

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert A. Hurner :
 :
 v. : No. 21 C.D. 2010
 :
 Commonwealth of Pennsylvania, : Submitted: July 16, 2010
 Department of Transportation, :
 Bureau of Driver Licensing, :
 Appellant :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE PATRICIA A. McCULLOUGH, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE McCULLOUGH

FILED: October 14, 2010

The Department of Transportation, Bureau of Driver Licensing (DOT) appeals from the December 8, 2009, order of the Court of Common Pleas of Chester County (trial court) reversing the one-year suspension of the operating privilege of Robert A. Hurner (Licensee) imposed by DOT pursuant to section 1547(b)(1)(i) of the Vehicle Code (Code), 75 Pa. C.S. §1547(b)(1)(i).¹ For the reasons that follow, we reverse.

¹ Section 1547(b)(1)(i) of the Code provides that DOT shall suspend a person's operating privilege for twelve months for refusing to submit to chemical testing following an arrest for a violation of section 3802 of the Code, 75 Pa. C.S. §3802 (relating to driving under influence of alcohol or controlled substance).

The underlying facts of this matter are not in dispute. At 12:57 a.m. on February 21, 2009, Trooper James Trunfio of the Pennsylvania State Police was dispatched to a call regarding a disorderly person. (R.R. at 17a.) Approximately ten minutes later, Trooper Trunfio arrived at the scene with Trooper Stone,² and the two officers observed a red Jeep Wrangler parked on the lawn in front of a house at a forty-five degree angle. (R.R. at 17a, 19a.) Upon approaching the vehicle, Trooper Trunfio observed Licensee, who was admittedly intoxicated, asleep in the backseat. Id.

Trooper Trunfio awakened Licensee and smelled a heavy presence of alcohol. Id. Trooper Trunfio directed Licensee to exit the vehicle and attempted to question him, but Licensee was incoherent and uncooperative. (R.R. at 17a-18a.) Trooper Trunfio thereafter asked Licensee to perform two field sobriety tests. Licensee failed both tests, and he was placed under arrest for driving under the influence (DUI). (R.R. at 18a.) After transporting Licensee to the barracks, Trooper Trunfio read the implied consent warnings to Licensee and asked him to submit to chemical testing. Licensee refused. (R.R. at 19a.)

By notice dated March 30, 2009, DOT advised Licensee that his operating privilege would be suspended for a period of one year as a result of his refusal to submit to chemical testing in accordance with section 1547 of the Code. (R.R. at 7a.) Licensee timely appealed, and the trial court held a *de novo* hearing on November 19, 2009. Counsel for the parties agreed that the only issue presented was the legal question of whether Trooper Trunfio had reasonable

² Trooper Stone's full name is not evident in the record.

grounds to believe that Licensee was operating the vehicle under the influence of alcohol. (R.R. at 15a.)

Trooper Trunfio was the only witness at the hearing, and he testified to the facts recited above. Trooper Trunfio also stated that the hood of the vehicle was warm, despite an outside temperature of twenty-eight degrees, and that the keys to the vehicle were found in Licensee's pocket. (R.R. at 18a-19a.) He added that, when Trooper Stone attempted to move the vehicle, he found that it was still in gear and had to slam on the brake to stop the vehicle from moving. (R.R. at 18a.) Trooper Trunfio reiterated that the vehicle was on the lawn, not on the driveway, at a forty-five degree angle, and approximately ten to fifteen feet from the road. (R.R. at 20a.) He stated that neither the owner of the property upon which the vehicle was parked nor the neighbor who made the initial call to police knew Licensee. (R.R. at 22a.) He also indicated that the vehicle was found in a residential area away from any bars. (R.R. at 23a.)

Trooper Trunfio testified that the only information he was able to get out of Licensee was Licensee's belief that he was in another county, Delaware County. (R.R. at 23a.) Trooper Trunfio said that the neighbor who called the police reported that he was awakened by loud noise and observed Licensee banging on the hood of the vehicle. (R.R. at 26a.) On cross-examination, Trooper Trunfio acknowledged that the neighbor did not see anyone driving the vehicle and that it was possible that someone else could have been driving it. (R.R. at 26a-27a.) Trooper Trunfio further acknowledged that the vehicle's engine was off, the lights were off, and the keys were not in the ignition. (R.R. at 28a-29a.)

By opinion and order dated December 8, 2009, the trial court reversed DOT's suspension of Licensee's operating privilege. The trial court concluded

that Trooper Trunfio failed to establish reasonable grounds to believe that Licensee operated the vehicle under the influence of alcohol, citing the fact that Licensee was in the backseat and stating that the only indication that the vehicle had been recently operated was the fact that the hood was still warm. Relying on Banner v. Department of Transportation, Bureau of Driver Licensing, 558 Pa. 439, 737 A.2d 1203 (1999), the court indicated that more was required to establish that Licensee had operated the vehicle.³

On appeal to this Court,⁴ DOT argues that the trial court erred as a matter of law in concluding that Trooper Trunfio did not have reasonable grounds to believe the Licensee was operating or was in actual physical control of the movement of the vehicle while under the influence of alcohol.⁵ We agree.

