

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :
:
Plaintiff :
:
Vs. : No. CR-649-2016
:
ANDREA MAZZELLA, :
:
Defendant :

Seth Miller, Esquire
Eric Wilttrout, Esquire

Counsel for Plaintiff
Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - October 18, 2018

This opinion is issued in response to the appeal filed by Andrea Mazzella (hereinafter "Mazzella") challenging the guilty verdicts rendered by the undersigned after a Bench Trial held on June 11, 2018. Respectively, this Court asks the appellate court to deny the appeal and allow the convictions and sentences to stand.

FACTUAL AND PROCEDURAL BACKGROUND

On March 19, 2016, Mahoning Township Police Officer Corey Frey (hereinafter "Frey") was called to an area on Mahoning Drive West in the Township of Mahoning, County of Carbon, for a motorcycle accident. Based upon his investigation, on April 18, 2016, Frey filed a criminal complaint against Mazzella alleging

that he had violated several sections of the Pennsylvania Vehicle Code namely: 1) 75 Pa.C.S.A. §3802(a)(1) - Driving Under the Influence; 2) 75 Pa.C.S.A. §3736(a) - Reckless Driving; 3) 75 Pa.C.S.A. §3309(1) - Disregard Traffic Lane; and 4) 75 Pa.C.S.A. §1505(c) - Improper Use of Motorcycle Learner's Permit.

After all charges were bound over to Court, Mazzella filed a motion to suppress any evidence referencing the fact that Mazzella had refused a blood test. A stipulation and order¹ were filed on September 23, 2016 that granted the motion and precluded the Commonwealth from seeking enhanced criminal penalties should the case ever proceed to sentencing. Additionally, this changes the grading of the DUI offense from a misdemeanor of the first degree to an ungraded misdemeanor and a loss of the Defendant's right to a jury trial.

Ultimately on June 11, 2018, a bench trial was held, the Commonwealth presented two witnesses, namely Matthew Ruch (hereinafter "Ruch") and Frey himself.

Ruch testified that on March 19, 2016 around 2:00 A.M. in the area of Gypsy Hill Road and Mahoning Drive, he observed a "cloud of dust." He also observed a single person standing near a motorcycle which was laying on the ground in a dirt lot near

¹ This matter predated both *Comm. v. Evans*, 153 A.3d 323 (Pa. Super. Ct. 2016) and *Comm. v. Giron*, 155 A.3d 635 (Pa. Super. Ct. 2017). Accordingly, unlike now, it was necessary to issue such an order.

Heintzelman's Meat Market. After passing the scene, Ruch, a trained EMT, turned around and asked this person, who he identified as the Defendant, Mazzella, if he was okay. Ruch testified that Mazzella said he "wrecked his motorcycle, but don't call the police. He (Mazzella) was fine." Ruch further indicated that in the process of conversing with Mazzella, Mazzella exhibited poor balance and was slurring his words.

At that point Ruch left the immediate area and drove his vehicle into the parking lot area of Gypsy Hill Gardens where he called 911. Upon exiting this parking lot area, he noticed Mazzella on the bike and now travelling further into Mahoning Township. Ruch then began to follow Mazzella and observed him swerving three (3) to four (4) times within his lane of travel from the double yellow center lines to the white fog line. In the process of doing this, Ruch testified that Mazzella was almost struck by a tractor trailer. Shortly thereafter, Ruch observed Mazzella stall the motorcycle at which point, Mazzella motioned for Ruch to go around him, which Ruch did. Ruch then proceeded down the road but pulled into the parking lot of a nearby business. From here, Ruch observed Mazzella resume his erratic driving before Mazzella pulled into the New England Motor Freight parking lot some five hundred (500) feet away from Ruch. Ruch remained in this parking lot until the Mahoning Township Police arrived.

The Commonwealth next called Frey to testify. Frey stated that he received a call for the report of an accident near Heintzelman's Meat Market. While travelling there, he received additional information that the motorcycle and its driver were now in the New England Motor Freight parking lot. Upon arriving at that location, Frey observed an individual seated on a motorcycle with the light on. As the officer arrived, Mazzella got off the bike, shut it off and began walking away. Frey testified that he observed Mazzella drop "something." Frey, upon observing facial injuries, asked Mazzella if he was okay and Mazzella responded that he was okay, but that it wasn't his bike. Frey eventually stopped Mazzella from walking away and upon confronting him notice slurred speech and smelled alcohol coming from Mazzella. Mazzella refused to perform field sobriety tests. Frey, believing Mazzella was driving this motorcycle under the influence of alcohol, placed him under arrest. Mazzella then asked Frey if he could pick up his keys.² Mazzella further stated that it was his bike and that it was stolen from outside of Ruby's Bar and that Mazzella, upon learning that it was stolen, chased down³ the "thief" and caught up with him in the New England Motor Freight parking lot. Frey then took Mazzella to Gnaden Huetten Memorial Hospital for a blood

² The set of keys was the object Frey saw Mazzella drop upon his arrival on the scene.

