

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

John Flannery,	:
Appellant	:
	:
v.	:
	:
Commonwealth of Pennsylvania,	:
Department of Transportation,	: No. 862 C.D. 2008
Bureau of Driver Licensing	: Submitted: July 25, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
JUDGE BUTLER**

**FILED: September 4, 2008**

This is an appeal by John A. Flannery (Flannery) from the Order of the Court of Common Pleas of Berks County (trial court) which dismissed Flannery’s statutory appeal from a six-month suspension of his driver’s license operating privilege. The suspension of his driver’s license operating privilege has been imposed by the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, (Penn DOT) in accordance with Section 1532(b) of the Vehicle Code, 75 Pa. C.S. § 1532(b) (related to suspension), based upon the Bureau’s receipt of a report of Flannery’s conviction of violating

Section 3734 of the Vehicle Code, 75 Pa. C.S. § 3734 (relating to driving without lights to avoid identification or arrest).

By official notice the Bureau notified Flannery that his operating privilege was being suspended for a period of six-months, effective December 3, 2007, as a consequence of his conviction on October 19, 2007 of violating section 3734 on October 13, 2007. Reproduced Record (R.R.) 10a–12a. The effective date of the suspension was stayed pending this litigation. Appellant’s Brief at 33.

On November 19, 2007, Flannery filed a timely statutory appeal of the suspension, in the Court of Common Pleas of Berks County R.R. 5a. On February 7, 2008 Senior Judge Barry F. Feudale held a hearing *de novo*. R.R. 7a, Notes of Testimony (N.T.) at 1.

Without objection, Senior Judge Feudale admitted into evidence a packet of documents related to the notice of suspension, etc., marked as Commonwealth Exhibit No. 1. R.R. 7a (N.T. at 3). Flannery did not testify nor did he offer any other evidence. Senior Judge Feudale heard arguments from counsel for both parties. On February 7, 2008, he entered an Order, “denying the appeal, and reinstating the suspension.” R.R. 27a. The later referenced Order is the subject matter of this appeal. On April 24, 2008 Senior Judge Feudale issued a Memorandum Opinion in support of his February 7 Order. *Flannery v. Commonwealth, Department of Transportation* (No. 07-12798, Pa. Com. Pl. (Berks), filed April 24, 2008).

For the reasons set-out below, we affirm the Order of Senior Judge Feudale.

Before this Court, Flannery raises four issues on appeal. He argues that the “revocation” of his driver’s license violates the 5<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution – as well as, Article I, §9 of the Pennsylvania Constitution. He also argues that “the procedures for the suspension of a driver’s license for a section 3743 violation [should] be declared void for vagueness.” Appellant’s Brief at p. 5.

In essence, Flannery argues that as a result of his conviction, he will lose his “property” right to inspect motor vehicles -- he will be unable to work, as he currently does as a licensed Penn DOT automobile inspector. As such, he argues that he should have been given notice of the fact that his guilty plea would result in the collateral suspension of his driver’s license privilege and the suspension of his license to inspect automobiles.

Excerpts from Flannery’s appellate brief best summarize his arguments.

Because the Appellant operates an inspection station pursuant to the provisions of 75 Pa. C.S.A. § 4721 with a certification of appointment pursuant to § 4722 he must have a valid drivers license in Pennsylvania 67 Pa. [Code] § 175.28(d)(2).

Once the Appellant’s driver’s license is suspended, the Appellant will lose his right to inspect motor vehicles pursuant to the provisions of 67 Pa. [Code] §175.28(a) because an inspection mechanic must have a valid driver’s license, 175.28(d)(2).

As a result of being unable to inspect motor vehicles, the Appellant effectively will be unable to work and his business will have no choice but to cease operations.

At no time was Appellant made aware prior to pleading guilty and paying the citations that in the event he pled guilty to the citation that [sic] his driver's license would be suspended[.] [T]he first notice of the license suspension was a notice he received from Penn DOT after the Appeal period had ended as a result of his having paid the fine for the citation and thereby avoiding a hearing for the citations.

Appellant's Brief at 6-7.

In sum, Appellant's "constitutional" arguments relate to the alleged impact of his guilty plea on his inspection station business, *i.e.*, his property right in the inspection station business.<sup>1</sup> With respect to Flannery's argument in this Court that the procedure for the suspension of a driver's license is "void for vagueness" (Appellant's Brief pp. 29-31) that argument is deemed, by this Court, to have been waived. Flannery did not raise that issue either during his hearing before Senior Judge Feudale or in his Pa. R.A.P. 1925(b) statement. *See* Pa. R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal"); *Hapchuk v. Department of Transportation, Bureau of Motor Vehicles*, 929 A.2d 656 (Pa. Cmwlth. 2007); *Busch v. Department of Transportation, Bureau of Drivers Licensing*, 900 A. 2d 992 (Pa. Cmwlth. 2006) ("Issues are considered waived when no 1925 statement is filed or when an issue not included in a filed statement"); *Caln Nether Co., L.P. v. Bd. of Supervisors of Thornbury Twp.*, 840 A.2d 484 (Pa. Cmwlth. 2004). This Court may not consider such issues on appeal.

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<sup>1</sup>As an aside, in his memorandum opinion, Senior Judge Feudale, addressed the issue of a possible *nunc pro tunc* appeal by Flannery of the criminal conviction: "Even if Appellant had filed an appeal *nunc pro tunc*, for these reasons, he would not have prevailed." *Flannery* (No. 07-12798), mem. op. at 4. Subsequent to the issuance of that Opinion, Flannery did in fact file a Petition for Leave to File an Appeal of the criminal conviction. Said Petition was denied by Judge Jeffrey K. Sprecher on February 28, 2008. R.R. 21a.

With regards to the constitutional issues that are properly brought before this Court,<sup>2</sup> Senior Judge Feudale ably disposed of each of those constitutional issues in his sound opinion. Therefore, this Court shall affirm on the basis of that opinion. *Flannery v. Commonwealth, Department of Transportation* (No. 07-12798, Pa. Com. Pl. (Berks), filed April 24, 2008).

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**JOHNNY J. BUTLER, Judge**

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<sup>2</sup>The Commonwealth Court's scope of review in a license suspension case is limited to determining whether necessary findings are supported by competent evidence of record and whether the trial court committed an error of law or abused its discretion in making its decision. *Levinson v. Department of Transportation, Bureau of Driver Licensing*, 926 A.2d 1284 (Pa. Cmwlth. 2007).

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**ORDER**

AND NOW, this 4th day of September, 2008, the order of the Court of Common Pleas of Berks County in the above-captioned matter is affirmed.

**JOHNNY J. BUTLER, Judge**