

[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 of the
v.	: Commonwealth Court entered on
	: September 9, 2005, at No. 738 CD 2005,
COMMONWEALTH OF PENNSYLVANIA,	: which affirmed the Order of the Court of
DEPARTMENT OF TRANSPORTATION,	: Common Pleas of Bucks County, Civil
BUREAU OF DRIVER LICENSING,	: Division, entered on March 10, 2005, at
	: No. 04-5184-29-6.
Appellant	:
	: ARGUED: April 5, 2006

OPINION

MADAME JUSTICE BALDWIN

DECIDED: September 27, 2006

The issue presented in this case is whether collateral civil consequences of criminal acts, in this instance suspensions of operating privileges (i.e., driver's licenses), should be merged to accord with the merger of the underlying criminal convictions from which the collateral civil consequences flow. Although this is a question of first impression for this Court, the lower courts of this Commonwealth have merged such suspensions at least since the Commonwealth Court decided Zimmerman v. Commonwealth, 759 A.2d 953 (Pa. Commw. Ct. 2000) (en banc), alloc. denied, 567 Pa. 753, 788 A.2d 382 (2001). We find that this is the result intended by the subject statute, 75 Pa.C.S. § 1532. Thus we affirm the Commonwealth Court's decision.

Matthew Steven Drabic (Drabic) was involved in a motor vehicle accident on November 27, 2003. A passenger in his vehicle died as a result of the accident. Drabic

pled guilty to fourteen offenses.¹ Subsequently, the Director of the Pennsylvania Department of Transportation's Bureau of Driver Licensing (PennDOT) issued the following series of suspensions, pursuant to 75 Pa.C.S.A. § 1532 (Suspension of operating privilege),² sending an individual notice to Drabic for each:

¹ The charges were: (1) homicide by vehicle while driving under the influence (75 Pa.C.S. § 3735); (2) aggravated assault by vehicle while driving under the influence (75 Pa.C.S. § 3735.1); (3) homicide by vehicle/safe speed (75 Pa.C.S. § 3732); (4) homicide by vehicle/reckless driving (75 Pa.C.S. § 3732); (5) accidents involving death or personal injury while not properly licensed (75 Pa.C.S. § 3742.1); (6) involuntary manslaughter (18 Pa.C.S. § 2504); (7) driving under the influence (75 Pa.C.S. § 3731); (8) recklessly endangering another person (18 Pa.C.S. § 2705); (9) offenses related to alcohol (75 Pa.C.S. § 6308); (10) driving with a suspended license (75 Pa.C.S. § 1543(b)); (11) driving on roadways laned for traffic (75 Pa.C.S. § 3309); (12) driving vehicle at safe speed (75 Pa.C.S. § 3361); (13) reckless driving (75 Pa.C.S. § 3736); and (14) maximum speed limits (75 Pa.C.S. § 3362).

² (a) One-year suspension.—The department shall suspend the operating privilege of any driver for one year upon receiving a certified record of the driver's conviction of or an adjudication of delinquency based on any of the following offenses:

(1) Any felony in the commission of which a court determines that a vehicle was essentially involved.

...

(3) Any violation of the following provisions:

Section 3735.1 (relating to aggravated assault by vehicle while driving under the influence).

Section 3742 (relating to accidents involving death or personal injury while not properly licensed).

Section 3742.1 (relating to accidents involving death or personal injury while not properly licensed).

Section 7111 (relating to dealing in titles and plates for stolen vehicles).

Section 7121 (relating to false application for certificate of title or registration).

Section 7122 (relating to altered, forged or counterfeit documents and plates).

(continued...)

Criminal Offense	Length of Operator's Privilege Suspension
75 Pa.C.S. § 3735 (homicide by vehicle while driving under the influence)	3 years
75 Pa.C.S. § 3735.1 (aggravated assault by vehicle while driving under the influence)	1 year
75 Pa.C.S. § 3732 (homicide by vehicle)	3 years
75 Pa.C.S. § 3742.1 (Accidents involving death or personal injury while not properly licensed)	1 year
75 Pa.C.S. § 3731 (Driving under the influence of alcohol or controlled substance)	1 year
75 Pa.C.S. § 6308 (offenses related to alcohol)	2 years
75 Pa.C.S. § 1543(b) (driving while operating privilege suspended)	1 year
75 Pa.C.S. § 3361 (driving vehicle at safe speed)	10 days
75 Pa.C.S. § 3736 (reckless driving)	6 months
75 Pa.C.S. § 3362 (Maximum speed limits)	20 days
Total:	12 years, 6 months and 30 days

On August 11, 2004, Drabic filed an appeal with the Court of Common Pleas of Bucks County for all of the suspensions except those imposed for the driving with a suspended license (§ 1543(b)) and offenses related to alcohol (§ 6308) violations. A de novo hearing was conducted on February 9, 2005 by the trial court, during which Drabic

(...continued)

(a.1) Three-year suspension.—The department shall suspend the operating privilege of any driver for three years upon receiving a certified record of the driver's conviction of or an adjudication of delinquency based on a violation of any of the following offenses:

- (1) Any violation of section 3732 (relating to homicide by vehicle).
- (2) Any violation of section 3735 (relating to homicide by vehicle while driving under influence).

