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OPINIONS

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COMMONWEALTH OF PENNSYLVANIA vs. TORRELL JONES*Traffic Stop*

Police officer may require the driver of a lawfully stopped vehicle to exit the vehicle without any additional probable cause or reasonable suspicion without violating an individual's Fourth Amendment rights.

CC20210002953. In the Court of Common Pleas of Allegheny County, Pennsylvania. Criminal Division. Todd, J. March 30, 2023.

OPINION

This is an appeal by Defendant, Torrell Jones, after he was found guilty on October 3, 2022 following a non-jury trial of the summary offenses of Harassment in violations of 18 Pa.C.S.A. 2709(a)(3); Disorderly Conduct in violation of 18 Pa.C.S.A. 5503(a)(4); and the Vehicle code violations of Failure to Carry Registration (75 Pa.C.S.A §1311(b)); Improper Display of Plate (75 Pa.C.S.A §1332 (a)); Failure to Carry License (75 Pa.C.S.A §1511(a)); and, Improper Sun screening (75 Pa.C.S.A §4524(1)). Defendant was sentenced to three consecutive 90 days periods of probation and fines at each offense for the motor vehicle code violations. Defendant filed a Notice of Appeal to the Superior Court on October 17, 2022. On October 31, 2022 an order was entered pursuant to Pa.R.A.P. 1925(b)(2) directing Defendant to file a Concise Statement of Matters Complained of on Appeal within 21 days of the order. On January 5, 2023 the trial court entered an order recusing itself from this case. As of the date of this opinion, the docket reflects that Defendant has not served or filed a Concise Statement of Matters Complained of on Appeal.

BACKGROUND

This matter arises out of a traffic stop which occurred on December 2, 2020. At trial the Commonwealth presented the testimony of Officer Hunter Scherf who was employed at the time by the City of Duquesne police department. Officer Scherf testified that he was on patrol in full uniform in a marked vehicle when he observed a vehicle on South 2nd Street that was not exhibiting a license plate and had extremely dark tinted windows. (T., p. 10) Officer Scherf initiated a traffic stop and when he approached the vehicle he requested Defendant, who was the driver of the vehicle, to provide his license and registration. Officer Scherf testified that Defendant began arguing with him about his right to conduct the traffic stop and refused to provide his license and registration. Defendant informed Officer Scherf that there was a paper tag in the back window. Officer Scherf testified that the paper tag, which was in the bottom left side of the rear window, was only visible when he approached the vehicle on foot due to the extremely dark tint of the windows. (T., pp. 12-13) Officer Scherf also observed beer cans on the back seat and that Defendant was “wearing a big, puffy jacket that covered his waistband.” (T., p. 13) As the location of the stop was in a high crime area with “a lot of gun violence” and that Defendant was “irate” and refusing to identify himself, Officer Scherf, for his safety and in an attempt to deescalate the encounter, asked Defendant to exit the vehicle. (T., p. 14) Defendant repeatedly refused to exit the vehicle and Officer Scherf attempted to remove him from the vehicle. Defendant resisted and struggled with Officer Scherf and Officer Johnson until he was ultimately removed from the vehicle and placed under arrest. (T., pp. 14-15) On cross examination Officer Scherf testified that while it was later determined that Defendant had a valid license and that the vehicle had a valid Ohio registration, that he ordered Defendant to exit the vehicle for his safety during the traffic stop. (T., p. 24)

Defendant called his fiancé, Sierra Wilson, who testified that when the officer approached the vehicle that Defendant complied when asked for his identification and that Defendant asked the officer to check the plate that was in the back window. (T, pp. 29-30) Ms. Wilson also confirmed that when the officer asked Defendant to exit the vehicle that Defendant repeatedly asked why and then the officer opened the vehicle door and pulled Defendant out and Defendant was still asking what was going on and was then thrown to the ground and put in handcuffs. (T.p.31)

Defendant requested a continuance to question Officer Johnson, who was not present at the trial and had not been subpoenaed by Defendant, and the case was continued to October 3, 2022. At that time Defendant had not subpoenaed Officer Johnson and presented no further testimony regarding the incident. (T., p. 2-3) After review of documents submitted by Defendant, the record reflects that Defendant was found guilty and sentenced as set forth above.

DISCUSSION

The evidence establishes that Defendant failed to comply with the lawful order to exit the vehicle when instructed by Officer Scherf and had to be physically removed and restrained as he struggled with the officers. Officer Scherf had reasonable suspicion to investigate a possible motor vehicle code violation when he initiated the traffic stop. A police officer may require the driver of a lawfully stopped vehicle to exit the vehicle without any additional probable cause or reasonable suspicion without violating an individual's Fourth Amendment rights. The serious and substantial dangers inherent in traffic stops, and the relatively minor intrusion upon the privacy rights of the driver in situations where the vehicle has been lawfully stopped, allow the officer, in consideration of his safety to order the driver and passengers from the vehicle. *Commonwealth v. Pratt*, 930 A.2d 561, 564 (Pa. Super., 2007) In this case, Officer Scherf testified that he was concerned for his safety. Defendant's refusal to exit the vehicle which necessitated him being removed from the vehicle and his struggle with the officers supports the verdicts.

