NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
	:	
RYAN P. CAMPBELL,	:	
	:	
Appellant	:	No. 1516 EDA 2011

Appeal from the Judgment of Sentence May 12, 2011
In the Court of Common Pleas of Montgomery County
Criminal Division No(s).: CP-46-SA-0001274-2010

BEFORE: BENDER, P.J., PANELLA, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED AUGUST 28, 2013**

Appellant, Ryan P. Campbell, appeals from the judgment of sentence entered in the Montgomery County Court of Common Pleas following his conviction for driving while operating privilege is suspended or revoked/due to driving under the influence[1] ("driving while under DUI-suspension.") His sole claim is that the evidence was insufficient to establish he had notice that his driver's license was suspended, where the trial court relied on information *dehors* the record. We agree and reverse.

On May 15, 2010, Appellant was cited for driving while under DUI-

* Former Justice specially assigned to the Superior Court.

[1] 75 Pa.C.S. § 1543(b)(1.1).

suspension; he subsequently pleaded guilty by paying the fine. However, after being granted leave to file a summary appeal *nunc pro tunc*, Appellant filed a notice of appeal to the Court of Common Pleas.

The court conducted trial on May 12, 2011, at which the only witness was the officer who conducted the traffic stop, Fran Rippert. The sole evidence introduced was the Commonwealth's exhibit, marked "C-1", of Appellant's driving record from the Pennsylvania Department of Transportation ("PennDOT"). N.T. Trial, 5/12/11, at 6-7. Appellant argued that the Commonwealth failed to establish that he had notice that his license was suspended, where evidence that notice was sent to him, alone, was not sufficient. ***Id.*** at 9-10.

The court took a twenty-minute recess. ***Id.*** at 12. Upon reconvening trial, it stated:

> Contained in C-1, is the address for which [notice of Appellant's suspension] was sent, and [Appellant's] **notice of suspension appeal file** contains the exact same address. That is one factor that I can consider as a factor to determine notice. There are other factors in here that I've also concluded, but that simply is the major one that stands out.

Id. at 13. The court thus found Appellant guilty of driving while under DUI-suspension, and immediately imposed a sentence of ninety days' imprisonment.

Appellant filed a timely notice of appeal on June 8, 2011, and subsequently a court-ordered Pa.R.A.P. 1925(b) statement of errors

complained of on appeal.[2] The court filed an opinion on February 28, 2013.[3]

Appellant presents one issue for our review: whether the Commonwealth presented sufficient evidence that he had notice his license was suspended. Citing ***Commonwealth v. Crockford***, 660 A.2d 1626 (Pa. Super. 1995) (*en banc*), Appellant claims there was no testimony by Officer Rippert that he asked Appellant for his license or that Appellant failed to produce it. Appellant also complains that although the trial court cited "other factors" for finding him guilty, it did not identify them. Appellant's Brief at 10. Finally, Appellant challenges the court's reliance on his "notice of suspension appeal file," where: (1) that file was not admitted into evidence; (2) the court did not identify the address "located in [his] 'notice of suspension appeal file[;]'" and (3) the court failed to read into the record its findings. ***Id.*** at 12. We agree that the court improperly considered information that was not of record.

This Court has stated:

> Our scope of review in a license suspension case is whether the trial court's findings are supported by

[2] Appellant also filed a petition to stay his sentence pending the instant appeal, which the trial court granted.

[3] In October of 2011, this Court sent notice to the trial court of a delinquent record. On October 21, 2011, the trial court advised that the record would be provided "as soon as possible." Ltr. from Trial Court to Superior Court, 10/20/11. The next entry on the Superior Court's docket is our receipt, on March 7, 2013—more than one year and four months later—of the trial record and opinion.

> competent evidence of record and whether an error of law or abuse of discretion was committed. We must determine if there was sufficient evidence to enable the fact finder to find every element of the crime beyond a reasonable doubt.
>
> In order to uphold a § 1543(b) conviction, the Commonwealth must establish that the defendant had actual notice that his license was suspended.[ ] . . . Actual notice "may take the form of a collection of facts and circumstances that allow the fact finder to infer that a defendant has knowledge of suspension."

Commonwealth v. Brewington, 779 A.2d 525, 526-27 (Pa. Super. 2001) (citations omitted).