...

75 Pa.C.S. § 1532.

conceded that the suspension for § 3735, homicide by vehicle while driving under the influence (homicide by vehicle-DUI), was proper. Drabic argued that all the other suspensions of his driver's license should have merged into that greater offense.

The trial court agreed in part and merged driving under the influence (§ 3731) (DUI) and aggravated assault by vehicle while driving under the influence (§ 3735.1) (AA-DUI) into homicide by vehicle while driving under the influence (§ 3735). The Court of Common Pleas merged the reckless driving (§ 3736) violation into the homicide by vehicle (§ 3732) violation. All remaining statutory appeals were denied. Based upon this, the trial court reduced Drabic's total driver's license suspension by two years and six months.

PennDOT appealed these rulings to the Commonwealth Court. In a memorandum opinion, a panel of the Commonwealth Court affirmed in part and reversed in part.³ Drabic v. Commonwealth, Dep't of Transp., Bureau of Driver Licensing, Nos. 738-739 C.D. 2005, slip op. at 7 (Pa. Commw. Ct. September 9, 2005). In its opinion, the Commonwealth Court first declined PennDOT's express invitation to overrule Zimmerman. In Zimmerman, the Commonwealth Court faced an analytically identical question. "The issue before the court is whether [criminal convictions] merge for purposes of operating privilege suspension[s]". Zimmerman, 759 A.2 at 957.

Judge Pellegrini, writing for the panel in the instant case, stated that Zimmerman "remains binding, precedential law." Id. at 5. Noting that this Court denied Allocatur in Zimmerman, Judge Pellegrini explained that the Commonwealth Court had "no inclination"

³ The Commonwealth Court did not affirm the entire holding of the trial court. Rather, it determined that an additional six-month suspension for reckless driving was warranted. It modified the trial court's order to impose this additional suspension, but otherwise affirmed the trial court's rulings on each of Drabic's appeals. Drabic v. Commonwealth, Nos. 738-739 C.D. 2005, slip op. at 6-7 (Pa. Commw. Ct. September 9, 2005). The reckless driving suspension is not at issue in the instant appeal.

to overrule its own precedent.⁴ Id. Before this Court is PennDOT's challenge to the merger of Drabic's operator's privilege suspension imposed for his conviction of aggravated assault while driving under the influence (75 Pa.C.S. § 3735.1) and the suspension imposed for his conviction of homicide by vehicle while driving under the influence (75 Pa.C.S. § 3735).

The parties do not dispute the facts in the case sub judice, rather, the question presented is a pure question of law. Our standard of review is de novo. Seven Springs Farm, Inc. v. Croker, 569 Pa. 2002, 208 n.1, 801 A.2d 1212, 1216 n.1 (2002). Questions of law are accorded a plenary scope of review. McNeil v. Jordan, ___ Pa. ___, 894 A.2d 1260, 1268 (2006).

In the first instance, the parties disagree as to whether the doctrine of merger even applies in the instant context, i.e., when collateral civil consequences are imposed. We need not directly address this question, since we believe the plain language of the statute directs that only a single suspension can be imposed based upon a single criminal episode. Regardless of whether the Commonwealth is correct, and the doctrine of merger is not properly applied to collateral civil consequences, or whether Appellee properly directs our attention to the statutory construction act and Commonwealth v. Anderson, 538 Pa.574, 650 A.2d 20 (1990) (holding that the doctrine of merger is a rule of statutory construction), the inquiry in either event must be based on the language of the statute at issue.

⁴ The Commonwealth Court also disagreed with PennDOT's contention that Zimmerman did not apply because, on the face of documents PennDOT received after Drabic was convicted, there was no way to know that the victim of the aggravated assault by vehicle while driving under the influence (75 Pa.C.S. § 3735.1) was the same victim for the homicide by vehicle while driving under the influence (75 Pa.C.S. § 3735). In other words, PennDOT contended that it could impose the separate sanctions because, as far as PennDOT knew, there was more than one victim thus taking the facts outside of the rule in Zimmerman. The Commonwealth Court characterized these contentions as disingenuous, noting that in oral argument to the trial court it was clear that there was only one victim. The Commonwealth Court rejected this argument on waiver grounds under Pa.R.A.P. 302. PennDOT did not raise this issue here.

