NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. JOSE ANTONIO ARZUAGA Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2567 EDA 2012

Appeal from the Judgment of Sentence August 14, 2012
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0005510-2011

BEFORE: DONOHUE, J., MUNDY, J., and OLSON, J.

MEMORANDUM BY MUNDY, J.: **FILED JUNE 05, 2013**

Appellant, Jose Antonio Arzuaga, appeals from the August 14, 2012 judgment of sentence of a $100.00 fine, imposed after he was found guilty of one count of disorderly conduct as a summary offense.[1] After careful review, we affirm.

The trial court summarized the relevant facts and procedural history of this case as follows.

> Members of the Vice and Intelligence division of the Allentown Police Department, with the assistance of a uniformed officer, stopped a vehicle operated by Quentin Velez, a defense witness at [Appellant's] non-jury trial. Mr. Velez had purchased drugs and his vehicle was stopped in the 1200 block of Allen Street in the City of Allentown. Inside the vehicle was Mr. Velez, another adult, and an infant.

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[1] 18 Pa.C.S.A. § 5503(a)(4).

Detective Jason Krasley testified that the occupants of the vehicle were cooperative, and the investigation proceeded without incident. However, while the vehicle stop was unfolding, [A]ppellant, who was standing on the south side of Allen Street, began recording the arrest. Suddenly, Mr. Velez's demeanor changed and he began making inquiries about why someone was filming their interaction.

[A]ppellant was told to "move on", but he failed to do so. Instead, he asserted, "[y]ou can't do anything to me. You can't do shit to me, I can videotape you, I know my rights[]", "I know my f'n rights, I can videotape." [A]ppellant then came off the curb, and was yelling and waving his arms. He came within five (5) feet of the officers. According to the officers, he was advised two (2) or three (3) times that if he did not quiet down, he would be arrested, but he continued to bellow. People in the neighborhood began to emerge, and [A]ppellant continued with the same deportment. It was shortly afterward that [A]ppellant was arrested and charged with [d]isorderly [c]onduct.

[A]ppellant and Mr. Velez testified and provided a different account of the events. Mr. Velez, who conceded his purchase of drugs and the vehicle stop, differed with Detective Krasley and Sergeant Kevin Birosik regarding the ensuing events. He did not notice [A]ppellant engaging in obstreperous behavior. [A]ppellant also testified and, while conceding that he recorded the vehicle stop with his cell phone, denied that he engaged in the behavior the officers described. He claimed that he did not interfere with the officers, and believed that he could record any public activity. [A]ppellant's version of events was challenged by the Commonwealth, who introduced evidence that [A]ppellant was previously convicted of two (2) forgery [offenses] and one (1) theft offense. These offenses were introduced to impeach [A]ppellant's credibility.

Trial Court Opinion, 11/2/12, at 1-3 (footnotes omitted).

On January 18, 2012, the Commonwealth filed an information charging Appellant with one count of disorderly conduct as a misdemeanor. On August 13, 2012, the Commonwealth amended its information to reduce the disorderly conduct charge from a misdemeanor to a summary offense. Appellant proceeded to a bench trial on August 14, 2012, at the conclusion of which Appellant was found guilty and fined $100.00. On August 23, 2012, Appellant filed a post-sentence motion, which was denied by the trial court on September 4, 2012 on the basis that post-sentence motions are not permitted in summary offense cases. ***See*** Pa.R.Crim.P. 720(D). On September 7, 2012, Appellant filed a timely notice of appeal.[2]

On appeal, Appellant presents two issues for our review.

> A. Whether or not the evidence as presented at the time of trial was sufficient as a matter of law to support the conviction for disorderly conduct based upon the Commonwealth's failure to show that [Appellant] had the intent to cause public inconvenience, annoyance or alarm or recklessly created a risk therefor?
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> B. Was the verdict of the [trial] court finding [Appellant] guilty of disorderly conduct against the weight of all the evidence to such an

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[2] On September 10, 2012, the trial court entered an order directing Appellant to file a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Appellant timely filed said statement on September 26, 2012. The trial court filed its Rule 1925(a) opinion on November 2, 2012.

> extent that the conviction of [Appellant] should be overturned?

Appellant's Brief at 7.

