

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

SETH LOWELL YELLIN,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2033 MDA 2013

Appeal from the Judgment of Sentence October 17, 2013
In the Court of Common Pleas of Centre County
Criminal Division at No(s): CP-14-CR-0000517-2013

BEFORE: FORD ELLIOTT, P.J.E., OLSON, and STRASSBURGER,* JJ.

MEMORANDUM BY STRASSBURGER, J.:

FILED JULY 11, 2014

Seth Lowell Yellin (Appellant) appeals from the judgment of sentence entered October 17, 2013, after he was found guilty of carrying a false identification card and exhibiting a fictitious driver's license.¹ We affirm.

On February 22, 2013, Appellant was stopped on suspicion of retail theft by security personnel at a store in State College, Pennsylvania. Officer Ken Shaffer of the State College Police Department was called out to the store to investigate. Upon arrival, security personnel handed Officer Shaffer a New York driver's license that purportedly was provided to them by Appellant. Officer Shaffer then spoke with Appellant, who admitted that he attempted to take a beer mug from the store without paying for it, and that

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. § 6310.3(a) and 75 Pa.C.S. § 1571(a)(5), respectively.

the driver's license was fake. The license indicated that Appellant was born in 1990. However, Appellant was actually born in 1994. As Officer Shaffer drove Appellant to the booking center, Appellant apologized for possessing the fraudulent license. Appellant explained that he acquired it online through a website named "ID Chief."

As a result of these events, Appellant was charged with the aforementioned offenses. Appellant also was charged with retail theft. Following a bench trial on September 12, 2013, Appellant was found guilty of carrying a false identification card and exhibiting a fictitious driver's license, but found not guilty of retail theft. On October 17, 2013, Appellant received an aggregate sentence of two years' probation. Appellant timely filed a notice of appeal. The trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925, and Appellant timely complied.

Appellant now raises the following issues on appeal.

1. Did the trial court err in finding that the evidence was sufficient for a conviction of Violation Concerning Licenses – Exhibiting False Identification and Carrying False Identification Card?
2. Did the trial court err in convicting [Appellant] of a Vehicle Code violation as opposed to the lesser offense of Possession of False Identification under the Crimes Code?

Appellant's Brief at 4.

Appellant first contends that the evidence presented at trial was insufficient to support his convictions. We consider a challenge to the sufficiency of the evidence mindful of the following.²

As a general matter, our 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.

The Commonwealth may sustain its burden by means of wholly circumstantial evidence. Accordingly, [t]he fact that the evidence establishing a defendant's participation in a crime is circumstantial does not preclude a conviction where the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence. Significantly, we may

² We observe that Appellant's concise statement of errors complained of on appeal fails to state which elements of the relevant crimes the Commonwealth allegedly failed to prove. Generally, "[i]f Appellant wants to preserve a claim that the evidence was insufficient, then the 1925(b) statement needs to specify the element or elements upon which the evidence was insufficient. This Court can then analyze the element or elements on appeal." **Commonwealth v. Williams**, 959 A.2d 1252, 1257 (Pa. Super. 2008) (quoting **Commonwealth v. Flores**, 921 A.2d 517, 522 (Pa. Super. 2007) (superseded by statute and overruled in part on other grounds)) (emphasis omitted). A failure to do so may result in waiver. **Id.** Here, because Appellant was convicted of only two relatively simple criminal offenses, we conclude that waiver is inappropriate. **See Commonwealth v. Laboy**, 936 A.2d 1058, 1060 (Pa. 2007) (holding that Laboy's sufficiency claim was properly preserved despite a vague Rule 1925 statement in a "relatively straightforward drug case," but that "[i]t may be possible in more complex criminal matters that the common pleas court may require a more detailed statement to address the basis for a sufficiency challenge").

not substitute our judgment for that of the fact finder; thus, so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant's crimes beyond a reasonable doubt, the appellant's convictions will be upheld.

Commonwealth v. Stays, 70 A.3d 1256, 1266 (Pa. Super. 2013) (citations and quotation marks omitted).

The offense of carrying a false identification card is defined as follows.

