NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. ALEXANDRIA M.H. ROBERSON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1706 MDA 2012

Appeal from the Judgment of Sentence entered August 28, 2012,
in the Court of Common Pleas of Cumberland County,
Criminal Division ,at No(s): CP-21-SA-0000119-2012

BEFORE: PANELLA, ALLEN, and COLVILLE*, JJ.

MEMORANDUM BY ALLEN, J.: **FILED MAY 22, 2013**

Alexandria M.H. Roberson ("Appellant") appeals from the judgment of sentence imposed after the trial court found her guilty of driving while her operating privilege was suspended.[1]

Our review of the record reveals that Appellant filed a summary appeal to her magisterial district conviction. A hearing convened before the trial court on August 28, 2012. Carlisle Borough Police Officer Mark Brewbaker testified that on March 2, 2012, he conducted a vehicle stop based on the vehicle having illegally tinted windows. N.T., 8/28/12, at 5. Appellant was driving the vehicle with the tinted windows. *Id*. at 6. Appellant was "unable to provide a driver's license", and upon contacting dispatch, Officer

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[1] 75 Pa.C.S.A. § 1543(a).

*Retired Senior Judge assigned to the Superior Court.

Brewbaker learned that Appellant's license was suspended. *Id*. Officer Brewbaker verified the suspension with PennDOT, and cited Appellant for driving with a suspended license. *Id*. When asked by Officer Brewbaker, Appellant responded that "yes", she knew her license was suspended. *Id*. at 8-9, 11. The Commonwealth entered Appellant's certified driving record into evidence as Exhibit 1. *Id*. at 7-8, 12.

Appellant admitted she was driving on March 2, 2012, when Officer Brewbaker conducted the vehicle stop. *Id*. at 13, 17. Appellant additionally testified that she had not had a valid driver's license since December 14, 2006. *Id*. at 15, 17. Appellant expressly testified that she did not think she had a driver's license when Officer Brewbaker stopped her on March 2, 2012. *Id*. at 17. Appellant admitted that she had prior stops for driving under suspension, and "received notice for all of those prior suspensions." *Id*. at 18.

Based on the foregoing evidence, the trial court convicted Appellant of driving with a suspended license. Appellant appealed, and both she and the trial court have complied with Pa.R.A.P. 1925. Appellant presents the following issue for our review:

> I. WAS THE EVIDENCE PRESENTED AT TRIAL INSUFFICIENT AS A MATTER OF LAW WHEN NOTICE WAS NOT ESTABLISHED FOR EITHER 1) THE DRIVING UNDER SUSPENSION CHARGE, OR 2) THE ENHANCED PENALTY GIVEN THEREFROM?

Appellant's Brief at 5.

Our scope of review in a driver's license suspension case is limited to determining whether the trial court's findings are supported by competent evidence in the record, whether the trial court committed an error of law, and whether the court's decision is a manifest abuse of discretion. ***Com. v. Herb***, 852 A.2d 356 (Pa. Super. 2004). When examining a challenge to the sufficiency of the evidence, our standard of review is as follows:

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [finder] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2005).

In conjunction with the foregoing scope and standard of review, we have reviewed the certified record and found no merit to Appellant's claims of error. The Honorable Thomas A. Placey, sitting as the trial court judge, filed a comprehensive opinion, which we adopt and incorporate as our own.

Judge Placey cogently analyzed Appellant's sufficiency arguments, such that further analysis and commentary would be redundant. We therefore adopt the trial court's November 30, 2012 opinion as our own, and affirm Appellant's judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

Mary A. Hoyle

Deputy Prothonotary

Date: 5/22/2013

COMMONWEALTH

v.

ALEXANDRIA MH ROBERSON

Commonwealth of Pennsylvania

IN THE COURT OF COMMON PLEAS OF THE NINTH JUDICIAL DISTRICT

CP-21-SA-0119-2012

IN RE: OPINION PURSUANT TO PA.R.A.P. 1925(a)

Placey, C.P.J., 30 November 2012.

This action began as a traffic citation, B 9480120-6, when the citation was filed on 6 March 2012, in Magisterial District Court 09-2-01, charging a violation of Vehicle Code section 1543(a) entitled Driving While Operating Privilege Is Suspended or Revoked (DUS). The case was given docket number TR-0401-2012, as processed by the court personnel, and remained open until it was withdrawn by the Commonwealth on 23 April 2012, which was the date set in the MDJS computer for summary trial.

On 24 April 2012, a Criminal Complaint was filed at Criminal Docket number CR-0080-2012, which charged the DUS violation together with a second degree misdemeanor charge of Habitual Offenders, Vehicle Code section 6503.1. A preliminary hearing was held on 18 June 2012, wherein Magisterial District Judge Paul M. Fegley correctly dismissed the misdemeanor Habitual Offenders charge, and pursuant to the Pennsylvania Rules of Criminal Procedure went forward with a hearing on the merits of the summary offense DUS charge and gave the summary charge the Traffic Docket number of TR-1393-2012. Defendant was convicted of the DUS charge and sentenced. This summary appeal ensued and a trial on the DUS charge was held on 28 August 2012. Following a *de novo* trial, Defendant was again convicted based on

the testimony from that proceeding. Defendant has now filed an appeal of the conviction in the Court of Common Pleas averring the following: (1) insufficient evidence to support the verdict of guilty, as Defendant's license was expired; (2) lack of notice of the enhanced mandatory penalties; and (3) the improper taking of judicial notice.

FINDINGS OF FACT

Corporal Mark Brewbaker of the Carlisle Borough Police Department was on duty in the afternoon hours of 2 March 2012, when at approximately 4:49 p.m., he saw a Black Ford Sedan in the First Block of West Willow Street, Carlisle, Pennsylvania.[1] Corporal Brewbaker stopped the vehicle for a perceived inspection violation based on very dark window tinting of the front windows.[2] Corporal Brewbaker identified Defendant in court as the operator of the vehicle at the time of the traffic stop.[3] The Corporal requested her driver's license, registration, and proof of insurance for the vehicle.[4] When Defendant was unable to provide a driver's license, the Corporal used electronic communications to obtain that information and found that Defendant's license was suspended, which the Corporal verified through obtaining Defendant's certified driving record from PennDOT.[5] After receiving this information, Defendant acknowledged her suspension when prompted by Corporal Brewbaker.[6] At trial, the

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[1] Notes of Testimony, p. 5, 28 August 2012 (hereinafter N.T., __).

[2] N.T., 5.

[3] N.T., 6.

[4] N.T., 6.

[5] N.T., 6.

[6] N.T., 8-9.

Corporal identified Commonwealth's Exhibit 1, which is a certified driver history for Alexandria MH Roberson dated 23 April 2012.[7] The Corporal did not have a copy of the original citation. The Criminal Complaint that was filed at District Court 09-2-01 was used as the charging document for the summary offenses and is part of the Magisterial District Court docket transcript, which was transmitted and is now part of the Court of Common Pleas docket. The complaint contains an Affidavit of Probable Cause, which provides, in part, that Defendant had nine (9) prior convictions for Driving While Operating Privilege Is Suspended or Revoked.

A review of Defendant's driving history indicates that she has been convicted of DUS on 23 October 2007, 16 June 2008, 6 May 2009, 9 June 2010, 18 June 2010, 25 August 2010, 16 February 2011, 23 February 2011, and 23 February 2011. Following a conviction for a violation of section 1501(a) of the Vehicle Code, Operators Required to be Licensed, Defendant was originally issued a license on 25 March 2003, which expired on 14 December 2006. It is noted that her first official suspension began on 19 May 2003, and that an affidavit was submitted to PennDOT on 20 January 2010.

DISCUSSION

The Vehicle Code provides, in part, that "any person who drives a motor vehicle on any highway or trafficway of this Commonwealth after the commencement of a suspension, revocation or cancellation of the operating privilege and before the operating privilege has been restored is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of $200." 75 Pa. C.S. § 1543(a). The Vehicle Code at section 6503 goes on to provide for Subsequent Convictions of Certain

[7] N.T., 7.

Offenses, specifically at subsection (a.1), which provides "[a] person convicted of a sixth or subsequent offense under section 1543(a) shall be sentenced to pay a fine of not less than $1,000 and to imprisonment for not less than 30 days but not more than six months." 75 Pa. C.S. § 6503(a.1). The Commonwealth must prove that a defendant had actual notice that the license had been suspended, revoked, or cancelled. ***Commonwealth v. Kane,*** 333 A.2d 925, 926-7 (Pa. 1975). The 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. Crockford***, 660 A.2d 1326, 1331 (Pa. Super. 1995).

Section 6503 entitled Subsequent Conviction of Certain Offenses is a penalty provision. As such, the Commonwealth is not required to aver a prior conviction in a charging document and failure to do so does not preclude the court from sentencing a defendant to an enhanced penalty under this recidivist provision. ***Commonwealth v. Soboleski***, 617 A.2d 1309, 1310 (Pa. Super. 1992).[8]

APPLICATION OF LAW

Defense counsel raises three errors on appeal, which will be addressed herein *seriatim*. First, that Defendant's driving privileges had been expired prior to any of the suspensions, which establishes guilt of driving without a license and not of driving under suspension. A review of the certified driving record at Commonwealth's Exhibit 1 clearly indicates that Defendant was operating a vehicle while her license was both expired

[8] It must be noted for police education purposes that, at the Magisterial District Court level, it is imperative that a citation note on its face when a DUS is a subsequent violation in order to prevent scofflaws from entering, by mail or in person, a guilty plea with payment of the $200.00 fine in an effort to circumvent the enhanced penalty and mandatory sentencing provisions.

and suspended. The facts and circumstances of the stop and interaction with the Corporal, including but not limited to Defendant's failure to produce a driver's license at the scene and acknowledgment that her license was under suspension, are consistent with both an expired or suspended license. The nine (9) previous convictions, all of which required Defendant's involvement to negotiate through the court system and any one of which put her on notice that her license was under suspension, and the notice indications on the certified driving record, particularly the affidavit received by PennDOT on 20 January 2010,[9] without a doubt establish that Defendant was driving under suspension and that she had actual notice.[10]

The second error complained of by defense counsel is that there was insufficient notice of the enhanced penalties related to the sixth or subsequent DUS charge. This argument would require the court to dictate the best police practices given the limitations of a fill-in-the-blank citation form and the best police practices for notifying the Magisterial District Courts of a distinct penalty provision, a legal requirement not mandated by statute. The case law does not mandate the best police practices; instead, the applicable case law provides that the Commonwealth is not required, in a driving under suspension case, to put a defendant on notice before a court may impose a recidivist's enhanced penalty. ***Commonwealth v. Soboleski***, 617 A.2d 1309 (Pa.

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[9] PennDOT form DL-16 would be used to create this affidavit.

[10] Defendant's argument for an Operators Required to be Licensed charge on an expired license is partially correct. The officer could have **also** charged the 1501(a) violation of the Vehicle Code, which upon review of the certified driving record would be a third violation and subject to the Subsequent Conviction of Certain Offenses section 6503. The officer wisely chose not to issue a second ticket for the expired license and instead cited for the most specific offense, but either one is subject to the enhanced penalty provisions.

Super. 1992). Thus, the Commonwealth is not required to prove, as alleged by defense, that Defendant had notice prior to sentencing of the enhanced penalties.

The third alleged error is that the court erred by taking judicial notice that Defendant had prior knowledge of the enhanced penalties because the affidavit indicated this was "her tenth (10) driving under suspension offense." While this alleged error has been addressed in the resolution of the first alleged error, further comment is included to illuminate what appears to be an area of concern. Magisterial District Judge Fegley correctly dismissed the misdemeanor Habitual Offender charge, as nowhere in the body of the certified driving record does notice appear of PennDOT recording and clearly stating the licensee is a habitual offender. Defendant's certified driving record shows an absence of any convictions necessary to earn the designation of habitual offender, nor has PennDOT clearly and distinctly recorded any such classification in the body of the driving record; therefore, the dismissal of the Habitual Offender charge was entirely proper. As noted above and known to the court, no notice of the recidivism penalties is required and the discourse made during the Commonwealth's closing argument was simply an educational opportunity for the court.

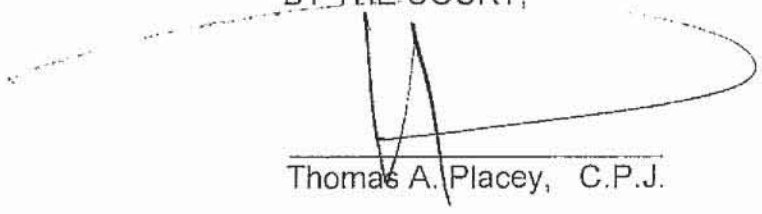
If the court were to assume a prosecutorial or defense role in taking judicial notice, it would not have been from the probable cause affidavit. Unsaid until now, if either side had properly presented Defendant's criminal history record, which is separate from the driving record, it would have been considered, solely for the purposes of determining Defendant's knowledge of suspension. Documentation of this information is available as public documents through the Administrative Office of the Pennsylvania Courts or the Clerk of Courts' computer systems. Such public documents

should show, absent deal making or best practice errors, that Defendant had been sentenced to the enhanced penalties on at least three prior mandatory sentences. The court took no such judicial notice; however, these criminal history records should exist and could be further limited proof of the collection of facts and circumstances that allow the fact-finder to infer that a defendant has knowledge of the suspension. The converse inference could be taken if the criminal record history does not show such mandatory sentences; however, neither side understood the direction the court was obliquely attempting to point out and the court did not access it.

CONCLUSION

Based upon the foregoing, sufficient evidence exists to find Defendant guilty of driving under suspension. Additionally, the Commonwealth was not required to put Defendant on notice of the possibility of an enhanced penalty, and judicial notice of facts indicating such notification to Defendant was not taken, properly or improperly, by the court.

BY THE COURT,



Thomas A. Placey, C.P.J.