

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	
	:	
Carl Miller,	:	No. 2617 C.D. 2009
Appellant	:	Submitted: June 4, 2010

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: November 10, 2010

Carl Miller (Miller) appeals the November 3, 2009 order of the Court of Common Pleas of Westmoreland County (trial court) finding Miller guilty of failing to connect a certain residence to the public sewer system pursuant to the North Belle Vernon Borough (Borough) Ordinance No. 495 (Ordinance). The issues before this Court are: 1) whether the trial court erred as a matter of law in admitting into evidence the citation issued against Miller; 2) whether the testimony of the Borough's witness James Bedsworth was credible; 3) whether evidence of bias on the part of various Borough officials was properly excluded; 4) whether other Borough records were properly admitted into evidence; 5) whether the sentence imposed by the trial court was proper; and 6) whether it was appropriate for the Borough to serve Miller with the citation as administrator of the Estate which owns the subject property. For the following reasons, we vacate the trial court's order and remand.

Miller is the administrator of the Estate of Anna Rowley who owned the property at 428 Fell Street, Belle Vernon, Pennsylvania. The Borough enacted the Ordinance to require and regulate connections to the newly constructed public sewer system, to require permits to connect to the system, and to prescribe penalties for violations of the Ordinance. Property owners received a letter informing them that the sewer system was complete and that they had six months to tap into the new system. Miller was cited on March 30, 2009 for failing to connect to the new sewer system as required by the Ordinance. A summary appeal hearing was held before the trial court on November 3, 2009. The trial court found Miller guilty of failing to connect to the new sewer system and fined him \$553.50, including court costs. Miller appealed, pro se, to this Court.¹

Miller first argues that the trial court committed an error of law by accepting into evidence the citation which he claims was defective, unclear and ambiguous, and by interpreting the citation without regard to Miller's understanding of the citation. Specifically, Miller alleges that the citation did not include the date and time of the offense, the specific section and subsection of the statute or ordinance allegedly violated, or sufficient facts to advise him of the nature of the offense

¹ This Court's review of a trial court's determination on appeal from a summary conviction is limited to whether there has been an error of law or whether competent evidence supports the trial court's findings. The Commonwealth has the never-shifting burden of proving all elements of a summary offense beyond a reasonable doubt. In considering whether the evidence is sufficient to convict, the Court must view all of the evidence admitted at trial, together with all reasonable inferences therefrom, in the light most favorable to the Commonwealth.

Commonwealth v. Nicely, 988 A.2d 799, 803 n.3 (Pa. Cmwlth. 2010) (citations and quotation marks omitted).

charged pursuant to the Pennsylvania Rules of Criminal Procedure (Pa.R.Crim.P.) 403.

It should be noted that it was not necessary for the Borough to move the citation into evidence, or for the trial court to admit it. The Pennsylvania Rules of Criminal Procedure state that the clerk of courts “shall maintain the criminal case file for the court of common pleas. The criminal case file shall contain all original records, papers, and orders filed in the case, and copies of all court notices.” Pa.R.Crim.P. 113(A). *See also Providence Builders, Inc. v. Commonwealth*, 492 A.2d 488 (Pa. Cmwlth. 1985) (holding that the citation notifying defendant of charges lodged against him was part of the procedural record before trial court in an appeal from judgment of the district justice and, therefore, township was not required to introduce it into evidence in *de novo* trial before court of common pleas). Thus, to the extent Miller raises an evidentiary issue, it is without merit.

Concerning the alleged ambiguity of the citation, Pa.R.Crim.P. 403(A) states:

(A) Every citation shall contain:

(1) the name and address of the organization, and badge number, if any, of the law enforcement officer;

(2) the name and address of the defendant;

(3) a notation if the defendant is under 18 years of age and whether the parents or guardians have been notified of the charge(s);

(4) the date and time when the offense is alleged to have been committed, provided however, if the day of the week is an essential element of the offense charged, such day must be specifically set forth;

(5) the place where the offense is alleged to have been committed;

(6) a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;

(7) the date of issuance;

(8) a notation if criminal laboratory services are requested in the case;

(9) a verification by the law enforcement officer that the facts set forth in the citation are true and correct to the officer's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Pa.R.Crim.P. 109, however:

proscribes dismissal for defects in the citation unless the defendants suffer actual prejudice to their rights. Such prejudice will not be found where the content of the citation, taken as a whole, prevented surprise as to the nature of summary offenses of which defendant was found guilty at trial, or the omission does not involve a basic element of the offense charged.

Commonwealth v. Borriello, 696 A.2d 1215, 1217 (Pa. Cmwlth. 1997) (citations and footnote omitted), *aff'd*, 555 Pa. 219, 723 A.2d 1214 (1998)²; *see also Commonwealth v. Nicely*, 988 A.2d 799, 807 (Pa. Cmwlth. 2010).

