

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Kevin Brandt Friel,	:	
Appellant	:	
	:	
v.	:	No. 214 C.D. 2008
	:	SUBMITTED: July 3, 2008
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: August 7, 2008**

Kevin Brandt Friel appeals from the order of the Court of Common Pleas of Allegheny County (trial court), dismissing his appeal against The Department of Transportation, Bureau of Driver Licensing (Department), and upholding the one-year suspension of his operating privilege imposed by the Department pursuant to Section 1547 of the Vehicle Code, 75 Pa. C.S. § 1547, for his refusal to submit to chemical testing.<sup>1</sup> Friel challenges the trial court’s finding

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<sup>1</sup> Section 1547 essentially mandates that if any person placed under arrest for driving under the influence is requested to submit to chemical testing and refuses to do so, the Department shall suspend the person’s operating privilege for at least twelve months.

that reasonable grounds existed to arrest Friel for suspicion of driving under the influence. We affirm.

In December 2005, the Department notified Friel that it was suspending his operating privilege for one year, effective February 2, 2006, pursuant to 75 Pa. C.S. § 1547(b)(1)(i), due to his refusal to submit to chemical testing. Friel filed a timely appeal of the suspension and a *de novo* hearing followed.

At the hearing, only the arresting officer, Benjamin Wolfson of the Borough of Sharpsburg Police Department, testified. The evidence established that on October 23, 2005, at 7:47 p.m. Wolfson was dispatched to the scene of an accident where a motor vehicle hit a house. Wolfson arrived on scene at 7:50 p.m. at which time he found the motor vehicle (a motorcycle) parked on the street with nobody on it. Scratches on the motorcycle lined up with damage to the house and pieces from the house were located next to the motorcycle. Wolfson was approached by a witness to the incident who was also the owner of the house that was struck. The witness informed Wolfson that the driver of the motorcycle and a passenger had gotten off the motorcycle and entered a bar directly across the street.

Wolfson immediately located the driver and passenger of the motorcycle in the bar, according to the description given by the witness. Friel, the driver, was standing by the bar having a conversation. At this point Wolfson says it was probably about 7:55 p.m., eight to ten minutes from his receipt of the original dispatch of the accident. Although Friel denied having struck the house, he admitted he had driven to the bar on the motorcycle. During this time Wolfson observed a strong odor of alcohol on Friel's person and bloodshot, glassy eyes.

Outside the bar, Wolfson requested that Friel perform a series of field sobriety tests, which Friel failed. Wolfson placed Friel under arrest for suspicion of driving under the influence and transported him to the Sharpsburg Police Station. There, Wolfson read Friel the Implied Consent DL-26 form, verbatim. Wolfson testified that he gave Friel several opportunities to comply, but Friel continued to refuse the chemical test, stating that he did not think he was that drunk. Wolfson also testified that Friel stated he had been drinking at home watching the Steelers game and then had one shot and a sip of beer before he was removed from the bar. On redirect examination, Wolfson testified that in his experience, the amount Friel admitted to drinking in the bar, one shot and a sip of beer, was not enough to cause Friel to be in the condition Wolfson observed.

At the hearing, defense counsel argued that Friel should not have been placed under arrest because the arresting officer did not have reasonable grounds to believe Friel had been driving under the influence. Wolfson had not seen Friel driving the motorcycle, nor had Wolfson observed Friel's demeanor at the time of the accident, so Wolfson's conclusion that Friel had been driving under the influence was speculative at best. The trial court noted that while probable cause may have been relevant in the criminal case of driving under the influence, here the burden was only reasonable suspicion, and the Department had met its burden.

In order to suspend a licensee's operating privilege under Section 1547(b) of the Vehicle Code (the Implied Consent Law), the Department must demonstrate that:

- (1) Licensee was arrested for violating Section 3802 of the Vehicle Code by a police officer who had "reasonable grounds to believe" that Licensee was operating or was in actual physical control of the movement of the vehicle while in violation of Section 3802 (*i.e.*, while driving

under the influence); (2) Licensee was asked to submit to a chemical test; (3) Licensee refused to do so; and (4) Licensee was specifically warned that a refusal would result in the suspension of his operating privileges and would result in enhanced penalties if he was later convicted of violating Section 3802(a)(1).

*Martinovic v. Dep't of Transp., Bureau of Driver Licensing*, 881 A.2d 30, 34 (Pa. Cmwlth. 2005).

Friel argues that the Department failed to establish the first prong required under the Implied Consent Law because the arresting officer did not have reasonable grounds to believe that Friel was operating the motorcycle under the influence of alcohol.

