

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kevin M. Keller :  
 :  
 v. : No. 2262 CD 2007  
 : Submitted: July 3, 2008  
 Commonwealth of Pennsylvania, :  
 Department of Transportation, Bureau :  
 of Driver Licensing, :  
 Appellant :

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge  
 HONORABLE MARY HANNAH LEAVITT, Judge  
 HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

*OPINION NOT REPORTED*

MEMORANDUM OPINION  
BY JUDGE SMITH-RIBNER

FILED: September 5, 2008

The Department of Transportation (DOT) appeals from the order of the Court of Common Pleas of Pike County that sustained the statutory appeal of Kevin M. Keller from a one-year suspension of his operating privilege. DOT's statement of the question for review is whether the trial court erred in sustaining Keller's appeal when he offered no evidence to rebut DOT's proof that he was convicted of violating Section 1543(a) of the Vehicle Code, *as amended*, 75 Pa. C.S. §1543(a) (related to driving while operating privilege suspended or revoked).

On March 26, 2007, Keller was cited for violating Section 4703 of the Vehicle Code, *as amended*, 75 Pa. C.S. §4703 (related to operating vehicle without official certificate of inspection). On June 7, 2007, DOT mailed a suspension notice to Keller (effective June 28) for his failure to make regular payments on the fines and costs from the citation pursuant to Section 1533(d) of the Vehicle Code, *as amended*, 75 Pa. C.S. §1533(d) (related to suspension of operating privilege for

failure to respond to citation). DOT thereafter notified Keller that his operating privilege was to be restored on July 11, 2007, but on July 7 he was cited for driving while his license was suspended. Keller pleaded not guilty. On August 1, 2007, he was convicted of driving while his operating privilege was suspended in violation of Section 1543(a).<sup>1</sup> On August 9, 2007, DOT mailed a notice to Keller that his privilege was being suspended for one year, effective September 13, 2007.

Keller timely filed a statutory appeal contending that he was not aware of his first suspension because he had moved and did not receive DOT's letter advising him of the suspension. At the de novo hearing, DOT submitted an exhibit containing a certification page; copy of notice of suspension mailed August 9, 2007; a "conviction detail" showing Keller's August 1, 2007 conviction; copy of notice of restoration of operating privilege effective July 11, 2007; copy of notice of suspension mailed June 7, 2007; a "conviction detail" showing the

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<sup>1</sup>Section 1543 provides in pertinent part:

**(a) Offense defined.**—Except as provided in subsection (b), any person who drives a motor vehicle on any highway or trafficway of this Commonwealth after the commencement of a suspension, revocation or cancellation of the operating privilege and before the operating privilege has been restored is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of \$200.

....

**(c) Suspension or revocation of operating privilege.**— Upon receiving a certified record of the conviction of any person under this section, the department shall suspend or revoke that person's operating privilege as follows:

(1) If the department's records show that the person was under suspension, recall or cancellation on the date of violation, and had not been restored, the department shall suspend the person's operating privilege for an additional one-year period.

March 26, 2007 citation for violating Section 4703; and Keller's certified driving history. Keller testified that he agreed to pay the fine in installments but missed a payment while in the hospital, that he paid the outstanding fine on Monday after being stopped the previous Saturday, that he had moved in the beginning of June and did not transfer his address right away and that he did not know his operating privilege was suspended because he had not received DOT's June 7, 2007 notice. The trial court sustained Keller's appeal finding that he "had not received notice of the first suspension due to his missing a payment on a preexisting ticket ...." Trial Court's November 21, 2007 Order.<sup>2</sup>

