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IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JOHN W. WALTON, :  
 :  
 Appellant :  
 :  
 v. : No. 19-2353  
 :  
 COMMONWEALTH OF PENNSYLVANIA :  
 DEPARTMENT OF TRANSPORTATION, :  
 :  
 Appellee :

David J. Rice, Esquire Counsel for Appellant  
Tricia J. Watters, Esquire Counsel for Appellee

MEMORANDUM OPINION

Serfass, J. - May 6, 2020

Here before the Court is the appeal of John W. Walton (hereinafter "Appellant") concerning the suspension of his motor vehicle operating privileges by the Commonwealth of Pennsylvania Department of Transportation. Following a hearing on the instant matter, and our review of the record and the post-hearing brief of Appellant, we find that the appeal is without merit and sustain the suspension of Appellant's operating privileges<sup>1</sup>.

FACTUAL AND PROCEDURAL BACKGROUND

The suspension of Appellant's operating privileges resulted from an incident which occurred on August 5, 2019. On that date, Patrolman Danilo A. Garcia (hereinafter "Officer Garcia") of the

<sup>1</sup> We note that Appellee did not file a brief in opposition to Appellant's submission.

Weatherly Police Department was dispatched to the area of East Main Street and North Street in the Borough of Weatherly, Carbon County, Pennsylvania. The dispatch was the result of reports from three pedestrians complaining of an erratic driver.

Upon arrival at the scene, Officer Garcia made contact with the pedestrians and they gave him a description of the vehicle which they claimed had nearly hit them while they were walking along the side of the road approximately five (5) minutes prior to the officer's arrival. The pedestrians informed Officer Garcia that they knew the operator of the vehicle (later identified as Appellant), who had been driving a red SUV at the time of the incident. They also pointed out the driver's father, who could be seen outside of his residence in the 900 block of North Street approximately twenty feet away from where they were standing with Officer Garcia.

Officer Garcia then proceeded on foot to the residence that was identified by the pedestrians, where he made contact with Appellant's father who stated that Appellant had been consuming alcohol prior to driving. He also stated that Appellant had been home for approximately five (5) minutes.

Officer Garcia then made contact with Appellant. He smelled a strong odor of alcohol emitting from Appellant's facial area. Appellant also appeared to be having trouble walking to his vehicle

to retrieve his driver's license when requested. Appellant admitted to drinking alcohol within the past thirty (30) minutes prior to encountering Officer Garcia. Additionally, Officer Garcia touched the engine area of Appellant's vehicle which was still warm from being recently driven.

Officer Garcia suspected that Appellant may have been driving the vehicle while under the influence of alcohol. Accordingly, the officer asked Appellant to submit to field sobriety tests and he consented. Appellant performed the horizontal gaze nystagmus test and the walk-and-turn test. Officer Garcia observed Appellant showing indicators of impairment on both tests. Based upon the totality of the circumstances, Officer Garcia believed that Appellant had been driving his vehicle while under the influence of alcohol and, as a result, Appellant was arrested.

Appellant was then taken into custody and Officer Garcia, with the assistance of Police Chief Markovchick, requested that he submit to a chemical test of his blood. The officers read the DL-26B form to Appellant. Appellant initially consented to the blood test. However, after his repeated requests to speak to an attorney, the officers were constrained to treat Appellant's requests as a refusal, as indicated on the DL-26B form.

Notice of driver's license suspension was mailed to Appellant on August 16, 2019. The reason cited by the Department of

Transportation was Appellant's violation of Section 1547 of the Pennsylvania Motor Vehicle Code for Chemical Test Refusal. 75 Pa.C.S.A. §1547. Appellant contends that Officer Garcia did not have reasonable grounds to arrest him for suspected Driving Under the Influence. Therefore, Appellant claims that PennDOT cannot prove that he violated Section 1547 of the Vehicle Code, warranting suspension of his operating privileges for chemical test refusal.

#### ISSUE

Did Officer Garcia have reasonable grounds to believe that Appellant had operated his vehicle while under the influence of alcohol?

