

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

William Scott Edwards, :  
 :  
 Appellant :  
 :  
 v. : No. 1017 C.D. 2012  
 :  
 Commonwealth of Pennsylvania, : Submitted: December 7, 2012  
 Department of Transportation, :  
 Bureau of Driver Licensing :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
 HONORABLE MARY HANNAH LEAVITT, Judge  
 HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
 BY JUDGE COHN JUBELIRER**

**FILED: January 18, 2013**

William Scott Edwards (Edwards) appeals from the Order of the Court of Common Pleas of Lawrence County (trial court) denying his appeal and sustaining the Department of Transportation’s (Department) one-year suspension of his operating privilege for refusing to submit to chemical testing pursuant to Section 1547 of the Vehicle Code (Implied Consent Law), 75 Pa. C.S. § 1547.<sup>1</sup> On appeal,

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<sup>1</sup> Section 1547 of the Vehicle Code, commonly referred to as the Implied Consent Law, provides, in pertinent part:

- (a) General rule.—Any person who drives, operates or is in actual physical control of the movement of a vehicle in the Commonwealth shall be deemed to have given consent to one or more chemical tests of breath, blood or urine for the purpose of determining the alcoholic content of blood or the presence of a controlled

*(Continued...)*

Edwards contends that the Implied Consent Law violates Section 8 of the Pennsylvania Constitution and the Fourth Amendment to the United States Constitution. Discerning no error, we affirm the trial court's Order.

This case arises out of a one-year suspension of Edwards' operating privilege imposed by the Department as a consequence of Edwards' refusal to submit to chemical testing in connection with his arrest for violating Section 3802 of the Vehicle Code, 75 Pa. C.S. § 3802.<sup>2</sup> Edwards appealed the suspension and the trial

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substance if a police officer has reasonable grounds to believe the person to have been driving, operating or in actual physical control of the movement of the vehicle:

(1) in violation of section . . . 3802 (relating to driving under the influence of alcohol or controlled substance).

. . .

(b) Suspension for refusal.—

(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:

(i) Except as set forth in subparagraph (ii), for a period of 12 months.

75 Pa. C.S. § 1547.

<sup>2</sup> Section 3802 of the Vehicle Code provides, in part:

(a) General impairment.--

(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.

*(Continued...)*

court held a *de novo* hearing on January 27, 2012. The Department's witness, an officer with the Shenango Township Police Department (Officer), testified that he observed Edwards' vehicle "driving down the middle of East Washington Street, intersecting a white painted line." (Hr'g Tr. at 6, R.R. at 8a.) Officer explained that he attempted to make a traffic stop, but Edwards' vehicle turned right, making a wide turn and did not initially stop. (Hr'g Tr. at 6-7, R.R. at 8a-9a.) After the vehicle finally stopped, Officer stated that Edwards had "bloodshot, glassy, watery eyes," "slurred speech," and there was a "strong odor of an alcoholic beverage coming from inside of the vehicle." (Hr'g Tr. at 7, R.R. at 9a.) Officer testified that Edwards had trouble locating his driver's license, vehicle registration, and proof of insurance. (Hr'g Tr. at 7, R.R. at 9a.) Officer stated that Edwards was unable to satisfactorily perform the horizontal gaze nystagmus, walk-and-turn, and one-leg stand field sobriety tests. (Hr'g Tr. at 8-10, R.R. at 10a-12a.) Officer offered Edwards the opportunity to take a pre-arrest breath test and Edwards refused. (Hr'g Tr. at 14, R.R. at 16a.) Officer next informed Edwards that "he was being placed under arrest for suspicion of driving under the influence" and, after a struggle, Officer placed Edwards in his patrol car and drove Edwards to a hospital. (Hr'g Tr. at 14-16, R.R. at 16a-18a.) Officer read the Implied Consent Law warnings to Edwards, but he refused to submit to chemical testing. (Hr'g Tr. at 17-20, R.R. at 19a-22a.)

