

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

PENNSYLVANIA DEPARTMENT OF :
TRANSPORTATION :
Plaintiff :
 :
v. : NO. 99-01,017
 :
WILLIAM FOREMAN, :
Defendant :

OPINION
Issued Pursuant to Pa. R.A.P. 1925(a)

Defendant William Foreman has appealed this court's order of 13 July 1999, dismissing his appeal from a one-year suspension of his operator's privilege. Since Mr. Foreman failed to comply with our order directing him to file a Statement of Matters Complained of on Appeal, we can only guess what his beef is. It appears that the sole issue is whether the police had reasonable grounds to believe Mr. Foreman drove his vehicle while under the influence of alcohol.

Facts

On 17 August 1998 at 7:00 P.M., Trooper Mark Bialecki was dispatched to an address in Plunketts Creek Township. He arrived shortly afterward and interviewed a man named John Cram, who told the officer that he had gotten into a fight with Mr. Foreman, during which both men fell from the porch into the yard. He also stated that Mr. Foreman fled from the scene in his black Nissan Pathfinder, traveling on Route 87 south toward Montoursville. Officer Bialecki called in a description of this vehicle to police headquarters and left the scene about 7:45 P.M.

Officer Bialecki arrived at the Montoursville police barracks between 8:10-8:15 P.M., where he met Mr. Foreman, who had been arrested while walking near his residence. Officer Bialecki noticed that Mr. Foreman had classic alcohol intoxication symptoms, including a strong odor of alcohol on his breath, bloodshot

eyes, and slurred speech. He also staggered, was belligerent, and used profanity.

Officer Bialecki further noticed that Mr. Foreman had grass stains on his clothing.

Officer Bialecki arrested Mr. Foreman for driving under the influence, read him

the standard implied consent warnings, and asked him to take a blood test, pursuant to

75 Pa.C.S.A. § 1547(a). Mr. Foreman refused and his license was thereafter suspended

for one year, pursuant to 75 Pa.C.S.A. § 1547(b).

Discussion

The test for determining whether reasonable grounds exist is not very demanding. Com., Dept. of Transp. v. Paige, 628 A.2d 917, 919 (Pa. Cmwlth. 1993). It requires only that a reasonable person, viewing the facts and circumstances as they appeared to the arresting officer, could have concluded that the motorist operated a vehicle while under the influence of alcohol. Com, Dept. of Transp. v. McGrath, 617 A.2d 400, 402 (Pa. Cmwlth. 1992). This low standard is no doubt due to the legislature's conclusion that a blood alcohol test is a minimal intrusion compared to the serious risk of harm a drunk driver poses to the public. It also prevents offenders from routinely thwarting DUI prosecutions by depriving police of the best evidence of the crime.

Although the facts presented at the hearing would probably not convince a jury Mr. Foreman drove his car while intoxicated, and might not even constitute probable cause, they nonetheless meet the reasonable grounds standard. The victim told Officer

Bialecki that Mr. Foreman drove away after a fight. An hour later, another officer arrested Mr. Foreman near his home and brought him to the barracks, where Officer Bialecki noticed obvious signs of intoxication and grass stains on his clothes. The stains verified that Mr. Foreman was at the victim's residence, and obviously he had to drive home, for it was too far to walk in that short period of time. Moreover, because fighting is often the result of alcohol-induced belligerence, the officer could have reasonably concluded that Mr. Foreman was intoxicated while at the victim's residence. In short, from the facts known to Officer Bialecki at the time, it was reasonable to conclude that Mr. Foreman was intoxicated when he drove home.

It makes no difference that Officer Bialecki did not see Mr. Foreman drive the vehicle. Paige, supra, at 919. That element may be proven by direct evidence or evidence supporting an inference that the licensee previously had control over a vehicle. DOT, Bur. of Dr. Licensing v. Bendir, 535 A.2d 1249 (Pa. Cmwlth. 1988), such as information received from a third person, Gasper v. Com., 674 A.2d 1200, 1202 (Pa. Cmwlth. 1996); Patterson v. Commonwealth, 587 A.2d 897 (Pa. Cmwlth. 1991).

Nor does it matter that there is a reasonable alternative explanation, such as Mr. Foreman's story that he took a swig of whiskey after returning home. Paige, supra at 920; McGrath, supra, at 403. While such evidence may well persuade a jury to acquit Mr. Foreman, it does not excuse his refusal to take a blood alcohol test.

BY THE COURT,

Clinton W. Smith, P.J.

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