#### DISCUSSION

Appellant's driver's license is subject to suspension based upon his alleged violation of 75 Pa. C.S.A. § 1547. The relevant portion of § 1547 provides as follows:

(a) Any person who drives, operates or is in actual physical control of the movement of a vehicle in this Commonwealth shall be deemed to have given consent to one or more chemical tests of breath or blood for the purpose of determining the alcoholic content of blood or the presence of a controlled substance. If a police officer has reasonable grounds to believe the person to have been driving, operating or in actual physical control of the movement of a vehicle in violation of section... 3802 (relating to driving under the influence of alcohol or a controlled substance)

The Department of Transportation has the burden of proving the following elements in support of its decision to suspend

Appellant's driver's license for a violation of § 1547: "(1) a police officer arrested a licensee based upon *reasonable grounds* to believe that the licensee was driving under the influence of alcohol; (2) the officer asked the licensee to submit to chemical testing; (3) the licensee refused to submit to such testing; and (4) the officer provided a warning to the licensee that his failure to submit to testing would result in the suspension of his license." DeMarchis v. Commonwealth of Pennsylvania Department of Transportation, 999 A.2d 639, 641 (Pa. Cmwlth. 2010) (citing Banner v. Department of Transportation, Bureau of Driver Licensing, 737 A.2d 1203 (1999)).

Here, Appellant challenges the first element of § 1547 and argues that Officer Garcia did not have reasonable grounds to believe that he was driving under the influence of alcohol. The Commonwealth Court of Pennsylvania has set forth the following test for determining whether a police officer had reasonable grounds to believe that a licensee was driving while intoxicated:

Whether evidence is sufficient to constitute "reasonable grounds" can only be decided on a case-by-case basis. The test, however, is not very demanding. We note initially that, for "reasonable grounds" to exist, the police officer obviously need not be correct in his belief that the motorist had been driving while intoxicated. We are dealing here with the authority to request a person to submit to a chemical test and not with the admission into evidence of the result of such a test. The only valid inquiry on this issue at the de novo hearing is whether, 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 under the influence of intoxicating liquor. Thus, it is not relevant that the motorist later, at the time of trial, can establish a cause other than intoxication for such observed behavior as slurred speech or an unsteady gait. At trial, the only relevant factual defense would be a showing that the motorist's behavior was not, in fact, as the officer testified.

DeMarchis, 999 A.2d at 642 (citing Department of Transportation, Bureau of Traffic Safety v. Dreisbach, 363 A.2d 870, 872 (Pa. Cmwlth. 1976)).

In determining whether an officer had a reasonable basis, the trial court must bear in mind that "[a]n officer's belief that a licensee was operating a vehicle under the influence of alcohol or a controlled substance must only be objective in light of the surrounding circumstances." DeMarchis, 999 A.2d at 642 (citing Zwibel v. Department of Transportation, Bureau of Driver Licensing, 832 A.2d 599 (Pa. Cmwlth. 2003)). Further, "the court must consider the totality of the circumstances, including the location of the vehicle, whether the engine was running and whether there was *other evidence* indicating that the motorist had driven the vehicle at some point prior to the arrival of the police." DeMarchis, 999 A.2d at 642 (citing Banner, 737 A.2d at 1207) (emphasis added).

In McCallum v. Commonwealth of Pennsylvania, the Pennsylvania Commonwealth Court found that the arresting officer had a reasonable basis to believe that the arrestee had been driving

while under the influence. In McCallum, the arresting officer spoke with two (2) witnesses who were involved in a traffic accident with the arrestee. The arresting officer then met with the arrestee approximately thirty (30) to forty (40) minutes after the accident. The officer observed that the arrestee smelled of alcohol and was slurring his speech. McCallum v. Commonwealth of Pennsylvania, 592 A.2d 820, 821 (Pa. Cmwlth. 1991)

