IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 005-SA-2015
	:	
JOSEPH DUMANOV,	:	
	:	
Defendant	:	

Michael S. Greek, Esquire — Counsel for the Commonwealth
First Asst. District Attorney
Joseph Dumanov — Pro Se

MEMORANDUM OPINION

Serfass, J. – March 23, 2017

Defendant, Joseph Dumanov, (hereinafter "Defendant"), has taken this appeal from his conviction on the charge of violating 75 Pa.C.S.A. §3362(a)(1.1)-(18) (exceeding posted sixty-five (65) miles per hour speed limit by eighteen (18) miles per hour) following a trial *de novo* held before the undersigned on January 5, 2017. Defendant was sentenced to pay the costs of prosecution and a fine of sixty-eight dollars and fifty cents ($68.50). We file the following Memorandum Opinion in accordance with Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that our Order of Sentence be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

The facts, when viewed most favorably to the Commonwealth as verdict winner, begin on January 2, 2015 when Trooper Daniel J. Marotta of the Pennsylvania State Police, Troop N, Fern Ridge Barracks, was monitoring traffic along Interstate 80, near mile marker

281 in Kidder Township, Carbon County. Trooper Marotta testified that the posted speed limit in the area he was patrolling was sixty-five (65) miles per hour. He further testified that as Defendant's silver pick-up truck entered the zone of influence, Trooper Marotta's radar indicated that Defendant was traveling at a rate of eighty-three (83) miles per hour. He then initiated a traffic stop and issued Defendant a citation for violating 75 Pa.C.S.A. §3362, exceeding the posted speed limit. Specifically, Trooper Marotta testified that Defendant was travelling eighteen (18) miles per hour in excess of the posted speed limit.

On January 5, 2017, a trial *de novo* was held before this Court during which Defendant did not contest the facts of the case as outlined by the Commonwealth. Additionally, the Commonwealth presented two exhibits - the certificate of calibration for Trooper Marotta's radar device from Simco Electronics and 44 Pennsylvania Bulletin page 8064 which lists Simco Electronics as a Pennsylvania Department of Transportation approved calibration facility. During Defendant's testimony, he admitted to violating 75 Pa. C.S.A. §3362. Accordingly, this Court found him guilty of that offense and sentenced him to pay the costs of prosecution and a fine of sixty-eight dollars and fifty cents ($68.50). A written order imposing sentence and containing the information required by Pennsylvania Rule of Criminal Procedure 462(g) was issued on January 5, 2017.[1]

[1] Nearly two years passed between Defendant's traffic stop on January 2, 2015, and the trial de novo in this Court on January 5, 2017. Here we note that a

On January 23, 2017, Defendant filed a notice of appeal and on the following day this Court directed Defendant to file a concise statement of the matters complained of upon appeal, pursuant to Pa. R.A.P. §1925(b). In his concise statement, which was served on the undersigned on January 30, 2017, Defendant questions the rational basis or, in his words, the validity of and the necessity for, 75 Pa. C.S.A. §3362.

DISCUSSION

On appeal Defendant raises the following two issues: whether 75 Pa.C.S.A. §3362 violates the fourteenth amendment of the United States Constitution by depriving him of due process because that statute lacks scientific foundation; and whether 75 Pa.C.S.A. §3362 is valid and/or necessary in light of 75 Pa.C.S.A. §3361.

Prior to addressing the issues raised by Defendant on appeal, it is important to note that in order to find Defendant guilty of the

---

summary appeal hearing was held before Magisterial District Judge Joseph J. Homanko on February 19, 2015. On that same date, Defendant was convicted and filed his "Notice of Appeal from Summary Criminal Conviction" in the office of the Carbon County Clerk of Courts. Pursuant to Pa.R.Crim.P. 462, the trial de novo in this Court was then scheduled for March 16, 2015. On February 27, 2015, Defendant filed a Notice of Removal to the United States District Court for the District of New Jersey and the proceedings in this Court were stayed pending disposition of Defendant's action in Federal Court. On January 12, 2016, the case was dismissed with prejudice for lack of jurisdiction by Order of U.S. District Judge Esther Salas. In particular, Judge Salas found that Defendant's notice of removal failed to state a federal cause of action or allege diversity of citizenship. In response to the dismissal, Defendant filed: a motion for summary judgment; a motion for clarification of dismissal; objections to the Report and Recommendations issued by Magistrate Judge Hammer; and a motion for reconsideration of Judge Salas's Order of January 12, 2016, which adopted the aforesaid Report and Recommendations. Reiterating that the Court lacked subject matter jurisdiction, Judge Salas denied Defendant's motions on October 7, 2016. Following receipt of Judge Salas's denial order, we lifted the stay previously imposed and again scheduled this matter for a trial de novo.

offense with which he has been charged, this Court need only determine that the radar device used by the trooper was properly calibrated and certified at the time the trooper issued the citation. Commonwealth v. Hamaker, 541 A.2d 1141, 1143 (Pa. Super. 1988), *See also* Commonwealth v. Kittelberger, 616 A.2d 1 (Pa.Super. 1992); Commonwealth v. Masters, 737 A.2d 1229, (Pa.Super. 1999); and Commonwealth v. Hearn, 28 Pa. D. & C.3d 560. (Evidence of the posting of speed limit signs is not necessary in order to sustain a conviction for speeding when the speed limit is fixed by statute). In the instant matter, Defendant does not dispute the testimony of Trooper Marotta or the exhibits introduced by the Commonwealth and admitted into evidence at trial. Moreover, Defendant expressly admits to travelling eighteen miles per hour over the posted speed limit at the time he was stopped by Trooper Marotta and his conviction may be upheld on these bases alone.

In a similar situation to the case at bar, the Pennsylvania Superior Court determined that despite a defendant's well-reasoned argument that the Commonwealth did not have a rational basis for posting a particular speed based on a lack of scientific foundation, the defendant's argument was moot because he admitted to exceeding the maximum speed limit pursuant to 75 Pa.C.S.A. §3362. Commonwealth v. Kondor, 651 A.2d 1135, 1138 (Pa. Super. 1994). Even though the defendant in Kondor presented extensive evidence that the roadway in question should not have been designated as a thirty-five (35) mile per hour speed limit zone, the Superior Court found that because the

defendant admitted to travelling above the maximum alternative speed limit of fifty-five (55) miles per hour, he was guilty prior to addressing his claims concerning the validity of 75 Pa.C.S.A. §3362. Id at 1138. Similarly, here Defendant argues that the Pennsylvania Department of Transpiration (hereinafter "PennDOT") arbitrarily set the speed limit at sixty-five (65) miles per hour because such a speed limit is not supported by a scientific foundation, and therefore lacks a rational basis. However, unlike the defendant in Kondor, Defendant failed to take any steps to bolster his assertion. Even if he had presented such evidence, Defendant's arguments concerning the validity and constitutionality of 75 Pa.C.S.A. §3362 are moot and his conviction may be upheld based upon his admission of guilt.

Although we find Defendant's arguments to be moot, we will now briefly consider and dispose of his second issue which was not raised by the defendant in Kondor. Defendant next asserts that 75 Pa.C.S.A. §3362 is needless legislation because 75 Pa.C.S.A. §3361 also regulates safe driving procedures, and because two of Pennsylvania's neighboring states, Ohio and New Jersey, do not have a similar law.[2] We find that Defendant's first argument lacks merit because even if there were redundancies or conflicts between 75 Pa.C.S.A. §3361 and 75 Pa.C.S.A. §3362, which we do not believe there are, it is well

[2] For purposes of addressing Defendant's argument, we have assumed that he is challenging an alleged redundancy between 75 Pa.C.S.A. §3361 and 75 Pa.C.S.A. §3362. However, the colloquial language employed in his concise statement creates uncertainty. Specifically, Defendant stated, "[T]he Plaintiff-Appellee, has left unanswered the issue of validity and necessity regarding PA 75 3362, an absolute speeding statute, in light of the fact that Pennsylvania also has PA 75 3361, which is a prima facie speeding statute."

established that all legislation duly enacted by the General Assembly carries a strong presumption of constitutionality and it is incumbent upon Defendant to demonstrate that the challenged statute clearly, palpably, and plainly violates the terms of the constitution. Commonwealth v. Burnsworth, 669 A.2d 883, 886 (Pa. 1995). Furthermore, "the right of the judiciary to declare a statute void, and to arrest its execution, is one which, in the opinion of all courts, is coupled with responsibilities so grave that it is never to be exercised except in very clear cases." In re R.D., 739 A.2d 548, 554 (Pa. Super. 1999). Moreover, we are unwilling to do so based solely on Defendant's belief that 75 Pa.C.S.A. §3362 is an unnecessary statute. Defendant's second argument that 75 Pa.C.S.A. §3362 is not necessary simply because Ohio and New Jersey do not have a similar law is a mix between a red herring and circular reasoning. Merely because other states have not enacted a similar statute in no way invalidates the law of this Commonwealth. Ultimately, Defendant has failed to meet the substantial burden imposed upon those challenging the legitimacy of the statutes duly enacted by the people's representatives.

CONCLUSION

For the foregoing reasons, we respectfully recommend that Defendant's appeal be denied and that our Order of Sentence dated January 5, 2017 be affirmed accordingly.

BY THE COURT:

_____

Steven R. Serfass, J.