

LEGAL NOTICES, cont.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, April 30, 1990 at 4:00 P.M., prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on May 4, 1990 at 1:00 P.M., prevailing time in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff

Franklin County, Chambersburg, PA
3/30, 4/6, 4/13/90

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has sought to benefit from the cognovit clause, which authorized the confession of judgment against Benju Corporation according to the tenor of the note of which it was a part. The Complaint filed with the confession did not set forth any basis whatever for any departure from the rate of interest stated therein. Accordingly, we will direct that the judgment be modified to include interest computed at 9% per annum, rather than the 13¼% per annum interest rate on which judgment was confessed.

ORDER OF COURT

NOW, July 13, 1989, the petition of Benju Corporation to strike off or to open the judgment in the above case is denied.

The Respondent, David A. Burkholder, Executor under the will of Aaron H. Meyers, deceased, is directed to re-calculate the interest on which judgment is confessed at a rate of nine (9%) percent per annum, and to file with the Prothonotary within ten (10) days of the date hereof, a certificate setting forth the corrected amount of interest, whereupon the amount of the judgment shall be deemed amended *nunc pro tunc* to the date of entry of judgment to reflect this adjustment.

Execptions are granted to petitioner and respondent.

COMMONWEALTH OF PENNSYLVANIA, DEPT. OF
TRANSPORTATION V. SATTERLY, C.P. Franklin County
Branch, Misc. Doc. Vol. Y, Page 536

Suspension of Operating Privileges - Administrative Delay

1. The mere passage of time between conviction and the suspension of privileges is not sufficient justification to set aside the Bureau's actions.
2. A change of circumstances occurring during an administrative delay constitutes a sufficient ground to vacate a suspension.

3. Where defendant left one job not requiring operating privileges and took another requiring such privileges during the six month administrative delay the Court will vacate the suspension.

Steven P. Miner, Esq., Assistant Counsel, for the Commonwealth
J. McDowell Sharpe, Esq., Attorney for Defendant

OPINION AND ORDER

KELLER, P.J., June 3, 1986:

On December 16, 1985, the defendant's petition for appeal from suspension of motor vehicle operating privileges was filed, and on December 19, 1985 an order was entered directing the appeal to act as a supersedeas of the suspension period and setting Thursday, February 6, 1986 at 1:30 o'clock p.m. as the date and time for hearing on the petition. On January 17, 1986, on motion to continue the hearing an order was entered rescheduling the hearing for February 27, 1986 at 2:00 o'clock p.m. The hearing was held as scheduled and counsel for defendant presented a memorandum of law on the legal issues as perceived by the defense. At the conclusion of the hearing on the request of the Commonwealth leave was granted the Commonwealth to file a memorandum of law within ten (10) days, and the defendant was granted leave to file a rebuttal memorandum within five (5) days thereafter.

FINDINGS OF FACT

1. Commonwealth's Exhibit 1 was admitted in evidence and the attachments thereto indicate:

Page 1 - An "Official Notice" was mailed to the defendant at 617 Pine Mt. Dr., Fayetteville, PA. 17222 inter alia advising him that as result of his conviction on March 27, 1985 of violating Section 1543 of the Vehicle Code, his driving privileges were revoked for a period of 6 months effective June 2, 1985. The Official Notice had a notation in the upper left-hand corner "Mail Date: May 6, 1985."

Page 2 - Copy of Citation No. 105274 which indicates Charles Andrew Satterly of 5662 Cumberland Hwy., Chambersburg, PA was charged with "Driving while operating privilege is suspended or revoked" on December 1, 1984 and further indicating a fine for the Vehicle Code violation is \$200.00 and costs \$17.50. A copy of the

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reverse side of the citation indicates a fine of \$200.00 and costs of \$17.50 were paid on March 27, 1985 to District Justice Larry Memminger.

Page 3 is a "Certification Statement" issued by the Department of Transportation and setting forth the driving record of Charles Satterly, 617 Pine Mt. Drive, Fayetteville, PA 17222.

2. Tpr. Michael W. Vasco of the Pennsylvania State Police was attached to the patrol section of the Pennsylvania State Police at the Chambersburg Substation, and he is primarily responsible for the Warrant and O.R. Unit. As the operating officer of the unit it is his responsibility to serve documents such as suspension notices and warrants for collection of funds when documents are forwarded to him through channels.

