NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. WILLIAM HALCOVAGE Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 564 MDA 2013

Appeal from the Judgment of Sentence March 5, 2013
In the Court of Common Pleas of Schuylkill County
Criminal Division at No(s): CP-54-CR-0001309-2011

BEFORE: PANELLA, J., MUNDY, J., and PLATT, J.*

MEMORANDUM BY MUNDY, J.: **FILED JANUARY 07, 2014**

Appellant, William Halcovage, appeals from the March 5, 2013 aggregate judgment of sentence of 48 hours to six months' imprisonment, with two days' credit for time-served, imposed after he was found guilty of driving under the influence (DUI) – general impairment, DUI - high rate of alcohol, driving an unregistered vehicle, and operation of a vehicle without official certificate of inspection.[1] After careful review, we affirm the judgment of sentence.

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

> [O]n Friday, July 15, 2011, at approximately 11:06 p.m., [Millersville Borough Police Officer Jason

---

* Retired Senior Judge assigned to the Superior Court.

[1] 75 Pa.C.S.A §§ 3802(a), 3802(b), 1301(a), and 4703, respectively.

> A. Klouser (Officer Klouser)] stopped [Appellant] after having observed [Appellant] driving a purple Plymouth sedan traveling from North Fifth Street to South Fifth Street operating at a "high rate of speed through an intersection in the Borough." [Officer Klouser] followed behind the vehicle to the intersection of South Fourth Street and Edgar Lewis Street where he observed the vehicle to have an expired Pennsylvania registration on the license plate showing June 11. [Officer Klouser] activated the patrol car's emergency lights in the area of Coal and Spencer Streets and continued to follow [Appellant] until [Appellant] finally brought his vehicle to a stop. While approaching [Appellant's] vehicle, [Officer Klouser] noted that the vehicle has an expired certificate of inspection showing June 2010. [Officer Klouser] then engaged [Appellant] in conversation and testified credibly that he smelled a strong odor of an alcoholic beverage emitting from [Appellant] with red, blood-shot and glassy eyes. After further questioning, [Appellant] admitted that he had "one or two beers." [Officer Klouser] then asked [Appellant] to exit the vehicle and submit to standard field sobriety testing. [Officer Klouser] administered a portable breath test with the result of 0.13% blood alcohol [(BAC)]. Prior to administering the test, [Appellant] also fumbled with his operator's documents while seated in his car. [Officer Klouser's] testimony supported his conclusion [that Appellant] had failed the field sobriety testing whereupon he placed [Appellant] in custody and transported him to the Schuylkill Medical Center South Emergency room where [Appellant] consented to the submission of a blood sample for chemical testing. The phlebotomist, Tanya Hicks, also testified along with [] Judith Veghte. Ms. Veghte[] is the Medical center's chemistry laboratory supervisor. These witnesses also testified credibly and introduced exhibits verifying the result of the [BAC] being 0.13%

Trial Court Opinion, 6/5/13, at 4-6.

Appellant was subsequently charged with DUI – general impairment, DUI - high rate of alcohol, and the aforementioned summary offenses in connection with this incident. On November 27, 2012, Appellant proceeded to a bench trial, at the conclusion of which he was found guilty of the two summary offenses. Following the submission of memoranda by the parties in support of their respective positions, the trial court found Appellant guilty of the remaining two DUI counts on December 6, 2012. ***See*** Trial Court Order, 12/6/12. On March 5, 2013, Appellant was sentenced to an aggregate term of 48 hours to six months' imprisonment, with two days' credit for time-served. This timely appeal followed on April 3, 2013.[2]

On appeal, Appellant raises the following issues for our review.

> 1. Was the testimony of the arresting officer improperly admitted to establish probable cause for subsequent blood test and driver impairment due to alcohol, where the officer's opinion and evidence was based upon field sobriety test[,] which he was not certified to conduct?
>
> 2. Was [Appellant] denied fundamental due process because of the denial of the jury trial because his arrest for driving under the influence carried a maximum of six (6) months in prison?

Appellant's Brief at 4.

---

[2] Appellant and the trial court have complied with Pa.R.A.P. 1925.

Prior to addressing the merits of Appellant's claims, we must first determine whether he has properly preserved them for appellate review. Pennsylvania Rule of Appellate Procedure 1925(b) 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). Rule 1925(b) further 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 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).

In the instant matter, Appellant filed his Rule 1925(b) statement, in accordance with the trial court's directive, on May 1, 2013. In said statement, Appellant raised five distinct claims of trial court error. ***See*** "Concise Statement of the Matters Complained of on Appeal," 5/1/13. The trial court, in turn, filed its Rule 1925(a) opinion on June 5, 2013, addressing each of these claims *in seriatim*. ***See*** Trial Court Opinion, 6/5/13, at 4-8. Our review reveals that the two claims Appellant raises in his appellate brief were not amongst those asserted in his Rule 1925(b) statement; rather, Appellant has raised these issues for the first time on appeal. Appellant had the opportunity to include these issues in his Rule 1925(b) statement. As a result, following our Supreme Court's directive in ***Hill***, we deem these issues waived. ***See Hill***, ***supra***.[3]

---

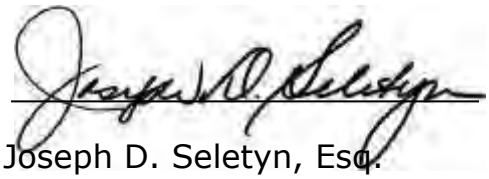
[3] To the extent Appellant's bald assertion in his Rule 1925(b) statement that he possesses a "Right to a Jury Trial" is construed to have properly preserved his second issue, we conclude that said issue is meritless. ***See*** "Concise Statement of the Matters Complained of on Appeal," 5/1/13, at ¶ 2(a). "The decisions of the Supreme Court of the United States have established a fixed dividing line between petty and serious offenses: those crimes carrying [a sentence of] more than six months [ ] are serious [crimes] and those carrying [a sentence of six months or] less are petty crimes." ***Commonwealth v. Kerry***, 906 A.2d 1237, 1239 (Pa. Super. 2006) (citation and internal quotation marks omitted; brackets in original).

(Footnote Continued Next Page)

Based on the foregoing, we affirm Appellant's March 5, 2013 judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/7/2014

(Footnote Continued) ———————————

> [T]he right to a jury trial under the Sixth Amendment to the United States Constitution and Article I, §§ 6, 9 of the Pennsylvania Constitution applies when a criminal defendant faces a sentence of imprisonment exceeding six months. Charging a defendant with two counts of a petty offense, where each count has a maximum term of imprisonment of six months or less, and therefore carries an aggregate potential prison term greater than six months, does not transform the multiple petty offenses into one serious offense where the jury trial right would apply.

Hill v. Randolph, 24 A.3d 866, 873 (Pa. Super. 2011), *citing* ***Commonwealth v. McMullen****,* 961 A.2d 842, 847 (Pa. 2008) (internal citations omitted).

Herein, the charges of DUI – general impairment and DUI - high rate of alcohol are ungraded misdemeanors and carry a maximum sentence of six months' imprisonment. Consequently, Appellant was not entitled to a trial by jury on these two charges.