IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stephen M. Tabone	:	
	:	
v.	:	No. 1328 C.D. 2013
	:	
Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing,	:	Submitted: February 21, 2014
	:	
Appellant	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: April 10, 2014**

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (Department) appeals from the Order of the Court of Common Pleas of Allegheny County (trial court) that, after a de novo hearing, sustained the statutory appeal of Stephen M. Tabone (Licensee)[1] from the Department's one-year suspension of Licensee's operating privilege pursuant to Section 1547(b)(1)(i) of the Vehicle Code (Code),[2] for his refusal to submit to chemical testing. On appeal,

[1] Licensee did not file a brief and is precluded from participating in this appeal.

[2] 75 Pa. C.S. § 1547(b)(1)(i). Section 1547(b)(1)(i) provides, in relevant part, that if a person placed under arrest for violating Section 3802 of the Vehicle Code, 75 Pa. C.S. § 3802

(Continued…)

the Department argues that the trial court erred in holding that Licensee's medical expert's testimony was competent and sufficient to satisfy Licensee's burden of proving that Licensee was incapable of making a knowing and conscious refusal of the requested chemical test. Discerning no error, we affirm.

On March 12, 2012, the Department notified Licensee that his operating privileges were suspended for one year based on Licensee's refusal to submit to chemical testing on February 11, 2012 (Notice). (Letter from the Department to Licensee (March 12, 2012) at 1, R.R. at 7a.) On March 27, 2012, Licensee appealed the suspension to the trial court, which held a de novo hearing on May 2, 2013. The Department presented documentary evidence and the testimony of Sergeant Ronald Klein of the Upper St. Clair Township Police Department. Licensee offered his own testimony, the testimony of his boss, Richard King Rainier, and the deposition testimony of Michael Collins, Ph.D., a clinical neuropsychologist.

Sergeant Klein testified as follows. On February 11, 2012, he observed Licensee driving erratically along Route 19. (Hr'g Tr. at 7-8, R.R. at 84a-85a.) Sergeant Klein followed Licensee for approximately one mile, during which time Licensee drove between 25 and 45 miles per hour and weaved heavily between the curb and passing lanes of Route 19. (Hr'g Tr. at 8-9, R.R. at 85a-86a.) The speed limit in this area is 40 to 45 miles per hour. (Hr'g Tr. at 9, R.R. at 86a.) After he

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(related to driving under the influence of alcohol or a controlled substance), is requested to submit to a chemical test and refuses to do so, the Department is required to suspend the person's operating privileges for a period of one year. 75 Pa. C.S. § 1547(b)(1)(i).

stopped Licensee, Sergeant Klein observed that Licensee's gait was unsteady as Licensee exited the car, Licensee dropped his registration card and driver's license, and Licensee was unsteady when he picked up those documents. (Hr'g Tr. at 9-10, R.R. at 86a-87a.) Sergeant Klein observed that Licensee had bloodshot and glassy eyes, Licensee's speech was slurred, Licensee mumbled, and had the odor of alcohol emanating from his breath. (Hr'g Tr. at 10, R.R. at 87a.) Upon questioning by Sergeant Klein, Licensee admitted to having too many drinks that evening. (Hr'g Tr. at 10, R.R. at 87a.)

Sergeant Klein thereafter administered two field sobriety tests, which Licensee failed because Licensee had difficulty following instructions. (Hr'g Tr. at 11-12, 32-33, R.R. at 88a-89a, 109a-10a.) Sergeant Klein arrested Licensee on suspicion of driving under the influence and transported him to the Upper St. Clair Police Department, where Sergeant Klein provided Licensee with the required DL-26 warnings. (Hr'g Tr. at 12-16, R.R. at 89a-93a.) Licensee attempted to sign the DL-26 form, but Sergeant Klein described Licensee's signature as a "squiggle." (Hr'g Tr. at 16, R.R. at 93a.) Licensee consented to a breath test, but did not provide the Intoxilyzer machine with an adequate breath sample because he did not follow Sergeant Klein's instructions. (Hr'g Tr. at 20, 22-26, R.R. at 97a, 99a-103a.) After two minutes with no adequate sample, the Intoxilyzer registered a refusal. (Hr'g Tr. at 21, 26-27, R.R. at 98a, 103a-04a.)

Licensee provided the following testimony. On the evening of February 10, 2012, he had dinner and two beers at the Mt. Lebanon Saloon and left the restaurant between 9:00 p.m. and 9:15 p.m. (Hr'g Tr. at 38-39, R.R. at 115a-16a.)

