

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania,	:
Department of Transportation,	:
Bureau of Driver Licensing,	:
Appellant	:
	:
v.	:
	:
Calvin T. Dorman	: No. 2034 C.D. 2007
	: Submitted: February 8, 2008

BEFORE: HONORABLE BERNARD McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
SENIOR JUDGE COLINS**

FILED: March 19, 2008

The Department of Transportation, Bureau of Driver Licensing (Department) appeals from an order of the Court of Common Pleas of Delaware County (Trial Court) that sustained Calvin T. Dorman’s (Licensee’s) appeal of the one-year suspension of his driving privileges imposed by the Department as a result of his reported refusal to submit to chemical testing, pursuant to Section 1547(b)(1) of the Vehicle Code, *as amended*, 75 Pa. C.S. §1547(b)(1).¹

¹ Section 1547(b)(1) of the Code provides as follows:

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:

Dorman received official notice, with a mailing date of March 16, 2007, from the Department advising that his driving privilege was being suspended for a one-year period, effective April 20, 2007, as a result of his refusal to submit to a chemical test on February 5, 2007, in violation of Section 1547 of the Vehicle Code, 75 Pa.C.S. §1547 (Implied Consent Law, pertaining to chemical testing to determine the amount of alcohol or controlled substance). Dorman, on April 11, 2007, filed a timely statutory appeal in the Court of Common Pleas of Delaware County.

On October 9, 2007, a hearing de novo was conducted at which Pennsylvania State Trooper Christopher Shoap (Trooper Shoap) testified as to the events surrounding his stopping Dorman's vehicle on February 5, 2007, at approximately 1:27 a.m., and as to the various field sobriety tests he asked Dorman to perform both at the highway situs where he had stopped Dorman, and subsequently at Crozer Hospital. Based upon Trooper Shoap's testimony, the Trial Court found that Dorman was not under arrest at the time he was asked to submit

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- (i) Except as set forth in subparagraph (ii), for a period of 12 months.
 - (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;
 - (II) an offense under former section 3731;
 - (III) an offense equivalent to an offense under subclause (I) or (II); or
 - (IV) a combination of the offenses set forth in this clause.

75 Pa. C.S. §1547(b)(1).

to chemical testing and accordingly sustained Dorman's appeal. The Department now brings this appeal from the Trial Court's determination.²

On appeal, the Department argues that Trooper Shoap's credible testimony, along with the DL-26 form, met the Department's *prima facie* burden of proof. The Department also contends that Trooper Shoap observed sufficient indicia of intoxication so as to develop reasonable grounds to believe that Dorman was operating his vehicle while intoxicated. Finally, the Department maintains that the Trial Court's finding that Trooper Shoap did not effectuate an arrest of Dorman so as to obligate Dorman to submit to chemical testing is unsupported by competent evidence of record.

Upon review of the record, we concur with the Trial Court's conclusion that the pivotal issue is whether or not Dorman was under arrest when Trooper Shoap read him the "implied consent" warning. During the hearing, the Trial Court expressly asked Trooper Shoap about the arrest issue to which the latter consistently responded that he had not placed Dorman under arrest. The following cross-examination testimony elicited from Trooper Shoap at Dorman's hearing is relevant:

Q. And you advised my client, you said you're not under arrest?

A. I said you're not under arrest for the – because I explained to him I have to put handcuffs on you when I

² This Court's scope of review in an operating privilege suspension case is confined to determining whether the trial court's findings are supported by competent evidence, whether errors of law have been committed, or whether the trial court's determinations demonstrate a manifest abuse of discretion. *Department of Transportation, Bureau of Driver Licensing v. Ingram*, 538 Pa. 236, 648 A.2d 285 (1994).

transport you in my vehicle. It's the Department policy. You are not under arrest by me placing these handcuffs on you. We are simply going back, if you wish, to perform the test at the Crozer Hospital. . .

Q. Okay. But the fact remains that you said to my client you're not under arrest. Let's just go to the hospital. I want you to do these tests again.

A. Yes. . . I did not force him to.

(N.T., 10/9/2007, pp. 24, 26.)

In *Whiteford v. Department of Transportation, Bureau of Driver Licensing*, 782 A.2d 1127 (Pa. Cmwlth. 2001), this Court reiterated the following four elements that the Bureau must prove in order to sustain a driver's license suspension pursuant to Section 1547(b)(1): (1) arrest for DUI; (2) request to submit to testing; (3) refusal; and (4) delivery of the required warnings. Applying this to the present matter, we concur with the Trial Court's conclusion that pursuant to the statute's unambiguous language, a police officer's duty to inform the licensee about the results of refusing to submit to chemical testing comes *after* the licensee is arrested. Based upon Trooper Shoap's unequivocal testimony that he had not placed Dorman under arrest, the first of the foregoing required elements for sustaining a driver's license suspension was not met.

Accordingly, we affirm the Trial Court's decision.

JAMES GARDNER COLINS, Senior Judge

Judge McGinley concurs in the result only.

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ORDER

AND NOW, this 19th day of March 2008, the order of the Court of
Common Pleas of Delaware County in the above-captioned matter is AFFIRMED.

JAMES GARDNER COLINS, Senior Judge