

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
JOSEPH R. GREENBERG, JR.,	:	No. 1863 WDA 2011
	:	
Appellant	:	

Appeal from the Judgment of Sentence, October 28, 2011,
in the Court of Common Pleas of Venango County
Criminal Division at No. CP-61-SA-0000027-2011

BEFORE: FORD ELLIOTT, P.J.E., BOWES AND DONOHUE, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: Filed: February 27, 2013

Joseph R. Greenberg, Jr. appeals, *pro se*, from the judgment of sentence of October 28, 2011, following his conviction of various summary traffic offenses. We affirm.

On October 28, 2011, following a trial *de novo* before the Honorable Robert L. Boyer, appellant was found guilty of driving without a license,¹ required financial responsibility,² operation of vehicle without official certificate of inspection,³ and driving unregistered vehicle.⁴ Appellant was found not guilty of 75 Pa.C.S.A. § 6308(a), investigation by police officer. At trial, Trooper Frank Malek of the Pennsylvania State Police

¹ 75 Pa.C.S.A. § 1501(a).

² 75 Pa.C.S.A. § 1786(f).

³ 75 Pa.C.S.A. § 4703(a).

⁴ 75 Pa.C.S.A. § 1301(a).

testified that on the date of the incident, April 5, 2011, he encountered appellant driving west on State Route 322 in Cranberry Township in a white Ford pickup truck. (Notes of testimony, 10/28/11 at 14-15.) Trooper Malek noted that there was no inspection sticker visible and effectuated a traffic stop. (*Id.* at 15.) When he stopped the vehicle, appellant was sitting in the driver's seat; there was also a minor child in the vehicle. (*Id.* at 16.)

Appellant was unable to provide a driver's license, vehicle registration or proof of insurance. (*Id.*) Because appellant was unable or unwilling to provide any identification, he was handcuffed and transported to police barracks. (*Id.* at 18.) Arrangements were made for the minor child to be taken home. (*Id.* at 19.) Eventually, appellant's identity was established through JNET, the PennDOT database. (*Id.*) Appellant's driver's license had expired in 2009. (*Id.* at 21.) The license plate on the pickup truck was a "dead tag," meaning that it had expired. (*Id.*) The vehicle was unregistered and uninsured, and there was no inspection sticker on the vehicle. (*Id.* at 24-25.) Trooper Malek issued five citations to appellant and appellant was released. (*Id.* at 25-26.)

The trial court, sitting as finder of fact, determined that appellant operated a motor vehicle without a valid driver's license; that the vehicle appellant was operating did not have an official certificate of inspection; that appellant did not have insurance on the vehicle; and that the vehicle was not registered. (Order, 10/28/11 at 1; Docket No. 18.) As a result, the trial

court found appellant guilty of the above-listed offenses. Appellant was sentenced to pay fines totaling \$600 and costs.

A timely *pro se* notice of appeal was filed on November 23, 2011. On December 7, 2011, appellant was ordered to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P., Rule 1925(b), 42 Pa.C.S.A., within 21 days; appellant timely complied on December 27, 2011. (Docket Nos. 8, 9.) On January 4, 2012, the trial court filed a Rule 1925(a) opinion.

Appellant has raised the following issues for this court's review:

1. If a person is being tried in a criminal venue and being subjected to substantial loss of property as a result, is it an error of law to convict such person without benefit of a trial by jury?
2. If it is the purpose of the courts 'to protect against any encroachment of constitutionally secured liberties' as is stated in Boyd v. U.S. 116 U.S. 616, is it an error of law to convict a person for practicing those very liberties?
3. If the Commonwealth itself admits that there is a difference between travelling, which is a right, and driving, which is a privilege, is it an error of law to convict without proof that the appellant was engaged in driving?

Appellant's brief at 2.

In his first issue on appeal, appellant argues that he had the right to a jury trial on these summary offenses. Simply stated, appellant is incorrect. Appellant was charged with Motor Vehicle Code violations which did not

carry the possibility of imprisonment, and were punishable by fines only. Therefore, the constitutional right to trial by jury did not attach. **See *Commonwealth v. Harriott***, 919 A.2d 234, 237 (Pa.Super. 2007), ***appeal denied***, 594 Pa. 686, 934 A.2d 72 (2007) (“The right to a jury trial exists when a defendant faces a charge which, alone, could lead to imprisonment beyond six months. By contrast, there is no jury trial right if an offense bears a maximum incarceration of six months or less.”), citing ***Commonwealth v. Kerry***, 906 A.2d 1237, 1239-1240 (Pa.Super. 2006).

