NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. DARNELL LEE SCOTT, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1378 WDA 2012

Appeal from the Judgment of Sentence Entered November 17, 2011
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0013324-2010

BEFORE: BENDER, P.J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY BENDER, P.J. FILED: December 5, 2013

Appellant, Darnell Lee Scott, appeals from the judgment of sentence of 24 to 48 months' incarceration, imposed following his convictions for Fleeing or Attempting to Elude a Police Officer, 75 Pa.C.S. § 3733(a); Reckless Driving, 75 Pa.C.S. § 3736(a); and Failure to Stop at Red Signal, 75 Pa.C.S. § 3112(a)(3)(i). Appellant contends that his appeal is timely filed, that the evidence is insufficient to support his conviction of Fleeing or Attempting to Elude Police Officer (graded as a felony of the third degree), and that it was error for the trial court to deny Appellant's suppression motion. After careful review of these issues on the merits, we affirm.

Appellant proceeded to a jury trial on July 27 and 28, 2011. The facts adduced at trial were as follows:

> On August 8, 2010, City of Pittsburgh police officer Michelle Auge was working a . . . patrol in a "marked police wagon" on Race

Street in the Homewood section of the City of Pittsburgh, Allegheny County. Officer Auge was traveling on Race Street toward North Lang Avenue when she observed [Appellant] drive past at a high rate of speed on North Lang. The speed limit on North Lang is twenty-five miles per hour. As [O]fficer Auge turned onto North Lang to follow [Appellant]'s vehicle, she activated the police vehicle's lights and siren. [Appellant] then accelerated to nearly seventy miles per hour and drove into the opposite lane of traffic to pass a vehicle in this initial part of his flight. As [Appellant] approached the four-way flashing red light signal at North Lang and Frankstown, he made a right-hand turn onto Frankstown Avenue without stopping or applying the brakes. [Appellant] proceeded through the next intersection of Frankstown and North Murtland Street against a steady red light signal, again accelerating to over seventy miles per hour. When [Appellant] reached the intersection of Frankstown and Fifth Avenue, he turned onto Fifth Avenue against a steady red signal. He next made an abrupt turn onto Hamilton Avenue against a steady red signal.

[Appellant] proceeded on Hamilton Avenue at a high rate of speed and drove into the opposite lane of traffic and across double yellow lines to pass a vehicle. [Appellant] returned to the proper lane of traffic and continued to drive at approximately fifty miles per hour, twenty-five miles [per hour] over the speed limit. [Appellant] was forced to stop his vehicle in traffic in the 6500 block of Hamilton Avenue because a nightclub had just closed, and there were approximately fifty people in the street, as well as stopped vehicles, that blocked his passage. At this point, [O]fficer Auge had chased [Appellant] for approximately eleven blocks with her police lights and siren activated. Several other officers monitored the pursuit and arrived in that area as backup.

Officer Auge approached [Appellant]'s vehicle to conduct a felony traffic stop. She ordered [Appellant] and his passenger out of the vehicle at gunpoint, and detained them at the rear of the vehicle. It was determined that [Appellant] owned the vehicle. Officer Auge determined that the vehicle had to be towed as [Appellant] was in custody pursuant to the felony traffic stop, the passenger did not have a driver's license, and the vehicle was blocking the roadway. Pursuant to police procedure, [O]fficer Auge began an inventory search of the vehicle to locate and identify any items of value that could be stolen or broken during the tow or storage. Inspection of the

> vehicle's interior revealed a spilled beer can on the floor behind the driver's seat. When [O]fficer Auge opened the trunk of the vehicle, she observed a noticeable bulge underneath a thin mat. A loaded 9mm firearm was recovered from underneath the mat. Officer Elvis Duratovic took possession of the firearm to make it safe, given that it was loaded and there was a large crowd still gathered in the area. He transported the weapon to the police station to be processed. It was determined that [Appellant] did not have a license to carry the firearm.

