IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	**:**	
	:	
v.	**:**	**No. SA-34-2008**
	:	**CRIMINAL DIVISION**
SCOTT WIDING,	**:**	**APPEAL**
Defendant	**:**	

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

The Defendant appeals this Court's Order dated August 12, 2008, finding the Defendant guilty of Disorderly Conduct (unreasonable noise). The Court notes a Notice of Appeal was timely filed on September 9, 2008, and that the Defendant's Concise Statement of Matters Complained of on Appeal was then filed on October 7, 2008. The Defendant challenges the Court's Order on two grounds: one, there was insufficient evidence for the Court's finding of guilty as to disorderly conduct and as to Defendant's intent; and second, the Court erroneously refused to consider readings from a decibel meter offered by a Defense witness at trial.

Background

Sometime after 11:30 p.m on January 19, 2008, Brian Minotti (Minotti) reported loud music coming from the side alley perpendicular to his street. Minotti related there was a band playing in a garage about 70-80 yards away that caused the panes in the windows of his home to rattle and his disrupt his living environment. He testified that he has complained to the police multiple times about the noise and that the noise occurs at all hours of the night from 7:00 or 8:00 p.m. to 12:30 or 1:00 a.m.

At 11:50 p.m. on January 19, 2008, Officer Devin Thompson (Thompson) of the Borough of South Williamsport Police Department responded to a complaint at Rooster Recording Studio, which is owned by Scott Widing (Defendant). Thompson testified that prior to this charged incident, his department has received five or six complaints all arising from Defendant's recording studio. Thompson related he was not always able to make contact with the Defendant, but when he was able, he gave the Defendant verbal warnings. He related that when he did speak with the Defendant in each of the prior complaints, Defendant was usually sarcastic and/or defiant and would tell the police they were harassing him. The Defendant would never immediately cease the music and tell the police they were "recording a music video and would be done shortly."

Thompson testified that on the night of this incident, he parked directly in front of Minotti's house, which is 80 yards from the Defendant's studio, where he could very audibly hear a live band playing the drums, snares, and the bass guitar. Thompson related he then made contact with the Defendant who said "I knew you guys would be here." Defendant then attempted to give Thompson documents from his attorney but the officer refused to accept them. Thompson explained to the Defendant that he was there on a noise complaint and he (Defendant) would be receiving a citation. Thompson also explained that the location of the Defendant's studio is in a primarily residential area.

Roy Pursel (Pursel) testified that he and the Defendant made improvements to the studio in an attempt to reduce the sound heard by others outside. Pursel related they covered some of the windows, walls, and doors with materials that help deaden sound. He also testified that while the improvements are sound deadening they are also acoustical and improve the sound inside the studio. Pursel related that on the night of January 19, 2008, he asked the band to play as loud as

they could and tested that sound, against the sound from starting his truck using a decibel meter. He was able to determine the sound from starting his truck was louder than the sounds coming from the studio. He also testified he used the decibel meter because the Defendant asked him to test whether the sounds coming from the studio were unreasonable. Finally, Pursel related there are numerous other noises in the area which are louder, such as the trains and noises coming from Keystone Friction Hinge.

Nathan Persun testified he lives next door to the Defendant; the studio adjoins, but is not facing his property, and is not more than 75 feet away. Persun related he was on his porch on January 19, 2008 around 11:50 p.m. and did not hear the band playing. He related the Defendant had made improvements to reduce the noise coming from his studio and that he (Persun) rarely heard sounds coming from the studio. Persun also related the Defendant approached him on numerous occasions to ask if there was bothersome noise coming from his studio. Persun testified he has no objection to the level of noise coming from the studio. Finally, he explained that there are other sounds in the area such as the announcer at the high school football games and the noise from Keystone Friction Hinge, which are louder.

Franklin Smith testified that he lived approximately 75 feet from the Defendant on the night of January 19, 2008. Smith related he witnessed the Defendant making sound proofing improvements to the studio. Smith also testified the Defendant came to him on numerous occasions in order to make certain his studio was not a disturbance. Finally, he testified the football games are louder then the noise from Defendant's studio when he has a band playing.

Defendant testified he purchased the real estate upon which his studio is with the intent of using it as a commercial studio. He explained that he checked with the Borough to ensure it was a lawful business use at that location. Defendant testified he made numerous improvements to

his studio costing him approximately $3000.00 in an attempt to minimize the amount of sound escaping from the building. Defendant related that when he purchased the property he went to every neighbor and told them about his business. He also explained that he told the neighbors that if there were ever any problems to let him know. He testified Minotti did not live in the neighborhood at the time.

