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MICHAEL J. CANARY, Petitioner, v. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING, Respondent, C.P. Fulton County Branch, Civil Action, Statutory Appeal, No. 99 of 2000-C

Driver's License Compact

1. The Driver's License Compact is designed in part to notify party states of convictions of its citizens in other party states.
2. A party state may take action in its state for an out-of-state conviction only if both offenses are substantially similar to Article IV of the Driver's License Compact.
3. Section 3731 of the Pennsylvania Motor Vehicle Code and Chapter 17C-5 of West Virginia's Vehicle Code are both substantially similar to Article IV of the Driver's License Compact.
4. Article III requires party states to report the person, the specific violation, the court and disposition of the matter to the defendant's home state.
5. Section 1584 and 1586 of the Pennsylvania Motor Vehicle Code do not "substantially alter" or breach the Driver's License Compact.

Appearances:

Gregory Kubusk, Esq., attorney for respondent
Shawn D. Meyers, Esq., attorney for petitioner

OPINION

Walker, P.J., October 23, 2000

Case History

Petitioner was charged by West Virginia authorities for a violation of Chapter 17C-5 of the West Virginia Vehicle Code on March 27, 1999. Thereafter, on March 1, 2000, petitioner entered a plea of nolo contendere to the charge. Pursuant to the Driver's License Compact, adopted by Pennsylvania in 1996 as 75 Pa.C.S.A. §1581, West Virginia officials notified the Commonwealth that petitioner was convicted under their corresponding statute. On April 28, 2000, respondent notified petitioner by letter that his license was to be suspended for one year effective June 2, 2000. Petitioner then filed an appeal of the suspension, and a hearing was held on the matter at the Fulton County Courthouse on August 8, 2000. Both parties stipulated to the facts, and this court denied the appeal on the basis of existing law.

Discussion

It is clear from a plain reading of the Driver's License Compact that its overall purpose is to ensure public safety reciprocally and cooperatively. As such, when a party state convicts a driver licensed in another party state, that other party state must be notified of the conviction. 75 Pa.C.S.A. §1581. The reasoning is clear and sound: a dangerous driver and threat to public safety in one jurisdiction is necessarily a danger and threat in all jurisdictions, not just the one that obtains the conviction.

The compact thus works to keep convicted motorists accountable and unable to "slip through the cracks." Indeed, an adjudicated threat to public safety is not magically transformed into a conscientious and vigilant driver by simply crossing a state line. It logically follows that such a motorist thus should be held accountable to the citizenry of his or her own jurisdiction as well, for their safety is no less consequential. It is in this light and to this end that the court has interpreted the compact.

For the purposes of the instant appeal, the pertinent provisions of the compact are as follows:

Article III

Reports of Conviction

"The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted, describe the violation specifying the section of the statute, code or ordinance violated, identify the court in which action was taken, indicate whether a plea of guilty or not guilty was entered or the conviction was the result of the forfeiture of bail, bond or other security and shall include any special findings made in connection therewith." 75 Pa.C.S.A. §1581.

Article IV

Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state in the case of convictions for:

(1) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) any felony in the commission of which a motor vehicle is used; or

(4) failure to stop and aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) of this article as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article. 75 Pa.C.S.A. §1581.

Petitioner, a licensed motorist in Pennsylvania, was convicted for violating Chapter 17C-5 of the West Virginia Vehicle Code while driving on West Virginia highways. Because both states have adopted the compact, the above provisions are applicable to both states. Thus, the compact required West Virginia to report the violation to the appropriate Pennsylvania authorities and those authorities, specifically the respondent, were then required to give the same effect to the conviction as if it had occurred here.

Two issues are necessarily present when a state reports a conviction pursuant to the compact. The first is whether the violation reported has an analogous offense in the sister state. If the statute is not an exactly-worded counterpart to Article IV(a)(2), subsection (c) of Article IV of the compact directs the states to dismiss any negligible barriers that semantics may introduce and to pragmatically identify the laws that are "substantially similar" to Article IV. The Pennsylvania Supreme Court has provided guidance on the requisite analysis in determining whether a party state's law is substantially similar. First, it is fundamental that each party state's law must be substantially similar to Article IV, not substantially similar to each other. *Petrovick v. Dept. of Transp., Bureau of Driver Licensing*, 559 Pa. 614, 741 A.2d 1264 (1999). Secondly, *Petrovick* announced that Section

3731 of the Pennsylvania Motor Vehicle Code is substantially similar to Article IV(a)(2) and that "PennDOT is entitled to treat violations of Article IV(a)(2) as if they were violations of 75 Pa.C.S. §3731." *Petrovick*, 559 Pa. at 621-22, 741 A.2d at 1268.

It has likewise been resolved that Chapter 17C-5 of West Virginia is akin to Article IV of the compact because the phrases "under the influence of alcohol to a degree which renders him incapable of driving safely" and "under the influence of alcohol" both proscribe an equal level of impairment. *Hunt v. Department of Transportation, Bureau of Driver Licensing*, 750 A.2d 922, 924 (Pa.Cmwlth. 2000). Therefore, the issue of a distinction between the two party states' laws presently is a non-starter.

A second issue may arise as to whether the particular report to the sister state has the requisite information required by Article III. In this case, petitioner has attached an exhibit of an abstract of judgment sent to respondent by West Virginia officials, preliminarily suggesting that the content is insufficient. Standing alone, it would appear that he is correct, but the court believes petitioner has not been completely clear in his presentation. The abstract of judgment sent to respondent in this matter was on the reverse side of the traffic citation and complaint.

Taken together, the information contained on the whole document satisfied Article III inasmuch as it (1) identified the person convicted as Michael Canary, (2) described the specific violation as 17C-5 2(c)(2), (3) essentially identified the court as the magistrate court of Jefferson County, West Virginia, case number 074695 and (4) indicated that petitioner entered a nolo contendere plea. See *Mazurek v. Department of Transportation*, 717 A.2d 23 (Pa.Cmwlth. 1998). While petitioner is distressed that the abstract on the reverse side lists the offense as simply a "DUI," the complaint itself lists the specific violation as 17C-5 2(c)(2). The argument then becomes somewhat circular as it has already been resolved that both statutes are substantially similar to Article IV(a)(2).

Thus, in the instant appeal this court has been presented with a reporting procedure by West Virginia officials that sufficiently met the requirements of Article III for a violation that corresponds to Article IV(a)(2) and 75 Pa.C.S.A. §3731. This alone is sufficient to sustain petitioner's license suspension. Even assuming arguendo that West Virginia did not comply with Article III, Section 1584 of the Pennsylvania Motor Vehicle Code would now cure any such defect. But petitioner has taken the argument another step as he has qualms with the recent amendments, Sections 1584 and 1586, to the Pennsylvania Vehicle Code that he believes "substantially alter" the language of the compact. Essentially, he asserts that the

amendments are a "breach" of the compact. The amendments at issue are as follows:

§1584. Furnishing of information to other states

The Department of Transportation of the Commonwealth shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact. The omission from any report received by the department from a party state of any information required by Article III of the compact shall not excuse or prevent the department from complying with its duties under Articles IV and V of the compact. 75 Pa.C.S.A. §1584.

§1586. Duties of department

The department shall, for purposes of imposing a suspension or revocation under Article IV of the compact, treat reports of convictions received from party states that relate to driving, operating or being in actual physical control of a vehicle while impaired by or under the influence of alcohol, intoxicating liquor, drugs, narcotics, controlled substances or other impairing or intoxicating substance as being substantially similar to section 3731 (relating to driving under the influence of alcohol or controlled substance). The fact that the offense reported to the department by a party state may require a different degree of impairment of a person's ability to operate, drive or control a vehicle than that required to support a conviction for a violation of section 3731 shall not be a basis for determining that the party state's offense is not substantially similar to section 3731 for purposes of Article IV of the compact. 75 Pa.C.S.A. §1586.

Section 1584 addresses Article III reporting procedures, and this court reads the statute as allowing the Commonwealth to enforce its motor vehicle laws without unnecessary technical constraints. Otherwise, dangerous drivers may be able to thwart justice by successfully arguing that a party state cannot enforce the violation because there was a reporting error. Here, the court reiterates that it is not convinced there even was such an error. However, even if there was such a defect, then Section 1584 would nonetheless permit respondent to comply with the compact by enforcing the conviction at home. While petitioner proposes that such a result substantially alters the terms of the compact, this court has antithetically deduced that the compact is rather enhanced by Section 1584. A "substantial alteration" of the compact would, for instance, be an amendment which

allowed Commonwealth officials to disregard their duty to report convictions to other party states altogether. Section 1584 instead goes to what the Commonwealth will accept on our end, not what we report under our Article III duties. Thus it is clear that the second sentence added in 1998 is really an effort to promote better compliance in Pennsylvania under Article IV of the compact, not an attempt to dodge its duties.

Section 1586 is explicitly directed at the categorization of statutes as substantially similar under Article IV of the compact, and it goes to the level of impairment of party states' statutes rather than the semantics dealt with by subsection (c) of Article IV. Instantly, both statutes dictate that the proscribed level of impairment is a blood alcohol content of 0.10% or more. It is not even as if the West Virginia statute defines a per se violation as a blood alcohol content of 0.08% or 0.16%; there is no current disparity between the two states' impairment levels.

Even if there was a difference in the impairment levels of both Pennsylvania and West Virginia, it is of no matter. or again, the court must stress that the party states' statutes must be substantially similar to Article IV(a)(2). Article IV(a)(2), moreover, requires no specific level of impairment in terms of a percentage. As it is obviously arduous and ultimately nonsensical to compare a state's numerical categorization of impairment with Article IV's definition, Section 1586 simply stands to reinforce *Petrovick's* instruction to correlate statutes with the description in Article IV. Hence, Section 1586 really presents no substantial alteration of the compact, as it merely hastens officials to avoid any initial confusion when confronted with a statute which requires a different level of impairment than the Commonwealth. See *Ester v. Commonwealth of Pennsylvania, Dept. of Transp., Bureau of Driver Licensing*, 756 A.2d 84 (Pa.Cmwlt. 2000).

In conclusion, this court believes that West Virginia authorities satisfactorily reported petitioner's conviction to respondent under Article III and Section 1584 of the compact by providing it the necessary information to enforce the conviction at home as required by Article IV. Further, it has already been settled that Chapter 17C-5 and §3731 are both substantially similar to subsection (a)(2) of Article IV. Finally, while petitioner suggests that §1584 and §1586 substantially alter the compact and place the Commonwealth in breach of the compact, this court posits that the amendments give the compact teeth, explain its mechanics and further its purpose and design.

Therefore, this court respectfully requests the petitioner's appeal be dismissed.

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