

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA,

:

: **NO. SA 27-2012**

:

vs.

:

:

ROBERT T. WALKER,

: **RULE 1925(a) OPINION**

Defendant,

:

Date: October 9, 2012

**OPINION IN SUPPORT OF THE ORDER OF JULY 12, 2012, IN COMPLIANCE WITH
RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Robert T. Walker has appealed this Court's sentence imposed pursuant to his de novo hearing in which he was found guilty on July 12, 2012. This Court sanctioned Mr. Walker with a fine of sixty-three dollars (\$63.00) and the cost of prosecution. This sentence was imposed on July 12, 2012 based on the finding that Defendant operated his vehicle 19-miles above the designated speed limit in a hazardous grade.

In Mr. Walker's Concise Statement of Matters Complained of on Appeal, filed August 31, 2012, Mr. Walker raised the issue of insufficient evidence by issuing the following question:

"Did the Court commit an error of law when it found Defendant guilty of PA 75 § 3365 §§C-14 and 75 § 3365 §§ C-19, in that the determination of weight of the trailer and testimony of the trooper is insufficient as a matter of law to prove beyond a reasonable doubt the actual weight of the modified trailer, in question."

Mr. Walker's appeal should be denied and the verdict and sentence affirmed.

I. FACTS AND PROCEDURAL HISTORY

On Thursday, July, 12, 2012 during a de novo hearing of *Commonwealth v. Walker* the following facts were determined to have occurred.

On the morning of January 20, 2012 Corporal Curtis Albaugh of the Pennsylvania State Police was in a marked police unit on Route 15 and Route 2012 in Lycoming County, Pennsylvania doing traffic patrol. Corporal Albaugh was enforcing the speed in a hazardous grade zone for trucks over 21,000 pounds. The speed limit for trucks over 21,000 pounds was thirty-five (35) miles per hour; for vehicles less than 21,000 pounds the speed limit was 55 miles per hour.¹ At 7:55 am Corporal Albaugh used his radar gun and clocked a tractor trailer going 54 miles per hour in the 35 miles per hour zone. Corporal Albaugh then proceeded to do a traffic stop on the tractor trailer. On the day in question the truck was not weighed. The registration that the defendant provided to Corporal Albaugh listed the trailer as weighing 12,500 pounds and the tractor, truck part, as weighing 17,000 pounds which would give the weight of the truck as 29,500 pounds.

The corporal has been a motor carrier officer since 1993, relying on his years of experience and the documentation provided by the driver, Robert Walker, Corporal Albaugh was able to ascertain that the weight of the truck was over 21,000 pounds. The defendant then received a citation for violating 75 Pa. C.S. § 3365 (c) for going 54 mph in a 35 mph zone.

On February 29, 2012 the defendant appeared at the office of Magisterial District Judge James H. Sortman. At that time, as a result of negotiations the charge was changed from traveling 19 miles per hour over the speed limit in a hazardous zone, 75 Pa. C.S. § 3365 (C) -19,

¹ Past tense is used because at the time of the hearing that particular part of the road was under construction and the speed limits had changed.

to traveling 14 miles per hour over the speed limit in a hazardous zone, 75 Pa. C.S. § 3365 (C) – 14, to which the defendant plead guilty. The defendant then appealed the guilty verdict and appeared before this Court on July 12, 2012 for a de novo hearing. After a de novo hearing the defendant was determined to be guilty of traveling 19 miles per hour over the speed limit in a hazardous zone, a violation of 75 Pa. C.S. § 3365 (C) -19.

II. DISCUSSION

§ 3365. Special speed limitations.

....

(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.

At issue is not the rate of speed that the Defendant was traveling, not the speed limit itself, nor the fact that the area is indeed a hazardous zone. The issue is the combined weight of the truck and trailer. The defendant argued that if the combined weight of the truck and trailer was 21,000 pounds or less then his speed was proper. The defendant further argued that because on January 20, 2012 the truck was not weighed to determine the exact weight the Commonwealth did not prove beyond a reasonable doubt the elements of 75 Pa. C.S. § 3365 (c).

