

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael William Dinger, :
Appellant :
v. :
Commonwealth of Pennsylvania, :
Department of Transportation, : No. 248 C.D. 2014
Bureau of Driver Licensing : Submitted: August 22, 2014

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: September 16, 2014

Michael William Dinger (Dinger) appeals the order of the Court of Common Pleas of Erie County (trial court) that dismissed Dinger’s statutory appeal and reinstated the disqualification of Dinger’s commercial operating privilege for one year pursuant to Section 1611 of the Uniform Commercial Driver’s License Act (Act), 75 Pa. C.S. §1611.¹

By official notice dated August 16, 2013, the Department of Transportation, Bureau of Driver Licensing (DOT) informed Dinger that his commercial operating privilege was disqualified for one year effective September 20, 2013, pursuant to Section 1611(a) of the Act, 75 Pa. C.S. §1611(a), due to his conviction in West Virginia for his violation of Fairmont, West Virginia,

¹ Section 1611 of the Act provides for disqualification from driving a commercial motor vehicle upon receipt of a report of a conviction in another state for an offense similar to a Pennsylvania offense which would result in disqualification. 75 Pa. C.S. §1611.

Municipal Ordinance 331.02. DOT's notification informed Dinger that his conviction in West Virginia for accidents involving damage to a vehicle was similar to a violation of Section 3745 of the Vehicle Code (Code), 75 Pa. C.S. §3745 (accidents involving damage to unattended vehicle or property).

Dinger appealed the suspension to the trial court. On September 12, 2013, the trial court conducted a *de novo* hearing. DOT introduced into evidence a packet of documents which consisted of the notice to Dinger and his driving record. The last page of his driving record indicated that Dinger committed a violation in West Virginia on July 22, 2013, was convicted on August 5, 2013, for leaving the scene of an accident and the comparable section of the Code was Section 3745, 75 Pa.C.S. §3745. DOT also submitted into evidence the MVR Access and Decoder Digest: The Complete National Reference of Motor Vehicle Records Access, Content, and Conviction Code Tables (MVR). Under the MVR, the incident was coded as "B08" which indicated "leaving accident scene before police arrive –Property damage accident." MVR Access and Decoder Digest: The Complete National Reference of Motor Vehicle Records Access, Content, and Conviction Code Tables, Appendix A at 2; Supplemental Reproduced Record (S.R.R.) at 17b.

DOT's counsel, Chester J. Karas, Jr., explained:

That information that the department [DOT] received from the state of West Virginia would place this offense within the purview of section 3745 of the Vehicle Code. . . it's an offense relating to accidents involving damage . . . to unattended vehicle or property. That would cause a commercial driver's license disqualification here in Pennsylvania.

Notes of Testimony, September 12, 2013, at 7; Reproduced Record (R.R.) at 17.

Dinger testified that he has been a licensed commercial driver in Pennsylvania since 2006. On July 22, 2013, Dinger was driving his tractor-trailer in a residential area in Fairmont, West Virginia. A police officer signaled Dinger to pull his tractor-trailer to the side of the road. The officer informed Dinger that he hit a mailbox. Dinger stated that he was unaware that he did so. The police officer checked Dinger's tractor-trailer and found no damage. Dinger introduced into evidence the citation he was issued which indicated that he violated municipal ordinance 331.02.² N.T. at 10-12; R.R. at 20-22. On cross-examination, Dinger admitted that he paid a fine of \$387.00. N.T. at 29-30; R.R. at 38-39. Dinger testified that the damage to the mailbox was minimal. The mailbox was twisted on its post, but not knocked over. N.T. at 30; R.R. at 40.

By order dated January 24, 2014, the trial court dismissed Dinger's appeal and authorized DOT to reinstate the disqualification. The trial court determined:

In the instant case, undisputedly the offense upon which Appellant [Dinger] pled guilty to in West Virginia was the offense of Accidents Involving Damage to Vehicle. . . . The elements of this West Virginia offense include a driver being involved in an accident resulting in damage to a vehicle and thereafter remaining on scene, or as close thereto as possible, to the scene of said accident without providing his name, address and registration number of the vehicle being driven by the driver and ensuring the

² The Fairmont, West Virginia citation charged Dinger with violating Municipal Ordinance 331.02 (leaving the scene of an accident resulting only in damage to a vehicle), and Municipal Ordinance 349.16 (no proof of insurance).

stop following said accident does not obstruct traffic more than necessary. The Pennsylvania offense is Accidents Involving Damage to Unattended Vehicle or Property. The elements of the Pennsylvania offense include a driver being involved in an accident resulting in damage to a vehicle or property stopping immediately or as close thereto as possible to the scene of said accident and provide his name, address, information relating to financial responsibility and registration number of the vehicle being driven by the driver and ensuring the stop following said accident is made without obstructing traffic more than is necessary. Clearly, both offenses are substantially similar when comparing the elements of each offense.