Central to Friel's argument is *Dep't of Transp., Bureau of Driver Licensing v. Mulholland*, 527 A.2d 1123 (Pa. Cmwlth. 1987), where a police officer investigated a minor automobile accident. One of the drivers involved reported to the officer that the other driver (Appellee) had left the scene of the accident and his vehicle was later spotted in front of a local tavern. When the officer and the witnessing driver entered the tavern and identified Appellee, 25 minutes had passed since the accident. The officer observed Appellee as being very confused, "thick-tongued," with an "exaggerated gait" and a strong smell of alcohol on his breath. The officer arrested Appellee for driving under the influence of alcohol and took him to the police station for a breathalyzer test. Despite repeated warnings that failure to take a chemical test would result in a license suspension, Appellee refused and his license was suspended pursuant to Section 1547(b) of the Vehicle Code, 75 Pa. C.S. § 1547(b).

In *Mulholland*, this court defined reasonable grounds as: "[W]hether, viewing the facts and circumstances as they appeared at the time, a reasonable person in the position of the police officer could have concluded that the motorist

was operating the vehicle and under the influence of intoxicating liquor.” *Mulholland*, 527 A.2d at 1124 quoting *Dep’t of Transp., Bureau of Traffic Safety v. Driesbach*, 363 A.2d 870, 872 (Pa. Cmwlth.1976). Such a determination must be made on a case-by-case basis. *Id.* The *Mulholland* court determined that under the circumstances of the case the officer did not have reasonable grounds to conclude that Appellee was operating the motor vehicle under the influence of alcohol because the officer never actually witnessed Appellee driving the motor vehicle, nor did he observe Appellee’s demeanor at the time of the accident. *Id.* Appellee could have become intoxicated in the 25 intervening minutes between the accident and the time he was located by the officer.

Friel’s reliance upon *Mulholland* is misplaced, as this decision is readily distinguishable from the instant case. Officer Wolfson testified that only 11 minutes elapsed between the initial call to the dispatch center and the moment when Wolfson first spoke with Friel. Wolfson also testified, “[a]t one point he [Friel] made a statement he didn’t think he was that drunk. He stated that he had been drinking at home watching the Steeler[s] game, and then he had one shot and one sip of beer before he was removed from the bar.” Notes of Testimony (N.T.) at 10-11. Thus, unlike *Mulholland*, a shorter time period had elapsed between the accident and Friel’s interaction with Wolfson, and Friel also admitted to drinking alcohol prior to operating his motorcycle.

The instant case is more analogous to *McCallum v. Commonwealth*, 592 A.2d 820 (Pa. Cmwlth. 1991). In *McCallum*, one of the drivers (Appellant) involved in an accident left the scene after exchanging information with the other driver and that driver’s passenger. He admitted to them that he had been drinking before the accident. The arresting officer located Appellant 30-40 minutes later,

smelling of alcohol and slurring his speech. Appellant was arrested for drunk driving and refused to submit to chemical testing. As a result, the Department suspended Appellant's operating privilege pursuant to 75 Pa. C.S. §1547(b). On appeal to this court, Appellant argued that because of the time delay between the accident and his arrest, the arresting officer did not have reasonable grounds to believe he was intoxicated at the time of the accident. *Id.*

In *McCallum*, this court held that the presence of "reasonable grounds" does not require that a police officer witness the driver operating the motor vehicle. 592 A.2d at 822. The information that Appellant had been drinking, provided to the arresting officer by the witnesses, and the observations of the officer 30-40 minutes after the accident, provided a sufficient basis for the officer to request Appellant to submit to the chemical test. *Id.*

In this case, there is even stronger evidence to support the officer's reasonable belief that Friel became intoxicated before the accident. Indeed, according to Wolfson, Friel admitted to having consumed alcohol at home before driving to the bar. Wolfson further testified that Friel admitted to having had only one shot and a sip of beer within the 11 minute window between the initial call to the dispatch center and the moment when Wolfson first spoke to Friel. Wolfson reasonably surmised that Friel could not have become as intoxicated as he appeared to be within just an 11 minute period, consuming the small amount of alcohol he admitted to drinking.

Officer Wolfson's observation of the odor of alcohol emanating from Friel's person and Friel's bloodshot, glassy eyes coupled with the information from the home-owner/witness, the observed damage to the house and corresponding damage to the motorcycle and, finally, Friel's failure to complete field sobriety

tests and admission to Wolfson that he had consumed alcohol prior to operating the motorcycle, all provided reasonable grounds to arrest Friel for driving under the influence of alcohol.

Accordingly, we affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

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Department of Transportation,	:	
Bureau of Driver Licensing	:	

**ORDER**

AND NOW, this 7th day of August, 2008, the order of the Court of Common Pleas of Allegheny County in the above captioned matter is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge