

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Frantz Charles :  
 :  
 v. : No. 1394 C.D. 2007  
 : Submitted: December 21, 2007  
 Commonwealth of Pennsylvania, :  
 Department of Transportation, :  
 Bureau of Driver Licensing, :  
 Appellant :

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge  
 HONORABLE RENÉE COHN JUBELIRER, Judge  
 HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: February 1, 2008

The Pennsylvania Department of Transportation, Bureau of Driver Licensing (Department), appeals an order of the Court of Common Pleas of Philadelphia County (trial court), which sustained the license suspension appeal of Frantz Charles (Licensee). The Department contends that it proved that Licensee violated Section 1786 of the Vehicle Code, which requires the owner of a registered motor vehicle to maintain financial responsibility on that vehicle, by proving that Licensee was convicted of violating Section 1786 of the Vehicle Code.<sup>1</sup> Accordingly, the Department asserts that the trial court lacked a basis to

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<sup>1</sup> Section 1786 provides, in pertinent part, that

[e]very motor vehicle of the type required to be registered under this title which is operated or currently registered shall be covered by financial responsibility.

75 Pa. C.S. §1786(a).

overturn Licensee's license suspension. Agreeing with the Department that Licensee was estopped by *res judicata* from collaterally attacking the facts underlying his conviction, we will reverse.

The relevant facts are not in dispute. On June 24, 2006, Licensee's motor vehicle was involved in an accident, which required Licensee to produce proof of financial responsibility. When he could not do so, he was issued a citation for violating Section 1786(f) of the Vehicle Code.<sup>2</sup> On January 17, 2007, the Department notified Licensee that his operating privilege was being suspended for three months in accordance with Section 1786(d) of the Vehicle Code,<sup>3</sup> effective

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<sup>2</sup> Section 1786(f) states:

Any owner of a motor vehicle for which the existence of financial responsibility is a requirement for its legal operation shall not operate the motor vehicle or permit it to be operated upon a highway of this Commonwealth without the financial responsibility required by this chapter. In addition to the penalties provided by subsection (d), any person who fails to comply with this subsection commits a summary offense and shall, upon conviction, be sentenced to pay a fine of \$300.

75 Pa. C.S. §1786(f).

<sup>3</sup> Section 1786(d) provides, in relevant part:

(1) *The Department of Transportation shall suspend the registration of a vehicle for a period of three months if it determines the required financial responsibility was not secured as required by this chapter and shall suspend the operating privilege of the owner or registrant for a period of three months if the department determines that the owner or registrant has operated or permitted the operation of the vehicle without the required financial responsibility. The operating privilege shall not be restored until the restoration fee for operating privilege provided by section 1960 (relating to reinstatement of operating privilege or vehicle registration) is paid.*

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(4) Where an owner or registrant's operating privilege has been suspended under this subsection, the owner or registrant shall have the same right of appeal under section 1550 (relating to judicial review) as provided for in cases of suspension for other reason. The court's scope of review in an

**(Footnote continued on the next page . . .)**

February 21, 2007. Licensee then appealed to the trial court, which held a hearing *de novo*.

At the hearing, the Department introduced, without objection, a packet of certified documents. The packet included the Department's notice of suspension; a conviction report documenting Licensee's conviction for violating Section 1786(f) of the Vehicle Code; and Licensee's driving history. Licensee, who appeared *pro se*, testified that he cancelled his insurance policy for the motor vehicle approximately two weeks prior to the accident because it was too costly. Licensee also explained that he obtained a new insurance policy on his motor vehicle, which became effective on June 27, 2006, or three days after the date of the accident. Licensee also testified that he never operated the motor vehicle during the time period it was uninsured. Licensee testified that at the time of the accident his vehicle was parked on the street by his house when it was hit by another motor vehicle.

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appeal from an operating privilege suspension shall be limited to determining whether:

- (i) the vehicle was registered or of a type required to be registered under this title; and
- (ii) the owner or registrant operated or permitted the operation of the same vehicle when it was not covered by financial responsibility. The fact that an owner, registrant or operator of the motor vehicle failed to provide competent evidence of insurance or the fact that the department received notice of a lapse, termination or cancellation of insurance for the vehicle shall create a presumption that the vehicle lacked the requisite financial responsibility. This presumption may be overcome by producing clear and convincing evidence that the vehicle was insured at the time that it was driven.