The key language in the subsections at issue is “the driver’s conviction . . . any of the following offenses.” 75 Pa.C.S. § 1532. Recently, in Commonwealth v. Freundt, 504 Pa. 283, 883 A.2d 503 (2005), we construed § 1532(c) explaining that where the legislature used the separate terms “conviction” and “offense” it must have intended for the words to have different meanings. Thus, while the merger of the suspensions of operating privileges under 75 Pa.C.S. §§ 1532(a) and 1532(a.1) is an issue of first impression for this Court, in Freundt we explained that, in the context of § 1532(c), “when there is a conviction, the appropriate [license] suspension shall be determined by whether or not the conviction stemmed from a single criminal episode, or multiple criminal episodes.” Freundt at 290, 883 A.2d at 507 (citations omitted).

Ms. Freundt (Freundt) pled guilty to sixteen counts of acquiring or obtaining a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge (35 P.S. § 780-113(a)(12)). PennDOT sent Freundt sixteen separate notices that her driving privileges were being suspended pursuant to 75 Pa.C.S. § 1532(c). Freundt appealed. The Court of Common Pleas of Carbon County denied the appeal and reinstated the suspensions, indicating that it was unable to determine whether there were or were not multiple violations involved in Freundt’s convictions.

Freundt then appealed to the Commonwealth Court, which concluded that with respect to § 1532(c) and its predecessor, 35 P.S. § 780-113(m), a single criminal episode results in a single license suspension. Freundt at 290, 883 A.2d at 507. Like the instant case, in Freundt, PennDOT asserted that the plain language of the statute required it to impose separate suspensions for each conviction. Id. at 287, 883 A.2d at 505. The Commonwealth Court disagreed based upon its own line of cases that has indicated that separate criminal episodes are required in order for PennDOT to impose multiple suspensions. Freundt v. DOT, Bureau of Driver Licensing, 804 A.2d 706, 710-12 (Pa. Commw. Ct. 2002). PennDOT then appealed to this Court.

Relying on our interpretation of the statute, we affirmed, because the statute said that the operating privilege of a person would be suspended after PennDOT had received a record of “the person’s **conviction** of any **offense** involving the possession, sale, delivery . . . of any controlled substance” 75 Pa.C.S. § 1532(c) (emphasis added). Chief Justice Cappy, writing for a majority, pointed out that we must presume that since the General Assembly used both the word “conviction” and the word “offense,” it must have meant for the words to have separate meanings. Freundt, 584 Pa. at 289-90, 883 A.2d at 506-07. This Court also noted that, while the issue of whether one or multiple suspensions should result from a single criminal episode was an issue of first impression for the Supreme Court, there was a long line of cases from the Commonwealth Court which consistently interpreted § 1532(c) as requiring that only one suspension issue for each criminal episode. Id. (citing Gregg v. DOT, Bureau of Driver Licensing, 851 A.2d 253 (Pa. Commw. Ct. 2004); Carter v. DOT, Bureau of Driver Licensing, 838 A.2d 869 (Pa. Commw. Ct. 2003); Yadzinski v. DOT, Bureau of Driver Licensing, 723 A.2d 263 (Pa. Commw. Ct. 1999); Lauer v. Department of Transp., 666 A.2d 779 (Pa. Commw. Ct. 1995); Brosius v. Department of Transp., Bureau of Driver Licensing, 664 A.2d 199 (Pa. Commw. Ct. 1995); Heisterkamp v. DOT, Bureau of Drive Licensing, 165 Pa. Commw. 128, 644 A.2d 262 (1994); Department of Transp., Bureau of Driver Licensing v. Hardy, 160 Pa. Commw. 427, 635 A.2d 230 (1993)). Therefore, in Freundt, we concluded that based on the plain language of the statute “conviction of any offense” as used in § 1532(c) refers to a single criminal episode.

The same statute, § 1532, is at issue in the case sub judice, but different subsections are implicated. Nonetheless, in the subsections scrutinized here, the Legislature again discusses “the driver’s **conviction** of . . . any of the following **offenses**.” As we did in Freundt, we find that the Legislature’s use of the separate terms “conviction” and “offenses” to be significant. Specifically, “conviction of . . . any of the following

offenses” stems from a single criminal episode. We see no reason to depart from our reasoning in Freundt. We acknowledge that the analysis in Freundt was simplified by the more generalized grammatical construct of subsection (c), i.e., “conviction of any offense involving the possession, sale, [etc.] of any controlled substance,” as opposed to the slightly different grammatical construct of the two subsections at issue here ((a) and (a.1)), but see no reason to arrive at a different result as the key language remains constant: “conviction of . . . any . . . offense[.]”

