

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
v.	:	
ROBERT HOAK RIEFLE,	:	
	:	
Appellant	:	No. 1467 WDA 2012

Appeal from the Judgment of Sentence of August 14, 2012,  
in the Court of Common Pleas of Allegheny County,  
Criminal Division, at No: CP-02-SA-0001121-2012

BEFORE: BENDER, J., MUNDY, J., and STRASSBURGER, J.\*

MEMORANDUM BY STRASSBURGER, J.: FILED: June 5, 2013

Robert Hoak Riefle (Appellant) appeals from his August 14, 2012 judgment of sentence following his conviction for a summary parking violation. We vacate Appellant’s judgment of sentence.

On the morning of February 13, 2012, Appellant parked his vehicle in downtown Pittsburgh along the left-hand side of the 500 block of William Penn Place, a one-way street. Officer DeMichael Holmes of the Pittsburgh Police cited Appellant for being parked in a no-stopping zone in violation of § 3353(a)(1)(x) of the Vehicle Code. Appellant was found guilty by the district magistrate judge and, following a *de novo* hearing on his summary appeal, by the trial court. Appellant filed a timely notice of appeal. Both Appellant and the trial court complied with Pa.R.A.P. 1925.

\*Retired Senior Judge assigned to the Superior Court.

On appeal, Appellant argues, *inter alia*,<sup>1</sup> that his conviction should be vacated because the Commonwealth's evidence was insufficient to prove that he violated subsection 3353(a)(1)(x) of the vehicle code. The statute provides, in relevant part, as follows.

**§ 3353. Prohibitions in specified places**

**(a) General rule.**--Except when necessary to avoid conflict with other traffic or to protect the safety of any person or vehicle or in compliance with law of the directions of a police officer or official traffic-control device, no person shall:

(1) Stop, stand or park a vehicle:

\* \* \*

(x) At any place where official signs prohibit stopping.

75 Pa.C.S. § 3353.

Appellant claims that the location where Appellant's vehicle was parked, as established at the hearing rather than as alleged on his citation, was not a place where signs prohibited stopping. Therefore, Appellant maintains, the Commonwealth failed to prove that he violated subsection 3353(a)(1)(x), the only statute under which he was charged and convicted. **See** Appellant's Brief at 9-10.

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<sup>1</sup> Appellant also challenges his conviction based upon due process grounds. However, our resolution of his claims as to the sufficiency of the evidence renders those questions moot.

We address Appellant's argument mindful of the following standard of review.

[O]ur standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. 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. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

**Commonwealth v. Stays**, 40 A.3d 160, 167 (Pa. Super. 2012) (internal quotations and citations omitted). Accordingly, we examine the evidence offered at Appellant's *de novo* hearing.

Officer Holmes testified that on February 13, 2012, "we had a.m. rush downtown, we were told to tag anyone that was illegally parked. ... [B]etween seven and nine on the meters it states that rush hour, you park there you get cited." N.T., 8/14/2012, at 3. Accordingly, Officer Holmes cited Appellant's vehicle for being parked "right across from 525 William Penn Place" at 7:50 a.m. **Id.** at 3-4. On cross examination, Officer Holmes indicated that Appellant's vehicle was parked "right near the William Omni Penn Hotel [*sic*], in that area there around the block people park illegally all the time." **Id.** at 5. Officer Holmes testified that Appellant's vehicle was parked on the left side of the street. **Id.** at 6. In fact, Officer Holmes

testified that “everyone on the left side ... [t]hat’s who was tagged.” *Id.* at 12.

Appellant testified, consistent with Officer Holmes, that he was parked on William Penn Place that morning on the left side of the street. *Id.* at 7. However, Appellant testified and produced photographs showing that, while the right side of the street is marked as a no-stopping zone between the hours of seven and nine a.m., the left side of the street contains no such prohibition, but is marked with signs indicating two-hour parking from eight a.m. to six p.m. *Id.* at 7-12.

