

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tiffany Renee Smith,	:	
Appellant	:	
	:	
v.	:	No. 1820 C.D. 2007
	:	SUBMITTED: February 22, 2008
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: April 18, 2008

Appellant Tiffany Renee Smith (Smith) appeals from the order of the Court of Common Pleas of the 39th Judicial District (Franklin County Branch) (trial court) reinstating the six-month suspension of Smith’s driver’s license, imposed by the Department of Transportation, Bureau of Driver Licensing (Bureau), pursuant to Section 1532 of the Vehicle Code, 75 Pa. C.S. § 1532. We affirm.

Smith was arrested on September 1, 2006, and charged with criminal conspiracy-unlawful delivery of a controlled substance pursuant to 18 Pa. C.S. § 903 and Section 13(a)(30) of The Controlled Substance, Device and Cosmetic Act (Drug Act), Act of April 14, 1972, P.L. 233, *as amended*, 35 P.S. § 780-113(a)(30)(count 1); unlawful delivery of a controlled substance pursuant to

Section 13(a)(30) of the Drug Act, 35 P.S. § 780-113(a)(30)(count 2); and criminal use of a communication facility pursuant to 18 Pa. C.S. § 7512(count 3). Under a plea agreement negotiated with the Franklin County District Attorney's Office, Smith pled guilty to count 1, criminal conspiracy to deliver marijuana. The Clerk of Courts of Franklin County certified to the Bureau that Smith was convicted of delivery of marijuana in violation of Section 13(a)(30) of the Drug Act. The Bureau then informed Smith by mail that her driving privilege would be suspended for six months as provided by 75 Pa. C.S. § 1532(c).

After Smith filed a timely statutory appeal, a *de novo* hearing took place before the trial court on June 26, 2007. At that hearing, the Bureau offered into evidence the certified conviction (PennDOT Form DL-21D), as well as the Criminal Docket Sheets from Franklin County, which showed that Smith pled guilty to conspiracy to deliver marijuana on December 18, 2006, while the two remaining charges were *nolle prossed*.¹ Smith's attorney offered into evidence the plea agreement, the three criminal informations brought against Smith, and the DL-21 certification. Following a discussion off the record, the trial court issued the following order:

¹ Commonwealth's Exhibit 2 is a ten page document entitled, "COURT OF COMMON PLEAS OF FRANKLIN COUNTY, CRIMINAL DOCKET, Docket Number: CP-28-CR-0001613-2006, Commonwealth of Pennsylvania v. Tiffany Renee Davis." In offering this as an exhibit, the Bureau's attorney stated that it was the "criminal docket printout from the AOPC [Administrative Office of Pennsylvania Courts] web site and that would substantiate the allegations that she [Smith] pled to count one, criminal conspiracy of delivery." Hearing of June 26, 2007, Notes of Testimony (N.T.), at 3. As noted by the trial court, although Ms. Smith holds a driver's license under the name of Tiffany Renee Smith, and she pled guilty under the name of Tiffany Renee Davis, "[t]here is no dispute that the person who pled guilty is the same person whose license PennDOT is attempting to suspend." Opinion and order, July 20, 2007, at 1, footnote 1, Certified Record (C.R.) Item 7.

June 26, 2007, the matter having come before the Court for argument on a license suspension in the above matter, and it appearing that Franklin County Clerk of Courts sent in a DL-21 report to PennDOT showing sale of marijuana and the official court records at this hearing indicate that the plea was to conspiracy to deliver marijuana.

The Court is going to direct the Franklin County Clerk of Courts to submit a new amended DL-21 to PennDOT showing the offense as conspiracy to deliver marijuana.

Order, dated June 26, 2007, Supplemental Reproduced Record (S.R.R.) at 31b. After both sides presented argument, the trial court issued an order and decision denying the license suspension appeal of Ms. Smith and reinstating the six-month license suspension imposed by the Bureau.²

On appeal, Smith argues that criminal conspiracy is an inchoate crime under the Crimes Code, separate and distinct from the crime of delivery of a controlled substance under the Drug Act. Smith asserts that while a conviction for delivery of a controlled substance will trigger the mandatory suspension under Section 1532(c) of the Vehicle Code, conspiracy is not one of the enumerated offenses for which the Bureau may suspend a driver's operating privilege. Therefore, the trial court erred in denying her appeal and reinstating the six-month suspension of her license.

