

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

**COURTNEY LINN,
Appellant**

vs.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
Appellee**

:
:
:
:
:
:
:
:
:
:

NO. 20-1079

OPINION

AND NOW, this **21st** day of **April, 2021**, at the time set for a hearing on Appellant’s Petition for Driver’s License Suspension Appeal filed November 5, 2020, Appellant appeared in person and was represented by E.J. Rymsza, Esquire and Kelly Solomon, Esquire appeared on behalf of Appellee. Appellant’s license was suspended due to her alleged chemical test refusal pursuant to Section 1547¹ of the Pennsylvania Motor Vehicle Code.

Facts

At the hearing, Trooper Troy Hansen of the Pennsylvania State Police testified as well as Appellant. To follow is a summary of the testimony.

On October 12, 2020, Trooper Hansen received a dispatch to Appellant’s residence for a child welfare check. The allegations were that Appellant had hit one of her three children and was driving drunk with the two youngest children in the vehicle.

¹ “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” 75 Pa.C.S.A. § 1547(a).

Upon arriving to Appellant's residence at approximately 11:12 p.m., which was about 45 minutes after the initial call to 9-1-1 came in, Trooper Hansen was greeted at the door by the middle of three children. The children told Trooper Hansen that they had just arrived home, that Appellant had been drinking and driving and that she was now sleeping. All three children were present in the home and were wide-awake. Trooper Hansen could see the youngest child sitting on the couch, watching TV.

When Appellant came to the door, she appeared confused, was slurring her words, was argumentative, and refused to answer his questions about her whereabouts. She admitted to Trooper Hansen that she had been driving but denied she was drinking before she arrived home. Additionally, Trooper Hansen felt that the hood of Appellant's only vehicle parked in her garage was warm, indicating it had recently been driven. Trooper Hansen did not personally see Appellant operate any vehicle.

Because Appellant refused to go outside with Trooper Hansen to perform Field Sobriety Tests and a Preliminary Breath Test, Trooper Hansen cuffed Appellant behind her back and led her outside by her arm. Appellant refused to perform any tests and was placed under arrest and taken to the hospital for a blood draw. Trooper Hansen did not have a warrant to arrest Appellant.

At the hospital, while Trooper Hansen read the Chemical Testing Warnings and Report of Refusal to Submit to a Blood Test ("warnings"), Appellant continually talked over him. After Trooper Hansen read the form verbatim, in its entirety, one time to Appellant, Appellant refused a blood draw and refused to sign the form.

Appellant testified that on the day in question, she had taken her two youngest children to her sister's birthday party around 5:00 p.m. and stayed at the party until approximately 7:00 or 8:00 p.m. She did not consume alcohol while at the party. On the way home, Appellant and her middle child got into a fight. After she got home, Appellant consumed two glasses of wine and took a prescription sleeping medicine, Trazadone. Afterward, she got her youngest child ready for bed and went to bed herself around 9:00 p.m. She was woken by her middle child who told her the police were there. She testified that she was very confused, crying, and was "out of it." She does, however, remember telling the police that she was drinking at home and had not consumed alcohol before driving. At the hospital, she remembers the police asking her permission to take blood but did not understand why they wanted to do so.

Discussion

Appellant sets forth three arguments. First, she argues that her arrest was illegal because Trooper Hansen did not have probable cause or a warrant and therefore, any evidence derived from her unlawful arrest should be suppressed. Next, Appellant states that Trooper Hansen lacked reasonable grounds to even question Appellant because he did not actually see Appellant driving the vehicle and the information he received came from Appellant's estranged ex-husband, a biased third party. Finally, Appellant argues that her refusal was not knowing and intelligent because she was confused about what was going on and Appellant and Trooper Hansen were talking over one another when Trooper Hansen was

trying to read the warnings to her. Appellant relies on *Welsh v. Wisconsin*² and *DiCola v. PennDOT*³ in support of her argument.

Appellee argues that the legality of the underlying arrest is entirely immaterial to a license suspension case. Additionally, Trooper Hansen did not have the duty to ensure Appellant understood the warnings set forth in the form he read to her. His only duty was to read the form verbatim in its entirety, which he did. In support of its argument, Appellee cites several Commonwealth Court cases and a Pennsylvania Supreme Court case, including *Menosky v. Commonwealth*⁴ and *PennDOT v. Wysocki*.⁵

The *Menosky* case directly addresses Appellant's first and second arguments. In *Menosky*, a licensee's van was found along the side of the road against a telephone pole but the driver was not in the van. 550 A.2d at 1373. When the police arrived at the licensee's home, he began yelling at the officers and was noted to have a very strong odor of alcohol, bloodshot eyes, and unsteady gait. *Id.* After being handcuffed, the licensee refused a breathalyzer in violation of the motor vehicle code. *Id.* The licensee argued that the officer's entry into his home was unconstitutional since the officer did not actually observe him operating the vehicle and therefore, any evidence such as the odor on his breath could "not be used to demonstrate that [the officer] had reasonable grounds to believe that the licensee was operating his van while intoxicated." *Id.* The licensee relied on the *Welsh v. Wisconsin* case, *supra*, in support of his argument. *Id.*

² 466 U.S. 740 (1984).

