

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Todd J. Cioppa,	:	
Appellant	:	
	:	
v.	:	No. 483 C.D. 2011
	:	SUBMITTED: October 21, 2011
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing	:	

**BEFORE:**   **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge  
              **HONORABLE P. KEVIN BROBSON**, Judge  
              **HONORABLE PATRICIA A. McCULLOUGH**, Judge

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: December 23, 2011**

Todd J. Cioppa appeals from the order of the Court of Common Pleas of Allegheny County dismissing his appeal from a one-year suspension of his driving privilege. Cioppa’s privilege was suspended for refusal to submit to a chemical test to determine blood alcohol level as required by the Vehicle Code, 75 Pa. C.S. § 1547(b). We affirm.

Common pleas conducted a *de novo* hearing in this matter, and found the following facts. After stopping Cioppa on suspicion of driving under the influence in a parking lot outside of a bar, Office John Mercalde observed that Cioppa’s eyes were bloodshot and glassy, and that there was a strong odor of alcohol coming from his person. The officer had Cioppa perform three field

sobriety tests, all of which he failed. Cioppa was then placed under arrest, and Officer Mercalde told him he would have to take a chemical test. Cioppa responded by telling the officer that he could “take that test and shove it up [his] ass.” Common Pleas Opinion at 2. Officer Mercalde then read Cioppa Form DL-26, which contained the statutorily required notifications. While reading the form, the officer was in the front seat of the police car and Cioppa was seated in the back seat. After Officer Mercalde read the form, Cioppa again refused the chemical test, using similarly profane language. According to Cioppa, he was in a highly agitated state at the time of his arrest and could remember very little.

Common pleas found that Cioppa had refused to take the chemical test after receiving the required warnings, and therefore dismissed Cioppa’s appeal. On appeal to this court, Cioppa argues that common pleas erred in dismissing his appeal because he was not provided with the required warnings.

A license suspension for failure to take a chemical test can only be valid if a licensee has been informed of the consequences of a refusal so that he can make a knowing and conscious choice. *Dep’t of Transp., Bureau of Traffic Safety v. O’Connell*, 521 Pa. 242, 555 A.2d 873 (1989). Cioppa argues that he was not able to make such a choice because Officer Mercalde did not read the entire warning and because he read the warning through the glass partition in the police car, rendering Cioppa unable to hear it fully.<sup>1</sup>

However, Officer Mercalde stated at two different points in his testimony, and common pleas found as a fact, that he read Cioppa the entire

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<sup>1</sup> Cioppa may have wished to make additional arguments before this court, but was foreclosed from doing so when, by order of August 11, 2011, we denied his motion to supplement the record. We do not revisit that decision here.

warning. Reproduced Record at 17a, 25a. Cioppa offers no reason for this court to reverse that finding. Cioppa also cannot point to any evidence or testimony of record to establish that the police car's partition kept him from hearing the warnings. This court can only reverse factual findings in cases of this sort if we find that they are not supported by substantial, competent evidence. *Riley v. Dep't of Transp., Bureau of Driver Licensing*, 946 A.2d 1115 (Pa. Cmwlth. 2008). As the findings in this case are supported by substantial evidence, we cannot disturb them.

For all the foregoing reasons, we affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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Department of Transportation,	:	
Bureau of Driver Licensing	:	

**ORDER**

AND NOW, this 23rd day of December, 2011, the order of the Court of Common Pleas of Allegheny County in the above-captioned matter is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge