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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

Commonwealth of Pennsylvania vs. Bryan Coen, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, CRIMINAL ACTION NO. SA 209-2014

HEADNOTES

Summary Appeal

1. 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. *Commonwealth v. McClendon*, 874 A.2d 1223, 1228 (Pa.Super. 2005) (citing *Commonwealth v. Robinson*, 817 A.2d 1153, 1158 (Pa.Super. 2003) (quoting *Commonwealth v. Widmer*, 744 A.2d 745 (2000)).
2. In *Commonwealth v. Heberling*, the Superior Court held that “speeding alone does not constitute a violation of [§ 3361]. There must be proof of speed that is unreasonable or imprudent under the circumstances (of which there must also be proof), which are the “conditions” and “actual and potential hazards then existing” of the roadway. *Commonwealth v. Heberling*, 678 A.2d 794, 795-96 (Pa.Super. 1996).
3. In *Commonwealth v. Hoke*, the Superior Court held that “it is not necessary to allege or prove any specific speed at which [the] defendant was driving.” *Commonwealth v. Hoke*, 298 A.2d 913, 915 (Pa.Super. 1972).
4. When a Defendant is driving over 54 miles per hour on an icy road in the freezing rain, such evidence is sufficient to conclude beyond a reasonable doubt that the Defendant disregarded the hazardous weather conditions and committed a violation of 75 Pa.C.S § 3361.

Apppearances:

Gerard Mangieri, Esquire, *Assistant District Attorney*

Thomas C. Egan, III, Esquire, *for Defendant*

OPINION PURSUANT TO PA.R.A.P. 1925(a)

Before Zook, J.

Defendant, Bryan Coen¹ appeals from the Order of Court entered December 19, 2014,² finding the Defendant guilty of violating 75 Pa.C.S. § 3361, Driving Vehicle at Safe Speed. The Defendant raises one issue on appeal: whether there was sufficient evidence to convict him of that offense. *See Concise Statement of Matters Complained of on Appeal*. Because there was sufficient evidence to support a finding of guilt, this Court respectfully suggests that the Superior Court affirm.

¹ Defendant is an individual represented by Thomas C. Egan, III, Esq..

² By the undersigned.

PROCEDURAL HISTORY

The instant matter arises out of a car crash that occurred on January 5, 2014. On June 19, 2014, a Citation³ was filed against the Defendant alleging a violation of 75 Pa.C.S. § 3361, Driving Vehicle at Safe Speed. On September 17, 2014, the Defendant was found guilty of violating 75 Pa.C.S. § 3361 by the Hon. Todd R. Williams, Magisterial District Court Judge. The Defendant filed a *Notice of Summary Appeal* on October 21, 2014. On November 18, 2014, the Commonwealth filed a *Motion to Continue* hearing in the matter. This Court granted said Motion on the same date and scheduled the matter for hearing on December 19, 2014.

On December 19, 2014, the Court conducted a trial in this matter; the Defendant was represented by Thomas C. Egan, III, Esq., and the Commonwealth was represented by Assistant District Attorney Gerard Mangieri, Esq.. At the close of the evidence, the Court found the Defendant guilty as charged and imposed the sentence as imposed by the Magisterial District Judge. On January 2, 2015, the Defendant filed a *Notice of Appeal* and a *Motion for Transcription and Filing of Trial Transcript*. On January 6, 2015, the Court entered an *Order* directing the Defendant to file a statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b)(2). On January 12, 2015, the Court entered an *Order* denying the Defendant's *Motion for Transcription and Filing of Trial Transcript* as moot and directed the Defendant to comply with Pa.R.A.P. 1911. The Defendant timely filed a *Concise Statement of the Matters Complained of on Appeal*. On February 17, 2015 a *Transcript* was lodged and subsequently filed on February 22, 2015.

DISCUSSION

I. *Standard of Review*

The standard of review regarding the sufficiency of the evidence is well established:

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.

Commonwealth v. McClendon, 874 A.2d 1223, 1228 (Pa.Super. 2005) (citing *Commonwealth v. Robinson*, 817 A.2d 1153, 1158 (Pa.Super. 2003) (quoting

³ Filed by Pennsylvania State Police Trooper George A. Durst.

Commonwealth v. Widmer, 744 A.2d 745 (2000)). Importantly, “facts and circumstances established by the Commonwealth need not preclude every possibility of innocence.” *Commonwealth v. Mack*, 850 A.2d 690 (Pa. Super. 2004) (quoting *Commonwealth v. DiStefano*, 782 A.2d 574, 582 (Pa. Super. 2001)). However, “guilt must be based on facts and conditions proved,” and the evidence is insufficient if guilt is based on “suspicion or surmise.” *Commonwealth v. Eckrote*, 12 A.3d 383, 386 (Pa. Super. 2010) (citing *Commonwealth v. Swerdlow*, 636 A.2d 1173 (Pa. Super. 1994)). A conviction may be based entirely on circumstantial evidence if the “evidence links the accused to the crime beyond a reasonable doubt.” *Commonwealth v. Chimel*, 639 A.2d 9, 11 (Pa. 1994). To determine whether the evidence was sufficient to sustain a verdict, “the entire record must be evaluated and all evidence actually received must be considered.” *Commonwealth v. Mack*, 850 A.2d 690, 693 (Pa. Super. 2004). As the Commonwealth is the verdict winner in this matter, we will view all the evidence admitted at trial in the light most favorable to the Commonwealth.

II. *Driving at Safe Speed 75 Pa.C.S. § 3361*

The Defendant was convicted of violating 75 Pa.C.S. § 3361, which states:

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 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.

75 Pa.C.S. § 3361.

The Commonwealth presented the testimony of Pennsylvania State Police Trooper George A. Durst, as well as expert testimony related to accident reconstruction performed by Corporal Eric Campbell of the Pennsylvania State Police. The incident in this matter occurred shortly after 3:00 p.m. on January 5, 2014, on the south-bound side of Interstate 81 (I-81). Tr. at 4 – 5. At the time of the incident, the roads were slick and icy, and the sky was overcast with ice/freezing rain. Tr. at 5 – 6. Furthermore,

Trooper Durst testified that these conditions began in the morning hours of January 5, 2014. Tr. at 8. Trooper Durst testified that while driving and approaching the scene of the incident, he “could tell through braking and normal driving acceleration from different points of stopping or slowing that the tires would spin.” Tr. at 7 – 8. Because of the conditions of the road, Trooper Durst drove in a prudent manner and below the speed limit. Tr. at 8, 20.

On Corporal Campbell’s approach to the incident site, he noticed that the roads were “icy. Not just a little bit. I mean, they were really icy.” Tr. at 27. Additionally, Corporal Campbell noted that he had seen six or seven cars that had slid off the road or were stuck because of the road conditions. Tr. at 27. The road conditions were so treacherous that Corporal Campbell drove approximately 20 – 25 miles per hour even though when the speed limit was 65 miles per hour. Tr. at 27.

Trooper Durst testified that he interviewed the Defendant at the hospital; the Defendant stated that as he was driving a vehicle pulled in front of him, which caused him to slow down suddenly and cross into the median. Tr. at 10. At this point the Defendant’s vehicle rolled over. Tr. at 11. Corporal Campbell’s expert testimony on the matter corroborated the Defendant’s version of the vehicle’s crash trajectory. See Tr. at 30 - 32.

Corporal Campbell further testified that he came to a conclusion about the Defendant’s true speed through the aid of a Computer Aided Drafting Program. Tr. at 47. From a yaw point of view, the Defendant’s true speed was calculated at 54.54 miles per hour. Tr. at 47. Additionally, Corporal Campbell testified that this was on the low end of the calculation. Tr. at 49.

Furthermore, Corporal Campbell did a secondary calculation where he analyzed the rotational spin, positioning the vehicle along the yaw marks, taking certain distances, and measuring the angle the vehicle was facing away from its path of travel, and analyzed the speed using a subjectively estimated impact speed to get a speed between 60.56 miles an hour and 65.66 miles per hour to correlate with the yaw speed. Tr. at 47 – 48; *see* also Tr. at 42 – 46.

