

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. SA-12-2016
	:	
MATTHEW C. SCHUTTER,	:	
	:	
Defendant	:	

Cynthia A. Dyrda Hatton, Esquire	Counsel for the Commonwealth
Assistant District Attorney	
Matthew C. Schutter	Pro Se

MEMORANDUM OPINION

Serfass, J. - October 24, 2016

Defendant, Matthew C. Schutter (hereinafter "Defendant"), has taken this appeal from his convictions of one (1) count of Driving While Operating Privilege is Suspended or Revoked¹ and one (1) count of Failing to Utilize Turn Signals (Turning Movements and Required Signals²) following a trial *de novo* held before the undersigned on July 25, 2016. Defendant was sentenced to pay the costs of prosecution and fines of two hundred dollars (\$200.00) and twenty-five dollars (\$25.00), respectively. We file the following Memorandum Opinion in accordance with Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the orders of sentence, entered on July 26, 2016, be affirmed for the reasons set forth hereinafter.

¹ 75 Pa.C.S.A. §1543(a) .

² 75 Pa.C.S.A. §3334(b) .

FACTUAL AND PROCEDURAL HISTORY

On November 23, 2015 at 9:25 p.m., Pennsylvania State Trooper Michael Sofranko and Corporal Shawn Noonan were on routine patrol in an unmarked police cruiser in the Borough of Weissport. They observed Defendant's beige Buick sedan make a left hand turn from Bridge Street onto Canal Street without utilizing its turn signal. (N.T. 7/25/2015, p. 16). The troopers then followed Defendant's vehicle and observed that vehicle make another left turn onto Long Run Road from Canal Street, again failing to utilize its turn signal. (Id.) Trooper Sofranko continued to follow Defendant's vehicle, found a safe location on Long Run Road, activated his cruiser's emergency lights and sirens, and initiated a traffic stop. (Id.) He approached the driver, who was the sole occupant of the vehicle and was identified as the defendant at trial, and requested his driver's license. (Id. At 17) Defendant responded by saying that his license was suspended. (Id.)

Trooper Sofranko then obtained, via the JNET database, a certified driver history of Defendant from the Pennsylvania Department of Transportation Bureau of Driver Licensing which confirmed that Defendant's driver's license status was suspended and expired at the time of the traffic stop on November 23, 2015. (See Commonwealth's Exhibit 1). The trooper subsequently issued two (2) traffic citations, one (1) for failure to use a turn signal and one (1) for driving while suspended. (Id. At 21).

At the conclusion of the trial *de novo*, Defendant was found guilty on both charges and sentenced to pay the costs and fines mentioned hereinabove. Written orders imposing sentence and containing the information required by Pa.R.Crim.P. 462(g) were issued on July 25, 2016. On August 23, 2016, Defendant filed a timely Notice of Appeal of his convictions in the office of the Carbon County Clerk of Courts. Pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), this Court issued an order on August 26, 2016 directing Defendant to file of record and serve upon the undersigned, a concise statement of matters complained of on appeal. On September 12, 2016, Defendant filed his concise statement in compliance with our order.

DISCUSSION

We address Defendant's claims of error in conformance with Pennsylvania Rule of Appellate Procedure 1925(a). We note, as a threshold matter, that "(a) concise statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no concise statement at all." Commonwealth v. Dowling, 778 A.2d 683, 686 (Pa. Super. 2001). Any issues not properly raised in Defendant's concise statement are deemed automatically waived. Commonwealth v. Lord, 719 A.2d 306, 309 (Pa. 1998); A bright-line rule requiring waiver of all issues not raised in a 1925(b) statement is "necessary to insure trial judges in each appealed case the opportunity to opine upon the issues which the appellant intends to raise, and thus provide appellate courts with

records amenable to meaningful appellate review." Commonwealth v. Castillo, 888 A.2d 775, 779 (Pa. 2005).

