IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. 04-11,848
	:	
vs.	:	CRIMINAL DIVISION
	:	
SAMUEL SHINER,	:	
Defendant	:	Summary Appeal

OPINION AND VERDICT

Before the Court is Defendant's appeal from his conviction of the summary offense of exceeding the speed limit on a hazardous grade, in violation of Section 3365(c) of the Vehicle Code. A hearing was held April 13, 2005.

The Section of which Defendant was found guilty provides:

> **Section 3365. Special speed limitations**
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> **(c) Hazardous grades.**—The department and local authorities on highways under their respective jurisdictions may conduct traffic and engineering investigations on grades which are considered hazardous. If the grade is determined to be hazardous, vehicles having a gross weight in excess of a determined safe weight may be further limited as to maximum speed and may be required to stop before proceeding downhill. The restrictions shall be indicated by official traffic-control devices erected and maintained according to regulations established by the department.

Defendant does not contest the fact he was traveling 26 miles per hour above the posted speed of 45 mph. Rather, Defendant argues the Commonwealth has failed to produce evidence the posting of the stretch of highway upon which he was traveling was done only after a determination the grade is hazardous, made only after a proper traffic and engineering investigation. The Commonwealth contends such a showing is unnecessary.

This same issue has been addressed by Superior Court, in Commonwealth v. Parker, 567 A.2d 1052 (Pa. Super. 1989). There, the appellant was convicted of exceeding the 35 mph speed limit posted in an urban district, and argued the Commonwealth had to show the posting

was in accordance with a proper determination that the zone was indeed an urban district. The court rejected that argument, reasoning as follows:

> As the trial court found, the posting of a sign designating a 35 mile per hour zone is a function of the municipal or state authority empowered by statute to establish such zones. It is a rule of law that the acts of such officials are entitled to a prima facie finding of regularity, Bethlehem Steel Co. v. Board of Finance and Revenue, 431 Pa. 1, 244 A.2d 767 (1968), which in this case requires a finding that the sign was posted in an urban district as defined in 75 Pa.C.S. 102, Definitions. A rebuttable presumption is created that the situs of the offense was in an urban district or another properly zoned section. See Albert v. Lehigh Coal and Navigation Co., 431 Pa. 600, 246 A.2d 840 (1968). This presumption results from the fact Pennsylvania law establishes two basic maximum speed limits: 35 miles per hour in any urban district and 55 miles per hour in other locations. 75 Pa.C.S. § 3362(a)(1) and (2). Any other posted speed limit must be based on an engineering and traffic study or fall in special zones such as school and work zones, all of which are covered by section 3362(a)(3). 67 Pa.Code § 211.72 Speed limits in other than work areas. Hence, if the area where the offense occurred was posted as a 35 mile per hour zone, the law presumes it is an urban district because of the presumption of regularity attributed to official acts. If such were not the case, in every traffic violation situation, before a conviction could be obtained, it would first be necessary to prove that the state or municipality properly exercised its authority in posting a zone, regardless of the evidence of the guilt of the party charged. A presumption of regularity is particularly suitable in properly posting speed limits, due to the extraordinary number and variations of such postings throughout the Commonwealth.
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> As a result, the Commonwealth need not prove appellant was exceeding the 35 mile per hour maximum speed limit in an urban district, but it need only show, as it did, appellant operated a vehicle in excess of 35 miles per hour in a 35 mile per hour zone. The Commonwealth having made that showing, it was then incumbent upon appellant to rebut the presumption the offense occurred in such a district and that officials improperly zoned that stretch as an urban district. Presumptions throw upon the party against whom they work, the duty of going forward with the evidence. MacDonald v. Pennsylvania R. Co., 348 Pa. 558, 36 A.2d 492 (1944). See also, Rice v. Shuman, 513 Pa. 204, 519 A.2d 391 (1986); Lynn v. Cepurneek, 352 Pa.Super. 379, 508 A.2d 308 (1986). "A presumption of law compels the fact finder to reach a particular conclusion in the absence of evidence to the contrary . . . . A legal presumption may also be based upon procedural expediency or public

> policy." Greene v. Oliver Realty, Inc., 363 Pa.Super. 534, 543, 526 A.2d 1192, 1196 (1987) (citations omitted). In the instant case, appellant made no attempt to rebut the presumption the offense occurred in a properly zoned urban district. As such, the trial court correctly presumed the offense occurred in an urban area and found appellant guilty under 75 Pa.C.S. § 3362(a)(1). There are thousands of urban districts with 35 mile per hour speed limits in Pennsylvania and it would be ludicrous to proceed, as appellant suggests, on the notion the Commonwealth must prove the speeding violation occurred in a properly zoned urban district in every case where a defendant is accused of exceeding the 35 mile per hour maximum speed limit. We therefore agree with the trial court.

Id. at 1053 – 1054 (footnote omitted). Similarly, it is presumed in the instant case that the posting of the hazardous grade was proper. Defendant having failed to rebut that presumption, and the Commonwealth having shown that he exceeded the posted speed limit, Defendant's conviction must be upheld.

VERDICT

AND NOW, this day of April 2005, for the foregoing reasons, Defendant's appeal is hereby DISMISSED. The Judgment of Sentence dated October 12, 2004, is hereby AFFIRMED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Howard Langdon, Esquire
Gary Weber, Esquire
Hon. Dudley Anderson