Licensee recalled falling and hitting his head after leaving the restaurant, and had no clear recollection of the subsequent events of that evening or the early morning of February 11, 2012. (Hr'g Tr. at 39, 41, R.R. at 116a, 118a.) Licensee's next clear recollection was waking up at home the next morning at around 11:00 a.m., with a headache, disorientation, and a small amount of blood on his pillowcase. (Hr'g Tr. at 41, R.R. at 118a.) Licensee immediately went to MedExpress with a severe headache and sensitivity to light. (Hr'g Tr. at 41-42, R.R. at 118a-19a.) The physician at MedExpress recommended that Licensee go immediately to the hospital, and Licensee went to the St. Clair Hospital emergency room where he received treatment and testing for a head laceration and a possible concussion. (Hr'g Tr. at 42-43, R.R. at 119a-20a.) Licensee followed up with his primary care physician, a neurologist, a cardiologist, and Dr. Collins. (Hr'g Tr. at 43, R.R. at 120a.) On cross-examination, Licensee acknowledged that there were no witnesses to his fall. (Hr'g Tr. at 44, R.R. at 121a.)

Licensee's employer, Mr. Rainier, also testified as to the events of February 11, 2012. He was called to pick up Licensee from the Upper St. Clair Police Station at around 2:30 a.m. and, when he saw Licensee, Licensee was "just kind of out of it." (Hr'g Tr. at 54-55, R.R. at 131a-32a.) The police officers requested that Mr. Rainier assist Licensee complete paperwork because Licensee was unable to do so. (Hr'g Tr. at 55-56, R.R. at 132a-33a.) Mr. Rainier indicated that Licensee's handwriting consisted of "squiggles" and that Licensee could not form letters. (Hr'g Tr. at 56, R.R. at 133a.) Mr. Rainier, who had previously worked in the restaurant industry and received training on how to recognize a visibly intoxicated person, did not think that Licensee was intoxicated because he observed no indicia

of intoxication. (Hr'g Tr. at 56, 59, R.R. at 133a, 136a.) According to Mr. Rainier, Licensee's speech was not slurred, but it appeared as though Licensee struggled to find words to answer questions, and Licensee was "out of it" and did not "seem like he was all there." (Hr'g Tr. at 57-59, R.R. at 134a-36a.) Mr. Rainier indicated that Licensee said that he had fallen and hit his head. (Hr'g Tr. at 57, R.R. at 134a.)

Licensee also submitted the deposition testimony of Dr. Collins, the Program Director for the University of Pittsburgh Medical Center Concussion Program. (Collins Dep. at 5, May 6, 2013, R.R. at 17a.) Dr. Collins indicated that Licensee's primary care physician, who examined Licensee shortly after the February 10th incident, referred Licensee to him. (Collins Dep. at 8, R.R. at 20a.) After performing a forty-five minute clinical interview, various tests, and reviewing Licensee's medical records from MedExpress and St. Clair Hospital, Dr. Collins diagnosed Licensee with a brain injury and cerebral concussion as a result of Licensee's falling and hitting his head on February 10th. (Collins Dep. at 7-13, 20-21, R.R. at 19a-25a, 32a-33a; Collins Report, Ex. A, R.R. at 60a-61a.) Based upon his evaluation of Licensee, Licensee's medical records, Licensee's physical findings and symptoms, and the history of Licensee's February 10th fall, Dr. Collins concluded with a reasonable degree of medical certainty that Licensee suffered a brain injury and concussion on the night of February 10, 2012 or the early hours of February 11, 2012. (Collins Dep. at 34, R.R. at 46a.) Dr. Collins opined that Licensee's memory loss was consistent with a concussion and that a head injury, alone, can cause the symptoms and behavioral changes Licensee experienced that evening. (Collins Dep. at 14-15, R.R. at 26a-27a.) Dr. Collins

indicated that those symptoms and behavioral changes can be present in an individual who has not consumed any alcohol. (Collins Dep. at 15, R.R. at 27a.) Dr. Collins stated, to a reasonable degree of medical certainty, that Licensee's head injury alone "would preclude him from being able to do the exams and make decisions on these kinds of things" and render him incapable of fully understanding and following directions with respect to the requested breath test on the night and morning after Licensee's head injury. (Collins Dep. at 17-18, 36, R.R. at 29a-30a, 48a.)

