

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Thomas Italo Rappaselli :
 :
 v. : No. 431 C.D. 2010
 : Submitted: August 13, 2010
 Commonwealth of Pennsylvania, :
 Department of Transportation, :
 Bureau of Driver Licensing, :
 Appellant :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: October 12, 2010

The Commonwealth of Pennsylvania Department of Transportation, Bureau of Driver Licensing (DOT) appeals from the February 24, 2010, order of the Court of Common Pleas of Berks County (trial court) rescinding DOT's suspension of the vehicle operating privilege of Thomas Italo Rappaselli (Rappaselli). We reverse.

The facts as found by the trial court are as follows. On October 10, 2009, at 2:53 a.m., Officer Ronald L. Tobias (Officer Tobias) of the Central Berks Regional Police Department observed Rappaselli driving a red Mazda station wagon at what Officer Tobias estimated to be fifty miles per hour in a thirty-five-miles-per-hour zone. Officer Tobias did not use any speed timing device in order to arrive at this estimate. The car's high beams were also on, blinding drivers travelling in the opposite direction. Officer Tobias was able to stop Rappaselli's car less than two

blocks away. During the time he followed Rappaselli's car, Officer Tobias did not observe any further traffic violations.

Once the vehicle was stopped, Officer Tobias smelled alcohol and observed that Rappaselli's eyes were red. There was a cold six-pack of beer on the floor behind the driver's seat, and Rappaselli told Officer Tobias that he had consumed several alcoholic beverages that day. Officer Tobias gave Rappaselli a preliminary breath test which indicated the presence of alcohol. Officer Tobias then conducted field sobriety testing on Rappaselli. Rappaselli exhibited four of the eight clues for intoxication in the walk-and-turn test and three of four clues in the one-leg-stand test. Officer Tobias then arrested Rappaselli for suspicion of driving under the influence of alcohol.

Upon his arrest, Rappaselli was asked to submit to chemical testing, and was warned that his operating privilege would be suspended if he did not submit to the test. Rappaselli refused the chemical test, and, as a result, DOT suspended his operating privilege under Section 1547(b) of the Vehicle Code.¹ Rappaselli appealed to the trial court, which rescinded the suspension on the ground that the traffic stop by Officer Tobias was illegal.

¹ 75 Pa. C.S. §1547(b).

On appeal to this court,² DOT argues that the trial court erred as a matter of law in rescinding the suspension. Rappaselli, on the other hand, argues that the trial court rejected Officer Tobias’s testimony in its entirety as “questionable” and that this court should not disturb this credibility determination. Rappaselli also argues that his license should not be suspended because the traffic stop was illegal. We disagree with both of Rappaselli’s arguments, and we agree with DOT that the trial court erred as a matter of law.

The trial court sustained Rappaselli’s appeal on the ground that the original traffic stop was illegal and, in fact, requested in its opinion that the Commonwealth Court rule that “a police intrusion without a vehicle violation is prohibited.” (Trial ct. op. at 3.) The trial court expressed doubt about whether Rappaselli could have been travelling at fifty miles per hour, given that Officer Tobias was able to pull him over so quickly. (*Id.*) The trial court also found it significant that Officer Tobias did not cite Rappaselli for a speeding or headlight violation. (*Id.*) Therefore, the trial court sustained Rappaselli’s appeal on the basis of “questionable testimony and the fact that the officer testified that no violations of the motor vehicle code occurred.”³ (*Id.*)

² This court’s scope of review in a license suspension case is limited to determining whether the trial court’s findings of fact are supported by competent evidence and whether the trial court committed an error of law or an abuse of discretion. *Orloff v. Commonwealth*, 912 A.2d 918, 922 (Pa. Cmwlth. 2006).

³ This characterization of Officer Tobias’s testimony conflicts with the record and with the facts as stated by the trial court. Officer Tobias testified that he observed no *additional* violations of the Vehicle Code *during the brief time that he followed Rappaselli’s car*. (R.R. at 12-13; tr. ct. op. at 1.)

We disagree that the traffic stop was illegal. Even if Officer Tobias's estimation of Rappaselli's speed was incorrect, he would have been justified in pulling Rappaselli over for driving with high beams on, in violation of Section 4306(a) of the Vehicle Code.⁴ The trial court opinion specifically notes that Rappaselli's vehicle "was blinding other drivers travelling westbound." (Trial ct. op. at 1.)

Moreover, our supreme court has determined that, even if the traffic stop was illegal, a licensee's operating privileges may be suspended for refusing chemical testing. *Commonwealth of Pennsylvania, Department of Transportation v. Wysocki*, 517 Pa. 175, 179, 535 A.2d 77, 79 (1987). Therefore, it is not necessary for the arresting officer to issue a citation for the Vehicle Code violation for which a licensee is initially pulled over. In order to suspend a licensee's operating privilege, DOT has the burden of proving only that the person:

(1) was arrested for driving under 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 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.

Banner v. Department of Transportation, Bureau of Driver Licensing, 558 Pa. 439, 445, 737 A.2d 1203, 1206 (1999). In this case, the parties stipulated that Rappaselli was asked to submit to chemical testing, refused such testing, and was properly

⁴ 75 Pa. C.S. §4306(a) (stating that whenever a driver of a vehicle approaches an oncoming vehicle within 500 feet, the driver shall use the low beam of light).

warned of the consequences of this decision. Therefore, the trial court had only to determine whether Officer Tobias had reasonable grounds to believe that Rappaselli was operating his car while intoxicated.

“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 intoxicating liquor.” *Id.* at 446, 737 A.2d at 1207. The question of whether reasonable grounds exist is a question of law reviewable by this court on a case-by-case basis. *Department of Transportation, Bureau of Driver Licensing v. Malizio*, 618 A.2d 1091, 1094 (Pa. Cmwlth. 1992).

In the case now before us, the record establishes that Rappaselli smelled of alcohol, had red eyes, had beer in his car, took a breath test indicating the presence of alcohol, failed the field sobriety tests, and admitted that he had consumed several alcoholic drinks. This is more than enough evidence to constitute reasonable grounds to believe Rappaselli was driving while intoxicated. The fact that Officer Tobias arrested Rappaselli for driving while intoxicated, but did not cite him for the Vehicle Code violations prompting the traffic stop in the first place, does not change this conclusion.

Accordingly, we reverse.

ROCHELLE S. FRIEDMAN, Senior Judge

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Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing,	:	
Appellant	:	

ORDER

AND NOW, this 12th day of October, 2010, the order of the Court of Common Pleas of Berks County, dated February 24, 2010, is hereby REVERSED.

ROCHELLE S. FRIEDMAN, Senior Judge