

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:
	:
vs.	: NO. SA-82-08
	:
DENISE PINKETT,	:
Defendant	: 1925(a) OPINION

Date: May 20, 2009

OPINION IN SUPPORT OF THE ORDER OF JANUARY 13, 2009 IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Defendant Denise Pinkett has appealed from this Court's order of January 13, 2009, at which we determined that she failed to stop at a stop sign and found her guilty of violating section 3323(b) of the Motor Vehicle Code. Ms. Pinkett's appeal should be denied and the Court's order of January 13, 2009 affirmed. In support of this contention, we rely upon our comments made, on the record, when we rendered our decision on January 13, 2009. Nevertheless, we will briefly address Ms. Pinkett's claims.

Ms. Pinkett filed a Statement in the form of a one paragraph explanation for why she feels should not have been found guilty of violating section 3323(b). Her Statement can be parsed into two main issues. One, that there was an insufficiency of evidence to support a conviction especially in that the Commonwealth could not produce a video of the offence which at one time did exist. Two, that the verdict was contrary to the weight of the evidence in that, in Ms. Pinkett's view, the officer could not have possibly witnessed a violation of the offense according to his testimony. Conversely, the Court found the officer's testimony to be credible and corroborated by Ms. Pinkett.

On September 2, 2009, Ms. Pinkett was stopped by Williamsport Police Officer Nathan Moyer. That day the officer had set up a stationary patrol in a marked police car near the intersection of Penn Street and Sheridan Street, for the primary purpose of monitoring possible stop sign violations. N.T., pp. 4-5. The stationary patrol was located in such a way that the officer had a clear, straight ahead visual of the stop sign location. N.T., p. 5. He observed a blue Pontiac minivan driving northbound on Penn Street which slowed, but did not come to a stop, before turning eastbound onto Sheridan Street. Id. p. 5. Specifically, the officer described that although the stop sign is five to ten feet away from the actual intersection, and most drivers do not stop at the stop sign but instead stop at the intersection in order to get a clear view of oncoming traffic, the minivan did not stop at all at any time and instead slowed to five miles per hour or less in order to make the turn and then accelerated again onto Sheridan Street. N.T., pp. 22. He never saw the minivan's break lights turn on. Because nobody was directing the minivan through the stop sign, and when the officer stopped the minivan a few blocks later and it was being driven by Ms. Pinkett, he ticketed Ms. Pinkett for violating 3323(b) of the Motor Vehicle Code. N.T., p. 6.

Section 3323(b) of the Motor Vehicle Code is as follows:

(b) DUTIES AT STOP SIGNS.-- Except when directed to proceed by a police officer or appropriately attired persons authorized to direct, control or regulate traffic, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line or, if no stop line is present, before entering a crosswalk on the near side of the intersection or, if no crosswalk is present, then at the point nearest the intersecting roadway where the driver has a clear view of approaching traffic on the intersecting roadway before entering. If, after stopping at a crosswalk or clearly marked stop line, a driver does not have a clear view of approaching traffic, the driver shall, after yielding the right-of-way to any pedestrian in the crosswalk, slowly pull forward from the stopped position to a point where the driver has a clear view of approaching traffic. The driver shall yield the right-of-way to any vehicle in the intersection or

approaching on another roadway so closely as to constitute a hazard during the time when the driver is moving across or within the intersection or junction of roadways and enter the intersection when it is safe to do so.

In evaluating a challenge to the sufficiency of the evidence, a court must determine whether, viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, together with all reasonable inferences therefrom, the trier of fact could have found that each and every element of the crimes charged was established beyond a reasonable doubt. *Commonwealth v. Little*, 879 A.2d 293, 297 (2005). Although a conviction must be based on more than mere suspicion or conjecture, the Commonwealth is not required to establish guilt to a mathematical certainty. *Commonwealth v. Thomas*, 867 A.2d 594, 597 (2005). If the record contains support for the conviction, then the fact-finder's decision may not be disturbed. *Id.* The fact-finder is free to believe some, all, or none of the evidence. *Id.*

Videotapes of traffic stops often are taped over and otherwise cannot be accounted for which, in these circumstances, can be a reasonable explanation in itself. In this case, there was probably a videotape, but it was not presented at the time of the hearing as it could not be accounted for. We found that it was reasonable in that sometimes these things do not work out and cannot be played even if they at one time did exist. We did not find the lack of a videotape being presented to be determinative. Instead, we found there was no reason that the officer would not have seen Ms. Pinkett stop, if Ms. Pinkett would have, in fact, stopped. The officer was watching the intersection for the very purposes of viewing potential stop sign violations and enforcing section 3323(b) of the Motor Vehicle Code. The officer testified that in clear view he witnessed Ms. Pinkett violate the Motor Vehicle Code as she failed to come to a stop anywhere when passing through an intersection, at which there was a stop sign.

Ms. Pinkett argued that the officer's "testimony did not support his version of the evidence to make them possible," in that the officer did not see brake lights but did observe car slow speed of travel, and that the events that he described at the location that he observed them were impossible.

As a general rule, a weight of the evidence claim is primarily addressed to the discretion of the judge who actually presided at trial. *Armbruster v. Horowitz*, 813 A.2d 698, 702 (2002). It is axiomatic that it is the function of the [judge] as the finder of fact to determine the credibility of the witnesses. *Commonwealth v. Champney*, 832 A.2d 403, 408 (2003), cert. denied, 542 U.S. 939, (2004) (citing *Commonwealth v. Johnson*, 668 A.2d 97, 101 (1995), cert. denied, 519 U.S. 827(1996)). A new trial should be granted only in truly extraordinary circumstances, i.e., "when the [judge]'s verdict is *so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail.*" *Abruster*, 813 A.2d at 703. *Id.* (emphasis in original).

Contrary to Ms. Pinkett's assertions, this Court found the officers testimony to be quite credible. In fact, the officer's testimony, that he did not see the minivan's brake lights come on, is completely consistent with the way that he described the minivan traveling through the intersection, that it did not stop but rather rolled through the intersection and then accelerated after the turn onto the next street. Without specific evidence detailing an "extraordinary circumstance," our finding of fact as to the credibility of witnesses must not be disturbed on appeal.

For the foregoing reasons, the verdict of January 13, 2009 should be affirmed and Ms. Pinkett's appeal dismissed.

BY THE COURT,

William S. Kieser, Senior Judge

cc: Denise Pinkett
1911 Lincoln Drive, Williamsport, PA 17701
DA
Judges
Gary L. Weber, Esquire (Lycoming Reporter)