3. During the month of July 1985, Tpr. Vasco received through channels a process dated July 8, 1985 addressed to Charles Satterly, 617 Pine Mt. Drive, Fayetteville, PA 17222. The process advised the defendant that he had been previously notified that his driving privileges were suspended/revoked effective June 10, 1985, and that he had failed to surrender his driver's license. The process further advised the defendant that he was required to immediately surrender his driver's license to the bearer of the notice "who is an authorized representative of the Department of Transportation and empowered to lift the above." The process was admitted in evidence as Defendant's Exhibit 1.

4. Sometime after receipt of the process, Tpr. Vasco examined the telephone directory in an attempt to locate the telephone in the name of the defendant, and was unsuccessful in his search.

5. In August 1985, Tpr. Vasco went to the address of the defendant and found no one at home. He did not attempt to contact any neighbors to determine whether the defendant resided at the address or to ascertain his whereabouts.

6. Tpr. Vasco is uncertain whether he made any effort between his first visit to the defendant's home in August, and November 21, 1985, to contact the defendant at his home. He does not believe that he did due to the number of documents he was responsible for processing and serving.

7. On November 21, 1985 Tpr. Vasco again went to the address of the defendant and spoke to a lady at the residence who advised him

that it was the home of Charles Satterly, and that Mr. Satterly was at work at Hal Lowrey Ford, Inc.

8. Tpr. Vasco then went to Hal Lowrey Ford, Inc. and met the defendant and advised him of the purpose of his visit, exhibited the process to him, and demanded the surrender of his operator's license. The trooper observed that the defendant was upset and appeared to be shocked and did question him as to the reason for the suspension.

9. The defendant did surrender his operator's license to Tpr. Vasco as required by the process.

10. The defendant and his wife, Barbara Satterly, had resided at 5662 Cumberland Highway, Chambersburg, Pa. until late December 1984 or early January 1985 when they moved to 617 Pine Mt. Drive, Fayetteville, Pa. where they have resided to the date of the hearing and defendant's mother-in-law Nancy Forney was living with them at their Cumberland Highway home, and now resides with them at their present address.

11. The defendant recalled that his operating privileges had been suspended in 1984, and were restored effective December 5, 1984 as evidenced by the letter of the Department of Transportation dated December 5, 1984, and admitted in evidence as Defendant's Exhibit 2.

12. The defendant recalls that about December 1, 1984 he was stopped for "running a redlight", and he had told the State Police Officer who stopped him that he did not have an operator's license and the officer verified that he was driving during suspension. He did not recall receiving a citation charging him with operating during suspension but did not question the fact that such a citation had been issued. He also did not recall ever having paid the \$217.50 fine to District Justice Memminger or at the office of the District Justice, and denied ever having paid such a fine.

13. The Court finds that either the defendant or someone on his behalf did, in fact, pay the fine for driving during suspension on March 27, 1985.

14. The defendant, his wife and mother-in-law testified that at no time was the Commonwealth's suspension notice ever delivered to the home of the defendant, and the Court accepts the fact that defendant never received notice of the suspension until he was

confronted by Tpr. Vasco with the process and the demand for delivery of his operator's license.

15. At and before December 1, 1984 until October 27, 1985 the defendant was employed as a shoe salesman and manager of a shoe store in the Chambersburg Mall. His employment did not require him to have an operator's license.

16. In October 1985 the defendant answered an advertisement for sales personnel at Hal Lowrey Ford, and was interviewed by the General Manager of the company for employment as an automobile salesman. He was hired October 28, 1985 as an automobile salesman. Defendant works on a commission basis demonstrating and selling new and used vehicles. A prerequisite for his hiring and for his continued employment is that he have a valid operator's license.

17. The General Manager of Hal Lowrey Ford, Inc., Bruce Cameron, testified that if the defendant's operating privileges were suspended it would be necessary to let him go.

18. The defendant testified that he would not have left his job as store manager and salesman of the shoe store if he had known that his operating privileges had been suspended, and the Court accepts this testimony as correct.

