

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. :
 :
 Kevin W. Cohen, : No. 1886 C.D. 2007
 Appellant : Submitted: April 4, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Judge
 HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE McGINLEY

FILED: May 12, 2008

Kevin W. Cohen (Cohen) appeals the order of the Court of Common Pleas of Allegheny County (trial court) which convicted him of selling tickets outside the “Reselling Zone.”¹

¹ Section 726.03(a) of the Pittsburgh City Code (Code) provides:
 A person may not sell or offer for sale a ticket for admission to any event at Heinz Field or PNC Park on a public street, sidewalk, public right-of-way, or any other City or publicly owned property within the City of Pittsburgh, except in accordance with the following provisions:
 (a) Tickets may not be offered for sale or sold within the area described in the map referred to in Section 726.06 of this chapter, except in the Reselling Zone created in Section 726.06 of this chapter.

Section 726.06 of the Code provides:
 Tickets shall not be offered for sale or sold within the area described in that certain Map (‘Map’) incorporated herein by reference and made a part hereof, which Map shall be available for public inspection in the office of the City Clerk, 5th Floor, City-County Building, 414 Grant Street, Pittsburgh, PA 15219, except in the Reselling Zone hereby created. The Reselling Zone shall be located at the northeastern corner of Dorsett Way and North Shore

(Footnote continued on next page...)

On June 2, 2007, Lieutenant Andrew Lisiecki (Lieutenant Lisiecki) of the City of Pittsburgh Police Department was working an anti-scalping/counterfeit ticket suppression detail for the Pittsburgh Pirates in the parking lots near PNC Park. Lieutenant Lisiecki observed Cohen make two sales of tickets to people coming into a parking lot in their vehicles. Lieutenant Lisiecki issued a citation to Cohen for “Resale/Buy Tickets on Private Property.” Citation #693387, Docket Number NT-4537-07 at 1.

On June 30, 2007, Officer Michael Burford (Officer Burford) of the City of Pittsburgh Police Department observed Cohen approaching traffic and attempting to sell Pirate tickets at the corner of North Shore Drive and Tony Dorsett Way. Officer Burford issued a citation to Cohen for “Resale of Tickets w/o Permit.” Citation #651199, Docket Number NT-5830-07.

On August 23, 2007, a trial was held before the Pittsburgh Municipal Court. Cohen was convicted of the summary offenses of Ticket Sales within fifteen feet of a bus stop (the June 2, 2007, Citation)² and Resale of Tickets without

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Drive, and consist of an area approximately twenty-three (23) feet by thirty (30) feet. The Reselling Zone shall be identified by appropriate signage, and signage which may include for the protection of the public, information such as, but not limited to, the validity of tickets and the maximum price at which tickets may be sold. Placement and size of signage shall be subject to the approval of the Zoning Administrator in accordance with the applicable provisions of Title IX of this Code.

² On the citation, Lieutenant Lisiecki listed the Section of the Pittsburgh City Code which Cohen violated as Section 726.03(c) which refers to sales within fifteen feet of a bus stop. **(Footnote continued on next page...)**

a license (the June 30, 2007, Citation). He was fined \$500.00 plus costs for each conviction for a total amount due and owing of \$1,102.00.

Cohen appealed to the trial court which held a de novo hearing on October 9, 2007. Officer Burford testified that he

observed Mr. Cohen approaching, standing at the corner of North Shore and Tony Dorsett Drive, with a sign used for scalping tickets, as well as tickets in his left hand. Mr. Cohen was facing traffic in an attempt to approach traffic and resell tickets in the area. Mr. Cohen was outside of the designated area for scalping tickets.

Notes of Testimony, October 9, 2007, (N.T.) at 3. Officer Burford testified that the designated area for scalping tickets was located on Tony Dorsett Way directly below the Fort Duquesne Bridge. N.T. at 3. Officer Burford warned Cohen twice that he was not in the designated Reselling Zone before he issued a citation.

Cohen testified that he was in the Reselling Zone area and that he “didn’t sell a ticket to no [sic] person at all.” N.T. at 7.

Lieutenant Lisiecki testified that on June 2, 2007, he worked the anti-scalping/counterfeit ticket suppression detail and observed Cohen twice selling tickets to people coming into the parking lot known as Gold Lot #4. N.T. at 14-15. Lieutenant Lisiecki approached Cohen who began yelling that he was going to the

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It appears that the citation should have been for Section 726.03(a) for tickets offered for sale for admission to any event at Heinz Field or PNC Park which is not sold in the Reselling Zone. There is no reference to a bus stop in the record.

Reselling Zone. Lieutenant Lisiecki reported that he told Cohen he had been warned too many times and issued a citation for selling or offering to sell tickets on public property. N.T. at 15.

Cohen testified that he did not buy or sell a ticket from or to anyone. N.T. at 20.

The trial court stated:

Here is what I am going to do. I am going to find you guilty on one, \$500. I am giving you a break on the other, not because I feel you are not guilty, I am just going to give you a break on the other one. That is \$500, a lot of money, plus costs. But the thing is this, they know you. They know who you are. They know what you do down there. You can't do this. If you come back to me again, I don't remember you, I am not going to give you another break. Do you understand that? . . . I am going to find you not guilty on the first and guilty on the second, on the counts; do you understand that?

N.T. at 20-21.

In the order the trial court found Cohen not guilty of NT-4537-07, the June 2, 2007, charge and guilty of NT-5830-07, the June 30, 2007, charge. Cohen was fined \$500 plus costs. In its subsequent opinion, the trial court stated:

At the conclusion of the hearing, this Court found Defendant [Cohen] guilty of one (1) violation, (June 2 violation), sentencing him to pay a fine of five hundred (\$500.00) dollars, and adjudged him not guilty of the second violation. (June 30 violation).

This Court observed the testimony of both police officers and Defendant [Cohen] and found the officers' testimony

to be far more credible than the testimony of Defendant [Cohen]. Therefore, this Court treated the conflicts in the evidence in favor of the officers. . . . (Citation omitted)

Trial Court Opinion, January 2, 2008, at 2.³

Cohen contends that there was not sufficient evidence presented to support his conviction.⁴

With respect to the June 2, 2007, charge, Cohen argues that Lieutenant Lisiecki's testimony did not establish that Cohen was outside the reselling zone when he sold tickets to people entering the parking lot.

Lieutenant Lisiecki testified that he observed Cohen attempting to sell tickets in parking lot, Gold Lot #4. Lieutenant Lisiecki testified that as he approached Cohen, Cohen yelled that he was going to the "scouting zone" which presumably was the Reselling Zone. N.T. at 14-15. He also testified that at the beginning of the season police officers "cut everybody a break, warning them they have to be in the reselling area. After that we start issuing citations." N.T. at 16.

Contrary to Cohen's contention, Lieutenant Lisiecki's testimony established that Cohen was in a parking lot selling tickets and not in the Reselling

³ Although the trial court on the order form checked the box not guilty for the June 2, 2007, citation and the checked the box guilty for the June 30, 2007, citation, it appears from the hearing transcript, the trial court opinion, and the briefs of the parties that Cohen was convicted of the June 2, 2007, citation.

⁴ This Court's review is limited to a determination of whether the trial court abused its discretion or committed an error of law. Casselli v. Commonwealth, 606 A.2d 633 (Pa. Cmwlth. 1992).

Zone. The trial court is the finder of fact. Commonwealth v. Spontarelli, 791 A.2d 1254 (Pa. Cmwlth. 2002). The trial court found Lieutenant Lisiecki credible.

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