75 Pa. C.S. §1786(d)(1), (4) (emphasis added).

The trial court sustained Licensee's appeal and rescinded the suspension issued by the Department. The trial court found credible Licensee's testimony that the vehicle was not operated during the period it was uninsured. The trial court concluded that the Department failed to meet its burden to establish that Licensee operated the vehicle while it was uninsured. The Department now appeals.<sup>4</sup>

On appeal, the Department raises one issue for this Court's review: whether the trial court erred in finding that Licensee did not operate the vehicle during the period it lacked financial responsibility. The Department argues that Licensee was estopped from claiming that he had not operated the vehicle at a time when it was uninsured because Licensee had been convicted of operating the vehicle without securing financial responsibility. For the reasons that follow, we agree with the Department.

We begin with a review of the burden shifting scheme applicable in a statutory appeal from an operating privilege suspension. In order to sustain a suspension of a licensee's operating privilege under Section 1786(d) of the Vehicle Code, the Department must prove the following: the vehicle was required to be registered in the Commonwealth; financial responsibility was not maintained for the vehicle; and licensee operated the vehicle while it was not covered by financial responsibility. *Richards v. Department of Transportation, Bureau of Driver Licensing*, 767 A.2d 1133, 1135 (Pa. Cmwlth. 2001). The operation of a motor

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<sup>4</sup> Our review of a trial court's order sustaining a licensee's statutory appeal from an operating privilege suspension is limited to determining whether the trial court committed an error of law or abused its discretion, and whether necessary findings of fact are supported by substantial evidence. *Capone v. Department of Transportation, Bureau of Driver Licensing*, 875 A.2d 1228, 1230 n.1 (Pa. Cmwlth. 2005).

vehicle without the required financial responsibility subjects the vehicle's owner to penalties for a summary offense. 75 Pa. C.S. §1786(f).<sup>5</sup> Where a licensee is convicted of the summary offense and does not object to the admission of the conviction at the suspension hearing, the Department satisfies its burden of proving that the registrant operated the motor vehicle without the required financial responsibility. *Capone v. Department of Transportation, Bureau of Driver Licensing*, 875 A.2d 1228, 1231 (Pa. Cmwlth. 2005) (citations omitted). A certified copy of the criminal conviction creates a rebuttable presumption of conviction. *Richards*, 767 A.2d at 1135.

To overcome the presumption of conviction, a licensee is required to show by clear and convincing evidence that the criminal record offered by the Department was erroneous. *Mateskovich v. Department of Transportation, Bureau of Driver Licensing*, 755 A.2d 100, 102 (Pa. Cmwlth. 2000). The licensee may show, for example, that the Department has presented an incorrect record or that the conviction was overturned. *See Department of Transportation, Bureau of Driver Licensing v. Diamond*, 616 A.2d 1105 (Pa. Cmwlth. 1992) (licensee submitted a certified copy of his acquittal); *Fine v. Department of Transportation, Bureau of Driver Licensing*, 694 A.2d 364 (Pa. Cmwlth. 1997) (certified copy of trial court order reversing a licensee's conviction rebuts the presumption of conviction); *Department of Transportation, Bureau of Driver Licensing v. Emery*, 580 A.2d 909 (Pa. Cmwlth. 1990) (letter from district justice, with official seal, stating that licensee was found not guilty rebuts evidence of conviction). *Cf.*

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<sup>5</sup> The Department must produce an official record of the conviction to support the suspension. *Department of Transportation, Bureau of Driver Licensing v. Tarnopolski*, 533 Pa. 549, 552, 626 A.2d 138, 140 (1993).

*Appeal of George*, 515 A.2d 1047 (Pa. Cmwlth. 1986) (licensee’s uncertified computer printout of driver’s record not containing one of the convictions upon which suspension was based did not rebut presumption of conviction).

In the present case, the Department introduced, without objection, a certified copy of a report detailing Licensee’s conviction under the summary offense provisions of Section 1786(f) of the Vehicle Code. Reproduced Record at 17a (R.R. \_\_\_\_). This evidence created a rebuttable presumption that Licensee was convicted of allowing his motor vehicle to be operated without the required financial responsibility.

