonly known as Pennsylvania's Implied Consent Law. 75 Pa. C.S. §1547(b)(1)(ii).² Licensee timely appealed his suspension to the trial court and a *de novo* hearing was held.

At the hearing, PennDOT presented the testimony of Officer Michael Vice, a 14-year veteran of the Lower Merion Township Police Department. Officer Vice testified that shortly after 7:00 a.m. on December 25, 2009, his

(continued . . .)

- (1) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.
- (2) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.08% but less than 0.10% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

75 Pa. C.S. §3802(a).

² Section 1547(b) states, in relevant part:

- (1) If any person placed under arrest for a violation of section 3802 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:

....

- (ii) For a period of 18 months if any of the following apply:

....

- (B) The person has, prior to the refusal under this paragraph, been sentenced for:

- (I) an offense under section 3802. . . .

75 Pa. C.S. §1547(b)(1)(ii).

dispatcher radioed him about a car accident at 2017 Montgomery Avenue, and Vice arrived at the scene within minutes. He found a red Mercedes-Benz on the property's front lawn, and Licensee was present. Licensee explained to Officer Vice that he lost control of the vehicle while using his cell phone, which caused the car to jump a curb, run over a mailbox, and land on top of several large decorative rocks on the lawn. Officer Vice testified that he believed the accident had just occurred, based upon the timing of the dispatcher's report and his own observations. These observations included a fresh, bleeding cut on Licensee's finger; the position of the car on the lawn; the appearance of freshly disturbed rocks and dirt on the property; and the presence of grass and debris on the surface of the adjacent, heavily traveled street. Officer Vice did not believe it necessary to question Licensee about the time of the accident.

Officer Vice smelled alcohol on Licensee's breath, observed that his eyes were red and glassy, and noticed that Licensee had to keep one hand on the vehicle to maintain his balance. Licensee stated that he had consumed alcohol the previous evening, but he did not relate any details about the timing of the accident or suggest that it had occurred hours earlier. Licensee did not state that he had consumed alcohol after the accident. Officer Vice administered three field sobriety tests, and Licensee failed all three. Officer Vice arrested Licensee for driving under the influence and took him to the police station, where he was read the chemical test warnings contained in Implied Consent Form DL-26. After three failed attempts to blow into the breathalyzer machine, Licensee was deemed a refusal to submit to chemical testing.

Licensee testified regarding his recollection of the events surrounding his accident. He stated that although he had two glasses of wine with dinner at

approximately 7:30 p.m. on December 24, he had not been drinking between dinner and his accident, which occurred at approximately 4:30 a.m. on December 25. After the crash, he injured his finger while trying to remove decorative rocks from underneath the vehicle. He apologized to the property owners and informed them that he was going home to call AAA to have his car towed and would return later.

Licensee testified that his aunt picked him up at the scene soon after 5:00 a.m. and drove him to his mother's house. Licensee called AAA and drank several glasses of vodka to calm down while waiting for the tow truck. A friend drove Licensee back to the scene around 6:20 a.m. to see if the tow truck had arrived. Upon learning that they would have to wait a while longer, the two left to get food, returned to the scene, and were eating when the police arrived shortly after 7:00 a.m.

Licensee testified that he told Officer Vice that he had caused the accident and that he had consumed wine with dinner the previous evening. Licensee also testified that he informed Officer Vice that the accident had occurred many hours earlier and that he had consumed more alcohol after the accident.

The trial court rejected as not credible Licensee's testimony that he told Officer Vice the accident had occurred hours earlier and that he had consumed alcohol in the interim. The trial court held that Officer Vice had reasonable grounds to believe that Licensee had operated his vehicle while under the influence of alcohol. Accordingly, the trial court denied Licensee's appeal. This appeal followed.

On appeal,³ Licensee raises one issue. He contends that the trial court erred in finding that Officer Vice had reasonable grounds to believe Licensee had operated his vehicle while intoxicated.

It is well-settled that to sustain a suspension of operating privileges under Section 1547 of the Implied Consent Law, PennDOT must show that:

- (1) the licensee was arrested for drunken driving by a police officer who had reasonable grounds to believe that the motorist was operating a motor vehicle while under the influence of alcohol;
- (2) the licensee was requested to submit to a chemical test;
- (3) the licensee refused to submit; and
- (4) the licensee was warned that refusal would result in a license suspension.