On the citation issued to Miller, the three boxes available for designation of the applicable statutory law indicate “495, Section 2, Sub.Sec. 201,” and the box next to “Crimes Code Title 18” is not checked. Supplemental Record (S.R.) at A-2. While the statutory section of the citation could appear confusing to a reasonable person, the charge listed on the citation clearly indicates that it is related to the public sewer system, and the nature of the offense is stated as “Property owner has failed as

² Pa.R.Crim.P. 109 replaced Pa.R.Crim.P. 90 which was cited in *Borriello* and, for the purposes of the present case, contains the same language as the former rule.

required to connect to new sewage system.” S.R. at A-2. Clearly, the information on the citation, taken as a whole, would prevent surprise to the defendant as to the nature of the offense, and does not involve an omission of the basic element charged. *Borriello*. Therefore, as a matter of law the citation was unambiguous and part of the record, hence there was no need to admit it into evidence.

Next, Miller argues that the trial court erred when it allowed the testimony of James Bedsworth, Chief of Police for North Belle Vernon Borough, because he was proven by Miller to be a liar and a perjurer. We disagree.

“The trial court, sitting as fact-finder, is free to believe all, part or none of the evidence, to make all credibility determinations, and to resolve all conflicts in the evidence.” *Commonwealth v. Holtzapfel*, 895 A.2d 1284, 1289 n.2 (Pa. Cmwlth. 2006). The evidence Miller relied on to challenge Bedsworth’s credibility was a 1998 citation filed against Miller’s wife for an abandoned vehicle in the yard of 428 Fell Street. N.T. at 14. Miller claimed that Bedsworth testified that he had never done any police work on his days off, but that the citation showed that Bedsworth checked on the vehicle daily for more than a month, and therefore, according to Miller, Bedsworth perjured himself. N.T. at 14. The trial court determined that this evidence was not relevant to the citation concerning the sewer system and did not admit the evidence. Clearly, the 1998 citation is irrelevant to the sewer system proceedings. The trial court was free to disregard it as such. “In general, questions concerning the admission and exclusion of evidence are within the sound discretion of the trial court and will not be reversed on appeal absent a finding of abuse of discretion.” *Carpenter v. Pleasant*, 759 A.2d 411, 414 (Pa. Cmwlth. 2000). The trial court did not abuse its discretion in excluding the 1998 citation from evidence.

Next, Miller argues that the trial court erred by excluding evidence that showed a pattern of discrimination, malicious and vexatious prosecution, official

oppression, and abuse of office by the Chief of Police and other elected or appointed North Belle Vernon officials. We disagree.

As stated, questions concerning the admission and exclusion of evidence are within the discretion of the trial court. *Carpenter*. “Evidence is admissible when it is relevant to a fact sought to be proved.” *Fernandez v. City of Pittsburgh*, 643 A.2d 1176, 1181 (Pa. Cmwlth. 1994). “Evidence that is not relevant is not admissible.” *Carpenter*, 759 A.2d at 414. Miller attempted to offer evidence to prove a past pattern of “oppressive and illegal” conduct by Bedsworth and other North Belle Vernon officials against him and his family, including citations for various ordinance violations related to, *inter alia*, abandoned vehicles and yard maintenance. However, none of the evidence was related to the issue of Miller’s failure to connect to the sewer system. Since the evidence Miller attempted to admit was not relevant to the citation for failing to connect to the sewer system, the trial court did not abuse its discretion in refusing to admit the evidence.

Next, Miller argues that the trial court erred by admitting into evidence other records offered by the Borough which were not evidenced by the certificate required by Section 6103 of the Judicial Code, 42 Pa.C.S. § 6103. Miller contends that the Borough documents should not have been admitted because the required certificate was not included. We disagree.

Section 6103(a) of the Judicial Code states:

An official record kept within this Commonwealth by any court, magisterial district judge or other government unit, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by that officer’s deputy, and accompanied by a certificate that the officer has the custody. The certificate may be made by any public officer having a seal of office and having official duties with respect to the government

unit in which the record is kept, authenticated by the seal of that office, or if there is no such officer, by:

(1) The Department of State, in the case of any Commonwealth agency.

(2) The clerk of the court of common pleas of the judicial district embracing any county in which the government unit has jurisdiction, in the case of any government unit other than a Commonwealth agency.

However, “[t]he legislative purpose behind the enactment of Section 6103 is to allow a method by which official records may be introduced into evidence without the need for bringing the records custodian into court to authenticate the records.” *Thorne v. Dep’t of Transp., Bureau of Driver Licensing*, 727 A.2d 1205, 1207 (Pa. Cmwlth. 1999). In the present case, the Borough presented the testimony of Mary Berish, the Manager-Secretary for the North Belle Vernon Borough Office, who stated that she had the responsibility of maintaining the Borough records. N.T. at 40-41. Ms. Berish testified about the letter sent to Miller concerning the need to connect the Estate’s property to the new sewer system. Since she is the custodian of the Borough’s records and testified to the document’s authenticity, a certificate is not required.³ Therefore, the trial court did not err in admitting the Borough’s records.