Licensee did not argue that he was never convicted of Section 1786(f) of the Vehicle Code. Instead, Licensee attempted to refute the facts underlying his conviction by testifying that he had not operated the motor vehicle during the period it was uninsured. On that basis, the trial court found, as fact, that Licensee’s vehicle was not operated during the time period it was uninsured.

It is well settled that determinations of credibility are solely within the province of the fact finder. *Department of Transportation, Bureau of Traffic Safety v. O’Connell*, 521 Pa. 242, 248, 555 A.2d 873, 875 (1989). However, the fact of Licensee’s operation of his uninsured vehicle was beyond the scope of the factfinder’s review because that fact had previously been established in his criminal case. Collateral estoppel prevents a “defendant from litigating an issue the defendant has previously litigated unsuccessfully in an action with another party.” *Shaffer v. Smith*, 543 Pa. 526, 529, 673 A.2d 872, 874 (1996) (quoting *Parklane Hosery Co. v. Shore*, 439 U.S. 322, 326 n.4 (1979)).<sup>6</sup> Moreover, it is

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<sup>6</sup> Collateral estoppel applies where:  
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well established in this Commonwealth that “a criminal conviction collaterally estops a defendant from denying his acts in a subsequent civil trial.” *Shaffer*, 543 Pa. at 529, 673 A.2d at 874.

The Supreme Court’s decision in *Shaffer* is illustrative of this principle. In *Shaffer*, the defendant assaulted the plaintiff by repeatedly striking the plaintiff in the left eye with a weapon known as a nunchaku.<sup>7</sup> As a result of his injuries, the plaintiff lost his left eye and thereafter initiated a civil action for damages against the defendant. While the civil action was pending, the defendant was tried and convicted of aggravated assault and possession of an instrument of crime. The defendant’s conviction and sentence were affirmed on appeal.<sup>8</sup> The plaintiff was granted partial summary judgment as to liability based on the defendant’s criminal conviction. The case proceeded to trial on the issue of damages, and the plaintiff was ultimately awarded \$1,650,000 in compensatory and punitive damages.

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- (1) The issue decided in the prior adjudication was identical with the one presented in the latter action;
- (2) There was a final judgment on the merits;
- (3) The party against whom the plea is asserted was a party or in privity with a party to the prior adjudication; and
- (4) The party against whom it is asserted has had a full and fair opportunity to litigate the issue in question in a prior action.

*Safeguard Mutual Insurance Co. v. Williams*, 463 Pa. 567, 574, 345 A.2d 664, 668 (1975) (citations omitted).

<sup>7</sup> A nunchaku, or nunchucks, is a “weapon that consists of two hardwood sticks joined at their ends by a short length of rawhide, cord, or chain.” MERRIAM-WEBSTER ONLINE, <http://www.m-w.com/dictionary/nunchakus> (last visited Jan. 7, 2008).

<sup>8</sup> The defendant also filed a petition for relief under the Post Conviction Relief Act, 42 Pa. C.S. §§9541-9546, which was denied.

The defendant appealed the damage award, asserting that the trial court erred by entering the partial summary judgment based on the criminal conviction that was also the subject of a pending Post Conviction Relief Act petition. The Supreme Court affirmed. It held that under the doctrine of collateral estoppel, a defendant cannot deny the acts that led to his criminal conviction in a subsequent civil trial, notwithstanding the pendency of an appeal of the criminal conviction. *Shaffer*, 543 Pa. at 530, 673 A.2d 875.

In this case, it is undisputed that Licensee was convicted of operating a motor vehicle without being financially responsible for that vehicle, in violation of Section 1786(f) of the Vehicle Code. Indeed, Licensee did not present any evidence to the contrary. Therefore, at the suspension hearing, Licensee was estopped from denying that he had not operated the vehicle while it was uninsured. Accordingly, the trial court erred in allowing Licensee to deny the acts that led to his conviction under 75 Pa. C.S. §1786(f).

Based on the foregoing, the decision of the trial court must be reversed.

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MARY HANNAH LEAVITT, Judge



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**ORDER**

AND NOW, this 1<sup>st</sup> day of February, 2008, the order of the Court of Common Pleas of Philadelphia County dated August 9, 2007, in the above captioned matter, is hereby REVERSED, and the three-month suspension of the operating privileges of Frantz Charles is REINSTATED.

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MARY HANNAH LEAVITT, Judge