When reviewing a sufficiency of the evidence claim, our standard of review is well settled. We must "review the evidence admitted during the trial along with any reasonable inferences that may be drawn from that evidence in the light most favorable to the Commonwealth." ***Commonwealth v. Crawford***, 24 A.3d 396, 404 (Pa. Super. 2011) (citation omitted). "Any doubts concerning an appellant's guilt [are] to be resolved by the trier of fact unless the evidence was so weak and inconclusive that no probability of fact could be drawn therefrom." ***Commonwealth v. West***, 937 A.2d 516, 523 (Pa. Super. 2007), *appeal denied,* 947 A.2d 737 (Pa. 2008). Moreover, "[t]he Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence." ***Commonwealth v. Perez***, 931 A.2d 703, 707 (Pa. Super. 2007) (citations omitted). "[T]he trier of fact, in passing upon the credibility of the witnesses, is free to believe all, part, or none of the evidence." ***Commonwealth v. Rivera***, 983 A.2d 1211, 1220 (Pa. 2009) (citation and internal quotation marks omitted), *cert. denied*, ***Rivera v. Pennsylvania***, 131 S. Ct. 3282 (2010).

In this case, Appellant was convicted of disorderly conduct. The relevant statute provides as follows.

> **§ 5503. Disorderly conduct**
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> **(a) Offense defined.**--A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:
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> (1) engages in fighting or threatening, or in violent or tumultuous behavior;
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> (2) makes unreasonable noise;
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> (3) uses obscene language, or makes an obscene gesture; or
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> (4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.
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> **(b) Grading.**--An offense under this section is a misdemeanor of the third degree if the intent of the actor is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a summary offense.
>
> **(c) Definition.**--As used in this section the word "public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, any neighborhood, or any premises which are open to the public.

18 Pa.C.S.A. § 5503.

Appellant specifically avers that the Commonwealth did not produce sufficient evidence to satisfy the *mens rea* requirement of section 5503(a). Appellant's Brief at 12. "The *mens rea* requirement of [section 5503] demands proof that appellant by his actions intentionally or recklessly

created a risk or caused a public inconvenience, annoyance or alarm." ***Commonwealth v. Troy***, 832 A.2d 1089, 1094 (Pa. Super. 2003) (brackets in original; citation omitted). Additionally, relevant to the case *sub judice*, "the intent requirement [of section 5503] may be met by a showing of a reckless disregard of the risk of public inconvenience, even if appellant's principle intent was to insult the police rather than to cause public inconvenience or annoyance." ***Commonwealth v. Kidd***, 442 A.2d 826, 827 (Pa. Super. 1982) (citation omitted).

The trial court relied in part on ***Commonwealth v. Pringle***, 450 A.2d 103 (Pa. Super. 1982), in which the appellant was convicted under section 5503(a)(3) for "us[ing] obscene language, or mak[ing] an obscene gesture[.]" 18 Pa.C.S.A. § 5503(a)(3). This Court summarized the underlying facts of that case as follows.

> [O]n the evening of September 28, 1979, an officer of the Shippensburg Police Department was attempting to arrest an unruly person in front of a tavern on a main town square. The subject of the arrest was violently resisting the officer and other officers who arrived to assist in the arrest. During their attempts to subdue the individual, a crowd of approximately fifty (50) people gathered to watch. The Appellant, Paula Pringle, arrived at the scene and recognizing the person being arrested as a friend, became obviously angered at the police officers. She repeatedly shouted "goddamn f[***]ing pigs" at the officers, from various locations in the area. The first arresting officer testified that several times when she stated these words she looked directly at him. He also testified that he was fearful that the Appellant's conduct, at that time, might motivate some persons in the crowd, including

> some who had come from the nearby tavern, to interfere with the arrest. Another officer, in addition to hearing the Appellant repeatedly yell "goddamn f[***]ing pigs", also heard her shout "f[***]ing pig, let him go" more than once. He expressed the belief that [Pringles'] conduct could have motivated those in the crowd to try to help her friend who was then resisting the arrest.

Pringle, ***supra*** at 105. This Court concluded that Pringle had the requisite *mens rea*, and could be convicted of disorderly conduct. Specifically, we held that "one may be convicted of disorderly conduct for engaging in the activity of shouting profane names and insults at police officers on a public street while the officers attempt to carry out their lawful duties." ***Id.*** at 106.

Although, Appellant was convicted under a different subsection of section 5503(a), the same *mens rea* requirement attaches to all four subsections. ***See*** 18 Pa.C.S.A. § 5503(a). Therefore, we find ***Pringle*** to be instructive in resolving this case. The testimony at trial revealed that at around 11:00 p.m. in a residential neighborhood, Appellant yelled and screamed obscenities at Detective Krasley and Sergeant Birosik while they were attempting to lawfully arrest Velez for purchasing illegal narcotics. N.T., 8/14/12, at 18-19, 61. Appellant was initially at a distance from the officers; however, Appellant left the curb and came within 10 feet or less of the officers while they were performing their duties. ***Id.*** at 59. Although Appellant was asked not to interfere several times, he ignored those requests and continued his behavior, causing several other individuals in the neighborhood to take notice of the incident. ***Id.*** at 18, 58, 59. Specifically,

Detective Krasley testified that although the street was nearly deserted when he and Sergeant Birosik began arresting Velez, after Appellant began shouting at the officers, at least nine to 12 people had emerged onto the street. ***Id.*** at 24. As a result, Sergeant Birosik left Detective Krasley alone with the two other suspects who had been stopped, but had not been checked for weapons or contraband. ***Id.*** at 49, 59.