Corporal Campbell testified that he performed an inspection of the Defendant’s vehicle after the crash and found “nothing that would indicate a defect in the vehicle” and that “absent any damage that would have been considered impact-related, there was no mechanical defect that would have attributed to this crash.” Tr. at 45.

In *Commonwealth v. Heberling*, the Court held that “speeding alone does not constitute a violation of [§ 3361]. There must be proof of speed

that is unreasonable or imprudent under the circumstances (of which there must also be proof), which are the “conditions” and “actual and potential hazards then existing” of the roadway. *Commonwealth v. Heberling*, 678 A.2d 794, 795 – 96 (Pa.Super. 1996). Furthermore, the Court held that “[i]t is these circumstances under which one’s speed may be found sufficiently unreasonable and imprudent to constitute a violation of section 3361, even if the driver has adhered to the posted speed limit.” *Id.* at 796.

In *Commonwealth v. Hoke*,⁴ the Court held that “it is not necessary to allege or prove any specific speed at which [the] defendant was driving.” *Commonwealth v. Hoke*, 298 A.2d 913, 915 (Pa.Super. 1972). The primary inquiry in such cases is not the speed, but the speed relative to the conditions. *Id.* The circumstances in this matter are to be determined by the fact-finder to conclude whether the Defendant is guilty. *See id.*

As detailed above, both Trooper Durst and Corporal Campbell testified to the icy conditions of the roads at the time of the incident. Based upon the expert opinion of Corporal Campbell, the Defendant was traveling at a lowest possible speed of 54.54 miles per hour on a “really” icy interstate. Tr. at 27, 47, 49. While the Defendant was not *per se* speeding, the law is clear that it is not necessary that the Defendant be traveling in excess of the posted speed limit in order to violate § 3361. *See Commonwealth v. Heberling*, 678 A.2d 794, 795-96 (Pa.Super. 1996); *Commonwealth v. Hoke*, 298 A.2d 913, 915 (Pa.Super. 1972).

Furthermore, as the Commonwealth was the verdict winner in the instant matter, the Court must view the evidence admitted at trial in the light most favorable to the Commonwealth. Both Trooper Durst and Corporal Campbell testified that the conditions of the road did not allow either of them to safely operate their vehicle at the speed limit. Tr. at 6, 20, 27. Corporal Campbell testified that he did not drive faster than 25 miles per hour because of the poor road conditions. Tr. at 27. Corporal Campbell further testified that he observed six or seven other vehicles had slid off of I-81 as he traveled to the accident scene. Tr. at 27.

These poor road conditions combined with the Defendant’s speed rendered the Defendant unable to maintain control of his vehicle which led to a car crash involving three separate vehicles. The Court found the testimony of Trooper Durst and Corporal Campbell credible regarding the icy and rainy conditions of the road. The Court found beyond a reasonable doubt that the Defendant did not operate at a reasonable or prudent speed 4 *Commonwealth v. Hoke* involved a violation of §1002(a) of Article 10 of the Pennsylvania Motor Vehicle Code which provided that “Any person (having) a vehicle on the highway shall drive the same at a careful and prudent speed, not greater than nor less than is reasonable and proper, having due regard to the traffic surface, and width of the highway, and of any other restrictions or conditions when and where existing; and no person shall drive any vehicle, upon a highway at such a speed as to endanger the life, limb, or property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead.” This statute was the precursor to 75 Pa.C.S. § 3361.

for the prevailing weather conditions. Driving over 54 miles per hour⁵ on an icy road in the freezing rain is extraordinarily dangerous. The evidence in this matter was sufficient to conclude beyond a reasonable doubt that the Defendant disregarded these hazardous weather conditions, which led to a multiple vehicle crash. Therefore, the Court found the Defendant guilty of violating 75 Pa.C.S. § 3361.

CONCLUSION

Based on the foregoing Opinion, this Court respectfully requests the Superior Court affirm in all aspects.

ORDER

Now this 25th day of February, 2015, the Clerk of Courts of Franklin County is directed to transmit the foregoing *Opinion Pursuant to Pa.R.A.P. 1925(a)* to the Prothonotary of the Superior Court of Pennsylvania pursuant to Pa.R.A.P. 1931(c).

⁵ This number was on the low end of Corporal Campbell's estimate. See Tr. at 47, 49.