

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	
	:	
Joshua Bialota,	:	No. 1676 C.D. 2010
Appellant	:	Submitted: April 21, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: May 25, 2011

Joshua Bialota (Bialota) appeals the November 17, 2009 order of the Court of Common Pleas of Schuylkill County (trial court) finding Bialota guilty of an occupancy permit violation, and directing him to pay fines and costs and apply for an occupancy permit. There are two issues before the Court: (1) whether the trial court erred in finding the permit analogous to a tax, and (2) whether the trial court erred by not permitting Bialota to assert a constitutional violation. For the following reasons, we affirm the trial court's order.

Bialota owns a property located at 136 North Union Street in the Borough of Shenandoah (the property). On July 15, 2009, Charles Zebrattis, a code enforcement officer for the Borough of Shenandoah, went to the property to investigate a report that someone was doing work on the property without a permit. It was discovered during that investigation that in addition to Bialota not having a permit for the alterations he was making to his home, he also did not have an

occupancy permit.<sup>1</sup> Bialota received a citation and a summons for both his failure to apply for an alterations permit and failure to obtain an occupancy permit.

Bialota pled not guilty and appeared before a Magisterial District Judge on July 31, 2009 for a hearing wherein he was found guilty on both citations. Bialota appealed to the trial court. On November 16, 2009, a hearing was held, and the trial court found Bialota guilty of failure to obtain an occupancy permit and not guilty of the failure to apply for an alterations permit.<sup>2</sup> Bialota appealed, pro se, to the Pennsylvania Superior Court. On August 3, 2010, the Superior Court transferred the appeal to this Court.<sup>3</sup>

Bialota argues that the occupancy permit is not a tax for services rendered but a permit, which is used to allow usages and regulate forms and means, and thus cannot be a requirement for use of one's own home. Specifically, he contends the trial court erred when it associated the permit with a tax.

Bialota misinterpreted the trial court's statement. The trial court was merely attempting to clarify the nature of an occupancy permit when it stated to Bialota in court that it was similar to a real property tax. The court followed up with: "I know there's some difference between occupying and paying your taxes, but I don't know that it holds much weight under the 14<sup>th</sup> amendment." Reproduced Record (R.R.) at 39. The trial court's gratuitous comparison was not a requisite

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<sup>1</sup> The failure to obtain an occupancy permit resulted in Bialota receiving free sewer and trash services.

<sup>2</sup> On November 17, 2009, the trial court filed an amended order which did not affect its original decision.

<sup>3</sup> This Court's scope of review in an appeal from a summary conviction is limited to determining whether the trial court committed an error of law or whether the trial court's findings are supported by competent evidence. *Commonwealth v. Whiteford*, 884 A.2d 364 (Pa. Cmwlth. 2005).

component of the court's decision. Thus, this issue does not merit review by this Court.

Bialota next argues that the court erred in not permitting him to "state property right and constitutionality as evidence." Appellant's Br. at 8. Specifically, Bialota contends the trial court erred when it stated during the hearing: "I don't think that's an issue here. Stick to the issue." R.R. at 40.

The above statement was made during Bialota's argument after he stated the following:

I am the rightful and legal title holder of the property located at what's commonly known as 136 North Union Street, Shenandoah, Pennsylvania. That means I hold--I'm the holder of all of the property rights. These rights include the right to possession. Property is owned by whoever holds the title. The right to control which is --within the laws, the owner controls the use of property. The right to exclusion, others can be excluded from using or entering the property--

R.R. at 39-40. Initially, this statement is not evidence, it is argument. As the trial court correctly pointed out, the argument is not relevant to the issue, i.e., whether the ordinance violates Bialota's due process rights under the 14th amendment.

Bialota further contends that his statement, which was interrupted by the trial court, contradicts the trial court's order which states in relevant part: "that there has been no evidence presented in what manner his rights were violated or why they were violated." R.R. at 52. As stated above, Bialota did not present any evidence, he merely made an argument. Because his argument was not persuasive, the trial court did not err in finding that the ordinance did not violate Bialota's due process rights under the 14th amendment.

For all of the above reasons, the trial court's order is affirmed.

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JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 25<sup>th</sup> day of May, 2011, the November 17, 2009 order of the Court of Common Pleas of Schuylkill County is affirmed.

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JOHNNY J. BUTLER, Judge