In explaining its determination that Appellant was guilty as charged, the trial court stated that it found Officer Holmes to be credible, and opined that the officer “clearly testified that [Appellant’s] car was parked in a location on William Penn Place where ‘No Parking’ signs were visible and applicable.” Trial Court Opinion, 10/22/2012, at 3 (pages unnumbered).

We are constrained to hold that the trial court’s finding of guilt under § 3353(a)(1)(x) of the Vehicle Code cannot stand. The trial court is correct that at one point Officer Holmes did answer “yes” to the question “[s]igns indicated that it was a no **parking** zone?” N.T., 8/14/2012, at 4 (emphasis added). However, Appellant was not charged with parking in a no **parking** zone. Rather, Appellant was charged with parking in a no **stopping** zone. *Compare* 75 Pa.C.S. § 3353(a)(1)(x) (“[N]o person shall... [s]top, stand or

park a vehicle... [a]t any place where official signs prohibit stopping.") **with** 75 Pa.C.S. § 3353(a)(3)(ii) ("[N]o person shall... [p]ark a vehicle... [a]t any place where official signs prohibit parking.").

It is axiomatic that one cannot be tried or convicted of a crime for which he or she was not charged. **See, e.g., Commonwealth v. Graham**, 85 A.2d 632, 633 (Pa. Super. 1952) ("Appellant was tried, convicted and sentenced ... for a crime for which he had not been indicted, a grave violation of his constitutional rights which is not saved by the doctrine of harmless error."). Therefore, because Appellant was never charged with parking in a no parking zone, he could not be tried, convicted, and sentenced for violating subsection 3353(a)(3)(ii) of the Vehicle Code.

Nor can his conviction stand under the no-stopping subsection of the Vehicle Code. The evidence was uncontroverted that (1) Appellant was parked on the left side of William Penn Place, and (2) there were signs on the right side, but not the left side, of the street prohibiting stopping. Because the Commonwealth offered no evidence that Appellant was parked at a place "where official signs prohibit stopping," it did not meet its burden of proving each element of section 3353(a)(1)(x).<sup>2</sup>

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<sup>2</sup> It appears from the record that Officer Holmes ticketed Appellant, and all vehicles parked along the left side of the street, based upon the erroneous belief that the signs posted on the right side of the street prohibiting stopping between seven and nine a.m., were applicable to vehicles parked on the left side of the street. The no stopping signs on the right obviously

Indeed, in its brief the Commonwealth concedes that “while Officer Holmes did testify that [A]ppellant was in a no parking area and the court below found his testimony credible, the entirety of the transcript seems to suggest that Officer Holmes’ conclusion may have been in error.” Commonwealth’s Brief at 9. “[R]eading the entire transcript supports that [A]ppellant’s car was parked on the side of the street across from William Penn Place where parking was not explicitly prohibited during rush hour.” **Id.** Therefore, “[a]fter reviewing the entire record, the Commonwealth acknowledges that the evidence is likely insufficient to sustain [A]ppellant’s conviction for parking illegally.” **Id.** at 10. The Commonwealth goes on to state that if this Court “were to agree with that assessment, then [A]ppellant’s judgment of sentence would have to be vacated.” **Id.** We do agree, and we do so vacate.

Judgment of sentence vacated. Jurisdiction relinquished.<sup>3</sup>

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could not apply to the left side of the street, because the signs on the left side indicate that parking is permitted there between eight a.m. and six p.m.

<sup>3</sup> Appellant asks this Court to order the refund of all fines and costs he has paid in relation to this case. Appellant’s Brief at 17. Upon remand, Appellant may seek the return of court fees and costs by presenting the appropriate petition to the trial court. **See Commonwealth v. McKee**, 38 A.3d 879, 882 (Pa. Super. 2012).

Judgment Entered.

*Nicholas V. Conetta*

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Deputy Prothonotary

Date: June 5, 2013