

[J-53-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

MATTHEW STEVEN DRABIC,	:	No. 152 MAP 2005
	:	
Appellee	:	
	:	Appeal from the Order the Commonwealth
	:	Court entered on September 5, 2005, at
v.	:	No. 738 CD 2005, which affirmed the
	:	Order of the Court of Common Pleas of
	:	Bucks County, Civil Division, entered on
COMMONWEALTH OF PENNSYLVANIA,	:	March 10, 2005, at No. 04-5184-29-6.
DEPARTMENT OF TRANSPORTATION,	:	
BUREAU OF DRIVER LICENSING,	:	
	:	
Appellant	:	ARGUED: April 5, 2006

DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: September 27, 2006

I join Madame Justice Newman’s dissenting opinion, but I have a moderately different perspective on the applicability of the recent decision in Freundt v. PennDOT, 584 Pa. 283, 883 A.2d 503 (2005).

At the outset, I recognize the effect of Freundt as precedent. Nevertheless, it is axiomatic that the binding holding of a decision must be read against its facts, see Commonwealth v. McCann, 503 Pa. 190, 195, 469 A.2d 126, 128 (1983); therefore, Freundt is not controlling relative to the distinct conduct at issue here, implicating a different subset of statutory provisions.

Freundt construed Section 1532(c) of the Vehicle Code, imposing suspensions based on a driver's "conviction of any offense involving the possession, sale, delivery, offering for sale or giving away of any controlled substance." 75 Pa.C.S. §1532(c). A majority of the Court found that the words "conviction of any offense" in this statutory provision should be read to encompass larger criminal episodes involving numerous convictions for separate offenses. See id. at 291, 883 A.2d at 507 ("[A]n offense, for purposes [75 Pa.C.S.] §1532(c) amounts to a criminal episode."). The Freundt majority reasoned that the use of both of the words "conviction" and "offense" in conjunction "shows that the statute imposes a suspension not merely for each conviction for every violation of the Crimes Code, but for each conviction stemming from a criminal episode." Freundt, 584 Pa. 283, 883 A.2d at 506 (emphasis added). On this basis, the majority held that the driver should be subject to a single suspension period, although she had committed numerous violations for which she received multiple convictions.

Freundt's logic that "offense" meant "single criminal episode" and not "violation" cannot be transported to Sections 1532(a) and (a.1), because the Legislature was even more explicit in those sections in targeting violations. For example, Section 1532(a.1) requires a three-year suspension by PennDOT upon its receipt of a certified record of the driver's conviction "based on a violation" of designated offenses. 75 Pa.C.S. §1532(a.1) (emphasis added). In delineating the specific violations to which the suspension was to attach, the Legislature specified "[a]ny violation of section 3732 (relating to homicide by vehicle)" and "[a]ny violation of section 3735 (relating to homicide by vehicle while driving under influence." 75 Pa.C.S. §1532(a.1)(1), (2) (emphasis added). Similarly, Section 1532(a) requires PennDOT to impose a one-year suspension of operating privileges upon receipt of a certified record of conviction based on "[a]ny violation" of statutory provisions including aggravated assault by vehicle while

driving under the influence. 75 Pa.C.S. §1532(a) (emphasis added). Per force, Fruendt's rationale that the Legislature was not addressing specific violations because it utilized different terminology cannot stand in the context of a statute that explicitly targets "violations."

In summary, I did not find the majority rationale from Fruendt persuasive in the context in which it arose, and I find it even less persuasive here. Further, I agree with Madame Justice Newman that the present majority's decision to ascribe criminal-sentence-like merger to the administrative suspension context finds no support in the statute or in any decision of this Court.