Section 1532 (c) of the Vehicle Code provides in pertinent part:

(c) SUSPENSION.-- The department shall suspend the operating privilege of any person upon receiving a

² In its opinion, the trial court stated that, “[t]he Clerk of Courts sent an amended form [DL-21] to PennDOT on July 6, 2007.” Opinion and order, July 20, 2007, at 2, C.R., Item 7. The amended DL-21 is not a part of the record, however.

certified record of the person’s conviction of any offense involving the possession, sale, delivery, offering for sale, holding for sale or giving away of any controlled substance

(1) The period of suspension shall be as follows:

(i) For a first offense, a period of six months from the date of the suspension.

75 Pa. C.S. § 1532(c). The Bureau argues that the statute’s use of the phrase “any offense involving” encompasses the crime of conspiracy to deliver a controlled substance, in this case, marijuana, citing *Keim v. Department of Transportation, Bureau of Driver Licensing*, 887 A.2d 834 (Pa. Cmwlth. 2005), and *Conchado v. Department of Transportation, Bureau of Driver Licensing*, 941 A.2d 792 (Pa. Cmwlth. 2008), in support of its argument. We agree.

In *Keim*, we held that the specific offenses included in Section 1532(c) were not exclusive and, in fact, could include a conviction for manufacturing a controlled substance, the crime for which Keim had been convicted, and which served as the basis for suspending his license under Section 1532(c). 887 A.2d at 839. More recently in *Conchado*, we considered the issue of whether a conviction for conspiracy to possess with intent to deliver a controlled substance would mandate the suspension of a person’s license pursuant to Section 1532(c). Similar to the facts in this case,³ Ms. Conchado had pled guilty to

³ The parties in *Conchado* were apparently in dispute over whether Conchado’s conviction was for criminal conspiracy as evidenced by a sentencing sheet introduced at trial, or for actual possession with intent to deliver as evidenced by the certified DL-21. The issue was complicated by the fact that the trial court, *sua sponte*, took judicial notice of an uncertified photocopy of a document that was represented as the sentencing sheet, showing that Conchado had pled guilty to conspiracy and not possession. While agreeing that it was improper for the trial court to have taken judicial notice of “information contained in an uncertified, unauthenticated photocopy of a **(Footnote continued on next page...)**

conspiracy to possess with intent to deliver a controlled substance, but the certified conviction form DL-21 showed that she had been convicted of possession with intent to deliver. Following the reasoning in *Keim*, we concluded that, “[i]t would appear obvious, as DOT argues, that conspiracy to commit a crime ‘involves’ that crime. Thus, Section 1532(c) provides for a license suspension following a conviction for Criminal Conspiracy to Possess with Intent to Deliver.” 941 A.2d at 795-96 (footnote omitted).

We similarly conclude that Smith’s conviction for conspiracy to deliver a controlled substance mandates the six-month suspension of her driver’s license as imposed by the Bureau. Accordingly, the order of the trial court is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

(continued...)

disputed document,” we nevertheless concluded that whether Conchado’s conviction was for conspiracy or actual possession with intent to deliver, Section 1532(c) mandated suspension of her license. 941 A.2d at 794.

In the matter *sub judice*, the parties agree that Smith was convicted of conspiracy to deliver a controlled substance and not delivery of a controlled substance. In fact, it was the Bureau’s attorney who introduced into evidence the criminal docket sheet purportedly from the Franklin County Court of Common Pleas, which showed that Smith pled guilty to the conspiracy charge and not the substantive drug charges. In addition, as noted herein, the trial court in this instance then ordered the Clerk of Courts to amend the DL-21 to reflect the offense that Smith had been convicted of, to wit, conspiracy to deliver a controlled substance.

