

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : NO. SA – 27 - 2023
Appellee, :
 : and
vs. :
 : NO. SA – 19 - 2023
 :
AARON B. KESSLER :
Appellant. :

OPINION AND ORDER

I. Statement of the Case:

The two docket matters captioned above came before the Court for a consolidated *de novo* non-jury summary appeal trial on November 21, 2023. At the conclusion of testimony, counsel for Aaron B. Kessler (hereinafter “Defendant”) requested the opportunity to submit a brief. The Court entered a briefing schedule, and conducted oral argument on February 26, 2024.

II. Background:

It is undisputed that Defendant was operating a 2019 Polaris Razor Turbo S Quadricycle (hereinafter “Defendant’s Quadricycle”) on a Commonwealth roadway on May 10, 2023, at approximately 12:37 p.m. At that time, he was stopped by a Trooper of the Pennsylvania State Police, and received multiple citations under the Pennsylvania Vehicle Code, related to that incident. Defendant’s Quadricycle was registered to ABK Consulting LLC of Helena Montana, and registered in Montana. Defendant’s Quadricycle was briefly impounded. Later that same day, the Defendant was observed operating his Quadricycle again, and he was charged with an additional citation (total of twelve (12) listed on that date).

On June 30, 2023, the Defendant was again observed operating his Quadricycle on a roadway, and was charged with five (5) additional citations related to that incident.

The Court notes that, among the citations entered for the offense date of May 10, 2023, in the Magisterial District Court, while the docket sheet indicates that the Defendant was charged with violating 75 Pa.C.S.A. §7711(a), “Registration of dealers,” no testimony or evidence were provided at trial on the subject of this citation. The Court further notes that the 75 Pa.C.S.A.

§7711(a) citation appears to have been changed and replaced by a 75 Pa.C.S.A. §7711.1(a)(1) citation at the Magisterial District Court level.

III. Issue Presented:

The gravamen of the dispute regarding these citations is the question of whether Defendant's Quadricycle is "street legal" pursuant to applicable Pennsylvania law. While several states permit similar vehicles to be operated on their highways, the Commonwealth contends that Pennsylvania does not. The Court has reviewed the thoughtful Opinion of Judge Hodge of the Court of Common Pleas of Lawrence County in the matter of *Commonwealth v. Ruffaner*, 2020 WL 12442525 (Lawrence Cnty. 2022). The Court shares the observation by Judge Hodge that "the status of all-terrain vehicles (ATV's) under the Vehicle Code appears to be floating and dynamic, and it morphs based upon the particular legal question at hand." By way of example, Defendant's Quadricycle is a mechanism which meets the description of a "vehicle" under 75 Pa.C.S.A. §102, but for the inclusion in that Section of the phrase "may be transported." It is equally clear that it meets the definition of an ATV under 75 Pa.C.S.A. §7702. The Court notes that Section 7702 defines an ATV as any motorized off-highway vehicle with three or more tires, but "does not include" a host of other clearly defined vehicles. Since Defendant's Quadricycle is suitable for off-road use, has four tires, and is not listed among the host of excluded vehicles, there is little question but that it falls squarely within 75 Pa.C.S.A. §7702. Since Chapter 77 of the Vehicle Code known as the "Snowmobile and All-Terrain Vehicle Law" was fashioned to address that discrete subject area, it is the Court's view that Sections 7701 through 7753 should serve as the basis for our examination.

The Defendant contends that, notwithstanding the clear language of 75 Pa.C.S.A. §7721(a), he is entitled to the benefit of the fact that highway operation of Defendant's Quadricycle is permitted in its state of registration. While the law of Montana may not include the prohibition set forth at 75 Pa.C.S.A. §7721(a), the Full Faith and Credit Clause of the United States Constitution does not require Pennsylvania to subordinate public policy within its borders to the laws of another state. *Ferrelli v. Commonwealth*, 783 A.2d 891, 894 (Pa. Commw. Ct. 2001).