Trial Court Opinion (TCO), 7/3/13, at 5 – 7 (citations to the record omitted).

The jury convicted Appellant of the above-mentioned crimes, and acquitted Appellant of Firearms Not to be Carried Without a License, 18 Pa.C.S. § 6106(a)(1); and Duties at Stop Sign, 75 Pa.C.S. § 3323(b). On August 17, 2012, Appellant was sentenced to 24 to 48 months' incarceration.

Appellant filed a notice of appeal on September 4, 2012, which we deem timely for the reasons stated below. Appellant now presents the following questions for our review:

> 1. Whether the appeal from the November 7, 2011 judgment of sentence is timely due to a breakdown in the court system where: the docket does not indicate the Order dated June 18 (filed June 20), 2011 denying post-sentence motions was served on [Appellant] as required by Pa.R.Cr.P. 114; and said Order did not contain the matter required under Pa.R.Cr.P. 720(B)(4)?
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> 2. Whether the evidence was insufficient as a matter of law to show that [Appellant] "endanger[ed] a law enforcement officer or member of the general public due to the driver engaging in a high-speed chase" and, therefore, the grading of the offense at Count 3 should be a second-degree misdemeanor rather than, under 75 Pa.C.S. §3733 (a.1)(2)(iii), a third-degree felony?
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> 3. Whether the seizure of [Appellant]'s vehicle violated the Pennsylvania Constitution and United States Constitution and the

> evidence derived from the search of [Appellant] and/or his vehicle should have been suppressed?

Appellant's Brief at 5.

We first address Appellant's argument regarding the timeliness of the instant appeal. We note that neither the trial court in its Rule 1925(a) opinion, nor Appellee in the Appellee's Brief, dispute Appellant's contention that his appeal is timely. We likewise conclude that the instant appeal is timely. Appellant's timely filed post-sentence motions were denied by an order dated June 18, 2011, which was filed on June 20, 2012. The docket prepared by the Allegheny County Department of Court Records[1] does not indicate that this order was served on Appellant, or Appellant's counsel. Such service is a mandatory duty of the Clerk of Courts pursuant to Pa.R. Crim.P. 114. For the purpose of appeal, the date of an order is the date that the Clerk of Courts furnishes a copy of that order to all parties. Pa.R.A.P. 108. The period for appealing from an order is not triggered if the Clerk of Courts does not furnish that order to an appellant. ***Commonwealth v. Jerman***, 762 A.2d 366, 368 (Pa. Super. 2000). Accordingly, we conclude that Appellant's Notice of Appeal from the trial court's June 20, 2012 order was timely filed, and we address the remainder of his claims on the merits.

Appellant next argues that the evidence offered at trial was insufficient to sustain his conviction for Fleeing or Attempting to Elude a Police Officer.

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[1] The Allegheny County Department of Court Records, Criminal Division, serves as the authorized Clerk of Courts.

Specifically, Appellant contests the grading of this crime as a felony of the third degree. Appellant claims that the evidence was insufficient to prove he engaged in a high-speed chase and endangered a police officer or a member of the general public. As a result, Appellant argues, he should have been convicted of a misdemeanor of the second degree. We conclude that the evidence was sufficient to permit the jury to find Appellant was guilty of Fleeing or Attempting to Elude a Police Officer graded as a felony of the third degree.

Our standard of review of sufficiency claims on appeal is well-established:

> A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. … When reviewing the sufficiency claim the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.

Commonwealth v. Widmer, 744 A.2d 745, 751 (Pa. 2000) (citations omitted).

The crime of Fleeing or Attempting to Elude a Police Officer is defined in applicable part at 75 Pa.C.S. § 3733(a): "Any driver of a motor vehicle who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police officer, when given a visual and audible signal to bring the vehicle to a stop, commits an offense as graded in subsection (a.2)." The statute further provides: "An offense under

subsection (a) constitutes a felony of the third degree if the driver while fleeing or attempting to elude a police officer. . . endangers a law enforcement officer or member of the general public due to the driver engaging in a high-speed chase." 75 Pa.C.S. § 3733(a.2)(2)(iii).