In our view, Appellant's shouting and swearing at police officers who were conducting their lawful duties in a residential neighborhood late at night showed "a reckless disregard of the risk of public inconvenience, even [though A]ppellant's principle intent [may have been] to insult the police rather than to cause public inconvenience or annoyance." ***Kidd***, ***supra***; ***see also Pringle***, ***supra***; ***Commonwealth v. Mastrangelo***, 414 A.2d 54, 56, 59-60 (Pa. 1980) (concluding evidence was sufficient for a disorderly conduct conviction where the appellant followed and yelled epithets at a meter maid while she was performing her duties, despite being asked to leave her alone, and other bystanders on the street stopped to take notice), *appeal dismissed*, 449 U.S. 894 (1980). Furthermore, although Appellant may have believed that the officers were attempting to interfere with his recording of the events, that does not undermine the recklessness of his other actions. ***See Commonwealth v. Hughes***, 412 A.2d 1272, 1274 (Pa. Super. 1979) (stating that although the appellant shouted epithets at the officers due to her belief that she was being arrested without cause, her

"mistaken belief in her justification in taunting the police does not vitiate her recklessness with regard to annoyance of the other members of the public in the vicinity[]"). Therefore, based on the above considerations, we conclude the evidence supports the trial court's finding that Appellant had the requisite *mens rea*, and his sufficiency challenge is without merit.

In his second issue, Appellant avers that the trial court's verdict was against the weight of the evidence. Appellant's Brief at 14. Prior to addressing this claim, we must first determine whether Appellant has complied with Pennsylvania Rule of Appellate Procedure 1925(b) to preserve this claim for our review. Rule 1925(b) by its text requires that statements "identify each ruling or error that the appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge." Pa.R.A.P. 1925(b)(4)(ii). The Rule also requires that "[e]ach error identified in the Statement will be deemed to include every subsidiary issue contained therein which was raised in the trial court …." ***Id.*** at 1925(b)(4)(v). Finally, any issues not raised in accordance with Rule 1925(b)(4) will be deemed waived. ***Id.*** at 1925(b)(4)(vii). Our Supreme Court has recently held that Rule 1925(b) is a bright-line rule.

> Our jurisprudence is clear and well-settled, and firmly establishes that: Rule 1925(b) sets out a simple bright-line rule, which obligates an appellant to file and serve a Rule 1925(b) statement, when so ordered; any issues not raised in a Rule 1925(b) statement will be deemed waived; the courts lack the authority to countenance deviations from the Rule's terms; the Rule's provisions are not subject to

> *ad hoc* exceptions or selective enforcement; appellants and their counsel are responsible for complying with the Rule's requirements; Rule 1925 violations may be raised by the appellate court *sua sponte,* and the Rule applies notwithstanding an appellee's request not to enforce it; and, if Rule 1925 is not clear as to what is required of an appellant, on-the-record actions taken by the appellant aimed at compliance may satisfy the Rule. We yet again repeat the principle first stated in [***Commonwealth v.***] ***Lord***, [719 A.2d 306 (Pa. 1998)] that must be applied here: "[I]n order to preserve their claims for appellate review, [a]ppellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925. Any issues not raised in a Pa.R.A.P. 1925(b) statement will be deemed waived." [***Id.***] at 309.

Commonwealth v. Hill, 16 A.3d 484, 494 (Pa. 2011) (footnote omitted).

Herein, Appellant's Rule 1925(b) statement raised three issues. The first two issues explicitly challenged the sufficiency of the Commonwealth's evidence. ***See*** Appellant's Rule 1925(b) Statement, 9/26/12, at ¶¶ 1, 2. Appellant's third issue stated that his conviction violated his rights under the First Amendment of the Federal Constitution. ***Id.*** at ¶ 3. Accordingly, as none of Appellant's three issues pertains to the weight of the evidence, and following our Supreme Court's instructions in ***Hill***, we conclude that Appellant has waived this issue for failure to include it in his Rule 1925(b) statement.

Based on the foregoing, we conclude that Appellant's issues are either waived or devoid of merit. Accordingly, the August 14, 2012 judgment of sentence is affirmed.

Judgment of sentence affirmed.

Judge Donohue concurs in the result.

Judgment Entered.

Prothonotary

Date: 6/5/2013