DISCUSSION

The defendant claims that the suspension of his operator's privileges by the Department of Transportation for violation of Section 1543 of the Vehicle Code, 75 Pa. C.S. §1543 should be vacated. An action by the Department of Transportation upon an operator's privileges may be vacated when an administrative delay between a conviction and suspension causes the operator to believe that his privileges will not be impaired and to change his circumstances to his detriment. *Commonwealth v. Lyons*, 70 Pa. Commwlth. 604, 453 A.2d 730 (1983), *Commonwealth v. Rutkowski*, 46 Pa. Commwlth. 64, 406 A.2d 248 (1979), *Commonwealth v. Hosek*, 3 Pa. Commwlth. 580, 284 A.2d 524 (1971).

The Department of Transportation is chargeable with the delay occurring after it received notice of certification of the conviction.

Commonwealth v. Lyons, supra, citing *Chappell v. Commonwealth*, 59 Pa. Commwlth. 504, 430 A.2d 377 (1981). The defendant was convicted by the payment of the fine on March 27, 1985. Because the Commonwealth's suspension notice dated May 6, 1986 was never delivered to the defendant's home, he first received notice of the suspension when he was confronted by Trooper Vasco with the process and demand for delivery of his operator's license on November 21, 1985. The administrative delay between the certification on March 27, 1985¹ and the notice of suspension on November 21, 1985 was almost eight months.

It is well settled that the mere passage of time between the defendant's conviction and the suspension of his operating privileges is not sufficient justification to set aside the Bureau's action. *Commonwealth v. Rutkowski*, supra. In re: *Appeal from Suspension of the Operator's License of Terry L. Betz*, Franklin County Misc. Docket Vol. Y, Page 391. A change of circumstances occurring during an administrative delay constitutes a sufficient ground to vacate a suspension. *Commonwealth v. Carey*, D&C 3d 367 (1983).

We must determine whether there was a change of circumstances so prejudicial to the defendant that the suspension should be invalidated. The existing cases fall into two categories. During delays ranging from three to six months, the prejudice suffered by the motorists was held to be insufficient to warrant the invalidation of Bureau action when the change of circumstances claimed was the diminishment of employment prospects, *Gilson v. Commonwealth*, 75 Pa. Commwlth. 616, 462 A.2d 357 (1983); when the motorist could retain his job by hiring a driver as he had done during an earlier suspension, *Commonwealth v. Chappell*, supra; when the motorist had purchased a vehicle and maintained insurance upon it, *Commonwealth v. Passarella*, 42 Pa. Commwlth. 352, 401 A.2d 1 (1979); and when the motorist's change of position consisted of scheduling out-of-office work and making a motor home vacation commitment. *Commonwealth v. Sharkey*, 2489 C.D. 1982, Slip opinion, September 3, 1985. In each case the prejudice to the motorist was considered minimal and thus insufficient to justify setting aside the otherwise valid penalty.

¹ Since the record does not disclose the date of certification to the Bureau; we will employ March 27, 1986, the date that the fine was paid at the office of the District Justice.

On the other hand, the appellate courts have held that changes in employment status by motorists established sufficient prejudice and required vacating license restrictions, viz., when during a sixteen month delay the defendant left his job as a mover's helper and took a job as a truck driver, *Commonwealth v. Hosek*, supra; when the defendant presented proof that during a one year delay he could have obtained employment close to his home but instead retained his thirty-mile-distant job; *Commonwealth v. Rutkowski*, supra; and when during a twenty-two month delay the motorist accepted a promotion which required extensive travel. *Commonwealth v. Carey*, supra.

In the case at bar, Mr. Satterly has shown that he detrimentally relied upon the administrative delay and suffered prejudice sufficient to justify invalidation of the suspension. The evidence establishes that he was employed in a position as a shoe store manager and salesman that did not require him to hold a driver's license. His operator's privileges were restored on December 5, 1984. On October 28, 1985, seven months after his conviction was certified to the Department of Transportation, he was hired as an automobile salesman. A prerequisite for his hiring and continued employment is that he have a valid operator's license. The defendant testified that he would not have left his job at he shoe store if he had known that his operating privileges had been suspended. He accepted employment in reliance upon his belief that the administrative delay was a result of the Commonwealth's decision not to suspend his driver's license. We are satisfied that the facts of this case demonstrate that during the administrative delay the appellant made the type of employment commitment which requires setting aside the license suspension.

ORDER OF COURT

NOW, this 3rd day of June, 1986, the appeal of Charles Satterly from suspension of operating privileges is sustained. The Department of Transportation, Bureau of Traffic Safety Operations, shall forthwith restore his operating privileges and return his operator's license to him.

Exceptions are granted the plaintiff.

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