Defendant explained that most musicians have day jobs so the recording studio must be available in the evening hours and on weekends. He testified his business closes at midnight and that there has never been a band there after midnight. Defendant also explained he cannot conduct a lawful recording studio without recording until midnight. Defendant explained that on January 19, 2008, he told Thompson the band would be over by midnight and that the band quit about thirty seconds after Thompson arrived. Defendant also related he had Pursel use a decibel meter that night to see how much noise was being generated and found the level to be reasonable when tested against other noises. Finally, Defendant related he has had numerous contacts with the police at his studio.

At the summary appeal trial held on August 12, 2008, this Court found the Defendant guilty of the summary offense of Disorderly Conduct, unreasonable noise. Defendant was fined $100 plus the costs of prosecution.

Discussion

There was insufficient evidence for the Court's finding of guilty as to disorderly conduct and as to Defendant's intent

Defendant asserts the Commonwealth's evidence presented at trial was insufficient for this Court to find him guilty of disorderly conduct. Specifically, Defendant alleges there was insufficient evidence as to his intent.

The test used to determine the sufficiency of the evidence in a criminal matter is "whether the evidence, and all reasonable inferences taken from the evidence, viewed in the light most favorable to the Commonwealth, as verdict-winner, were sufficient to establish all the elements of the offense beyond a reasonable doubt." Commonwealth v. Maloney, 876 A.2d 1002, 1007 (Pa. Super. Ct. 2005) citing Commonwealth v. Lawson, 759 A.2d 1 (Pa. Super. Ct. 2000). When applying "the above test, the entire record must be evaluated and all evidence actually received must be considered." Commonwealth v. Lambert, 795 A.2d 1010, 1015 (Pa. Super. Ct. 2002). "[T]he trier of fact, while passing upon the credibility of witnesses and the weight to be afforded the evidence produced, is free to believe all, part or none of the evidence." Commonwealth v. Griscavage, 517 A.2d 1256, 1257 (1986). An appellate court should not interfere with the trial court's findings in a non-jury trial unless "the evidence is so weak and inconclusive that as a matter of law no probability of fact can be drawn from the combined circumstances." Commonwealth v. George, 878 A.2d 881, 886 (Pa. Super. Ct. 2005) (quoting Commonwealth v. Wright, 722 A.2d 157, 161 (Pa. Super. 1998)).

The elements of the summary offense of Disorderly Conduct require that a person "be shown to have made unreasonable noise . . . [and] the noise must be made with *either* (a) the intent to cause public inconvenience, annoyance or alarm, *or* (b) recklessly creating a risk

thereof." Commonwealth v. Alpha Epsilon Pi, 540 A.2d 580, 583 (Pa. Super. Ct. 1987). See also 18 Pa. C.S. § 5503(a)(2). "[P]ublic means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are . . . any neighborhood . . .." 18 Pa.C.S. § 5503(c).

In Alpha Epsilon Pi, the police officer went to the area of the fraternity house after he received a complaint from a resident of that neighborhood. 540 A.2d at 583. At 11:20 p.m., the officer stopped his car fifty yards away from the fraternity house where he could hear music coming from the house. Id. The Court found that given the time of day, the officer's ability to hear the noise from a distance of fifty yards and the initial complaint to the officer was sufficient to permit the trier of fact to find the noise to be unreasonable. Id.

In the instant case, the Commonwealth produced evidence that Thompson received a complaint from Minotti a resident of the neighborhood and parked in front of his house 80 yards away from the recording studio where he could very audibly hear a live band playing.
The Court finds the evidence was sufficient to show the Defendant recklessly created an unreasonable noise. Viewed in the light most favorable to the Commonwealth, the Court finds there was sufficient evidence for it to find the Defendant guilty of Disorderly Conduct.

The Court erroneously refused to consider readings from a decibel meter

Defendant asserts the Court erred in refusing to consider readings from a decibel meter offered by a Defense witness at trial. Under the Pennsylvania Rules of Evidence, authentication is a condition precedent to the admissibility of evidence. 901(a). "Evidence describing a process or system used to produce a result and showing that a process or system produces an accurate result" conforms to the requirements of this rule. Pa.R.Evid. 901(b)(9).

At the summary appeal trial, the Defendant and Pursel both testified they tested the decibel meter against other noises in the community. However, neither the Defendant nor Pursel were able to testify as to the decibel meter's accuracy. Therefore, this Court properly excluded the decibel meter readings because the Defendant was unable to show he was measuring the meter against known standards to know that his machine was reading an accurate level.

For the foregoing reasons, this Court respectfully suggests that its August 18, 2008 Order finding the Defendant guilty of Disorderly Conduct (unreasonable noise) be affirmed.

By the Court,

Dated: _____ Nancy L. Butts, Judge

xc: DA (PP)
Ryan C. Gardner, Esq.
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)