A claim challenging the sufficiency of the evidence is a question of law. *Commonwealth v. Sullivan*, 820 A.2d 795, 805 (Pa. Super. 2003). When reviewing a challenge to the sufficiency of the evidence, the following standard of review is employed:

‘The standard we apply when reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant’s guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced is free to believe all, part or none of the evidence.’

Commonwealth v. Gray, 867 A.2d 560, 567 (Pa. Super. 2005) (quoting *Commonwealth v. Nahavandian*, 849 A.2d 1221, 1229-30 (Pa. Super. 2004)). Direct and circumstantial evidence receive equal weight when assessing the sufficiency of the evidence. *Commonwealth v. Grekis*, 601 A.2d 1275, 1280 (Pa. Super. 1992). Whether it is direct, circumstantial, or a combination of both, what is required of the evidence is that it taken as a whole links the accused to the crime beyond a reasonable doubt. *Commonwealth v. Robinson*, 864 A.2d 460, 478 (Pa. 2004).

In the present case the evidence presented was the testimony of Corporal Albaugh, a twenty-four (24) year veteran who has been a motor carrier officer and part of the weight team since 1993, who relied both on his training and years of experience combined with the documentation provided by the defendant to ascertain that the defendant’s truck and trailer were over a combined weight of 21,000 pounds. The defense argued that that evidence alone was not enough to sustain a guilty verdict and that the registration information that was used to issue the

citation should not be considered. That argument is flawed. The weight determination that day was not a hunch; it was based on the registration provided and the years of experience, training and knowledge of the corporal. Corporal Albaugh also testified that the weights listed on the registration are consistent with the norms. When conducting a traffic stop checking license and registration is part of the officer's everyday business transaction and should be considered by the fact finder.

Furthermore, the defendant is obligated to provide vehicle weight information to Pennsylvania Department of Transportation. Pursuant to 75 Pa. C.S. § 1305 (a) when registering a truck and trailer the applicant is required to provide the vehicle's gross weight; if the truck and trailer weighs less than originally manufactured and the vehicle owner wishes for the truck and trailer to be registered as weighing less then the applicant shall include information as to the new weight of the vehicle. Additionally, Pennsylvania Department of Transportation Trucker's Handbook page 13 – 17 outlines the requirements of registration and weight requirements.²

CONCLUSION

The standard for reviewing the sufficiency of the evidence is whether the evidence admitted at trial and all reasonable inferences drawn therefrom, when viewed in the light most favorable to the Commonwealth as the verdict winner, is sufficient to support all the elements of the offenses beyond a reasonable doubt.

Commonwealth v. Greenberg, 885 A.2d 1025, 1026 (Pa. Super. 2005) (*quoting Commonwealth v. DeJesus*, 787 A.2d 394, 398 (Pa. 2001)).

² Furthermore, 75 Pa. C.S. § 1916 addresses the annual registration fee, a class 9 vehicle which weighs 26,001 – 30,000 pounds which is the registered weight class this truck and trailer would be has an annual fee of \$472.50; a class 7 vehicle which weighs 17,000 – 21,000 which the defendant is arguing that the modified weight could be has an annual fee of \$355.50. Given the cost disparity and the legal obligation to provide accurate information to the Department of Transportation along with Corporal Albaugh's training there is no reason to question the accuracy of the weight determination.

Whether it is direct, circumstantial, or a combination of both, what is required of the evidence is that it taken as a whole links the accused to the crime beyond a reasonable doubt. *Commonwealth v. Robinson*, 864 A.2d 460, 478 (Pa. 2004). There was more than sufficient evidence to prove that the defendant's truck and trailer had a combined weight of more than 21,000 pounds which resulted in his speed of 54 miles per hour being 19 miles per hour over the legal speed limit in the hazardous zone.

Given the overwhelming evidence of Mr. Walker's guilt, the Court's verdict and sentence of July 12, 2012 should be affirmed and Mr. Walker's appeal dismissed.

BY THE COURT,

Joy Reynolds McCoy, Judge