

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
KYLE M. LEARN,		
Appellant		No. 1570 WDA 2012

Appeal from the Judgment of Sentence of September 13, 2012  
In the Court of Common Pleas of Erie County  
Criminal Division at No(s): CP-25-SA-0000093-2012

BEFORE: BENDER, GANTMAN AND OLSON, JJ.

MEMORANDUM BY OLSON, J.:

**FILED JUNE 04, 2013**

Appellant, Kyle M. Learn, appeals from the judgment of sentence entered on September 13, 2012 in the Criminal Division of the Court of Common Pleas of Erie County. After careful review, we affirm.

At the conclusion of a bench trial on September 13, 2012, the court found Appellant guilty of the summary offense of meeting or overtaking a school bus in violation of 75 Pa.C.S.A. § 3345(a). Immediately thereafter, the trial court ordered Appellant to pay fines and costs totaling \$320.00.

The trial court summarized the undisputed facts in this case as follows:

Tracy Pytlarz (hereinafter "the Bus Driver") [was] a school bus driver through First Student Transportation for the last eight (8) years. She was working May 14, 2012 for three hours in the morning and between 2:20 p.m. and 4:30 p.m. At approximately 3:40 p.m. on May 14, 2012, the Bus Driver [] stopped at the intersection of Avon and Spires in Erie County, Pennsylvania[,] dropping students off after school.

Approximately fifteen (15) students were on the school bus. The school bus had both the eight[-]way red and the eight[-]way amber lights activated and the stop sign and the crossing arm [were] out. After the [Bus] Driver had opened the door and as the children were in the process of crossing the street, a tan Chrysler car, driven by [Appellant], as identified by the Bus Driver in open [c]ourt during the hearing, came to the same intersection at Avon and Spires. Despite the red and amber lights being activated, the stop sign and the crossing arm being out and the children crossing the street, [Appellant] proceeded to make a right-hand turn onto Spires. The Bus Driver honked the horn of the school bus, [at] which, [Appellant] responded by displaying his middle finger to the Bus Driver. The Bus Driver continued to observe [Appellant] after the turn and saw him pull into a driveway. The Bus Driver then proceeded to that same driveway and stopped in front of the driveway. [Appellant], now out of his vehicle and on the cellphone, saluted the Bus Driver. The Bus Driver recorded [Appellant's] information and proceeded on. The following morning on May 15, 2012, after the Bus Driver completed a Report regarding the incident with [Appellant] the day before, [she] delivered it to her dispatcher, Tim Galla, at the Office for J&C, where the school buses are parked, in accordance with the procedures set forth by First Student Transportation.

Corporal Anthony Chimera from the Millcreek Police Department is the officer who filed the citation in the instant matter. He explained that [ ] a faxed transmission of a Report from First Student Transportation [was received at the police station] on May 16, 2012, at 1:16 p.m., within 48 hours of the violation. Corporal Chimera explained that the fax machine in the police station sits approximately twenty-five steps from his desk and that the protocol for when a fax is received into the police station is that an employee collects them from the fax machine and distributes them to the proper person. During the hearing, a copy of this fax, containing a time and date showing the fax was received on May 16<sup>th</sup>, 2012 at 13[:]16 hours, was received into evidence and verified by Corporal Chimera. [Although Corporal Chimera confirmed the date and time that the Report was transmitted to the facsimile machine in the police office, he could not recall the precise time that he personally received the [report.] After receiving the fax, Corporal Chimera then began investigating the report, initially discovering the car in question was registered to Robert Learn. However, after further

investigation, Corporal Chimera was led to [Appellant] who admitted he was the driver of the vehicle and he did observe the school bus on May 14, 2012.

On September 13, 2012, following a hearing, th[e trial c]ourt found [Appellant] guilty of the charge of Meeting or Overtaking School Bus, in violation of 75 Pa. C.S.A. §3345(a) and sentenced [Appellant] to a \$250.00 fine, \$10.00 EMSA, \$50.00 MCARE, \$10.00 Judicial Computer and all court costs. On October 10, 2012, immediately after [Appellant] filed the instant appeal, th[e trial c]ourt entered an Order, directing [Appellant] to file a Statement of Matters Complained of on Appeal, pursuant to Pa.R.A.P. 1925(b), within twenty-one (21) days. [Appellant] filed his 1925(b) Statement on October 15, 2012[, and on December 10, 2012, the trial court filed its opinion.]

Trial Court Opinion, 12/10/12, at 1-3.

In his brief, Appellant asks us to consider a single issue:

Does not a summary conviction of violation of [75 Pa.C.S.A. § 3345(a)] of the Vehicle Code require proof that the citing officer actually received the bus driver's report within 48 hours of the occurrence of the violation?

Appellant's Brief at 2.