"After due consideration," the trial court sustained Licensee's statutory appeal on July 10, 2013. (Trial Ct. Order, July 10, 2013, R.R. at 150a.) The Department appealed, and the trial court directed the Department to file a Concise Statement of Errors Complained of on Appeal, pursuant to Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. 1925(b). The Department did so, asserting that the trial court erred in concluding that Dr. Collins' testimony satisfied Licensee's burden of proving that his refusal to submit to the breathalyzer test was not knowing and conscious based *solely* on his head injury and in no way on his admitted consumption of alcohol. The trial court thereafter addressed the Department's argument in its opinion pursuant to Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. 1925(a).

The trial court first indicated that it credited Licensee's testimony that he fell and hit his head after leaving the restaurant on February 10th. (Trial Ct. Op. at 5.) Relying on our Supreme Court's decision in Barbour v. Department of Transportation, Bureau of Driver Licensing, 557 Pa. 189, 194, 732 A.2d 1157,

1160 (1999), which states that a doctor "need only tender an opinion with a reasonable degree of medical certainty" in a license revocation matter, the trial court stated that "Dr. Collins did not testify with absolute certainty that alcohol was not a factor in Licensee's refusal, but absolute certainty is not the standard." (Trial Ct. Op. at 8.) The trial court stated that, while Dr. Collins indicated that alcohol could exacerbate concussion symptoms and could not say what role, if any, alcohol played, he "repeatedly testified within a reasonable degree of medical certainty that [Licensee's] head injury alone could cause Licensee's temporary amnesia, confusion, disorientation, slow speech and difficulty following commands and multi-tasking." (Trial Ct. Op. at 8.) The trial court found Dr. Collins' testimony that, even without intoxication, Licensee's injury and resulting concussion rendered "him incapable of fully understanding and following directions with respect to the breath[alyzer] test" satisfied Licensee's burden of proof. (Trial Ct. Op. at 9.) This matter is now before our Court.[3]

The Department argues on appeal that the trial court's finding that Licensee met his burden of proving that he was incapable of making a knowing and conscious decision to refuse chemical testing is not supported by competent evidence. The Department first asserts that the testimony of Dr. Collins was not competent because he did not exclude Licensee's admitted alcohol consumption as a cause of or contributing factor to Licensee's inability to make a knowing and conscious decision to refuse chemical testing. The Department argues that,

[3] Our review in a license suspension case is "to determine if the factual findings of the trial court are supported by competent evidence, and whether the trial court committed an error of law or an abuse of discretion." Nornhold v. Department of Transportation, Bureau of Driver Licensing, 881 A.2d 59, 61 n.4 (Pa. Cmwlth. 2005).

pursuant to Kollar v. Department of Transportation, Bureau of Driver Licensing, 7 A.3d 336, 340 (Pa. Cmwlth. 2010), where, as here, the evidence shows that a licensee has consumed alcohol prior to his arrest and refusal of chemical testing, the licensee's "medical expert must rule out alcohol as a contributing factor to the licensee's inability to offer a knowing and conscious refusal in order to satisfy the licensee's burden."

The Department bears the initial burden in a license suspension proceeding to establish that the licensee:

> (1) was arrested for driving under the influence by a police officer who had reasonable grounds to believe that the licensee was operating or was in physical control of the movement of the vehicle while under the influence of alcohol; (2) was asked to submit to a chemical test; (3) refused to do so; and (4) was warned that refusal might result in a license suspension.

Kollar, 7 A.3d at 339. There is no dispute that the Department satisfied its burden here. Therefore, the burden shifted to Licensee to present evidence that he was not physically capable of taking the test or that the refusal was not knowing or conscious. Pappas v. Department of Transportation, Bureau of Driver Licensing, 669 A.2d 504, 508 (Pa. Cmwlth. 1996). The determination of whether the licensee's refusal was knowing or conscious is a question of fact that is for the trial court. Kollar, 7 A.3d at 340. The trial court's finding will be affirmed if it is supported by substantial, competent record evidence. Id.

In trying to establish that a refusal is not knowing or conscious, a licensee's self-serving testimony that he or she was incapable of providing such refusal does not satisfy the licensee's burden of proof. Ostermeyer v. Department of

Transportation, Bureau of Driver Licensing, 703 A.2d 1075, 1077 (Pa. Cmwlth. 1997). Rather, medical testimony is generally required[4] for the licensee to meet the required burden of proof and that testimony "must rule out alcohol as a contributing factor to the licensee's inability to offer a knowing [or] conscious refusal." Kollar, 7 A.3d at 340. Notably, if a licensee's "inability to make a knowing [or] conscious refusal of testing is caused in whole or in part by consumption of alcohol, the licensee is precluded from meeting [his or] her burden as a matter of law." Id. The question of whether expert medical testimony is competent and unequivocal is a question of law subject to our review. Scott v. Department of Transportation, Bureau of Driver Licensing, 6 A.3d 1047, 1050 (Pa. Cmwlth. 2010).

