

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **No: SA-13-2013**
 v. :
 :
 :
 COURTNEY VIDONISH, : **SUMMARY APPEAL**
 Defendant :

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

On November 27, 2012 at approximately 8:40 AM, Trooper Edward Dammer (Dammer) of the Pennsylvania State Police was dispatched to a vehicle crash at the intersection of Middle Road and State Route 44. N.T., March 28, 2013, p. 4, 15. At the time of the accident approximately three (3) inches of snow had accumulated on the ground and it was still snowing. Id. at 14-15. Where the road curved and there was an elevation change, Dammer observed that a black Pontiac had left the roadway and approximately 100 feet away struck a pole. Id. at 4-5. Tire tracks in the snow observed by Dammer indicated the route that the vehicle had taken. Id. Dammer also observed foot prints leaving the vehicle to a residence, where he found Courtney Vidonish (Defendant). Id. at 14. Dammer issued a citation for Driving Vehicle at Safe Speed based upon the one vehicle crash, that the vehicle left the roadway on a curve, that there was an elevation change, and that the roadway was covered with snow. Id. at 5.

On March 28, 2013, following a summary appeal hearing, this Court found beyond a reasonable doubt that the Defendant committed the offense of Driving Vehicle at Safe Speed.¹

¹ 75 Pa.C.S. § 3361.

The Defendant was sentenced to pay the costs of prosecution and pay a fine in the amount of twenty-five (25) dollars.

On April 25, 2013, the Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania. On April 26, 2013, the court directed the Defendant to file a concise statement of the matters complained of on appeal in accordance with Pa.R.A.P. 1925(b). On May 23, 2013, the Defendant filed a concise statement and alleged two (2) issues: 1) the trial court erred in finding the Defendant/Appellant guilty of violating Section 3361 of the Motor Vehicle Code where there was no evidence as to the speed of the vehicle and 2) the trial court erred in inferring that whatever the speed was, that it was not reasonable and prudent.

Whether the Court erred in finding the Defendant guilty of 75 Pa.C.S. § 3361

The Defendant claims that the Court improperly found that she guilty of 75 Pa.C.S. § 3361 when there was no evidence of any speed of the vehicle. 75 Pa.C.S. § 3361 provides that:

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, nor at a speed greater than will permit the driver to bring his vehicle to a stop within the assured clear distance ahead. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

“[O]n a charge of driving too fast for conditions, it is not necessary to allege or prove any specific speed at which defendant was driving. Whether one is driving too fast for conditions is a relative matter, dependent not on any specific speed but on all the existing circumstances, which circumstances are for the fact finder to consider in determining whether or not defendant is guilty as charged.” Commonwealth v. Hoke, 298 A.2d 913 (Pa. Super. 1972). Surrounding

circumstances that courts are to consider are the amount of traffic, pedestrian travel, weather conditions, and the nature of the roadway itself. Commonwealth v. Minnich, 874 A.2d 2005 (Pa. Super. 2005) (citing Commonwealth v. Heberling, 678 A.2d 794 (Pa. Super. 1996)).

In Rishel, an officer responded to an accident an hour after it occurred. Commonwealth v. Rishel, 658 A.2d 352 (Pa. Super. 1995), *vacated on other grounds*, 682 A.2d 1267 (Pa. 1996). The defendant testified that she was unable to maintain control of her vehicle and an officer testified that she failed to negotiate the turn in the roadway. Id. at 357-58. The Superior Court found that there was sufficient evidence for 75 Pa.C.S. § 3361 as the trier of fact was free to believe the Commonwealth that the defendant was not driving at a safe speed. Id. at 358; see also Commonwealth v. Johnson, 846 A.2d 161 (Pa. Super. 2003) (finding that a defendant drove a vehicle at an unsafe speed solely due to roadway conditions and the time of night).

Here, the Court found that the Defendant was driving too fast to maneuver the roadway. N.T., March 28, 2013, p. 24. The Defendant's vehicle approached a section of road that curved, had a change in elevation, and was covered with snow. As a result of the speed of the Defendant's vehicle, the Court found beyond a reasonable doubt that the Defendant was unable to make the turn and ran off the roadway. As established by Pennsylvania precedent, evidence of the speed of the vehicle was not necessary and may be inferred. The Court did not err in finding the Defendant guilty of 75 Pa.C.S. § 3361 and the issues raised by the Defendant are without merit.

Conclusion

As this Court properly found that the Defendant violated 75 Pa.C.S. § 3361, it is respectfully suggested that the Defendant's sentence be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Bradley S. Hillman, Esq.