On appeal, Appellant maintains that his summary conviction should be reversed for two distinct, but related, reasons. First, as a matter of statutory construction, Appellant argues that transmission of an incident report to a common facsimile machine at a police station does not constitute "delivery" to a "police officer" under § 3345(a.1)(2). Second, Appellant asserts that because Corporal Chimera could not specify the precise time that he received the facsimile transmission, the Commonwealth failed to establish that a police officer received the incident report within the 48-hour time period set forth in § 3345(a.1)(2). Appellant therefore concludes that

we must reverse his conviction because the Commonwealth failed to prove that the school bus driver timely delivered a copy of the incident report to a police officer, as required by § 3345(a.1)(2).

Our standard of review from an appeal of a summary conviction heard *de novo* by the trial court is limited to a determination of whether an error of law has been committed and whether the findings of fact are supported by competent evidence. The adjudication of the trial court will not be disturbed on appeal absent a manifest abuse of discretion.

***Commonwealth v. Marizzaldi***, 814 A.2d 249, 251 (Pa. Super. 2002).

As the first component of Appellant's claim involves a matter of statutory construction, our standard and scope of review over this question are as follows:

[T]he interpretation and application of a statute is a question of law that compels plenary review to determine whether the court committed an error of law. As with all questions of law, the appellate standard of review is *de novo* and the appellate scope of review is plenary.

***B.K.M. v. J.A.M.***, 50 A.3d 168, 172 (Pa. Super. 2012) (internal quotation marks and case citations omitted). "The object of statutory interpretation is to ascertain and effectuate the intent of the legislature." ***Id.*** at 174. Our Supreme Court has offered the following explanation of our task when construing legislation:

To determine the meaning of a statute, a court must first determine whether the issue may be resolved by reference to the express language of the statute, which is to be read according to the plain meaning of the words. 1 Pa.C.S. § 1903. It is only when the words of the statute are not explicit on the point at issue that resort to statutory construction is appropriate. However, basic principles of statutory construction demand that

“[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit[,]” and legislative history may be considered only “[w]hen the words of a statute are not explicit....” 1 Pa.C.S. § 1921(b)(1), (c)(8).

***Commonwealth v. Dellisanti***, 876 A.2d 366, 369 (Pa. 2005) (case citations and certain internal quotation marks omitted).

The relevant statutory provision in this case states<sup>1</sup>:

**§ 3345. Meeting or overtaking school bus**

**(a) Duty of approaching driver when red signals are flashing.**--Except as provided in subsection (g), the driver of a vehicle meeting or overtaking any school bus stopped on a highway or trafficway shall stop at least ten feet before reaching the school bus when the red signal lights on the school bus are flashing and the side stop signal arms are activated under section 4552(b.1) (relating to general requirements for school buses). The driver shall not proceed until the flashing red signal lights are no longer actuated. In no event shall a driver of a vehicle resume motion of the vehicle until the school children who may have alighted from the school bus have reached a place of safety. The driver of a vehicle approaching an intersection at which a school bus is stopped shall stop his

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<sup>1</sup> Even though we have recited portions of the statute that deal with a motorist’s duties during an approach to a school bus as well as the required content for an incident report prepared by a school bus driver, we note the following features of this appeal which demonstrate that the issues raised by Appellant involve only § 3345(a.1)(2). First, Appellant has conceded that he violated the duties of a motorist as they are set forth at § 3345(a). **See** Appellant’s Brief at 2 (“At [the time the bus was stopped at the intersection of Avon and Spires Streets Appellant], who was traveling in the opposite direction on Avon, approached that intersection and made a right-hand turn onto Spires despite the fact that the school bus warning lights were flashing.”). Moreover, Appellant has not contested the form and content of the report prepared by the bus driver under § 3345(a.1)(1)(i)-(iv). Appellant thus confines his challenge on appeal to the timeliness of the submission of the bus driver’s report under § 3345(a.1)(2).

vehicle at that intersection until the flashing red signal lights are no longer actuated.

**(a.1) Reports by school bus operators.--**

(1) The operator of a school bus who observes a violation of subsection (a) may prepare a signed, written report which indicates that a violation has occurred. To the extent possible, the report shall include the following information:

(i) Information, if any, pertaining to the identity of the alleged violator.

(ii) The license number and color of the vehicle involved in the violation.

(iii) The time and approximate location at which the violation occurred.

(iv) Identification of the vehicle as an automobile, station wagon, motor truck, motor bus, motorcycle or other type of vehicle.

**(2) Within 48 hours after the violation occurs, the school bus operator shall deliver a copy of the report to a police officer having authority to exercise police power in the area where the violation occurred.** If the police officer believes that the report establishes a sufficient basis for the issuance of a citation, the officer shall file a citation and the report with the issuing authority. If the issuing authority determines that the report and citation establish a sufficient basis for the issuance of a summons, a summons shall be issued in accordance with general rules governing the institution of proceedings in summary traffic offense cases. The issuing authority shall send the defendant a copy of the citation, together with a statement that it was filed by the police officer named in the citation on the basis of information received.