In order to sustain a suspension of a licensee's operating privilege for refusing to submit to a chemical test, the Department must establish that: (1) the licensee was arrested for driving under the influence by a police officer who had reasonable grounds to believe that the licensee was operating or was in actual physical control of the movement of the vehicle while under the influence of

³ In Banner, our Supreme Court held that, where the engine and lights were off and the vehicle was parked safely along a rural road near a convenience store, the fact that the licensee was found asleep in the passenger seat of a vehicle parked along the road with the keys in the ignition was not sufficient to establish a reasonable belief on the part of a police officer that the licensee had operated or was in actual control of the vehicle while under the influence of alcohol.

⁴ Our scope of review in a driver's license suspension case is limited to determining whether the findings of the trial court are supported by competent evidence, whether errors of law were committed or whether there has been a manifest abuse of discretion. Hockenberry v. Department of Transportation, Bureau of Driver Licensing, 972 A.2d 97 (Pa. Cmwlth. 2009).

⁵ Whether reasonable grounds exist is a question of law reviewable by the court on a case by case basis. Banner; Marone v. Department of Transportation, Bureau of Driver Licensing, 990 A.2d 1187 (Pa. Cmwlth. 2010).

alcohol or a controlled substance; (2) the licensee was asked to submit to a chemical test; (3) refused to do so; and (4) was warned that refusal might result in a license suspension. Banner; Marone v. Department of Transportation, Bureau of Driver Licensing, 990 A.2d 1187 (Pa. Cmwlth. 2010).

The standard of reasonable grounds necessary to support a license suspension is not very demanding and is a lesser standard than the probable cause standard needed to support a DUI conviction. Gammer v. Department of Transportation, Bureau of Driver Licensing, 995 A.2d 380 (Pa. Cmwlth. 2010); Marone. Additionally, it is not necessary for the officer to be correct in his belief. Gammer. Reasonable grounds exist when a person in the position of the police officer, viewing the facts and circumstances as they appeared at the time, could have concluded that the motorist was operating the vehicle while under the influence of an intoxicating substance. Banner; Marone.

A determination of whether reasonable grounds exists is based on the totality of the evidence, including the location of the vehicle, whether the engine was running, whether there was evidence that the licensee had driven the vehicle before the arrival of the police, the licensee's general appearance, and the licensee's behavior. Id. At the very least, there must be some objective evidence that the licensee exercised control over the movement of the vehicle at the time he was intoxicated. Gammer. Additionally, reasonable grounds do not require that other possible explanations or inferences that the officer could have made be unreasonable. Marone.

Generally, presence in the driver's seat of the vehicle with the engine running and/or the lights on has been deemed sufficient to satisfy the reasonable grounds test. See Marone (licensee found in driver's seat of vehicle in parking lot

with engine running and lights on); Riley v. Department of Transportation, Bureau of Driver Licensing, 946 A.2d 1115 (Pa. Cmwlth. 2008) (licensee found in driver's seat of vehicle parked alongside a road with engine running, headlights on, and music blaring); Vinansky v. Department of Transportation, Bureau of Driver Licensing, 665 A.2d 860 (Pa. Cmwlth. 1995) (licensee found slumped over steering wheel in parking lot with engine running and brake lights on); Department of Transportation, Bureau of Driver Licensing v. Paige, 628 A.2d 917 (Pa. Cmwlth. 1993) (licensee found slumped over steering wheel while parked on street with key in ignition and parking lights on).

However, reasonable grounds have not been found where the licensee was discovered in the passenger's seat with the engine and/or lights off. See Banner (licensee found asleep in the passenger seat of a vehicle parked along the road with the keys in the ignition but with engine and lights off); Solomon v. Department of Transportation, Bureau of Driver Licensing, 966 A.2d 640 (Pa. Cmwlth.), appeal denied, 603 Pa. 678, 982 A.2d 67 (2009) (licensee found asleep in the passenger seat of a vehicle parked on city street near a club with the engine running on a cold and snowy night).

In the present case, although Licensee was asleep in the backseat, we conclude that the evidence establishes reasonable grounds for Trooper Trunfio to believe that Licensee was operating or was in actual physical control of the movement of the vehicle while under the influence of alcohol. At the hearing before the trial court, counsel for Licensee admitted that Licensee was intoxicated at the time in question. Indeed, Trooper Trunfio smelled a heavy presence of alcohol on Licensee, who was incoherent and uncooperative upon questioning.

Additionally, Licensee's vehicle was found parked on the front lawn of a home in a residential area and neither the owner of the home nor the neighbor who called the police knew Licensee. Troopers Trunfio and Stone arrived on the scene within ten minutes of the call, spoke to a neighbor who observed Licensee banging on the hood of the vehicle, found Licensee asleep in the vehicle, discovered the hood of the vehicle to be warm despite an outside temperature of twenty-eight degrees, realized the vehicle was still in gear, and retrieved the keys for the vehicle from Licensee's pocket. The location of the vehicle, coupled with the warmth of the hood and Licensee's possession of the keys, distinguish the present case from the aforementioned passenger seat cases where reasonable grounds were lacking.

Accordingly, the order of the trial court is reversed.

PATRICIA A. McCULLOUGH, Judge

Judge Pellegrini dissents.

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ORDER

AND NOW, this 14th day of October, 2010, the December 8, 2009, order of the Court of Common Pleas of Chester County, is hereby reversed. The one-year suspension of the operating privilege of Robert A. Hurner, imposed by the Department of Transportation, Bureau of Driver Licensing, is reinstated.

PATRICIA A. McCULLOUGH, Judge