In his concise statement, Defendant has raised twelve (12) matters, the majority of which we find too insubstantial to address intelligently and consider to have been waived accordingly. We will address, in turn, the three (3) primary issues which we have identified as the essence of Defendant's appeal:

1. Whether Defendant was entitled to a jury trial on the charges of driving with a suspended license and failing to use a turn signal;

2. Whether Defendant's "constitutionally guaranteed" right to travel upon public roadways was violated by the Commonwealth and by this Court; and

3. Whether Defendant's right to a fair trial was violated by the actions of this Court.

I. TRIAL *DE NOVO*

Initially, Defendant contends that this Court deprived him of a jury trial "...that is guaranteed in the United States Constitution and the Pennsylvania Constitution." Here we note that both offenses with which Defendant was charged by Trooper Sofranko are classified in the Vehicle Code as summary offenses. See 75 Pa.C.S.A. §1543(a) and 75 Pa.C.S.A. §3334(b). A summary trial on those charges was held before Magisterial District Judge William J. Kissner on March 3, 2016. Following his convictions by Judge

Kissner, Defendant immediately filed summary appeals on that same date in the office of the Carbon County Clerk of Courts.

Pursuant to Pennsylvania Rule of Civil Procedure 462(a), "When a defendant appeals after the entry of a guilty plea on a conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard *de novo* by the judge of the court of common pleas **sitting without a jury.**" Pa.R.Crim.P. 462(a) (emphasis added). The trial *de novo* was held in this Court on July 25, 2016. Defendant was convicted on that date and he subsequently appealed. He was not entitled to a jury trial and his claim to the contrary is without merit.

II. DEFENDANT'S RIGHT TO TRAVEL UPON PUBLIC ROADWAYS

Defendant next argues that his "personal liberty", consisting of "...the right of locomotion-to go when and where one pleases...", was violated by the Commonwealth in prosecuting the instant Vehicle Code violations and by this Court in convicting Defendant of those offenses. (See Defendant's 1925(b) statement, at paragraph 5).

It is the settled law of this Commonwealth that "[o]perating a motor vehicle upon a Commonwealth highway is not a property right but a "privilege", Mauer v. Boardman, 7 A.2d 466 (Pa. 1939); Plowman v. Comm. Dept. of Trnsp, Bureau of Driver Licensing, 635 A.2d 124, 126 (Pa. 1993). As such, the Commonwealth has the right to control and regulate its use. Commonwealth v. Strunk, 582 A.2d

1326 (Pa. Super. 1990). Moreover, to obtain the benefit of such a privilege, a driver must abide by the laws of the Commonwealth relating to the privilege. Commonwealth v. Zimmick, 653 A.2d 1217 (Pa. 1995).

It is to be emphasized that our legislature enacted the Motor Vehicle Code, in part, to protect the public safety and to provide a uniform system and code of law regulating the use and operation of motor vehicles. Id. At 1223. Clearly, the most basic of those laws is that one must possess a valid driver's license in order to operate a motor vehicle upon the roadways of the Commonwealth and there is no dispute as to the status of Defendant's license at the time of the traffic stop initiated by Trooper Sofranko.

Accordingly, we find Defendant's second issue to be meritless.

III. DEFENDANT'S RIGHT TO A FAIR TRIAL

Finally, Defendant contends that he "...did not get a fair trial because of the Judge's unconstitutional and unlawful actions!" (See Defendant's 1925(b) statement, at paragraph 12). This vague contention leaves the Court guessing as to what issues Defendant is attempting to preserve for appellate review. See Madrid v. Alpine Mountain Corp., 24 A.3d 380 (Pa. Super. 2011) (recognizing that "[w]hen a court has to guess what issues an appellant is appealing, that is not enough for meaningful review"). Therefore, we find Defendant's blanket assertion that he was deprived of a fair trial by "unconstitutional" and "unlawful" actions of this Court to be devoid of merit. To the contrary, we

submit that a review of the transcript in this matter leads to the certain conclusion that Defendant was afforded a full and fair trial before an impartial jurist and that this Court's verdict is fully supported by the evidence of record.

CONCLUSION

For the foregoing reasons, we respectfully recommend that Defendant's appeal be denied and that our orders of sentence dated July 25, 2016 be affirmed accordingly.

BY THE COURT:

Steven R. Serfass, J.