Based upon the foregoing credible testimony, the trial court found that "Officer indeed had reasonable grounds to believe [Edwards] was driving under the influence of an intoxicating substance." (Trial Ct. Op. at 5.) Accordingly, on May 8, 2012, the trial court issued an Order denying Edwards' appeal of the one-year suspension of his

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75 Pa. C.S. § 3802.

operating privilege. (Trial Ct. Order, May 8, 2012.) Edwards filed a timely appeal to this Court.<sup>3</sup> On May 29, 2012, the trial court ordered Edwards to file a concise statement of errors complained of on appeal (1925(b) Statement) pursuant to Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. 1925(b). In his 1925(b) Statement, Edwards raised two issues: (1) whether the trial court erred in concluding that Officer had reasonable grounds to believe that Edwards was operating or was in actual physical control of the movement of the vehicle while under the influence of alcohol; and (2) whether Section 1547(b) of the Vehicle Code is unconstitutional under both Section 8 of the Pennsylvania Constitution<sup>4</sup> and the Fourth Amendment to the United States Constitution.<sup>5</sup>

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<sup>3</sup> “Our scope of review of a license suspension case under the Implied Consent Law is limited to determining whether necessary findings of the trial court are supported by substantial evidence and whether the trial court committed an error of law or abused its discretion.” Martinovic v. Department of Transportation, Bureau of Driver Licensing, 881 A.2d 30, 34 n.6 (Pa. Cmwlth. 2005).

<sup>4</sup> Article I, Section 8 of the Pennsylvania Constitution states:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Pa. Const. art I, § 8.

<sup>5</sup> The Fourth Amendment to the United States Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

In his brief to this Court in support of this appeal, Edwards no longer appears to challenge whether the trial court erred by finding that Officer had reasonable grounds to believe Edwards was driving under the influence of alcohol because it is not discussed in his brief.<sup>6</sup> Even if Edwards had preserved a challenge to the trial court's finding, there is no basis in the record to reverse the trial court's Order.

In order to support a one-year suspension of an operating privilege imposed pursuant to Section 1547(b) as a consequence of a refusal to submit to chemical testing related to an arrest for violating Section 3802 of the Vehicle Code, 75 Pa. C.S. § 3802, the Department must establish several factors, including that the licensee was arrested by a police officer who had reasonable grounds to believe that the licensee was operating or in actual physical control of the movement of a vehicle while under the influence of alcohol. Zaleski v. Department of Transportation, Bureau of Driver Licensing, 22 A.3d 1085, 1087 (Pa. Cmwlth. 2011). “It is well settled that the standard for reasonable grounds is not very demanding and the police officer need not be correct in his belief that the motorist had been driving while intoxicated. . . . Nothing in the statute requires an officer to be absolutely certain of intoxication prior to requesting a chemical test.” Sisinni v. Department of Transportation, Bureau of Driver Licensing, 31 A.3d 1254, 1259 (Pa. Cmwlth. 2011), petition for allowance of

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<sup>6</sup> Edwards' brief does not include this issue in the “Statement of Questions Involved” section of his brief and, pursuant to Rule 2116(a) of the Pennsylvania Rules of Appellate Procedure, “[n]o question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby.” Pa. R.A.P. 2116(a). In addition, Rule 2119(a) of the Pennsylvania Rules of Appellate Procedure mandates that “[t]he argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part--in distinctive type or in type distinctively displayed--the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent.” Pa. R.A.P. 2119(a). Here, Edwards offers no discussion whatsoever of this issue in the argument portion of his brief.

appeal denied, \_\_\_ Pa. \_\_\_, 44 A.3d 1163 (2012) (citations omitted). “Whether reasonable grounds exist is a question of law reviewable by this Court on a case-by-case basis.” Id. at 1257.

