

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert A. Phillippi, :
Appellant :
v. : No. 1341 C.D. 2009
Commonwealth of Pennsylvania, : Submitted: December 11, 2009
Department of Transportation, :
Bureau of Driver Licensing :
:

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE FLAHERTY

FILED: February 24, 2010

Robert A. Phillippi (Phillippi) appeals from an order of the Court of Common Pleas of Westmoreland County (trial court) which denied Phillippi's appeal from an eighteen month suspension of his operating privileges imposed by the Department of Transportation, Bureau of Driver Licensing (Department) pursuant to Section 1547 of the Vehicle Code, 75 Pa. C.S. §1547.¹ We affirm.

¹ Section 1547 of the Vehicle Code provides in pertinent part as follows:

(a) General rule.- Any person who drives, operates or is in actual physical control of the movement of a vehicle in this 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 substance if

On December 29, 2007, Robert Derk, a City of Latrobe Police Officer (Officer Derk), received a panic alarm from Huber Hall, a private club in the City of Latrobe. The alarm came about due to an automotive accident in the parking lot next to the club, where a vehicle was pushed into the side of the club by another vehicle. Outside of Huber Hall, Officer Derk met the bartender, Lynn Ruffner, and she related to him that she had to remove Phillippi from the bar because he was too intoxicated and within a minute, she heard a crash in the parking lot. Other eyewitnesses related to Officer Derk that a red Chevrolet Blazer S-10 crashed into the other vehicle

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

(1) in violation of section...3802 (relating to driving under 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:

(ii) For a period of 18 months if any of the following apply:

(A) The person's operating privileges have previously been suspended under this subsection.

(B) The person has, prior to the refusal under this paragraph, been sentenced for:

(I) an offense under section 3802....

and sped off through the parking lot at a high rate of speed toward Bush Lane.

Officer Derk obtained Phillippi's address from the bartender, then Officer Derk and Officer Rummel proceeded directly to such address in Loyalhanna Township, which is a distance of three miles.² Officer Derk located the red Chevrolet Blazer S-10 directly behind Phillippi's residence. While speaking to Phillippi, Officer Derk observed a strong odor of alcohol and that Phillippi had bloodshot, glassy eyes, slurred speech and walked with a staggered gate. When questioned, Phillippi responded that he was the only person to drive the Blazer that day and he denied that he had been involved in an accident. Phillippi further stated that he had not had anything to drink after leaving Huber Hall. Thereafter, Officer Derk and Phillippi looked at Phillippi's Blazer and observed that it had damage to the bumper. Phillippi indicated that the damage was not there before and that no one else had driven the vehicle that evening. Officer Derk believed Phillippi was under the influence of alcohol and incapable of safe driving.

Officer Derk asked Phillippi to take a field sobriety test, but Phillippi refused. Officer Derk then arrested Phillippi for driving under the influence. Officer Derk read Phillippi the DL-26 warnings form, and Phillippi refused to take the chemical test. Although Phillippi was given more than one opportunity to take the chemical test, Phillippi refused it.

² There is conflicting information as to whether Phillippi's property is in Derry or Loyalhanna Township. The Pennsylvania State Police, not the City of Latrobe Police, have jurisdiction over both Derry and Loyalhanna Township. The State Police were not contacted that evening regarding this matter.

Officer Derk was the only witness who testified on behalf of the Department. Phillippi did not testify nor did any witnesses testify on behalf of Phillippi. On June 8, 2009, the trial court denied Phillippi's appeal. Phillippi now appeals to this court.³

On appeal, Phillippi contends that the trial court erred in failing to determine that Officer Derk violated the Municipal Police Jurisdiction Act, 42 Pa. C.S. §§8951- 8954 and, therefore, Phillippi's suspension for failure to submit to chemical testing under the implied consent law should be reversed.

Section 8953 of the Municipal Police Jurisdiction Act (MPJA) provides in pertinent part as follows:

(a) General rule.- Any duly employed municipal police officer who is within this Commonwealth, but beyond the territorial limits of his primary jurisdiction, shall have the power and authority to enforce the laws of this Commonwealth or otherwise perform the functions of that office as if enforcing those laws or performing those functions within the territorial limits of his primary jurisdiction in the following cases:

(2) Where the officer is in hot pursuit of any person for any offense which was committed, or which he has probable cause to believe was committed, within his primary jurisdiction and for which offense the officer continues in fresh pursuit of the person after the commission of the offense.