³ Mazzella claimed he hopped on a car to chase down the thief and received the injuries to his face when he fell off of the car.

draw. At the hospital, Mazzella refused the blood test and in doing so stated three to four times, "I wasn't driving, so I'm not giving blood."

Lastly, the Commonwealth presented a copy of Mazzella's motorcycle learner's permit and a copy of his JNET record to confirm his license status.

Mazzella presented one witness, Richard Gould, who testified that he too was at Ruby's around 2:00 A.M. on March 19, 2016 where he was able to see Mazzella leave the bar with a friend to chase down whoever it was that had stolen Mazzella's motorcycle and that he recently came forward in Mazzella's defense because he recently heard, in that same bar, the bartender and others talking about this very incident.

At the conclusion of the testimony, this Court found Mazzella guilty of driving under the influence, reckless driving and improper use of a motorcycle learner's permit. Mazzella was found not guilty of disregard traffic lane. Sentencing was deferred until July 20, 2018, then continued until August 24, 2018 so that Mazzella could obtain a CRN and comprehensive alcohol assessment, if necessary along with a requested I.P.P. investigation. On August 24, 2018, Mazzella was sentenced to a period of incarceration of not less than thirty (30) days nor more than six (6) months on the DUI charge as well as the mandatory fines on the

two traffic offenses of reckless driving and improper use of motorcycle learner's permit.

On September 7, 2018, Mazzella filed this appeal. Pursuant to Pennsylvania Rule of Appellant Procedure 1925(b), this Court issued an order directing the filing of a concise statement which Mazzella did on September 21, 2018. The sole issue raised and presented in that concise statement reads as follows:

The evidence was insufficient to establish that Mr. Mazzella did drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving (75 Pa.C.S.A. §3802(a)(1)), that Mr. Mazzella did disregard a traffic lane (75 Pa.C.S.A. §3309(1)) or improperly used a motorcycle learners permit (75 Pa.C.S.A. §1505(c)) because witness testimony was unable to positively identify Mr. Mazzella as the person who operated the motorcycle.

Thus, the only issue for the Appellate Court to decide is whether the evidence presented by the Commonwealth was sufficient to find Mazzella guilty on the aforementioned charges and specifically, was the evidence sufficient to establish that Mazzella was the person who operated the motorcycle in question.

LEGAL DISCUSSION

In order to prove Mazzella guilty of the offenses of Driving Under the Influence of Alcohol, (75 Pa.C.S.A. §3802(a)(1)), Reckless Driving (75 Pa.C.S.A. §3736(A)), and Improper Use of Motorcycle Learner's permit (75 Pa.C.S.A. §1505(c)), the

Commonwealth was required to prove beyond a reasonable doubt all elements of the offenses charged, including the singular issue subject to this appeal: Whether Mazzella was the operator of the vehicle in question.

"When reviewing a sufficiency of the evidence claim, the appellate court must review all of the evidence and all reasonable inferences drawn therefrom in the light most favorable to the Commonwealth, as the verdict winner." *Commonwealth v. Teems*, 74 A.3d 142, 144 (Pa. Super. Ct. 2013) (citation omitted). "Evidence will be deemed to support the verdict when it establishes each element of the crime charged and the commissions thereof by the accused, beyond a reasonable doubt." *Id.* It is not necessary, however, for the Commonwealth to preclude every possibility of innocence or prove the defendant's guilt to a mathematical certainty. *Commonwealth v. Williams*, 871 A.2d 254, 259 (Pa. Super. Ct. 2005) (citation omitted).

As stated, the sole issue raised on appeal by Mazzella is that the evidence presented by the Commonwealth was insufficient to prove beyond a reasonable doubt the element of driving and/or operating a motor vehicle. The determination of whether the evidence is sufficient to establish this element is based on the totality of the circumstances.

In the case *sub judice*, Ruch observed, a single individual, Mazzella, standing near a motorcycle in a dirt parking lot in a

cloud of dust. Mazzella told Ruch, he "wrecked his bike." Several moments later, Ruch, after calling 911 and turning his vehicle around in a nearby parking lot, saw this same motorcycle being driven away. Ruch followed it, watched Mazzella stall it, then drive it to the shoulder of the road to allow Ruch to pass him. Then, Ruch, after parking in a lot owned by a nearby business, watched as the same individual, Mazzella drove the same motorcycle into the New England Motor Freight parking lot.

Officer Frey also saw Mazzella on the same motorcycle in the New England Motor Freight parking lot when he arrived on scene. Mazzella alit from the motorcycle upon Frey's presence in that lot and tossed the key before being confronted by Frey.

Clearly, the Commonwealth's evidence, based upon the observations of the two (2) Commonwealth witnesses, places Mazzella as the driver of the motorcycle on Mahoning Drive in Mahoning Township, Carbon County on March 19, 2016.

CONCLUSION

For the foregoing reasons, the trial court respectfully requests the Appellate Court find no merit to this appeal and recommends affirmance of its verdict and sentence.

BY THE COURT:



Joseph J. Matika, J.