"The seminal case in this area is ***Commonwealth v. Kane***, . . . 333 A.2d 925 ([Pa.] 1975), which held that it is necessary for the Commonwealth to prove that the accused had actual notice of suspension in order to convict of driving while under suspension." ***Crockford***, 660 A.2d at 1328. "***Kane*** also ruled that proof that notice was mailed was not sufficient **alone** to prove the vital element of actual notice." ***Id.*** at 1329.

> In the twenty years since ***Kane*** was decided, numerous rulings of both the supreme court and this court have refined its basic message. While these cases have set out no hard and fast rule as to the kinds of proof required to establish actual notice of suspension, they do indicate that evidence of mailing of notice coupled with some other, additional evidence of knowledge will suffice to establish actual notice beyond a reasonable doubt.[ ] The question has always been, how much evidence is sufficient.

Id.

Finally, with respect to the sufficiency of evidence, we note: "We cannot validate a conviction for a crime when no evidence was presented at

the proceeding to sustain the conviction. Our standard of review of a sufficiency claim prevents us from using facts dehors the record to sustain a verdict." ***Commonwealth v. Moore***, 49 A.3d 896, 903 (Pa Super. 2012), *appeal granted on other grounds*, 68 A.3d 327 (Pa. 2013).

Preliminarily, we note that although Appellant's reproduced record included a copy of the May 12, 2011, trial transcript, there was no copy in the certified record transmitted on appeal. Furthermore, there was no copy, in the certified or Appellant's reproduced record, of the Commonwealth's exhibit C-1. Both the transcript and exhibit are necessary for this Court to review Appellant's sufficiency of the evidence challenge. We remind Appellant's counsel,

> An appellate court may consider only the facts which have been duly certified in the record on appeal. All involved in the appellate process have a duty to take steps necessary to assure that the appellate court has a complete record on appeal, so that the appellate court has the materials necessary to review the issues raised on appeal. Ultimate responsibility for a complete record rests with the party raising an issue that requires appellate court access to record materials.[4]

[4] Pennsylvania Rule of Appellate Procedure "1931 (c) and (f) afford a 'safe harbor' from waiver of issues based on an incomplete record." Pa.R.A.P. 1921, *note*. Subsection (f) provides:

> If the clerk of the lower court fails to transmit to the appellate court all of the documents **identified in the list of record documents**, such failure shall be deemed a breakdown in processes of the court. Any omission shall be corrected promptly pursuant to Rule 1926 (correction or modification of the record) and shall not be the basis for any penalty against a party.

Pa.R.A.P. 1921, *note* (citations omitted). Nevertheless, upon informal inquiry by this Court, the trial court supplied, as supplemental records, the transcript and exhibit.

Our review of the exhibit C-1, Appellant's PennDOT record, corroborates his assertion that it did not contain information about his appeal from the suspension of his driving privileges. Although C-1 indicated that Appellant's driving privilege was suspended multiple times, the exhibit did not include the information relied upon by the trial court—that the address to which notice of his suspension was mailed matched the address included in his record for appealing from the suspension. ***See Moore***, 49 A.3d at 903. A review of the trial transcript reveals the Commonwealth failed to present any evidence, aside from evidence that notice of the suspension was mailed to Appellant, that he had notice of the suspension. ***See Crockford***, 660 A.2d at 1328-29.

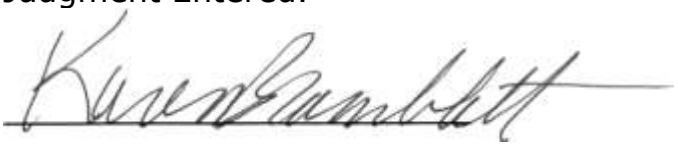
Finally, we note that Appellant does not dispute the contention that he appealed from the suspension of his driving privilege, the fact of which necessarily establishes his knowledge that his license was suspended. Nevertheless, we are constrained to agree that the evidence of record does not support his conviction of driving while under DUI-suspension.

Pa.R.A.P. 1931(f) (emphasis added). However, that subsection does not apply in the instant matter, as the certified record did not indicate that a transcript was included.

Accordingly, we reverse the judgment of sentence.

Judgment of sentence reversed. Appellant discharged.

Judgment Entered.



Prothonotary

Date: 8/28/2013