Relying upon *Orndoff v. Department of Transportation, Bureau of Driver Licensing*, 654 A.2d 1 (Pa. Cmwlth. 1994), DOT submits that it met its burden of proving that the Bureau received a certified record of conviction for violation of Section 1543(a) and that the Bureau's records show that Keller's operating privilege was under suspension on the date of violation and had not been restored. DOT argues that its certified documents create a rebuttable presumption that Keller was convicted of violating Section 1543(a) and that he did not present clear and convincing evidence that the Bureau's records were incorrect, citing *Department of Transportation, Bureau of Driver Licensing v. Diamond*, 616 A.2d 1105 (Pa. Cmwlth. 1992), and *Carter v. Department of Transportation, Bureau of Driver Licensing*, 838 A.2d 869 (Pa. Cmwlth. 2003). DOT dismisses Keller's

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<sup>2</sup>The Court's review is limited to determining whether the trial court's findings are supported by competent evidence and whether it committed an error of law or abused its discretion. *Keim v. Department of Transportation*, 887 A.2d 834 (Pa. Cmwlth. 2005). By order dated June 20, 2008, the Court precluded Keller from filing a brief because he failed to comply with the Court's May 20, 2008 order directing him to file a brief within fourteen days.

defense that he did not know that his operating privilege was suspended on July 7, 2007, noting that a licensee may not collaterally attack the validity of a conviction in a statutory appeal of the resulting suspension. *See Orndoff*.

In *Commonwealth v. Duffey*, 536 Pa. 436, 639 A.2d 1174 (1994), the Supreme Court reiterated that a license suspension is a collateral civil consequence of a criminal conviction. In a license suspension appeal "[t]he only issues are whether the licensee was in fact convicted, and whether the Department acted in accordance with applicable law." *Department of Transportation, Bureau of Driver Licensing v. Barco*, 656 A.2d 544, 546 (Pa. Cmwlth. 1994). In *Diamond* the Court explained that "once DOT has introduced, via a certified record, evidence of a conviction, DOT has met its burden of production and established a rebuttable presumption that a conviction exists." *Id.*, 616 A.2d at 1107. The burden shifts to the licensee to offer clear and convincing evidence to rebut the presumption of correctness raised by DOT's certified records. *Carter*.

DOT established a rebuttable presumption that Keller was convicted when it introduced exhibits containing DOT's notices of suspension and certified copies of Keller's conviction of driving while under suspension. Keller failed to offer clear and convincing evidence to rebut this presumption. *See Diamond* (stating that the court has never precluded a licensee from offering evidence that tends to refute information contained in DOT's certified driving record). Instead, Keller argued that he did not receive DOT's June 7, 2007 notice of suspension, which constitutes an impermissible collateral attack upon Keller's underlying conviction. Consequently, the trial court erred in sustaining the appeal because it considered evidence regarding Keller's underlying conviction and thereby

permitted collateral attack on that underlying conviction.<sup>3</sup> In *Department of Transportation, Bureau of Driver Licensing v. Rinehart*, 537 A.2d 930, 931 (Pa. Cmwlth. 1988), the Court specifically noted that "[t]he trial court can not consider facts and circumstances surrounding the conviction because the relevant inquiry is whether the motorist was convicted, not whether he should have been convicted." Based on this Court's review, the trial court's order must be reversed.

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DORIS A. SMITH-RIBNER, Judge

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<sup>3</sup>Even if the issue of notice were relevant, Keller failed to prove that he notified DOT of his new address within the required fifteen-day time period pursuant to Section 1515 of the Vehicle Code, *as amended*, 75 Pa. C.S. §1515(a). Section 1515(a) provides:

Whenever any person after applying for or receiving a driver's license moves from the address named in the application or in the driver's license issued or when the name of a licensee is changed, such person shall, within 15 days thereafter, notify the department of the old and new addresses or of such former and new names and of the number of any license then held by the person. The department shall be notified of a change of name in writing.

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Department of Transportation, Bureau	:	
of Driver Licensing,	:	
Appellant	:	

***ORDER***

AND NOW, this 5th day of September, 2008, the order of the Court of Common Pleas of Pike County is reversed.

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DORIS A. SMITH-RIBNER, Judge