This Court has held that the term "high-speed chase" is not "to be construed literally;" instead, it is "a term of art, having a practical, legal meaning that was not closely bound by a literal definition." ***In the Interest of R.C.Y.***, 27 A.3d 227, 230 (Pa. Super. 2011). A finding that a defendant engaged in a so-called high-speed chase "merely require[s] a different level of danger from the run-of-the-mill dangers posed by merely failing to stop when signaled to do so by a police officer." ***Id***. This crime constitutes a felony of the third degree "where the defendant's actions created an extraordinary danger to the public at large or to police officers." ***Id***.

In the instant case, the trial court noted:

> (1) [O]fficer Auge followed Appellant for eleven blocks in a densely populated urban area trying to effectuate a traffic stop after witnessing Appellant drive past at a high rate of speed; (2) Appellant twice went into the opposite lane of traffic to pass vehicles while fleeing; (3) Appellant drove at speeds between fifty and seventy miles per hour for most of the pursuit in a twenty-five mile per hour zone; (4) Appellant drove through four red-light signals without stopping or braking. . . .

TCO at 11 – 12. Appellant's vehicle stopped only when he reached a road blocked by a large crowd outside of a club that had just closed for the night. We conclude that this evidence was sufficient to sustain the jury's finding that Appellant's actions constituted an extraordinary danger to the police

and to the public. Appellant's challenge to the grading of this offense is meritless.

Appellant also argues that the trial court erred when it failed to suppress evidence obtained during the police inventory search of Appellant's vehicle. We conclude that the admission of this evidence was not error.

Appellant concedes that his vehicle was subject to impound. Appellant also concedes that the Commonwealth introduced the Pittsburgh Bureau of Police inventory policy and procedure. Appellant does not contest the propriety of this policy. Appellant's sole dispute with the pre-tow inventory search of his vehicle is that the police noted a bulge under a mat in the vehicle's trunk, and so they lifted the mat. Appellant alleges that this went beyond what was necessary to inventory the contents of the vehicle.

This Court has explained the inventory search exception to the warrant requirement:

> The United States and Pennsylvania Supreme Courts have recognized that inventory searches constitute a well-defined exception to the warrant requirement of the Fourth Amendment. The purpose of an inventory search is not to uncover criminal evidence. Rather, it is designed to safeguard items in order to benefit both the police and the defendant. So long as the search is pursuant to the caretaking functions of the police department, the conduct of the police will not be viewed as unreasonable under the Constitution.

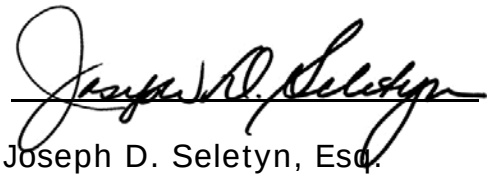
Commonwealth v. Woody, 679 A.2d 817, 819 (Pa. Super. 1996) (citations omitted). As noted by the trial court, "[f]or items to be seized during an inventory search it is not necessary that the items be in plain view; rather, the items may be seized so long as the search is reasonable and does not

extend from the formalities of an inventory search into a criminal investigation." TCO at 14 (citing ***Woody, supra***).

Here, the police observed an item visible in the trunk of Appellant's car. Removing the mat covering that item was consistent with the purpose of an inventory search, "safeguard[ing] seized items in order to benefit both the police and the defendant." ***Woody, supra***, at 819. In light of the foregoing, we conclude that the trial court did not err in finding the inventory search of Appellant's vehicle fell within the scope of the police's community caretaking function. Accordingly, this claim is without merit.

Judgment of sentence ***affirmed***.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/5/2013