Broadbelt v. Department of Transportation, Bureau of Driver Licensing, 903 A.2d 636, 640 (Pa. Cmwlth. 2006) (quoting *Berman v. Department of Transportation, Bureau of Driver Licensing*, 842 A.2d 1025, 1027 n. 3 (Pa. Cmwlth. 2004)). The only issue presented for our review is whether the arresting officer had reasonable grounds to believe that Licensee had operated his vehicle while under the influence of alcohol.

“Reasonable grounds” exist when a person, in the position of the police officer, viewing the facts and circumstances as they appeared at the time of the arrest, would have reasonably concluded that the licensee was operating a vehicle while under the influence of alcohol. *Banner*, 558 Pa. at 446, 737 A.2d at

³ Our standard of review of a trial court’s order upholding a license suspension for refusal to submit to chemical testing is limited to determining whether the trial court’s factual findings are supported by competent evidence and whether the trial court erred as a matter of law or abused its discretion. *Banner v. Department of Transportation, Bureau of Driver Licensing*, 558 Pa. 439, 443-44, 737 A.2d 1203, 1205 (1999). Whether an arresting officer had reasonable grounds is a question of law reviewable by this Court. *Demarchis v. Department of Transportation, Bureau of Driver Licensing*, 999 A.2d 639, 642 (Pa. Cmwlth. 2010).

1207. This test is not very demanding.⁴ For reasonable grounds to exist, the arresting officer need not be correct in his belief that the licensee was intoxicated; it is irrelevant if the licensee can later prove at trial a reason other than intoxication for behavior such as “slurred speech or an unsteady gait.” *Department of Transportation, Bureau of Traffic Safety v. Dreisbach*, 363 A.2d 870, 872 (Pa. Cmwlth. 1976). The Department proves reasonable grounds where “the arresting officer’s belief [is] objectively reasonable in light of the surrounding circumstances.” *Keane v. Department of Transportation*, 561 A.2d 359, 361 (Pa. Cmwlth. 1989).

The question of what constitutes reasonable grounds must be determined on a case-by-case basis. *Banner*, 558 Pa. at 447, 737 A.2d at 1207. All facts and circumstances, as they appeared at the time of the arrest, must be considered. *Schindler v. Department of Transportation, Bureau of Driver Licensing*, 976 A.2d 601, 605 (Pa. Cmwlth. 2009). There is not a set list of behaviors that a licensee must exhibit for an arresting officer to have reasonable grounds to make an arrest, but our case law has identified several factors that constitute reasonable grounds. *Stancavage v. Department of Transportation, Bureau of Driver Licensing*, 986 A.2d 895, 899 (Pa. Cmwlth. 2009). These factors include: a licensee who is unsteady on his feet; has slurred speech; exhibits uncooperative behavior; or emits an odor of alcohol. *Id.* The arresting officer may cite a licensee’s glassy eyes, but there must be at least one other physical sign of intoxication for reasonable grounds to exist. *Id.* The absence of one of the factors

⁴ The “reasonable grounds” standard used to support a driver’s license suspension is a lesser standard than the probable cause standard required for criminal prosecution. *Banner*, 558 Pa. at 446, 737 A.2d at 1207.

does not mean that the officer lacks reasonable grounds. *Bruno v. Department of Transportation*, 422 A.2d 217, 218-19 (Pa. Cmwlth. 1980) (holding that reasonable grounds existed even though the licensee did not smell of alcohol).

Here, Officer Vice testified to a number of independent factors to support his belief that Licensee had driven under the influence of alcohol. These factors included: Licensee's admission that he had been driving the crashed vehicle; Licensee's red, glassy eyes; the smell of alcohol on Licensee's breath; Licensee's admission that he drank alcohol the previous evening; a fresh, bleeding cut on Licensee's finger; the dispatcher's report that the car accident had recently occurred; Licensee's difficulty maintaining his balance; and Licensee's failure to pass three field sobriety tests. In fact, Licensee's own testimony supported Officer Vice's observations. Licensee testified that between 5:30 a.m. and 7:00 a.m., he consumed several glasses of vodka.

Licensee's defense is that he consumed alcohol after the accident. Unfortunately for Licensee, his testimony was not believed. In rejecting Licensee's testimony, the trial court acted within its province as factfinder, which is beyond our review. *Reinhart v. Department of Transportation, Bureau of Driver Licensing*, 954 A.2d 761, 765 (Pa. Cmwlth. 2008) (determinations regarding witnesses' credibility and the weight assigned to evidence "are solely within the province of the trial court as fact-finder.").

For all of the foregoing reasons, we affirm.

MARY HANNAH LEAVITT, Judge