The record also reflects that an order was entered and served on Defendant directing Defendant to file a Concise Statement of Errors Complained of on Appeal within twenty-one (21) days of October 31, 2023 and Defendant has failed to do so. Therefore, all issues are deemed waived.

BY THE COURT:

/s/The Hon. Randal B. Todd

ROBERT T. KANE and RENEE KANE vs. CYNTHIA KORTZ*Appeal*

Failure to preserve issues for appeal by failing to file a post-trial motion or a concise statement of errors.

AR-18-004452. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. McVay, J. March 14, 2023.

Pa.R.C.P. 1925(b) OPINION**Procedural History**

On January 20, 2023, Cynthia Kortz ("Kortz") filed this appeal of my January 10, 2023, Non-Jury Verdict that found in favor of Robert and Renee Kane ("Kanes") and awarded \$19,475.80 for damages sustained to their property located at 4003 Melvin Street, Munhall, PA 15120. Kortz did appear pro se at her non-jury trial as her counsel withdrew on February 24, 2022, which was almost a year before the non-jury trial that was held before me on January 10, 2023. After her counsel withdrew there were three continuances granted for Kortz due to the deaths of her parents and her own illness.

On January 23, 2023, after receiving the notice of appeal filed on January 20, 2023, I ordered Kortz to file a concise statement of errors within twenty-one (21) days pursuant to Pa.R.A.P. 1925(b). I have not received a concise statement of errors as of the date of this opinion. While I did not receive a concise statement of errors, Kortz's Notice of Appeal appeared to include a letter stating her reasons for appeal were her confusion about my award and the fact that she had not received anything regarding receipts and insurance claims from the Kanes' attorney.

Discussion

Issues not included in the Concise Statement of Errors and/or not raised in accordance with the provisions of Pa.R.A.P. 1925(b)(4) are waived. Pa.R.A.P. 1925(b)(4)(vii). Here, Kortz did not preserve any issues for appeal when she failed to provide her reasons for appeal in the requested Concise Statement of Errors pursuant to Pa.R.A.P. 1925(b).

Further, Kortz did not file any post-trial motions preserving any issues for appeal after I had entered my Non-Jury Verdict pursuant to Pa.R.C.P. 227.1(c). "If an issue has not been raised in a post-trial motion, it is waived for appeal purposes." *P.S. Hysong v. Lewicki*, 931 A.2d 63, 66 (Pa. Commw. Ct. 2007). The purpose of this rule is to provide me with an opportunity to correct the errors and avert the need for appellate review. *Id.* Here, Kortz did not afford me an opportunity to address her issues for appeal by failing to file post-trial motions.

Assuming, *arguendo*, that Kortz did file the necessary motion and concise statement of errors, she contends that my order was not clear and that she did not have the necessary receipts. I entered my Non-Jury Verdict in accordance with Pa.R.C.P. 1038(b) which permits my decision to consist of only general findings as to all parties and dispose of all claims for relief.

The Superior Court in *Davis v. Borough of Montrose*, 194 A.3d 597, 605 (2018), defined its role in cases involving non-jury verdicts as:

to determine whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in any application of the law. The findings of fact of the trial judge must be given the same weight and effect on appeal as the verdict of the jury.

Id.

At the non-jury trial, Kortz's only objection to the Kanes' exhibit book being admitted was directed towards what time the pictures in Exhibit No. 2 were taken and I overruled this objection, because I could determine the time that the pictures were taken through trial testimony. *See* Trial Transcript "TT" 1/10/2023 P. 8-10. There was no objection to Exhibit No. 4 which detailed the work performed, its cost, and what work was attributable to Kortz, which along with the testimony, I used to calculate my award amount. *Id.* Ms. Kortz also indicated that she had received a copy of the exhibit book in advance of the trial. TT 1/10/2023 P. 9.

Further, Renee Kane who is a plaintiff, testified that Exhibit No. 4 was a description of the work costs and the costs attributable to Kortz that the Kanes had paid, which I found credible. TT 1/10/2023 P.16-17. Then, Donald McFarland who worked for the contractor who had performed the work testified to how Exhibit No. 4 was broken down and detailed the work that was done. TT 1/10/2023 P.24-28. I further questioned Donald McFarland and found him credible, and there were no objections from Kortz regarding his testimony. TT 1/10/2023 P. 28-33. Based off of the admitted exhibits and trial testimony, I was able to determine the damages that were attributable to Kortz and make a finding for the Kanes and an award.

In conclusion, Kortz has failed to preserve any issues for appeal by failing to file a post-trial motion or a concise statement of errors. Assuming *arguendo* that my verdict was not clear and receipts were not provided to Kortz, my findings were based on credible testimony, and the trial exhibits were provided to Kortz prior to trial and properly admitted.

BY THE COURT:

/s/The Hon. John T. McVay Jr.