(a) Offense defined.--A person commits a summary offense for a first violation and a misdemeanor of the third degree for any subsequent violation if he, being under 21 years of age, possesses an identification card falsely identifying that person by name, age, date of birth or photograph as being 21 years of age or older or obtains or attempts to obtain liquor or malt or brewed beverages by using the identification card of another or by using an identification card that has not been lawfully issued to or in the name of that person who possesses the card.

18 Pa.C.S. § 6310.3(a).

The offense of exhibiting a fictitious driver's license is defined as follows.

(a) Offenses defined.--It is unlawful for any person:

(5) To exhibit or cause or permit to be exhibited or have in possession a fictitious or fraudulently altered driver's license.

75 Pa.C.S. § 1571(a)(5).

Instantly, the trial court concluded "based on the testimony presented at trial, that [Appellant] not only possessed a false identification card, but that he provided it to security officers when confronted," and that the evidence was therefore sufficient to support Appellant's convictions. N.T.,

1/10/2014, at 3. In response, Appellant argues that Officer Shaffer never testified to seeing him in possession of the fraudulent license, and that the Commonwealth failed to establish how the license was obtained. Appellant's Brief at 10-12.

Upon reviewing the record in this matter in the light most favorable to the Commonwealth, it is clear that sufficient evidence was presented to establish that Appellant possessed the fraudulent license. The license is included in the certified record on appeal, and features Appellant's full name and other identifying information. Officer Shaffer testified at Appellant's trial that Appellant twice admitted that the fraudulent license was his. N.T., 1/10/2014, at 8, 13. Appellant even explained to Officer Shaffer how he obtained the license. *Id.* at 13-14. Thus, regardless of whether Officer Shaffer ever saw Appellant in physical possession of the fraudulent license, Appellant's admissions were sufficient to establish that he possessed it. Both of the offenses of which Appellant was convicted require mere possession, and testimony regarding the actual exhibition of the license was unnecessary. Even if testimony of exhibition were required, Officer Shaffer testified that Appellant admitted to handing the fraudulent license to the security personnel. N.T., 1/10/2014, at 8 ("He admitted that that was a fake

identification card that he had handed to the security officers when we stopped them[.]”).³

Appellant next claims that the trial court erred by convicting him of both exhibiting a fictitious driver’s license, graded as a misdemeanor, as well as carrying a false identification card, graded as a summary offense. Appellant argues that he should only have been convicted of the lesser offense because it is more applicable to the facts of this case. Appellant’s Brief at 13-19. In support of this argument, Appellant directs our attention to this Court’s decision in ***Commonwealth v. Gordon***, 897 A.2d 504 (Pa. Super. 2006). In that case, Gordon was convicted of possession of a controlled substance pursuant to 35 P.S. § 780-113(a)(16), after he was found to possess 8.67 grams of marijuana. Appellant also had been charged with the lesser offense of possession of a small amount of marijuana pursuant to 35 P.S. § 780-113(a)(31); however, the trial court dismissed that count.

³ At oral argument, counsel for Appellant claimed, for the first time, that Appellant could not be convicted of exhibiting a fictitious driver’s license because Appellant possessed a fraudulent New York license and not a fraudulent Pennsylvania license. Appellant’s argument derives from the fact that a “driver’s license,” is defined as “[a] license or permit to drive a motor vehicle **issued under this title**,” that is, the Pennsylvania Vehicle Code. 75 Pa.C.S. § 102 (emphasis added). Appellant has waived this claim by failing to raise it with the trial court, and by failing to include it in his brief. ***See*** Pa.R.A.P. 302(a) (“Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.”); ***Commonwealth v. Furrer***, 48 A.3d 1279, 1281 n.3 (Pa. Super. 2012) (“[I]ssues not developed in an appellate brief with pertinent ‘discussion’ and ‘citation of authorities’ are waived.”) (quoting Pa.R.A.P. 2119(a)).

On appeal, Appellant argued that the trial court erred by convicting him of possession under subsection (a)(16) when his conduct was covered by subsection (a)(31), and a panel of this Court agreed. The Court reasoned that

the General Assembly, by including subsection (31) in section 780–113 of the proscribed conduct section of the Act, wisely set out the specific crime of possession of a small amount of marijuana, and created a graduated system of penalties that imposes far heavier punishment for traffickers and lesser sanctions for casual users of marijuana. This tiered approach furthers the quite purposeful penological goals of not imprisoning slight offenders and not further crowding already burdened prison facilities.