The McCallum court emphasized that "'[r]easonable grounds' does not require a police officer to witness the driver driving his car." McCallum, 592 A.2d at 822 (citing Menosky v. Commonwealth, 550 A.2d 1372 (Pa. Cmwlth. 1988)). In addition, the police officer's reasonable grounds will not be rendered void even if the belief is later discovered to be erroneous." McCallum, 592 A.2d at 822 (citing Keane v. Department of Transportation, 561 A.2d 359 (Pa. Cmwlth. 1989)). Ultimately, the McCallum court concluded that the accounts of the witnesses as well as the officer's observations concerning the arrestee were sufficient to provide a reasonable basis to suspect that the arrestee had been driving while under the influence. Additionally, the court noted that the arrestee had not presented any evidence which would rebut the officer's inference that he had begun consuming alcohol before the accident. McCallum, 592 A.2d at 822-823.

Lastly, Appellant in the instant matter argues that Officer Garcia presented an insufficient timeline of events. The Commonwealth Court of Pennsylvania has refused to find that an officer had a reasonable basis to arrest a suspect where the officer presented no evidence concerning a period of time between the alleged intoxicated driving and the arrival of law enforcement. DeMarchis, 999 A.2d at 644.

In the instant matter, Officer Garcia spoke with three (3) witnesses who stated that Appellant was driving the vehicle which had nearly hit them. Additionally, upon arriving at Appellant's residence, Officer Garcia spoke with Appellant's father who stated that Appellant had been consuming alcohol prior to driving. Upon observing indicators of impairment after making contact with Appellant, Officer Garcia touched Appellant's vehicle and noted that the engine area was still warm. Lastly, Officer Garcia confirmed his suspicion that Appellant was under the influence of alcohol by having him perform standardized field sobriety tests.

As to the timeline presented in this case, Officer Garcia testified that, after receiving the dispatch, it took him approximately five (5) minutes to arrive at the scene of the incident where he made contact with the witnesses. Additionally, Appellant's father stated to Officer Garcia that Appellant had



been home for approximately five (5) minutes prior to the officer's arrival at the Walton residence.

Like the police officer in McCallum, Officer Garcia presented sufficient facts to demonstrate that he had a reasonable basis to arrest Appellant for Driving Under the Influence based on the totality of the circumstances. We also note that the instant matter is distinguishable from DeMarchis in that Officer Garcia presented a timeline of events indicating that Appellant had been home for approximately five (5) minutes when the officer arrived at the Walton residence whereas the police officer in DeMarchis presented the court with no timeline whatsoever.

We recognize that objective evidence, such as indicia of a limited time period between the incident at issue and police observations of the licensee or eyewitness testimony, is necessary to support a reasonable grounds determination when the arresting officer did not witness the licensee actually operating the vehicle. DeMarchis, 999 A.2d at 644. Officer Garcia's testimony at the hearing, which we find to be credible and accurate, supports a close succession of events between the time he received initial notice from the dispatch, his arrival at the scene of the incident and his interaction with Appellant at the Walton residence. Accordingly, we conclude that Appellee has met its burden of proving that Officer Garcia had reasonable grounds to believe that

Appellant was operating his vehicle while under the influence of alcohol.

We will, therefore, uphold the suspension of Appellant's operating privileges for his violation of Section 1547 of the Pennsylvania Motor Vehicle Code - Chemical Test Refusal.

**CONCLUSION**

For the reasons set forth hereinabove, we will deny Appellant's Driver's License Suspension Appeal and enter the following

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: Appellee :

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ORDER OF COURT

AND NOW, to wit, this 6<sup>th</sup> day of May, 2021, upon consideration of Appellant's "Petition for Appeal of Driver's License Suspension", and following an evidentiary hearing thereon, and for the reasons contained in our memorandum opinion bearing even date herewith, it is hereby

ORDERED and DECREED that Appellant's "Petition for Appeal of Driver's License Suspension" is DENIED and that the Pennsylvania Department of Transportation shall reinstate the suspension of Appellant's operating privileges accordingly.

BY THE COURT:

  
Steven R. Serfass, J.