³ 649 A.2d 398 (Pa.Cmwlt. 1997).

⁴ 550 A.2d 1372 (Pa.Cmwlt. 1988).

⁵ 535 A.2d 77 (Pa. 1987).

Welsh, which dealt specifically with a Wisconsin statute, is not helpful in Pennsylvania. Unlike in Wisconsin, Pennsylvania has no statute that allows the defense of an unlawful arrest in refusal hearings. *Id.* **“In Pennsylvania . . . a lawful arrest is not a prerequisite to a valid license suspension proceeding.”** *Id.*, citing *Glass v. DOT*, 333 A.2d 768 (Pa. 1975) (emphasis added). This holding was affirmed in the *Wysocki* case, which reasoned that “[t]he basis for employing the exclusionary rule in Fourth Amendment situations is to deter police officials for [sic] engaging in improper conduct for the purpose of obtaining *criminal* convictions.” 535 A.2d at 79 (emphasis added). License suspensions are *administrative* in nature. *Menosky*, 550 A.2d at 1374.

Pursuant to the statute, an arresting officer must have reasonable grounds to believe that a licensee was driving a vehicle while intoxicated in order to justify suspension of operating privileges for refusal to submit to a breath or blood test. *Id.*; 75 Pa.C.S.A. § 1547(a). The Commonwealth Court went on to hold that “[i]f a reasonable person in the position of the officer viewing the facts and circumstances as they appeared at trial could have concluded that the motorist had operated the vehicle while under the influence of alcohol, the requisite grounds are established.” *Id.* The Court ultimately held that the arresting officer had reasonable grounds to believe the licensee was driving intoxicated when the arresting officer interviewed the licensee shortly after the call came in, the person reporting the incident stated the licensee “appeared to be intoxicated,” and the arresting officer personally observed the licensee’s condition. *Id.* at 1374-75.

Pursuant to *Menosky*, *supra*, it is clear that the *Welsh* case cited by Appellant is inapplicable to this matter and Trooper Hansen’s entry into

Appellant's home and his arrest of Appellant, whether lawful or not, is irrelevant. The only matter for the Court to decide is whether Trooper Hansen had reasonable grounds to believe that Appellant was driving while intoxicated and the Court finds that Trooper Hansen did in fact have reasonable grounds.

Trooper Hansen was given information from dispatch that Appellant had been driving intoxicated with her two children in the car. As he later learned, this report came directly from one of the children in the car to the child's father, who called in the information. Upon arriving to the house, Trooper Hansen noted Appellant to be argumentative, confused, and slurring her words. Trooper Hansen felt that the hood of Appellant's car was warm and he spoke directly to the children who told him that Appellant was drinking prior to driving. These facts establish reasonable grounds for Trooper Hansen to believe Appellant was driving with intoxicated.

Finally, Appellant argues that her refusal was not knowing and intelligent because Trooper Hansen only read the warnings to her once while she was talking over him. It is well settled that the licensee bears the burden of proving that her refusal to submit to a blood draw was not knowing or conscious. *Patane v. PennDOT*, 192 A.3d 335, 342 (Pa.Cmwlt. 2018). The Commonwealth Court has held that even when a licensee is engaging in loud, verbally abusive behavior and talking over the arresting officer, the officer still has a duty to read the warnings to the licensee as long as there is nothing preventing him from doing so even if he must read them over the licensee's constant interruptions. *Reed v. Com.*, 25 A.3d 1308, 1312 (Pa.Cmwlt. 2011). A driver's state of intoxication, when claimed that it prevented a driver from knowingly and

intelligently refusing a breathalyzer, does not constitute a defense. *Coraluzzi v. Com.*, 524 A.2d 540 (Pa.Cmwlt. 1987).

Here, Appellant argues her refusal was not knowing and intelligent because her state of mind at the time of her refusal as well as the fact that Trooper Hansen read the warnings only once prevented her from doing so. However, despite Appellant constantly talking over Trooper Hansen while he was reading the warnings, he still read them to her in their entirety and verbatim. The fact that Appellant was under the influence of alcohol and sleeping medication and chose to be loud while Trooper Hansen was reading the warnings is not a defense. An individual cannot avoid a request for a blood draw by intentionally trying to interrupt the reading of the warning. The Court finds that Appellant's refusal was knowing, intelligent, and conscious.

Conclusion

The Court finds that Trooper Hansen has reasonable grounds to arrest Appellant and that Appellant knowingly, intelligently, and consciously refused a blood draw. Therefore, Appellant's driver's license suspension will be reinstated and her appeal dismissed.

ORDER

AND NOW, this **21st** day of **April, 2021**, for the reasons set forth above, Appellant's appeal is **DISMISSED** and the license suspension **REINSTATED** pursuant to the Notice of Suspension dated October 30, 2020.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

CC: Kelly Solomon, Esq.
1101 S. Front Street, ROC-3rd Floor, Harrisburg, PA 17104
E.J. Rymysza, Esq.
Gary Weber, Esq.
April McDonald
Alexandra Sholley – Judge Tira's Office