In Barbour, the licensee sustained injuries in an automobile accident and was taken to the hospital where he was asked by a police officer to submit to chemical testing, which the licensee refused. The Department suspended the licensee's operating privilege for that refusal. Barbour, 557 Pa. at 191, 732 A.2d at 1159. The licensee appealed and submitted the deposition testimony of a physician, who opined, within a reasonable degree of medical certainty, that, regardless of whether the licensee had been intoxicated, the licensee "would not have been able to comprehend questions presented to him immediately after the accident, the time period when the arresting officer asked [the licensee] to submit to testing" and "would not be able to give a knowing waiver of the test." Id. at 192, 732 A.2d at

[4] Where a licensee's injuries are obviously severe and incapacitating, an expert medical opinion is not required to validate the licensee's averred inability to make a knowing or conscious refusal. Ostermeyer, 703 A.2d at 1077.

1159. The trial court ultimately granted the licensee's appeal. Id. However, this Court reversed on appeal and held that the licensee's medical testimony was not competent because, in this Court's opinion, the physician's testimony, which appeared to suggest that the licensee's cognitive impairment was the result of both his injuries and his consumption of alcohol, did not sufficiently sever the relationship between the licensee's consumption of alcohol and the licensee's inability to make a knowing or conscious refusal. Barbour v. Department of Transportation, Bureau of Driver Licensing, 701 A.2d 990, 994 (Pa. Cmwlth. 1997).

The licensee appealed to the Supreme Court, which reversed. The Supreme Court held that this Court had interpreted "what constitutes 'competent medical evidence' in this arena so that it now requires that the expert medical testimony must be certain and essentially without doubt in order for it to be sufficient to establish that the licensee's refusal was unconscious and unknowing" and "that this standard is a deviation from the norm." Barbour, 557 Pa. at 193-94, 732 A.2d at 1160. Instead, the Supreme Court concluded that, in order to be deemed competent, "a litigant's expert witness need only tender an opinion with a *reasonable degree* of medical certainty." Id. (emphasis in original). After examining the record, the Supreme Court held that the licensee's expert opined, with a reasonable degree of medical certainty, that the licensee's injuries rendered him incapable of giving a knowing or conscious refusal and that, while the expert acknowledged that part of the impairment was due to alcohol consumption, the physician clearly testified that, because of his injuries, the licensee "would not be able to give a knowing waiver of the test." Id. at 195, 732 A.2d at 1160. Thus, the

Supreme Court reinstated the order granting the licensee's appeal. Id. at 195, 732 A.2d at 1161.

In Kollar, the licensee sustained injuries in an automobile accident, was taken to the hospital, and, having admitted that she had consumed alcohol earlier in the day, was asked to submit to chemical testing and refused. Kollar, 7 A.3d at 338. Thereafter, the Department suspended the licensee's operating privilege and the licensee appealed. Id. At the hearing on her appeal the licensee presented the testimony of a physician, who testified that the licensee sustained, *inter alia*, a concussion in the accident which "could have been a factor" and "was more significant" than alcohol in her ability to give a knowing and conscious refusal of the chemical test. Id. at 341 (emphasis omitted). The physician further stated that, "within a reasonable degree of medical certainty, [it was] more likely than not, that the cause of her inability to . . . understand . . . [was] because of her medical condition." Id. (emphasis omitted). The trial court sustained the licensee's appeal based on the physician's testimony, but, on appeal, this Court reversed. We held that the physician's use of "more likely than not" rendered his opinion equivocal and the physician's inability to rule out the licensee's alcohol consumption as a contributing factor to her inability to understand the warnings precluded the licensee from proving her burden of proof as a matter of law. Id. at 341-42. In so holding, we distinguished Barbour on the basis that the physician in Kollar "was not as adamant that [the l]icensee's injuries would have rendered [the l]icensee incapable of offering a knowing and conscious refusal *regardless of any alcohol consumption*." Id. at 342 (emphasis added).