Although appellant complains about the amount of the fines, these are still considered petty offenses for which there is no constitutional right to a jury trial. **See *Commonwealth v. Smith***, 868 A.2d 1253, 1257 (Pa.Super. 2005), ***appeal denied***, 583 Pa. 682, 877 A.2d 462 (2005) (“The United States and Pennsylvania Constitutions require that one accused of a ‘serious offense’ be given a jury trial. The decisions of the Supreme Court of the United States have established a fixed dividing line between petty and serious offense: those crimes carrying more than six months sentence are serious and those carrying less are petty crimes.”) (quotation marks and citation omitted). Regardless of the fines involved, the charges did not expose appellant to a sentence of incarceration and were not “serious offenses” triggering the right to trial by jury.

In his second issue on appeal, appellant claims that his constitutional “right to travel” was violated. Appellant argues that he has a right to

freedom of movement and to travel unfettered upon the public roads, which was violated by enforcement of the statutes at issue here. Essentially, appellant contends that the Commonwealth does not have the right to require that drivers of motor vehicles be licensed, carry insurance, maintain current registration, *etc.* We disagree.

It is true that in a general sense, citizens enjoy a constitutional right to freedom of movement. *See, e.g. Commonwealth v. Doe*, 167 A. 241, 242 (Pa.Super. 1933) ("Freedom of locomotion, although subject to proper restrictions, is included in the 'liberty' guaranteed by our Constitution (see article 1, §§ 1, 9)."). However, such right is not without limitation. *Commonwealth v. Patchett*, 425 A.2d 798, 800 (Pa.Super. 1981) ("... the legislature, in the proper exercise of its police power, may regulate the use of the highways of the Commonwealth for the purpose of promoting public safety. To accomplish that purpose, the legislature may limit the enjoyment of personal liberty and property.") (citations omitted); *Com., Dept. of Transp. v. Gallagher*, 283 A.2d 508, 510 (Pa.Cmwlt. 1971) ("... the right to operate a vehicle on the highways is not a civil or property right but a privilege, the enjoyment of which is subject to such regulation and control as the state may see fit to impose.") (citations omitted).

Appellant's "right to travel" does not include the right to operate a motor vehicle on the public highways without a valid driver's license and proof of financial responsibility, registration, *etc.* The statutes in question

are not unconstitutionally restrictive, and appellant has cited no binding authority otherwise. Appellant's claim fails.⁵

Finally, appellant argues that the Commonwealth failed to prove he was actually "driving" the vehicle. As the Commonwealth states, it was clearly established that appellant was the driver of the pickup truck. (Commonwealth's brief at 4-5.) Trooper Malek identified appellant at trial as the driver. (Notes of testimony, 10/28/11 at 16.) The only other individual in the vehicle was a child. (*Id.*)

Appellant attempts to make a distinction between driving a vehicle for personal pleasure and driving a vehicle in connection with commercial activity. According to appellant, the legislature only has the power to regulate commercial travel, *i.e.*, those who are operating vehicles for-hire or conducting business in the streets. (Appellant's brief at 29.) The statutes in question make no such distinction between private and commercial travel and appellant has cited no authority for the proposition that the legislature lacks authority to regulate so-called "private" vehicular travel.

⁵ We note that the constitutional "right to travel" which appellant expounds upon at length, usually applies to interstate travel. *See Commonwealth v. Moody*, 843 A.2d 402, 405 (Pa.Super. 2004), *appeal denied*, 584 Pa. 693, 882 A.2d 477 (2005) ("The right to travel embraces three factors: (1) the right of a citizen of one State to enter and leave another State, (2) the right to be treated as a welcome visitor rather than an unfriendly alien, and (3) the right to be treated like citizens of that State.") (internal quotation marks and citations omitted).

J. S02010/13

Having determined that appellant's issues on appeal lack merit and do not afford him any relief on appeal, we will affirm the judgment of sentence.

Judgment of sentence affirmed.