Gordon, 897 A.2d at 509.⁴

⁴ This Court also discussed the facts of **Commonwealth v. Giampa**, 846 A.2d 130 (Pa. Super. 2004). Giampa was convicted of possession of a controlled substance (steroids) under 35 P.S. § 780–113(a)(16). **Giampa**, 846 A.2d at 131. On appeal, Giampa claimed that “that since there is a separate subsection of the Drug, Device, and Cosmetic Act, 35 P.S. § 780–113(a)(37), that prohibits the possession of ‘more than three trade packages’ of steroids, and he had less, he cannot be convicted.” **Id.** A panel of this Court rejected that argument, on the basis that “[t]o rule otherwise would require a tortured interpretation of the statute, and clearly was not the intent of the legislature.” 846 A.2d at 132 (quoting Trial Court Opinion, 9/22/2002, at 5). This Court in **Gordon** distinguished **Giampa** as follows.

It bears further mention that, unlike the anabolic steroid proscription of subsection (37), which was at issue in **Giampa**, subsection (31) defines an offense for possession of a **lesser** amount of contraband, and explicitly provides for a **lesser** sanction for that offense, a distinction that cannot be overstated. In fact, the Court in **Giampa**, specifically referred with approval to the decision of the General Assembly **to exempt the possession of small amounts of a drug from penalties**, as it did in drafting a section providing for less penalties for possession of small amounts of marijuana.

(Footnote Continued Next Page)

We do not find Appellant's reliance on **Gordon** persuasive. In that case, the offenses at issue were codified at two different subsections of 35 P.S. § 780-113(a), and the conduct prohibited by both subsections overlapped directly. Here, Appellant's offenses are not contained in the same code, let alone the same section, and the two crimes have several key differences. 75 Pa.C.S. § 1571(a)(5) applies to "driver's licenses," and criminalizes the possession or exhibition of a fraudulent driver's license, regardless of what makes the license fraudulent or to whom the license is exhibited. On the other hand, 18 Pa.C.S. § 6310.3(a) applies to "identification cards,"⁵ and operates only in situations where an individual

(Footnote Continued) _____

Finally, the Pennsylvania Supreme Court, pursuant to the rule that penal provisions shall be strictly construed, has consistently held that when a criminal statute calls for construction, it is not the construction that is supported by the greater reason that is to prevail but that one which, if reasonable, operates in favor of life and liberty.

Gordon, 897 A.2d 509 (citations and quotation marks omitted, emphasis in original).

⁵ "Identification cards" are defined as follows.

A driver's license, a Department of Transportation nondriver's identification card or a card issued by the Pennsylvania Liquor Control Board for the purpose of identifying a person desiring liquor or malt or brewed beverages, a card which falsely purports to be any of the foregoing, or any card, paper or document which falsely identifies the person by name, photograph, age or date of birth as being 21 years of age or older.

18 Pa.C.S. § 6310.6.

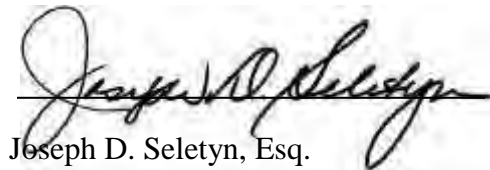
possesses an identification card stating incorrectly that he or she is over the age of 21, or where such a card is exhibited for the purpose of purchasing alcoholic beverages.

Additionally, while Appellant violated both 75 Pa.C.S. § 1571(a)(5) and 18 Pa.C.S. § 6310.3(a) by possessing a fraudulent driver's license, Appellant also engaged in conduct prohibited under 75 Pa.C.S. § 1571(a)(5), but not prohibited under 18 Pa.C.S. § 6310.3(a). Namely, Appellant exhibited his fraudulent driver's license for a reason other than purchasing alcohol. Thus, we find that **Gordon** is distinguishable from the present matter, and that there is no merit to Appellant's claim.

Accordingly, because we conclude that neither of Appellant's issues entitles him to relief, we affirm his judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/11/2014