

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ALEXANDER C. JOHNS,	:	
	:	
Appellant	:	No. 1400 EDA 2013

Appeal from the Judgment of Sentence Entered April 24, 2013
In the Court of Common Pleas of Chester County
Criminal Division No(s).: CP-15-SA-0000088-2013

BEFORE: PANELLA, MUNDY and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED DECEMBER 04, 2013**

Appellant, Alexander, C. Johns, appeals from the judgment of sentence entered in the Chester County Court of Common Pleas to pay fines totaling \$300 for disorderly conduct and failing to use a turn signal.¹ Appellant challenges the sufficiency of the evidence for the disorderly conduct conviction. We affirm.

The trial court summarized the evidence presented at the trial *de novo*:

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. § 5503(a)(4); 75 Pa.C.S. § 3334(a).

The prosecuting witness, a Pennsylvania state trooper, observed an older gentleman[, Appellant²] execute two turns without signaling. He followed [Appellant's] vehicle onto Route 1, a heavily-traveled divided highway, and signaled for it to stop. [Appellant] pulled his car into the multiple-lane entrance of a retirement community. The trooper pulled his vehicle in behind that of [Appellant], got out, and walked up to speak with him. [Appellant] asked why he was being stopped and the trooper explained that it was due to his failure to signal when turning. [Appellant] became agitated. As the trooper looked at [Appellant's] driver's license and proof of insurance, [Appellant] became increasingly upset at the reason for the stop. [Appellant] said "you got to be kidding me", or words to that effect. The trooper replied that [Appellant] should "lose the attitude". [Appellant] responded in kind. The trooper told [Appellant] to remain in his vehicle, to "sit tight", while he went back to the patrol vehicle to verify the driver's license and registration information. While the trooper was in his patrol car, [Appellant] exited his vehicle and came towards the trooper. The trooper testified that this caused him no little concern, as he was at a severe tactical [dis]advantage.^[3]

He cited the fact that he did not know the individual and had no idea what might have been in the vehicle. The trooper feared for his own safety. The trooper testified that he got out of his patrol car and told [Appellant] in a stern manner to go back to his vehicle. [Appellant] replied that the trooper needed to show [him] some respect, and continued to come closer to the trooper's position. The trooper was attempting to call on the radio on his uniform, but it was malfunctioning. When he looked back up he noticed that [Appellant] now had a hand behind his back and was coming towards him in an aggressive manner. The trooper further testified that at that point, he had to

² According to the record, Appellant was fifty-nine years old at the time of the traffic stop. The trooper was in a marked patrol vehicle and in uniform. N.T., 4/24/13, at 7.

³ **See id.** at 9 (indicating trooper believed he was at disadvantage because, *inter alia*, he was seated in his patrol vehicle).

figure that [Appellant] was going for a weapon, and so he drew his gun and told the driver to show his hands, which he did.

The trooper then directed [Appellant] to place his hands on the hood of the patrol car. By that time the passenger in [Appellant's] vehicle had also exited and walked toward the trooper. This made matters worse, tactically. She was instructed to place her hands on the hood as well.

The trooper then attempted to handcuff [Appellant] who, with a free hand, reached into his pocket. Fortunately, all he pulled out was a cell phone, announcing that he was going to "call the real police". While the trooper was trying to call for backup, [Appellant] resisted being handcuffed. He pulled free and headed toward Route 1 yelling for help. He was kicking and screaming wildly with the trooper in tow. The trooper had to physically pull [Appellant] away from the traffic and return to the patrol car. Because [Appellant] continued to push back, the trooper had to use all his body weight to pin [Appellant] against the vehicle until backup finally arrived.

[Appellant] testified in his defense. He denied he was upset, and disputed the officer's testimony at various points. He did concede that he got out of his own vehicle "to find out more about this citation". When the trooper told him to get back in his car, [Appellant] testified that he said "you talk to me with respect." [Appellant] had a shoulder injury and told the officer not to yank his arm behind his back as hard as he was doing.

Trial Ct. Op., 6/4/13, at 2-4 (citations omitted).

On February 5, 2013, a magisterial district judge found Appellant guilty of disorderly conduct and failing to use a turn signal. Appellant appealed to the Court of Common Pleas and proceeded to a trial *de novo* on April 24, 2013. At the close of the evidence, the trial court found him guilty and ordered him to pay \$300 in fines. Appellant filed a timely notice of

appeal and complied with the trial court's Pa.R.A.P. 1925(b) order to submit a statement of errors complained of on appeal.

Appellant presents three questions for review, all of which challenge the sufficiency of the evidence for the disorderly conduct conviction. Appellant's Brief at 2. He argues that the trial evidence failed to establish that: (1) he intended to cause public inconvenience, annoyance, or alarm; (2) his actions were likely to create a hazardous or physically offense condition; and (3) his actions served no legitimate purpose. He also cites **Commonwealth v. Hock**, 728 A.2d 943 (Pa. 1999), for the propositions that the crime of disorderly conduct "is not intended as a catchall for every act which annoys or disturbs people" and that police officers must expect some verbal indignities from "distraught individuals in emotionally charged situations." **Id.** at 10 (quoting **Hock**, 728 A.2d at 947). No relief is due.