Moreover, as was the case in Freundt, here again the Commonwealth Court merged the suspensions pursuant to a long line of its cases, the most prominent of which is Zimmerman v. Commonwealth, 759 A.2d 953 (Pa. Commw. Ct. 2000) In Zimmerman, the licensee pled guilty to ten offenses including DUI and AA-DUI. Id. at 955. PennDOT issued both a suspension and a revocation of Zimmerman’s operating privilege pursuant to the version of § 1532 then in effect. Id. The trial court concluded that because all of the elements of DUI were also elements of AA-DUI, the suspensions for those two offenses merge in the same manner as the underlying convictions merge. PennDOT appealed, relying upon a series of cases from the Commonwealth Court where license suspensions were not merged. The Commonwealth Court found these cases inapposite, indicating that “the violators in these cases either committed offenses with distinct elements or committed offenses arising from separate acts.” Id. at 957 (citing Department of Transportation, Bureau of Driver Licensing v. Lescisin, 156 Pa. Commw. 666, 628 A.2d 1208 (1993); Department of Transportation, Bureau of Driver Licensing v. Maddesi, 138 Pa. Commw. 467, 588 A.2d 580 (1991); Department of Transportation, Bureau of Traffic Safety v. Bishop, 102 Pa. Commw. 483, 518 A.2d 897 (1986); Parks v. Commonwealth, 40 Pa. Commw. 544, 398 A.2d 230 (1979)).

Indeed, the Zimmerman court noted that it had applied the doctrine of merger in 1991 to the allocation of points to a licensee. Maddesi, 138 Pa. Commw. at 474, 588 A.2d

at 583. The Commonwealth Court recognized in Maddesi that § 1535(b) prohibited “the separate assignment of points for multiple violations arising from the same act only where proof of one violation also proves another violation.” Id. Therefore, the Commonwealth Court explained that where any underlying convictions would merge, the collateral civil consequences, in this case “points” on a license, cannot be separately assessed. Id.

Thus, the Commonwealth Court concluded that “[s]eparate administrative penalties for multiple convictions arising from the same transaction are prohibited where the convictions are greater and lesser included offenses.” Zimmerman, 759 A.2d at 957 (citing Xanakis v. Department of Transportation, Bureau of Driver Licensing, 702 A.2d 572 (Pa. Commw. Ct. 1997)).

PennDOT argues that the Commonwealth Court’s determination was erroneous, in that operator’s privilege suspensions should not be subjected to the doctrine of merger of related offenses, because the doctrine has no bearing on non-criminal sanctions. PennDOT encourages us to delve into the statutory construction statutes, and the legislative intent behind the license suspensions, to determine whether merger should apply.

Without contesting the non-criminal nature of the license suspensions, Appellee Drabic notes that the Legislature was free at the time it wrote § 1532 to provide either that merger should or should not apply to these provisions and it chose not to do that. Indeed, as Drabic noted in his brief, “[i]t is presumed that members of the General Assembly and their constituents are aware that the doctrine of merger is being applied in license suspension cases. It is the function of the General Assembly to enact laws to prohibit such merger if, in fact, that is the legislative intent.” Brief of Appellee at 2.

We recognize that the doctrine of merger of related offenses has its roots in the double jeopardy provisions of both the United States⁵ and Pennsylvania⁶ Constitutions. Double jeopardy protections forbid the imposition of multiple punishments for a single criminal act that constitute greater and lesser-included offenses. Commonwealth v. Buffington, 574 Pa. 29, 39, 828 A.2d 1024, 1028 (2003). However, merger has been applied in the related context of administrative consequences in this Commonwealth for over a decade. While the underpinnings of the application of merger in this context may not lie in double jeopardy, we find that the Legislature articulated no proscription against collateral civil consequences merging along with the underlying criminal convictions.

Finally, PennDOT also advances a public policy argument, contending that the intent of the Legislature in providing for these collateral civil consequences, unlike their criminal counterparts, is not to punish the driver but rather to protect the public from these drivers. While this argument is noble, it is unpersuasive. We cannot accept PennDOT's argument that public safety concerns militate a conclusion that, under § 1532, operator's privilege suspensions do not merge given our interpretation of the plain language of § 1532 and the Legislature's intent.

The sanctions at issue here, related to the convictions for AA - DUI and homicide by vehicle - DUI, cannot be construed as PennDOT suggests. Here, the suspensions derived directly from the underlying criminal convictions and there is no question that those underlying criminal convictions merge. The decision of the Commonwealth Court is affirmed.

Mr. Chief Justice Cappy and Messrs. Justice Castille and Baer join the opinion.

⁵ U.S. Const. amend. V.

⁶ Pa. Const. art. 1 § 10.

Madame Justice Newman files a dissenting opinion in which Mr. Justice Eakin joins.

Mr. Justice Saylor files a dissenting opinion.