With the above principles in mind, we address the Department's contention that Dr. Collins did not exclude the possibility that Licensee's intoxication caused, in whole or in part, Licensee's inability to make a knowing or conscious refusal. The Department relies upon Dr. Collins' testimony that: he did not know if Licensee had consumed alcohol; a "head injury with intoxication would be worse than a person whose head was injured alone;" and "if you're drinking and have a head injury, your functioning is going to be far worse than if you had a head injury alone. So alcohol can certainly play a role, obviously, in cognitive abilities as well." (Collins Dep. at 15, 18, 32, R.R. at 27a, 30a, 44a.) However, Dr. Collins also indicated that the symptoms and behavioral changes that Licensee experienced from his head injury, such as confusion, the inability to form memories, personality changes, slurred speech, inability to understand instructions or complete a task, would be present in an individual who has not consumed any alcohol. (Collins Dep. at 15-16, 19, R.R. at 27a-28a, 31a.) Dr. Collins opined that if "[y]ou hit the back of your head and there is a head injury, then it can produce the things I just described to you in patients that do not drink alcohol." (Collins Dep. at 15, R.R. at 27a.) Dr. Collins stated, to a reasonable degree of medical certainty, that Licensee's head injury alone "would preclude him from being able to do the exams and make decisions on these kinds of things" on the night and morning after Licensee's head injury. (Collins Dep. at 17-18, R.R. at 29a-30a.) Dr. Collins agreed that, "[a]bsolutely, yeah" "to a reasonable degree of medical certainty, that *without intoxication*, the injury and its symptoms would have been sufficient to render [Licensee] incapable of fully understanding and following directions with respect to [the requested breath] test." (Collins Dep. at 36, R.R. at 48a (emphasis added).)

After reviewing Dr. Collins' testimony, we conclude that it is more akin to the testimony found sufficient in Barbour than insufficient in Kollar. Although Dr. Collins acknowledged that intoxication could have made Licensee's symptoms worse, he testified that the symptoms of Licensee's concussion alone would have been sufficient to render Licensee incapable of understanding and following the directions for the breathalyzer test. Moreover, Dr. Collins stated that many of the other symptoms Licensee experienced the evening of February 10th and morning of February 11th, the slurred speech, the confusion, the inability to complete a task, would be present in a person who had a concussion. Accordingly, we agree with the trial court that Dr. Collins' testimony is sufficient to meet Licensee's burden of proving that he was incapable of making a knowing or conscious refusal of the chemical test.

The Department next asserts that Dr. Collins' testimony was not legally competent because, as a whole, his testimony was equivocal. Specifically, the Department points to Dr. Collins' testimony that, "**[p]robably, yes**" "a head injury . . . likely occurred that evening;" "a head injury, in and of itself, **can cause** behavioral changes;" "**if he was in that state at that point** that he was asked whether he should do the sobriety tests or not, the amnesia would certainly preclude his ability to make a rational judgment;" "**could a head injury produce the problems that were seen that night** that would preclude [Licensee] from being able to do those things, yes, head injuries absolutely **can do** the things that would preclude him from being able to do the exams and make decisions on those kinds of things;" and "[**i]f the gentleman had received a head injury**, it would be very hard to evaluate someone." (Department's Br. at 30-32 (quoting Collins Dep.

at 10, 15-18, R.R. at 22a, 27a-30a) (emphasis added by the Department).) The Department contends that this testimony is similar to that rejected in Scott, 6 A.3d 1047, 1052.

A competent medical opinion is one given within a reasonable degree of medical certainty, but such opinions and "testimony, however, will be deemed incompetent if it is equivocal." Kollar, 7 A.3d at 340. The question of whether medical testimony is equivocal is a question of law reviewable by this Court. Scott, 6 A.3d at 1050. In making this determination, we must view the expert's testimony as a whole to determine whether the expert's opinion is based on possibilities. Kollar, 7 A.3d 340. In doing so, our Court has stated that:

> [t]estimony which is so uncertain or inadequate or equivocal or ambiguous or contradictory as to make a verdict of a jury or findings of a trial judge or the findings of an administrative fact finder mere conjectures is not adequate in lawsuits or substantial in administrative proceedings as a matter of law.

Feinberg v. Unemployment Compensation Board of Review, 635 A.2d 682, 684 (Pa. Cmwlth. 1993) (emphasis omitted).