³ Our review is limited to determining whether the trial court's findings of fact are supported by substantial evidence and whether the trial court committed an error of law or violated constitutional rights. Dardozi v. Department of Transportation, Bureau of Driver Licensing, 660 A.2d 205 (Pa. Cmwlth. 1995).

42 Pa. C.S. §8953.

Specifically, Phillippi argues that Officer Derk was unlawfully outside of his jurisdiction and therefore, lacked the authority to enforce the Implied Consent Law. Phillippi states that Officer Derk had enough time to contact the state police and advise them of his concerns, but failed to do so, even though Officer Derk knew that he was outside of his jurisdiction. Phillippi states that there was no “hot” and “fresh” pursuit and that prior to the illegal investigation, Officer Derk did not have probable cause. Phillippi further argues that Officer Derk’s pursuit may have been “fresh”, but it definitely was not “hot”. Phillippi relies on the dissent in Commonwealth v. McPeak, 708 A.2d 1263, 1269 (Pa. Super. 1998), wherein Judge Popovich stated that “hot” pursuit requires “the officer to chase the suspect and not just appear at the suspect’s home after receiving information regarding the suspect’s location.” Id. at 1269.

In Commonwealth v. Peters, 600 Pa. 268, 965 A.2d 222 (2009), our Supreme Court affirmed the Superior Court, adopting its opinion and supplementing it, answering the question regarding what is a “hot” and “fresh” pursuit under the MPJA. Our Supreme Court recounted the Superior Court’s reasoning as follows:

“hot pursuit” requires some sort of chase, but does not require a ‘fender-smashing Hollywood-style chase scene’ nor ‘police observation of the criminal activity.’ [McPeak, 708 A.2d 1266.] Furthermore, pursuit of a suspect may constitute a chase when it is ‘based on witness information as to the location of the suspect.’ Id. And ‘fresh pursuit’ requires that it be immediate, continuous and uninterrupted. See id.” Peters, 915 A.2d at

1219. The panel found Sugarcreek police were in hot and fresh pursuit of appellant when he arrived at his house in Franklin because:

After [Sugarcreek police] received the radio call reporting the accident, [they] **immediately** began pursuing [a]ppellant, first arriving at the accident scene and then tracking him to the abandoned vehicle, and ultimately to [a]ppellant's house. The information that guided [Sugarcreek police] as [they] **chased** [a]ppellant from one scene to the next was of course provided first by witnesses, then the Franklin police, and lastly by [a]ppellant himself. Nonetheless within an approximately one hour period, [Sugarcreek police] **continuously** pursued [a]ppellant without **interruption**, and at each step of the pursuit [they] got closer to catching him.

Id. at 1219-20.

Peters, 600 Pa. at 273-274, 965 A.2d at 224-225 (emphasis in original). The Supreme Court agreed “that ‘hot pursuit’ and ‘fresh pursuit’ require some sort of investigation and tracking of the perpetrator and that that pursuit be immediate, continuous and uninterrupted.” Id. at 274, 965 A.2d at 225.

The arrest of appellant by Sugarcreek police was authorized under Section 8953 because they were in hot and fresh pursuit of appellant. Sugarcreek police engaged in an immediate and systematic pursuit of the person who left the scene of the accident. Further, Sugarcreek police pursued appellant continuously and without interruption for approximately one hour. It is clear that the hot and fresh pursuit exception to the MPJA was met.

Id.

The present controversy is on point with Peters. Officer Derk responded to a hit and run call, immediately investigated it and systematically pursued the offender. Such pursuit was continuous and without interruption. It is clear, in this case as well as in Peters, that the hot and fresh pursuit exception to the MPJA was met. Therefore, Officer Derk did possess the statutory authority under the MPJA to effect Phillipi's arrest for driving under the influence outside of Officer Derk's primary jurisdiction.

Accordingly, we must affirm the order of the trial court.

JIM FLAHERTY, Senior Judge

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Department of Transportation,	:	
Bureau of Driver Licensing	:	
	:	

ORDER

AND NOW, this 24th day of February, 2010, the order of the Court of Common Pleas of Westmoreland County in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge