

## NEWS ITEM

FRANKLIN COUNTY SHERIFF

February 26, 1995

that, effective January 27, 1995, fees levied in the State of Pennsylvania. These fees are only a slight adjustment, but have just doubled. "If you need a list of Sheriff's Fees," says Sheriff Wollyung, call the office and pick one up for future

on fees, Sheriff Wollyung says that he will increase the advanced deposit for handling of cases in this county. The fee is: \$50.00 for service of Writs, \$100.00 for service of a single defendant or \$100.00 for Personal Property Writ of Execution for Real

RANDY LYNN MELLOTT V. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, C.P. Franklin County Branch, Misc. No. BB-168

*Appeal from Driver's License Suspension-Refusal to submit to chemical testing 75 Pa.C.S.A. 1547(b)*

1. Where the driver has sustained injuries in a collision prior to the time the request for the test was made, competent medical testimony must be produced by the driver to show that he was incapable of making a knowing and conscious decision relative to the chemical testing in order to meet his burden of proof, unless the injuries sustained obviously made him unable to comply with the testing request.

*James K. Reed, Esq.*, Attorney for Petitioner  
Commonwealth of Pennsylvania, Department of Transportation,  
Respondent

## OPINION AND ORDER

KAYE, J., February 1, 1995:

## OPINION

Randy Lynn Mellott ("petitioner") has filed an appeal from the suspension of his operating privileges by the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT"). A hearing thereon was held on January 26, 1995, at the conclusion of which counsel were given the opportunity to submit memoranda of law in support of their positions. Counsel for petitioner has elected

Matthew Sattazahn were the occupants of the vehicle. Both identified petitioner as the driver of the vehicle.

Petitioner was transported to the Chambersburg Hospital via ambulance for treatment of injuries received in the collision. Trooper Messina proceeded to the hospital where he spoke to an emergency room physician who advised that petitioner was intoxicated. Trooper Messina attempted to speak with petitioner, and read PennDOT form DL-26 to him in order to advise him regarding his intention to request that he provide a blood sample pursuant to 75 Pa.C.S.A. §1547. A copy of the form, and of Trooper Messina's affidavit was offered into evidence without objection as Commonwealth's Exhibit 1.

After the warnings on the form were read to petitioner, he was asked to submit to a blood alcohol test, but refused to do so, and refused to sign the form. The refusal to submit to the testing constitutes the basis for the suspension of petitioner's operating privileges. 75 Pa.C.S.A. §1547(b).

The only issue raised by petitioner in this appeal is whether his refusal to submit to the proffered blood testing was a conscious refusal due to the injuries he sustained in the collision. The petitioner has conceded that PennDOT met its burden of proof set forth in *Bell v. Commonwealth, Department of Transportation*, 147 Pa.Cmwlth. 157, 162, 607 A.2d 304, 307 (1992), allocatur denied 618 A.2d 403 (1992). Since this concession was made, the burden then shifted to petitioner to demonstrate that he was physically incapable of making a knowing and conscious refusal. *Pollock v. Commonwealth, Department of Transportation, Bureau of Driver Licensing*, 160 Pa.Cmwlth. 383, 634 A.2d 852 (1993).

Where the driver has sustained injuries in a collision prior to the time the request for the test was made, competent medical testimony must be produced by the driver to show that he was incapable of making a knowing and conscious decision relative to the chemical testing in order to meet his burden of proof, unless the injuries sustained obviously made him unable to comply with the testing request. *Department of Transportation, Bureau of Driver Licensing v. Walsh*, 146 Pa.Cmwlth. 461, 466, 606 A.2d 583, 585 (1992), citing *Department of Transportation, Bureau of*

*Driver Licensing v. Derhammer*, 118 Pa.Cmwlth. 364, 544 A.2d 1132 (1988).

In the instant case, petitioner provided no medical testimony regarding the effect, if any, that his injuries had upon his ability to make a conscious and knowing decision to refuse to submit to the proffered blood alcohol test. Instead, he testified that he could recall only portions of what the Trooper had said to him as he was "in [his] own little world". He testified that he had a cut to his head, his right eyelid was "sliced in half", he had glass in his eye and hair, and bumps and bruises. He submitted a copy of the emergency room medical report [Petitioner's Exhibit 1] which indicates that he had glass in his right eye, a laceration on the top of his head, and multiple abrasions of his face. A report from Dr. J. C. Kiskaddon, who saw petitioner in the emergency care unit of the hospital indicates petitioner was a "...well-developed, well-nourished, alert, cooperative, white male in no acute distress. He does have alcohol smell to breath... He has multiple lacerations of the right upper lid which appear superficial..." [*Id.*].

In our review of the medical report, we see nothing that would have rendered petitioner incapable of complying with the testing request. While we have no doubt that he was experiencing pain at the time Trooper Messina attempted to obtain his assent to the blood alcohol testing, the doctors who were working on him did not give any indication at all that he could not provide them with information regarding his medical condition and personal circumstances. Dr. Kiskaddon noted petitioner's "Neuro" condition to "be within normal limits with clear and normal mentation". These data, submitted by petitioner, disprove his assertion that he could not understand what the Trooper was asking of him. Indeed, his asserted partial amnesia of those events are at least as consistent - if not more so - to a condition of alcohol intoxication as to any of the injuries petitioner sustained.

Petitioner has failed to sustain his burden of proof, and we will therefore deny his appeal.

#### ORDER OF COURT

NOW, February 1, 1995, after hearing and upon consideration of the memorandum of law submitted by

petitioner, the appeal from suspension of operating privileges filed by petitioner, Randy Lynn Mellott, is hereby DENIED.

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