This finding is further supported by the evidence admitted by PennDOT during the hearing, which included a certified copy of Appellant's [Dinger] driving history . . . containing the Out of State Conviction list . . . and the Motor Vehicle Records Access and Decoder Digest (hereinafter referred to as 'DVR'). . . .The DVR describes the coding of PennDOT's out-of-state conviction list and provides the framework for PennDOT to compare offenses. A review of the DVR evidences the relationship between Fairmont Township, Marion County, West Virginia, Municipal Ordinance 331.02 and 75 Pa.C.S.A. [sic] §3745. West Virginia electronically reported to PennDOT that Appellant [Dinger] was convicted of an offense coded as WV 020. Upon review of the DVR, West Virginia offense with WV Code 020 is described as a hit and run/leaving accident and bears an ACD of B08, which is described as leaving the scene of an accident before the police arrive where property was damaged. This description is supported by Appellant's [Dinger] testimony that he was unaware he had hit a mailbox until he was pulled over by police. Therefore, this Lower Court finds Fairmont Township, Marion County, West Virginia, Municipal Ordinance 331.02 and Section 3745 of the Pennsylvania Vehicle Code are substantially similar.

Trial Court Opinion, May 1, 2014, at 5-6; R.R. at 99-100.

Dinger contends that the trial court erred when it dismissed his appeal.³

Initially, Dinger argues that the trial court erred in dismissing his appeal because the incident in West Virginia was not sufficiently similar to section 3745 of the Vehicle Code, 75 Pa. C.S. §3745. Specifically, Dinger argues that hitting a mailbox in West Virginia is not sufficiently similar to the Pennsylvania offense of damage to an unattended vehicle or property.

“A license suspension is a collateral civil consequence of a criminal conviction.” Shewack v. Department of Transportation, Bureau of Driver Licensing, 993 A.2d 916, 919 (Pa. Cmwlth. 2010). When appealing a license suspension, the “licensee may not attack the validity of the underlying criminal conviction.” Id. Further, the only relevant issues are whether the licensee was actually convicted and whether DOT “acted in accordance with [the] applicable law.” Id.

Further, in Shewack, a case which dealt with whether a licensee could have his commercial driver’s license disqualified for one year based on a conviction for an offense in Maryland, this Court stated:

Licensee may not collaterally attack his underlying criminal conviction in this civil license proceeding. . . .

³ This Court’s review is limited to determining whether the trial court’s decision is supported by substantial evidence, whether an error of law occurred, or whether the decision indicates a manifest abuse of discretion. Stahr v. Department of Transportation, Bureau of Driver Licensing, 969 A.2d 37, 39 n.2 (Pa. Cmwlth. 2009).

As such, we lack authority to consider the validity of Licensee's Maryland conviction. To consider the underlying basis for that conviction would constitute an impermissible collateral attack on the conviction. Our sole inquiry is whether the offense on which Licensee was convicted in Maryland is sufficiently similar to a Pennsylvania offense so as to justify PennDOT's disqualification of Licensee's CDL [commercial driver's license].

For purposes of determining whether an out-of-state offense is similar to one that would result in disqualification of a CDL [commercial driver's license] if the conviction occurred in Pennsylvania, it is the offense and not the statute of the other state that must be essentially similar to the offense proscribed in Pennsylvania. . . . In *Aten* [v. Department of Transportation, Bureau of Driver Licensing, 649 A.2d 732 (Pa. Cmwlth. 1994)], this Court noted the relevant comparison is between the elements of the foreign state's statute and the elements of Pennsylvania's statute. (Citation omitted).

Shewack, 993 A.2d at 919.

Thus, this Court's sole inquiry is whether the offense that Dinger was convicted of in West Virginia is essentially similar to the Pennsylvania offense so as to justify DOT's disqualification of Dinger's commercial operating privilege.