75 Pa.C.S.A. § 3345 (emphasis added).

In developing his statutory construction argument, Appellant draws our attention to the terms “deliver” and “police officer” as they are used in § 3345(a.1)(2). Appellant maintains that, based upon the statutory

language, the provision requires a bus driver to “deliver” an incident report to “a police officer” within 48 hours of a violation. Appellant’s Brief at 5. Appellant points out that the term “police officer” is unambiguous since the Motor Vehicle Code defines that term as “a natural person authorized by law to make arrests for violations of law.” 75 Pa.C.S.A. § 102. Appellant further argues that, since the term “delivery” is undefined in the Motor Vehicle Code, it constitutes an ambiguity. Because ambiguities in penal statutes must be interpreted in the light most favorable to an accused, Appellant reasons that “delivery” cannot be accomplished under § 3345(a.1)(2) until a report is “actually received” by a natural person authorized by law to make arrests for violations of law. **See** Appellant’s Brief at 6-7. Employing this interpretation of the statute, Appellant asserts that the trial court erred in concluding that delivery to a police officer was constructively complete upon transmission to the common facsimile machine at the Millcreek police station.

Based upon our review of the certified record, the relevant statutes and case law, as well as the trial court’s Rule 1925(a) opinion, we conclude that transmission of an incident report to a common facsimile machine at a police station satisfies the delivery requirement set forth at § 3345(a.1)(2). Although this appears to be an open question, we are persuaded by the following rationale offered by the trial court:

[A]ccording to Title 1 of the Pennsylvania Consolidated Statutes, “[w]ords and phrases shall be construed according to rules of

grammar and according to their common and approved usage[.]” Black’s Law dictionary defines “delivery” as “the formal act of transferring something, such as a deed; the giving or yielding possession or control of something to another.” Black’s Law Dictionary, 494, (9<sup>th</sup> ed. 2009).

According to the Black’s Law [d]efinition of “delivery,” all that is required to satisfy the statute is that a formal act be performed to transfer the report to a police officer. It is undisputed by [Appellant] that the Report was faxed by the Bus Driver’s supervisors to the police station. The physical faxing of the Report satisfies the formal act portion of the definition, thereby satisfying the final element of the relevant statute. Furthermore, the statute only requires the bus driver transfer the [r]eport to a police officer, wherein the instant case, the police station received the report within the required 48 hours. To require the police officer who will eventually conduct the investigation to physically receive the [r]eport is not practical due to the internal procedures of police [organizations], such as varying shift times, holidays and vacations.

Trial Court Opinion, 12/10/12, at 5 (emphasis in original).

Not only does the trial court’s construction of § 3345(a.1)(2) acknowledge a proper role for current technology and the realities of modern police practices and organizations, the court’s determination also strikes a proper balance between the competing concerns the legislature sought to address by enacting provisions to govern reported violations of § 3345(a). Those concerns include the Commonwealth’s interest in prosecuting violations of § 3345(a) and the desire to provide law enforcement officers the opportunity to investigate prompt and reliable reports of alleged offenses. **See Commonwealth v. Fulmer**, 621 A.2d 146, 147 n.2 (Pa. Super. 1993) (“[T]he statute was enacted to balance the state’s need for apprehending persons suspected of violating § 3345(a) against the potential



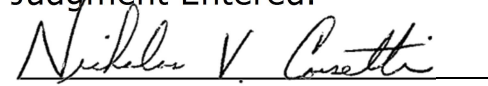
for abuse or mischief occasioned by permitting other drivers, pedestrians, and/or neighbors to give hearsay reports which form the basis for a school bus operator's communication of the event to the proper citation-issuing authorities.”). The trial court did not err in its construction of § 3345(a.1)(2) by holding that timely delivery may be accomplished by transmitting a facsimile of an incident report to a police station.

Next, Appellant challenges the sufficiency of the Commonwealth’s proof that the school bus driver complied with the reporting requirements of § 3345(a.1)(2). Appellant asserts that, because Corporal Chimera was unable to specify the precise moment at which he actually received the incident report, the Commonwealth failed to prove timely delivery of the report. Because we have held that delivery may be accomplished under § 3345(a.1)(2) by transmitting a facsimile of an incident report to a police station, we need not address Appellant’s challenge to the sufficiency of the Commonwealth’s proof regarding timely submission of the report. Here, the evidence is undisputed that the incident report was transmitted to the police station within 48 hours of the incident as required under § 3345(a.1)(2). Hence, Appellant is not entitled to reversal of his summary conviction.

Judgment of sentence affirmed.

J-A12032-13

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Cussetti", is written over a horizontal line.

Deputy Prothonotary

Date: 6/4/2013