When reviewing a challenge to the sufficiency of the evidence,

[t]he standard for review is whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in the light most favorable to the Commonwealth as verdict winner, was sufficient to enable the factfinder to conclude that the Commonwealth established all of the elements of the offense beyond a reasonable doubt.

Commonwealth v. Thompson, 922 A.2d 926, 928 (Pa. Super. 2007) (citation omitted).

Section 5503(a)(4) of the Crimes Code states, "A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance

or alarm, or recklessly creating a risk thereof, he . . . creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.” 18 Pa.C.S. § 5503(a)(4). The disorderly conduct statute defines “public” as

affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways . . . places of business or amusement, any neighborhood, or any premises which are open to the public.

18 Pa.C.S. § 5503(c).

This Court has noted, “The specific intent requirement of this statute ‘may be met by a showing of a reckless disregard of the risk of public inconvenience,’ annoyance, or alarm, even if the appellant’s intent was to send a message to a certain individual, rather than to cause public inconvenience, annoyance, or alarm.” **Commonwealth v. Troy**, 832 A.2d 1089, 1094 (Pa. Super. 2003) (citation omitted).

In **Hock**, the defendant was subject to a traffic stop, and after the officer apprised her of his intent to issue a citation, she walked away from him and “uttered, ‘F___ you, a_____,’ in a normal tone of voice audible to” the officer. **Hock**, 728 A.3d at 944. The officer attempted to arrest the defendant for disorderly conduct. **Id.** The defendant physically resisted, but was subdued and charged with resisting arrest and disorderly conduct. **Id.** The trial court entered a pre-trial order dismissing all charges. **Id.**

After this Court reversed the order dismissing the charges, the Pennsylvania Supreme Court considered the limited question of “whether the trial court appropriately dismissed the charge of resisting arrest based upon its holding that [the defendant’s] offensive language alone did not support a charge of disorderly conduct.” *Id.* at 945 (footnote omitted). The *Hock* Court concluded that the defendant’s remark did not constitute fighting words under the circumstances and that “a trier of fact could not reasonably find that [the defendant’s] comment risked an immediate breach of the peace.” *Id.* at 946-47.

Instantly, a review of Appellant’s arguments reveals that he disregards the proper standard of review governing a challenge to the sufficiency of the evidence and instead urges this Court to accept his version of the evidence. He asserts he “merely wanted to ‘talk to the Trooper[,]’” when he exited his vehicle, and that the trooper “was obviously offended by [his] refusal to get back in the vehicle.” Appellant’s Brief at 11. Appellant contends that when the trooper drew his firearm it “created a genuine ‘fear for his [Appellant’s] life[,]’” and that his responses—running from the trooper, yelling for help, kicking, and screaming—served a legitimate purpose. He concludes that the trooper “merely overreacted” and “unnecessarily escalate[d] the situation.”

Id. In short, Appellant construes the evidence in a light most favorable to himself, rather than the Commonwealth, and his arguments must fail.⁴

When properly viewed, the record established that Appellant and the trooper were in an area accessible to the public. During the course of the traffic stop, Appellant exited his vehicle despite the trooper's order that he remain inside. He then approached the trooper's vehicle with one hand behind his back and demanded the trooper to give him respect. He disregarded the trooper's orders to return to his vehicle and continued to approach, which caused the trooper to draw his firearm and attempt to secure Appellant by having him place his hand on the hood of his vehicle. Appellant continued to disregard the trooper's orders and reached into his pocket. When the trooper attempted to place Appellant in handcuffs, Appellant resisted, ran from the trooper, and began kicking, screaming, and yelling for help.

Accordingly, Appellant's attempt to liken the present case to **Hock's** passing epithet uttered in a normal speaking voice is meritless. **See Hock**, 728 A.2d at 946. Furthermore, we conclude there was ample evidence sustaining the findings of the trial court that Appellant recklessly created a

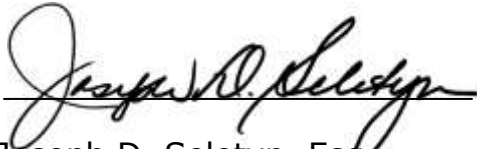
⁴ To the extent Appellant seeks a new trial based on the weight of the evidence, such a claim has been waived due to his failure to preserve it in a post-sentence motion and his court-ordered Pa.R.A.P. 1925(b) statement. **See** Pa.R.A.P. 1925(b)(4)(vii); Pa.R.Crim.P. 607(A); **Commonwealth v. Griffin**, 65 A.3d 932, 938-39 (Pa. Super.), *appeal denied*, ___ A.3d ___ (Pa. Oct. 2, 2013).

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risk of public inconvenience or alarm, created a hazardous condition, and had no legitimate basis for his continued intransigence during the traffic stop. **See *Thompson***, 922 A.2d at 928-29. Thus, we affirm Appellant's conviction for disorderly conduct.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line underneath it.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/4/2013