

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
ANDREW JOSEPH LEE,	:	
	:	
Appellant	:	
	:	No. 1604 WDA 2012

Appeal from the Judgment of Sentence of September 9, 2012,
in the Court of Common Pleas of Allegheny County,
Criminal Division, at No: CP-02-SA-0001684-2012

BEFORE: BENDER, J., LAZARUS, J., and STRASSBURGER, J.*

MEMORANDUM BY STRASSBURGER, J.:

FILED JUNE 07, 2013

Andrew Joseph Lee (Appellant) appeals *pro se* from his September 19, 2012 judgment of sentence following his conviction for the summary offense of operating a vehicle in an unsafe condition pursuant to 75 Pa.C.S. § 4107(b)(2). We affirm.

On December 30, 2011, Appellant was stopped by Robinson Township Police Officer Brad Mermon to measure the window tint of the passenger side window of Appellant's vehicle. Officer Mermon concluded that Appellant's window was inappropriately tinted and cited him for violating 75 Pa.C.S. § 4107(b)(2).

Appellant was found guilty before a magisterial district judge and was sentenced to pay a fine of \$25 plus costs. Appellant filed a timely notice of appeal to the Common Pleas Court from the summary conviction.

*Retired Senior Judge assigned to the Superior Court.

Officer Mermon testified at the *de novo* hearing. He testified that pursuant to section 175.67(d)(4)¹ of the "inspection manual," an automobile window cannot have less than a 70% light transmittance level. N.T., 9/19/2012, at 4; 12. Officer Mermon measured the light transmittance level using a "tint-meter." **Id.** at 3. The light transmittance level for Appellant's passenger-side window measured 21%. **Id.** The trial court found Appellant guilty and fined him \$25 plus costs.

Appellant filed a timely notice of appeal and both Appellant and the trial court complied with Pa.R.A.P. 1925. On appeal, Appellant contends that the evidence was insufficient to support his conviction under the aforementioned sections of the Motor Vehicle Code and Pennsylvania Code.

We address Appellant's argument mindful of the following standard of review.

[O]ur standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

¹ 67 Pa. Code § 175.67.

Commonwealth v. Stays, 40 A.3d 160, 167 (Pa. Super. 2012) (internal quotations and citations omitted). The relevant portions of the Motor Vehicle Code and Pennsylvania Code are as follows.

75 Pa.C.S. § 4107(b) provides:

(b) **Other violations.**--It is unlawful for any person to do any of the following:

(2) Operate, or cause or permit another person to operate, on any highway in this Commonwealth any vehicle or combination which is not equipped as required under this part or under department regulations or when the driver is in violation of department regulations or the vehicle or combination is otherwise in an unsafe condition or in violation of department regulations.

The specific unsafe condition or violation here was dark window tint, which is regulated by 67 Pa. Code 175.67(d)(4), and provides as follows.

(d) **Obstructions.** A vehicle specified under this subchapter shall have glazing free from obstructions as described in § 175.80 (relating to inspection procedure).

(4) A sun screening device or other material which does not permit a person to see or view the inside of the vehicle is prohibited, unless otherwise permitted by FMVSS No. 205, or a certificate of exemption has been issued in compliance with § 175.265 (relating to exemption provisions). See Table X for specific requirements for vehicles subject to this subchapter. Passenger car requirements relating to the rear window are delineated by vehicle model year in Table X.

67 Pa. Code § 175.67.

As the Commonwealth notes in its brief on appeal, “the law on tinted automobile windows is not as clear and discoverable as it should be.” Commonwealth’s Brief at 2. As there is no argument that Appellant’s car is subject to the exemptions provided in section 175.265, we turn to 67 Pa. Code Table X, which reveals that the light transmittance levels for a passenger car side window could not fall below 70%. As testified to by Officer Mermon, side window of Appellant’s vehicle had a light transmittance level of 21%.

In support of his argument that the evidence was insufficient to convict him, Appellant relies on the opinion issued by this Court in ***Commonwealth v. Brubaker***, 5 A.3d 261 (Pa. Super. 2010). In that case, Brubaker was stopped by a police officer who believed that the vehicle was in violation of section 4524(e)(1) of the Motor Vehicle Code. That section provides that “[n]o person shall drive any motor vehicle with any sun screening device or other material which does not permit a person to see or view the inside of the vehicle through the windshield, side wing or side window of the vehicle.” 75 Pa.C.S. § 4524(e)(1). Brubaker was convicted and appealed his conviction to this Court. The police officer testified that he could see figures in the vehicle, but the light transmittance level fell below the 70% threshold pursuant to 67 Pa. Code 175.67(d)(4). Thus, he charged Brubaker with violating section 4524(e)(1) related to window tinting. This

Court held that the evidence was insufficient to convict Brubaker under section 4524 because the statute does not reference the light transmittance requirements outlined in 67 Pa. Code 175.67(d)(4). This Court opined that:

[Brubaker] was not charged with violating § 4107(b)(2) but, rather, was charged with violating § 4524(e)(1), which does not contain either explicitly or by reference the 70% transmittance standard utilized to convict [Brubaker].

Brubaker, 5 A.3d at 265-66. Thus, in that case, the police officer's testimony that he could see figures inside the vehicle rendered the evidence insufficient to convict Brubaker under section 4524(e)(1).

Instantly, Appellant was charged under section 4107(b)(2), which is the section of the Motor Vehicle Code which incorporates by reference the 70% light transmittance standard. Thus, in this case, Appellant's reliance on **Brubaker** is misplaced. Accordingly, because the tint on Appellant's window fell below that required by the statute under which he was charged, the evidence was sufficient to support Appellant's conviction.²

Judgment of sentence affirmed.

² We recognize that an *en banc* panel of this Court has also observed that "[t]here is no measurable amount of tint that renders a vehicle with tinted windows illegal in Pennsylvania. Tint is illegal if, from point of view of the officer, he or she is unable to see inside of a vehicle through the windshield, side wing, or side window." **Commonwealth v. Cartagena**, 63 A.3d 294, 305 (Pa. Super. 2013). However, once again, this case references section 4524(e)(1) of the Motor Vehicle Code.

J-S33044-13

Judgment Entered.

Nicholas V. Conatti

Deputy Prothonotary

Date: 6/7/2013