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Department of Transportation,	:	
Bureau of Driver Licensing	:	

ORDER

AND NOW, this 18th day of April, 2008, the order of the Court of Common Pleas of the 39th Judicial District (Franklin County Branch) in the above captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge

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Commonwealth of Pennsylvania, : Submitted: February 22, 2008
Department of Transportation, :
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HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

DISSENTING OPINION
BY SENIOR JUDGE KELLEY

FILED: April 18, 2008

I respectfully dissent. The majority relies upon this Court's decisions in Keim v. Department of Transportation, Bureau of Driver Licensing, 887 A.2d 834 A.2d 834 (Pa. Cmwlt. 2005) and Conchado v. Department of Transportation, Bureau of Driver Licensing, 941 A.2d 792 (Pa. Cmwlt. 2008), in holding that the use of the phrase "any offense involving" found in Section 1532(c) of the Vehicle Code, 75 Pa. C.S. §1532(c), encompasses the crime of conspiracy to deliver a controlled substance. As stated by the majority herein, in Keim, this Court held that the specific offenses included in Section 1532(c) were not exclusive and in fact could include a conviction for manufacturing a controlled substance. However, as I stated in the dissenting opinion in Keim:

When the words of a statute are clear and free from ambiguity, the interpretation is relatively simple; in such circumstances, “the letter of it is not to be disregarded under the pretext of pursuing its spirit.” Section 1921(b) of the Statutory Construction Act of 1972 (Statutory Construction Act), 1 Pa. C.S. §1921(b). When, however, the words of a statute are not explicit, legislative intent may be ascertained by considering, *inter alia*, the occasion and necessity of the statute, the circumstances in which it was enacted, the mischief to be remedied, and the object to be attained by the legislation. Section 1921(c) of the Statutory Construction Act, 1 Pa. C.S. §1921(c). The primary object of all statutory interpretation, of course, “is to ascertain and effectuate the intention of the General Assembly.” Section 1921(a) of the Statutory Construction Act, 1 Pa. C.S. §1921(a).

Here, Section 1532(c) is clear and free from ambiguity and easily understood by its express terms. Section 1532(c) expressly lists six types of Drug Act offenses warranting the suspension of a licensee's operating privilege - the "possession, sale, delivery, offering for sale, holding for sale or giving away of any controlled substance." 75 Pa. C.S. §1532(c). Subsection (2) reiterates "for the purposes of this subsection, the term "conviction" shall include any conviction or adjudication of delinquency for any of the offenses listed." 75 Pa. C.S. §1532(c)(2) (emphasis added). The manufacture of a controlled substance, however, is not listed as an offense warranting suspension.

The maxim, *inclusio unius est exclusio alterius*, is clearly applicable to the present circumstances. This doctrine decrees that where law expressly describes a particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded. *Black's Law Dictionary* 763 (6th ed. 1990).

Keim, 887 A.2d at 839-40. Notwithstanding the fact that, as in Keim, the offense for which the licensee pled guilty, specifically criminal conspiracy, is not included

in the list of offenses warranting the suspension of a licensee's operating privilege, this Court held in Conchado, based on the construction of the phrase "any offense involving" as set forth in Section 1532(c), that "it would appear obvious, as DOT argues, that conspiracy to commit a crime 'involves' that crime. Thus, Section 1532(c) provides for a license suspension following a conviction for Criminal Conspiracy to Possess with Intent to Deliver." Conchado, 941 A.2d at 795-96.

However, I believe that like Keim, Conchado was wrongly decided based on the plain language of Section 1532(c). In the present matter, this Court continues to disregard and go beyond the express language of Section 1532(c) in order to pursue what DOT believes is the spirit of the law. I once again disagree, based on my dissent in Keim as set forth above, that the plain language of Section 1532(c) should be construed to include any offense other than the six specifically listed therein by the General Assembly. While the offense of criminal conspiracy with intent to deliver would be a logical addition to the list of offenses for which a licensee's operating privilege may be suspended, such expansion is clearly a matter for the General Assembly. Accordingly, I would reverse the trial court's order suspending Smith's operating privilege based on her conviction for criminal conspiracy with intent to deliver marijuana.

JAMES R. KELLEY, Senior Judge