While the Court finds that Defendant's Quadricycle fits the definition of an ATV for purposes of 75 Pa.C.S.A. §7721(a), more analysis is required in order to resolve the questions presented by other citations. The Commonwealth credibly asserts that Defendant's Quadricycle is not a lawful vehicle for operation on the highways of this Commonwealth pursuant to 75 Pa.C.S.A. §7721(a). Nevertheless, the Commonwealth appears to treat Defendant's Quadricycle as if it were a "street legal" vehicle, for purposes of several other citations. Some citations allege Defendant's failure to meet requirements (helmets) which apply to the operation of an ATV on highways where ATV operation is legally permitted (not the facts of this case). Other citations allege Defendant's failure to meet requirements applicable to "street-legal" vehicles appropriate for highway driving (similarly not the facts of this case). It is disingenuous to treat Defendant's Quadricycle differently, depending upon the Vehicle Code section under consideration. Rather, the Court must consider each citation in terms of Defendant's operation of an ATV, operated on a highway for which ATV use is not permitted. The Court will separately consider each citation, under the facts presented.

IV. The Citations:

1. The Defendant has been charged with three (3) counts of violation of 75 Pa.C.S.A. § 7721(a). The Court finds, beyond a reasonable doubt, that the Defendant operated Defendant's Quadricycle, which is an ATV as defined at 75 Pa.C.S.A. § 7702, on a highway in Lycoming County at three (3) separate times, over two (2) separate dates, in violation of 75 Pa.C.S.A. § 7721(a).
2. The Defendant has been charged with failure to register as a person who is in the business of selling ATVs, in violation of 75 Pa.C.S.A. §7711(a). Because there were no testimony or evidence provided on this subject at trial, the Court does not find, beyond a reasonable doubt, that the Defendant violated that Section.
3. The Defendant has been charged with two (2) counts of the operation of an ATV on a highway open to ATV traffic without a helmet, in violation of 75 Pa.C.S.A. § 7726. It is undisputed that the Defendant was operating on a highway which is NOT open to ATV traffic (in violation of Section 7721(a)). Since the Defendant was not operating an ATV

on a highway which is open to ATV traffic, the Court does not find, beyond a reasonable doubt, that the Defendant violated 75 Pa.C.S.A. § 7726.

4. The Defendant has been charged with two (2) counts of failure to comply with a police officer, resulting in the impoundment of a vehicle, in violation of 75 Pa.C.S.A. § 6311. While it is undisputed that Defendant's Quadricycle was impounded for inspection, the Court is not convinced, beyond a reasonable doubt, that the impoundment was the result of the willful refusal of the Defendant to comply.
5. The Defendant has been charged with two (2) counts of the operation of a vehicle which is not properly equipped with an opaque covering over off-road lighting, in violation of 75 Pa.C.S.A. § 4303(f). Obviously, this Section was intended to govern off-road lighting on "street-legal" vehicles, operated on the highway. While the Defendant was operating Defendant's Quadricycle on a highway which is not open to ATV traffic (in violation of Section 7721(a)), the fact remains that he was operating an ATV equipped with off-road lighting on a highway, and that the off-road lighting lacked the required opaque covering. For that reason, the Court finds, beyond a reasonable doubt, that the Defendant violated 75 Pa.C.S.A. § 4303(f), on two (2) separate dates.
6. The Defendant has been charged with two (2) counts of operation of a vehicle on a highway which is not equipped as required by the vehicle code, in violation of 75 Pa.C.S.A. § 4107(b)(2). An ATV cannot possibly be equipped in such a manner as to comply with 75 Pa.C.S.A. § 7721(a), since that Section precludes the operation of an ATV on a highway, regardless of the manner in which it is equipped. In the view of this Court, the requirements of 75 Pa.C.S.A. § 4107(b)(2) were intended to govern the equipment required for the safe operation of "street-legal" vehicles. The Court does not find, beyond a reasonable doubt, that the Defendant violated that Section.
7. The Defendant has been charged with three (3) counts of failure to obtain a certificate of registration for an ATV in violation of 75 Pa.C.S.A. § 7711.1 (a)(1), and one (1) count of failure to display a registration decal in violation of 75 Pa.C.S.A. § 7711.1 (a)(2) and one (1) count of failure to display a valid registration sticker in violation of 75 Pa.C.S.A. § 7711.1 (a)(4). Section 7711.1(f) provides that the Subsection (a) does