Next, Miller argues that the trial court erred in imposing a fine on Miller without first considering his financial resources or the burden the payment would have on him. Section 9726 of the Sentencing Code, 42 Pa.C.S. § 9726, provides a trial court with the authority to impose a fine as punishment on a defendant. It also provides that “[t]he court shall not sentence a defendant to pay a fine unless it appears

³ The trial court also admitted a “Y sheet” and a copy of a blank sewage connection permit based on the testimony of Dennis Hill, the Public Works Superintendent. Although the trial court determined that Hill was the custodian of these documents, Hill testified that he had access to them and used them in the course of his position. If he is not the custodian, the documents may not have been admissible. However, the documents to which Hill testified are not relevant to the outcome of the present case, and any error by the trial court as to the admission of these documents is harmless.

of record that: (1) the defendant is or will be able to pay the fine; and (2) the fine will not prevent the defendant from making restitution or reparation to the victim of the crime.” 42 Pa.C.S. § 9726(c). Further, Section 9726 provides: “[i]n determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.” 42 Pa.C.S. § 9726(d).

The trial court stated on the record, however, that the fine was imposed on Miller as the administrator of Anna Rowley’s Estate, and that the Estate was responsible for the fines and costs, not Miller individually.⁴ The trial court also told Miller that he would have 90 days to pay the fine, but that if he needed additional time, he could write a letter to the court requesting an extension. N.T. at 93. The trial court does not need to look at an individual ability to pay when the judgment it imposed is against an estate. Therefore, the trial court did not err in imposing the fine against Rowley’s Estate.

Finally, Miller argues that the trial court erred as a matter of law in reaching its decision when the Borough did not show proof that Miller was the property owner. We are unable to make a determination as to this issue based on the record presently before this Court.

The record is unclear as to who the owner of the subject property was at the time of the citation at issue. There is no question that Anna Rowley passed away, that Miller is the administrator of her Estate, and that the subject property is part of the Estate. However, at the summary appeal hearing, Miller made reference during his testimony to other residents that were living at the subject property at that time. One of those may have been his wife, the daughter of decedent Anna Rowley. If that

⁴ Specifically, the trial court concluded: “the sentence is imposed upon Carl Miller, administrator of the estate of Anna S. Rowley, so therefore, the estate is responsible for the fine and costs. It’s not an individual judgment against you. It’s against the estate. . . .” N.T. at 93-94.

was indeed the case, then the trial court erred by holding that Miller, as administrator of the Estate, was in violation of the sewage connection ordinance “with respect to property that he had a fiduciary responsibility to maintain.” Tr. Ct. Op. at 3. Under Section 3311 of the Probate, Estates and Fiduciaries Code (PEF Code),

[a] personal representative shall have the right to and shall take possession of, maintain and administer all the real and personal estate of the decedent, *except real estate occupied at the time of death by an heir or devisee with the consent of the decedent.*

20 Pa. C.S. §3311(a) (emphasis added). Thus, Miller’s wife may be an heir, who gained legal and equitable title to the property upon her mother’s death pursuant to Section 301 of the PEF Code, 20 Pa. C.S. § 301(b).⁵ If that was the case, then Miller was correct in arguing that he was not the responsible party, as the Borough should then have cited his wife and/or any other living heirs who may have been residing at the property with Anna Rowley’s consent at the time of her death. For this reason, we vacate the trial court’s order and remand the matter for a determination as to whether Miller, as administrator of the Estate, was properly cited.

Specifically, the trial court must determine whether Miller’s wife was occupying the subject property with the consent of Anna Rowley at the time of Rowley’s death. Additionally, whereas the trial court stated on the record that the fine at issue was imposed on Miller as the administrator of Anna Rowley’s Estate, not Miller individually, the trial court is directed to make a specific factual finding as to

⁵ Section 301 of the PEF Code states:

Legal title to all real estate of a decedent shall pass at his death to his heirs or devisees, subject, however, to all the powers granted to the personal representative by this code and lawfully by the will and to all orders of the court.

20 Pa. C.S. §301(b). As indicated above, the “powers granted to the personal representative” are limited if an heir is occupying the real estate with the consent of the deceased at the time of death.

whether the citation was issued to Miller as administrator, noting any substantial evidence in support of such finding. The trial court should then resolve this matter in a manner consistent with this Court's opinion.

For the reasons stated above, the order of the trial court is vacated, and the matter is remanded to the trial court.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 10th day of November, 2010, the November 3, 2009 order of the Court of Common Pleas of Westmoreland County is vacated. The matter is, hereby, remanded to said court to address the factual issues specified in this Court's Opinion, and to further resolve this matter in a manner consistent therewith. The Court of Common Pleas shall take additional evidence as needed, exclusively at the discretion of said court.

Jurisdiction relinquished.

JOHNNY J. BUTLER, Judge