Here, Edwards does not dispute the following facts, as found by the trial court based upon Officer’s testimony: (1) Edwards was “driving down the middle of East Washington Street, intersecting a white painted line”; (2) Edwards did not initially stop when Officer attempted to make a traffic stop; (3) Edwards had “bloodshot, glassy, watery eyes,” “slurred speech,” and there was a “strong odor of an alcoholic beverage coming from inside of the vehicle”; (4) Edwards had trouble locating his driver’s license, vehicle registration, and proof of insurance; and (5) Edwards failed three field sobriety tests. (Trial Ct. Op. at 3-5; Hr’g Tr. at 6-10, R.R. at 8a-12a.) Accordingly, the trial court’s finding that Officer had reasonable grounds to believe that Edwards was operating his vehicle while under the influence of alcohol is supported by substantial evidence. As such, the trial court did not err by denying Edwards’ appeal and sustaining the one-year suspension of his operating privilege.

Notwithstanding that we must affirm the trial court’s Order on the foregoing basis, we will briefly address Edwards’ broad contention that the Implied Consent Law violates Article I, Section 8 of the Pennsylvania Constitution and the Fourth Amendment to the United States Constitution because a licensee’s operating privilege may be suspended for refusing a chemical test even when the traffic stop is not lawful.<sup>7</sup> However, because Edwards does not challenge the lawfulness of his traffic

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<sup>7</sup> Edwards argues that “[t]he fact that a lawful arrest is immaterial to a license suspension under the Implied Consent Law creates a situation where a police officer is able to stop a driver for no reason and form ‘reasonable grounds’ for requesting chemical testing upon investigation of the  
(Continued...)

stop he is, in reality, asking this Court to rule that Section 1547(b) of the Vehicle Code is unconstitutional as applied to someone else. We decline to so rule. We also note that in the seminal case that Edwards does not mention in his brief, our Supreme Court in Department of Transportation v. Wysocki, 517 Pa. 175, 535 A.2d 77 (1987), held that a constitutional attack on a traffic stop has no bearing on the resolution of an appeal from a license suspension.<sup>8</sup> Rather, our proper standard of review is to determine whether the Department proved that reasonable grounds existed to believe that Edwards had been operating his vehicle under the influence of alcohol. As stated, the Department here met its burden of proof.

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vehicle and its occupants.” (Edwards’ Br. at 13.) Edwards contends that this results in the seizure occurring “before such reasonable grounds are established.” (Edwards’ Br. at 13.) However, the police officer in this case did not stop Edwards “for no reason” but because of the manner in which Edwards was driving.

<sup>8</sup> In Wysocki, the Supreme Court held that

the power of the Department of Transportation to suspend a driver’s license[] . . . is conferred by the implied consent law. That authority is not conditioned on the validity of the arrest which gives rise to the request for a breathalyzer test . . . . [T]he legislature did not intend to engraft the requirements of the exclusionary rule onto the statute in question . . . . The basis for employing the exclusionary rule in Fourth Amendment situations is to deter police officials from engaging in improper conduct for the purpose of obtaining criminal convictions. Terry v. Ohio, 392 U.S. 1 . . . (1968); Linkletter v. Walker, 381 U.S. 618 . . . (1965); Mapp v. Ohio, 367 U.S. 643 . . . (1961). Where the driver refuses to take a breathalyzer test, that refusal violates a condition for the continued privilege of operating a motor vehicle and is properly considered as a basis for suspension of that privilege. The driver’s guilt or innocence of a criminal offense is not at issue in the license suspension proceedings. The only fact necessary to the administrative determination is the driver’s refusal to comply with the breathalyzer request after being taken into custody.

Wysocki, 517 Pa. at 179-80, 535 A.2d at 79. See also Nornhold v. Department of Transportation, Bureau of Driver Licensing, 881 A.2d 59, 62-63 (Pa. Cmwlth. 2005) (holding, based upon Wysocki, that the trial court erred by finding that licensee’s arrest was unlawful because the police officer formed reasonable grounds to believe that licensee was driving under the influence after the arrest).

For the foregoing reasons, the trial court's Order is affirmed.

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**RENÉE COHN JUBELIRER, Judge**



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Department of Transportation,	:	
Bureau of Driver Licensing	:	

**ORDER**

**NOW**, January 18, 2013, the Order of the Court of Common Pleas of Lawrence County in the above-captioned matter is **AFFIRMED**.

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**RENÉE COHN JUBELIRER, Judge**