Dinger first argues that he was charged under a code section in West Virginia which did not reflect what actually happened. On the citation, the police officer stated that Dinger hit a mailbox, but he was charged with an offense that reflected that he was in an accident with another vehicle which was not the case. Here, Dinger attempts to argue that he should not have been convicted under the Fairmont, West Virginia, Municipal Ordinance, 331.02. Dinger is attempting to

collaterally attack the West Virginia conviction which is not permissible and is not this Court's inquiry. As stated previously, neither this court nor the trial court may examine the circumstances of the underlying conviction. Commonwealth v. Duffey, 639 A.2d 1174, 1177 (Pa. 1994).

Dinger also asserts that the West Virginia offense was not substantially similar to the Pennsylvania offense.

The Fairmont, West Virginia, Municipal Ordinance 331.02 provides:

331.02 ACCIDENTS INVOLVING DAMAGE TO VEHICLE.

The driver of any vehicle involved in *an accident resulting only in damage to a vehicle which is driven or attended by any person* shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 331.03. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with such requirements under such circumstances shall be guilty of a misdemeanor. (WVaC 17C-4-2) (emphasis added).

Regarding the Pennsylvania statute, Section 1611(a) and (h) of the Act provides for disqualification from driving a commercial motor vehicle in pertinent part as follows:

(a) First violation of certain offenses.—Upon receipt of a report of conviction, the department shall, in addition to any other penalties imposed under this title, disqualify

any person from driving a commercial motor vehicle . . . for a period of one year for the first violation of:

(4) section 3745 (*relating to accidents involving damage to unattended vehicle or property*), where the person was a commercial driver at the time the violation occurred;

.....

(h) Conviction in Federal court or another state.-- For purposes of the provisions of this section, a copy of a report of conviction or a copy of a report of administrative adjudication from . . . another state for an offense similar to those offenses which would result in disqualification in this section shall be treated by the department as if the conviction had occurred in this Commonwealth.

75 Pa. C.S. §1611(a) and (h) (emphasis added).

In turn, Section 3745 of the Code entitled “Accidents involving damage to unattended vehicle or property” provides:

(a) General rule.—The driver of any vehicle which collides with or is involved in *an accident with any vehicle or other property which is unattended* resulting in any damage to the other vehicle or property shall immediately stop the vehicle at the scene of the accident or as close thereto as possible and shall then and there either locate and notify the operator or owner of the damaged vehicle or other property of his name, address, information relating to financial responsibility and the registration number of the vehicle being driven or shall attach securely in a conspicuous place in or on the damaged vehicle or other property a written notice giving his name, address, information relating to financial responsibility and the registration number of the vehicle being driven and shall without unnecessary delay notify the nearest office of a duly authorized police department. Every stop shall be made without obstructing traffic more than is necessary.

(b) Penalty.—A violation of this section is a summary offense, punishable by a fine of \$300 or imprisonment for not more than 90 days, or both.

75 Pa. C.S. §3745 (emphasis added).

Here, Dinger was convicted in West Virginia of the offense of leaving the scene of an accident that involved damage to a vehicle “which is driven or attended by any person.” The Pennsylvania provision that DOT cited in Dinger’s disqualification notice involves the offense of leaving the scene of an accident that involved damage to an “unattended” vehicle or property. In essence, both provisions prohibit leaving the scene of an accident. However, this Court disagrees with the trial court that the two offenses are sufficiently similar to provide DOT with the authority to disqualify Dinger’s commercial operating privilege.

The two offenses are not essentially similar because Fairmont, West Virginia, Municipal Ordinance 331.02 concerns an occupied vehicle, whereas section 3745 of the Vehicle Code, 75 Pa. C.S. §3745, concerns an unoccupied vehicle or piece of property.⁴ The difference between an occupied or “attended” vehicle in the West Virginia Ordinance and an unoccupied or “unattended” vehicle or property in the Code compels this Court to conclude that the two laws are not essentially similar.

⁴ Had DOT disqualified Dinger pursuant to section 3743 of the Vehicle Code, 75 Pa. C.S. §3743, which relates to “[a]ccidents involving damage to attended vehicle or property,” a contrary conclusion might be warranted.

Accordingly, this Court reverses.

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 16th day of September, 2014, the order of the Court of Common Pleas of Erie County in the above-captioned matter is reversed.

BERNARD L. MCGINLEY, Judge