

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR, DEPARTMENT OF)	
PUBLIC SAFETY,)	
)	
Petitioner,)	
)	
vs.)	No. 13-0882 PO
)	
AMIE C. HILL,)	
)	
Respondent.)	

DECISION

There is cause to discipline Amie C. Hill’s peace officer license because she committed two class B misdemeanors: driving while intoxicated and careless and imprudent driving.

Procedure

On May 22, 2013, the Director of the Department of Public Safety (“Director”) filed a complaint seeking to discipline Hill’s peace officer license. Hill filed her answer on June 26, 2013. The Director filed a motion for summary decision on August 9, 2013. Hill filed her response on September 9, 2013.

Findings of Fact

1. Hill is licensed as a peace officer by the Department. Hill’s license was active at all times relevant to this proceeding.
2. On December 10, 2011, a Jefferson County deputy sheriff stopped Hill after Hill failed to stop at a stop sign.

3. At the time of the stop, the deputy smelled a strong odor of alcohol coming from Hill. Hill had watery and bloodshot eyes, slurred speech, a rotational sway, and was stumbling.

4. Hill refused to perform field sobriety tests or a breath alcohol test.

5. The deputy issued Hill citations for driving while intoxicated and failing to stop at a stop sign.

6. Hill committed the class B misdemeanor of careless and imprudent driving in violation of § 304.012.1.¹

Conclusions of Law

We have jurisdiction to hear this case.²

The Director is responsible for issuing and disciplining the licenses of Missouri peace officers.³ When the Director files a complaint with this Commission asking us to determine there is cause for discipline, the Director bears the burden of proving by a preponderance of the evidence that the licensee committed an act for which the law gives the Director the authority to discipline the license.⁴ A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.”⁵ We may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.⁶

We first must address what appears to be a disputed fact. In paragraph three of its statement of uncontroverted material facts, the Department stated: “[Hill] was driving while

¹ RSMo 2000. Statutory citations are to the 2012 Cumulative Supplement to the Missouri Revised Statutes unless otherwise noted.

² Section 590.080.2.

³ Section 590.020, .030, and .080.

⁴ See *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo.App. W.D. 2012) (dental licensing board demonstrated “cause” to discipline by showing preponderance of evidence).

⁵ *Id.* at 230 (quoting *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo.App. W.D. 2000)).

⁶ 1 CSR 15-3.440(6)(A).

intoxicated, displaying the following signs of intoxication at the time of the traffic stop: a strong odor of an alcoholic beverage emanating from her; watery and bloodshot eyes; slurred speech; a rotational sway; and stumbling.” The Department established this fact through the affidavit of Deputy Roger Wensler.⁷

Hill denied that paragraph as follows: “Deny. [Hill] attended a Christmas party at Jilly’s Bar and was pulled over by Officer Roger Wensler, her condition did not rise to the level of intoxication.”⁸ Hill did not cite to any evidence to support her denial. The only support in the record for the denial is Hill’s statement in her affidavit that she was “not impaired at the time of the stop.”

Regulation 1 CSR 15-3.440(6)(B) provide that “parties may ... raise a dispute as to such facts ... by admissible evidence.” Hill has provided no evidence that contradicts the Department’s assertion that she had “a strong odor of an alcoholic beverage emanating from her; watery and bloodshot eyes; slurred speech; a rotational sway; and stumbling.” We therefore consider these facts undisputed. The parties do dispute whether Hill was intoxicated, but that is a legal conclusion. A determination of whether Hill was intoxicated requires applying the facts of this case to the definitions in §§ 577.001 and 577.010. Thus, there is no factual dispute that would bar summary decision.

The Department contends that Hill’s license is subject to discipline under § 590.080.1(2):

The director shall have cause to discipline any peace officer licensee who:

(2) has committed any criminal offense, whether or not a criminal charge has been filed.

⁷ Pet. Ex. B at 2.

⁸ Respondent’s Response to Petitioner’s Statement of Uncontroverted Material Facts at ¶3.

The Director contends that Hill committed the criminal offenses of driving while intoxicated⁹ and careless and imprudent driving.¹⁰ The parties stipulate that Hill committed the offense of careless and imprudent driving, a class B misdemeanor.

Driving while intoxicated under § 577.010 requires two elements: (1) operating a motor vehicle (2) while in an intoxicated state. There is no dispute that Hill was operating a motor vehicle at the time of the alleged intoxication; Hill and the Director agree that she failed to observe a stop sign while driving and the deputy then pulled her over. The sole dispute is whether she was “in an intoxicated condition.”

Section 577.001(3) states that a person is in an “intoxicated condition” when he or she is “under the influence of alcohol.” “[T]he State may meet its burden to show intoxication through testimony of an alleged offender’s physical manifestations of intoxication, such as bloodshot eyes and slurred speech, and through a defendant’s difficulty performing the field sobriety tests.”¹¹ “[I]n the absence of a chemical analysis showing a defendant’s blood alcohol content, the State may meet its burden of proof solely through the testimony of a witness who had a reasonable opportunity to observe the defendant.”¹² We may consider Hill’s refusal to submit to chemical tests as evidence.¹³

Here, there is ample evidence that Hill was intoxicated. She smelled of alcohol, admitted to drinking, had watery and bloodshot eyes, stumbled, swayed, and refused alcohol testing. Hill told the deputy that she would not submit to those tests because, as she said, “I’m not stupid. I’m not going to give you any evidence to use against me.”¹⁴ These facts show that Hill was

⁹ Section 577.010.

¹⁰ Section 304.012, RSMo 2000.

¹¹ *State v. Gittemeier*, 400 S.W.3d 838, 841-42 (Mo.App. E.D. 2013).

¹² *State v. Seitz*, 384 S.W.3d 384, 387 (Mo.App. S.D. 2012), quoting *State v. Rose*, 86 S.W.3d 90, 105 (Mo.App. W.D. 2002)

¹³ See § 577.041.1.

¹⁴ Pet. Ex. B at 3.

intoxicated.¹⁵ We find that Hill committed the class B misdemeanor of driving while intoxicated.

Conclusion

The Director has cause to discipline Hill's peace officer license because Hill committed the class B misdemeanors of driving while intoxicated and careless and imprudent driving. We cancel the hearing.

SO ORDERED on September 20, 2013.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹⁵ *Seitz*, 384 S.W.3d at 388; *State v. Burks*, 373 S.W.3d 1, 4 (Mo.App. S.D. 2012); *State v. Hatfield*, 351 S.W.3d 774, 778 (Mo.App. W.D. 2011).