

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Glenn E. Hanna,	:
Appellant	:
	:
v.	:
	:
Commonwealth of Pennsylvania,	:
Department of Transportation,	: No. 316 C.D. 2008
Bureau of Driver Licensing	: Submitted January 30, 2009

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: February 26, 2009

Glenn Hanna (Hanna) appeals from an order of the Court of Common Pleas of Montgomery County (trial court) denying his appeal and reinstating his 18 month license suspension for chemical testing refusal. The only issue Hanna raises before this Court is whether he was adequately advised of the chemical test refusal warnings pursuant to Section 1547(b)(2) of the Vehicle Code, *as amended*, 75 Pa.C.S. § 1547(b)(2). For reasons that follow, we affirm the trial court.

On January 7, 2005, Hanna was stopped for suspicion of driving under the influence of alcohol (DUI). After refusing to perform the field sobriety tests and the portable breathalyzer test, and admitting he had a couple of beers at Reed's Tavern, two miles from the stop, Hanna was placed under arrest. Whitpain Township Police Officer Jon Bleuit then advised Hanna of his rights pursuant to Section 1547 of the Vehicle Code by reading the 2003 version of the warnings on the implied consent

form, Form DL-26, verbatim, and requested Hanna to submit to a blood test. The December 2003 version of Form DL-26 provided:

1. Please be advised that you are under arrest for driving under the influence of alcohol or controlled substance in violation of Section 3802 of the Vehicle Code.
2. I am requesting that you submit to a chemical test of *Blood*.
3. It is my duty as a police officer to inform you that if you refuse to submit to the chemical test, your operating privilege will be suspended for at least one year. In addition, if you refuse to submit to the chemical test, and you are convicted of, plead to, or adjudicated delinquent with respect to violating Section 3802(a) of the Vehicle Code, because of your refusal, you will be subject to the more severe penalties set forth in Section 3804(c) of the Vehicle Code, which include a minimum of 72 hours in jail and a minimum fine of \$1000.00.
4. It is also my duty as a police officer to inform you that you have no right to speak with an attorney or anyone else before deciding whether to submit to testing and any request to speak with an attorney or anyone else after being provided these warnings or remaining silent when asked to submit to chemical testing will constitute a refusal, resulting in the suspension of your operating privilege and other enhanced criminal sanctions if you are convicted of violating Section 3802(a) of the Vehicle Code.

Hanna refused to provide a sample for chemical testing on the advice of his attorney.¹

On January 21, 2005, Hanna was notified that his license had been suspended for 18 months for refusing to submit to chemical testing. On February 16, 2005, Hanna appealed to the trial court. A hearing was held on October 6, 2006, and

¹ Officer Bleuit testified that Hanna refused to submit to a chemical test because “his lawyer told him not to.” R.R. at 7a. Hanna’s attorney was not present at the stop and there is no testimony in the record regarding any conversation between Hanna and his attorney that evening.

on January 18, 2008, the trial court denied Hanna's appeal and reinstated his license suspension. Hanna timely appealed to this Court.²

Hanna argues the implied consent form read to him was legally insufficient due to the form and punctuation of the warnings. Specifically, Hanna argues that the commas inserted before and after the words "because of your refusal" in paragraph 3 of Form DL-26 implies that a motorist would be subject to the more severe penalties only when the conviction for DUI is predicated upon the refusal.³

The issue of whether the implied consent warnings on the 2003 version of Form DL-26 satisfy the requirements of 75 Pa.C.S. § 1547(b)(2) has already been addressed by the Pennsylvania Supreme Court in *Dept. of Transp., Bureau of Driver Licensing v. Weaver*, 590 Pa. 188, 912 A.2d 259 (2006), wherein the Court held "[t]he plain language [of Section 1547(b)(2)(ii)] requires only that the officer inform the arrestee that if he is convicted of DUI, refusal will result in additional penalties; it does not require the officer to enumerate all of the possible penalties" *Id.* at 196, 912 A.2d at 264. In the instant case, Hanna argues the positioning of the words/commas makes it unclear as to when the more severe penalties would be applied. However, we agree with the Court in *Weaver* that "Form DL-26 gives an arrestee an easily understandable warning that if he refuses a chemical test and is convicted of DUI, he will be subject to severe penalties because of his refusal." *Id.* at

² This Court's scope of review in a license suspension case is limited to determining whether the trial court's findings of facts are supported by competent evidence, whether the trial court committed an error of law, or whether the trial court abused its discretion. *Orloff v. Dept. of Transp., Bureau of Driver Licensing*, 912 A.2d 918 (Pa. Cmwlth. 2006).

³ Hanna also argues that paragraph 4 of Form DL-26 also suggests that remaining silent or requesting to speak to someone when asked to submit to chemical testing would only result in a suspension if the individual was also convicted of DUI. However, that paragraph does not apply to Hanna as the record indicates he did not remain silent or request to speak to anybody.

196-197, 912 A.2d at 264. In accordance with *Weaver*, this Court holds the 2003 version of Form DL-26 to be sufficient under 75 Pa.C.S. § 1547(b)(2) as a matter of law. Hence, the trial court properly reinstated Hanna's license suspension.

Moreover, in order for Hanna to have succeeded in reversing his license suspension he had to have met his burden of proving that his refusal was not knowing or conscious. *Dep't of Transp., Bureau of Driver Licensing v. Boucher*, 547 Pa. 440, 691 A.2d 450 (1997). In the case sub judice, Hanna specifically stated he refused the chemical testing based on advice of counsel. Reproduced Record (R.R.) at 7a. Hanna testified he discussed being stopped for DUI's with his attorney at some time prior to January 7, 2005. R.R. at 27a-28a. For Hanna to come before the Court now and argue he did not understand the warnings is disingenuous.

At the hearing before the trial court, Hanna testified Officer Bleuit only told him if he refused chemical testing he would lose his license for 12 months. Hanna's attorney, therefore, argued Hanna was unaware he could lose his license for 18 months and receive more severe penalties. However, in his brief, the attorney argued that it was the punctuation that made Hanna believe he would only receive enhanced penalties if his DUI was based on his refusal. The fact that Hanna raises conflicting arguments is telling. Clearly, Hanna was aware of the consequences of his refusal, and is now simply looking for a way to evade such consequences. This Court holds Hanna failed to meet his burden of proving that his refusal was not knowing and conscious.

For the above reasons, the order of the trial court is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 26th day of February, 2009, the order of the Court of Common Pleas of Montgomery County dated January 18, 2008, is hereby affirmed.

JOHNNY J. BUTLER, Judge