not apply if the owner of an ATV is not a resident of this Commonwealth and the operator presents proof that the ATV has been properly registered in another jurisdiction. Since Defendant's Quadricycle is owned by a Montana LLC and registered in Montana, the Court does not find, beyond a reasonable doubt, that the Defendant violated those Sub-Sections. The Court has examined the opinion of Judge Brewbaker of the Court of Common Pleas of Cumberland County in *Commonwealth v. Diehl*, 2022 WL 16570197 (Cumberland Cnty. 2022). Judge Brewbaker reached the opposite result under virtually identical facts, relying upon the limitations for registration exemption for non-resident owners of highway vehicles, which are set forth within 75 Pa.C.S.A. § 1303. Since that Section applies to the registration exemption for non-resident owners of highway vehicles (as distinguished from ATV's) and since the registration exemption language for non-resident owners of ATV's set forth within Section 7711.1(f) is completely dissimilar, this Court does not find the language in 75 Pa.C.S.A. § 1303 to be dispositive. Had the Pennsylvania General Assembly intended to condition the registration exemption for non-resident owners of ATV's in the same manner as non-resident owners of highway vehicles, the language in 75 Pa.C.S.A. § 1303 could have been restated within Section 7711.1(f). While the Court accepts the argument that an ATV is not a highway vehicle under the Vehicle Code, the Court cannot also accept the argument that an ATV should be subject to all highway vehicle requirements and limitations. Rather, the Court shares the view expressed in the matter of *Nationwide Mutual Insurance Company v. Yungwirth*, 940 A.2d 523 (Pa. Super. Ct. 2008):

While an ATV arguably fits within the definition of a motor vehicle contained within the Vehicle Code, the legislature provided a specific definition of an ATV within the SATVL. The SATVL is a separate chapter within the Vehicle Code, which applies only to snowmobiles and ATVs.

940 A.2d at 526; *see also Pelter v. Department of Transportation*, 663 A.2d 844, 848 (Pa. Commw. Ct. 1995) (Court concluded that the unique ATV registration exemption language in the SATVL exempted the operator from the requirements of the Motor Vehicle Financial Responsibility Law),

ORDER

And now, this 28th day of February, 2024, for the reasons more fully set forth above, the Defendant is found NOT GUILTY of the citation which charges a violation of 75 Pa.C.S.A. §7711(a), and NOT GUILTY of the two (2) citations which charge a violation of 75 Pa.C.S.A. §7726, and NOT GUILTY of the two (2) citations which charge a violation of 75 Pa.C.S.A. §6311, and NOT GUILTY of the two (2) citations which charge a violation of 75 Pa.C.S.A. §4107(b)(2), and NOT GUILTY of the three (3) citations which charge failure to obtain a certificate of registration for an ATV in violation of 75 Pa.C.S.A. §7711.1 (a)(1), and NOT GUILTY of the one (1) citation which charges failure to display a registration decal in violation of 75 Pa.C.S.A. §7711.1 (a)(2) and NOT GUILTY of the one (1) citation which charges failure to display a valid registration sticker in violation of 75 Pa.C.S.A. §7711.1 (a)(4).

The Defendant is found GUILTY of three (3) separate violations of 75 Pa.C.S.A. §7721(a). The Court finds, beyond a reasonable doubt, that the Defendant operated Defendant's Quadricycle on a highway in Lycoming County at three (3) separate times, over two (2) separate dates, in violation of that Section. The sentence of the Court on those citations is that the Defendant pay a fine in the amount of \$200.00 on each of those citations (total of \$600.00) and the costs of prosecution.

The Defendant is found GUILTY of two (2) separate violations of 75 Pa.C.S.A. §4303(f). The Court finds, beyond a reasonable doubt, that the Defendant operated Defendant's Quadricycle on a highway in Lycoming County at two (2) separate times, over two (2) separate dates, in violation of that Section. The sentence of the Court on those citations is that the Defendant pay a fine in the amount of \$25.00 on each of those citations (total of \$50.00) and the costs of prosecution.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc:

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