In Scott, the licensee challenged the suspension of her operating privilege asserting that, after being stopped on suspicion of driving under the influence, she began suffering a panic attack, which precluded her from making a knowing or conscious refusal of the chemical test request. Scott, 6 A.3d at 1049. The licensee submitted the deposition testimony of her treating physician, who opined, in relevant part, that "[i]t [was his] opinion that *if* [the licensee] would have a panic attack[] and anxiety, she could have not be[en] able to understand consciously."

Id. at 1052 (emphasis in original). Although the trial court sustained the licensee's appeal, this Court reversed on appeal. We held that the physician's testimony was not unequivocal because he stated that: "*if* [the l]icensee had a panic attack the night she was arrested, she would have difficulty understanding [the] . . . request to submit to chemical testing"; his opinion was based on the symptoms the licensee described to him; and that "there was a 'probability' that, because of anxiety, [the licensee] was not able to make a knowing or conscious refusal." Id. (emphasis in original). This Court noted that the physician "did not testify with a reasonable degree of medical certainty that [the l]icensee, in fact, had a panic attack the night of her arrest." Id.

Here, a review of Dr. Collins' testimony reveals that it was not based merely on probabilities and was not, therefore, equivocal. The Department's first allegation is that Dr. Collins did not testify with certainty that Licensee sustained a head injury and concussion on February 10th. Dr. Collins acknowledged that he did not witness Licensee falling and hitting his head on February 10th and, therefore, he could not be absolutely certain this is when Licensee sustained a concussion. (Collins Dep. at 23-24, 30, 34, R.R. at 35a-36a, 42a, 46a.) However, Dr. Collins stated that he believed, pursuant to the history Licensee gave him and Licensee's medical records from MedExpress and St. Clair Hospital, that Licensee fell, hit his head, and sustained a concussion on February 10th before he was arrested by Sergeant Klein. (Collins Dep. at 10-14, R.R. at 22a-26a.) More importantly, the trial court credited Licensee's testimony that, on the evening of February 10th, he fell as he left the restaurant, hit his head, and experienced

symptoms including amnesia and confusion.[5] (Trial Ct. Op. at 5, 9.) Thus, the facts, as found by the trial court and believed by Dr. Collins, are that Licensee fell, hit his head, and suffered a concussion with accompanying symptoms on the evening of February 10th. (Trial Ct. Op. at 5, 9; Collins Dep. at 13-15, R.R. at 25a-27a.)

Moreover, Dr. Collins' use of "could" or "can" in relation to whether a head injury, like the one he opined Licensee sustained on February 10th, would result in Licensee's refusal being not knowing or conscious did not render that "[t]estimony . . . so uncertain or inadequate or equivocal or ambiguous or contradictory as to make . . . findings of a trial judge . . . mere conjectures." Feinberg, 635 A.2d at 684 (emphasis omitted). To the contrary, Dr. Collins repeatedly opined that head injuries, like the one Licensee sustained on February 10th, "would preclude him from being able to do the exams and make decisions on these kinds of things" and render him incapable of fully understanding and following directions. (Collins Dep. at 17-18, 36, R.R. at 29a-30a, 48a.) Dr. Collins specifically opined that:

> To a reasonable degree of psychological certainty, a head injury can produce problems exactly as described, and one would have a difficult time following instructions, behavioral changes, cognitive changes, mood changes that would . . . certainly complicate an

[5] "Determinations as to the credibility of witnesses and the weight assigned to the evidence are solely within the province of the trial court as fact-finder." Reinhart v. Department of Transportation, Bureau of Driver Licensing, 954 A.2d 761, 765 (Pa. Cmwlth. 2008). "As fact-finder, the trial court may accept or reject the testimony of any witness in whole or in part." Id. This Court is "bound by these credibility determinations and cannot reweigh the evidence as Licensee desires." Sitoski v. Department of Transportation, Bureau of Driver Licensing, 11 A.3d 12, 17 (Pa. Cmwlth. 2010).

> evaluation of that sort. To a reasonable degree of medical certainty, yes, a head injury could produce that.

(Collins Dep. at 19, R.R. at 31a.) Accordingly, we conclude that Dr. Collins' testimony was not equivocal and that Licensee presented substantial, competent medical testimony establishing that, on the night of February 10th, he had a medical condition that rendered him incapable of making a knowing or conscious refusal of Sergeant Klein's request that he submit to chemical testing.

For the foregoing reasons, we affirm the trial court's Order.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stephen M. Tabone	:	
	:	
v.	:	No. 1328 C.D. 2013
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing,	:	
	:	
Appellant	:	

O R D E R

NOW, April 10, 2014, the Order of the Court of Common Pleas of Allegheny County in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge