

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. : No. 168 C.D. 2013
 : Submitted: August 16, 2013
 Nickolas Solic, :
 Appellant :

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: October 15, 2013

Appellant Nickolas Solic (Solic) appeals from an order of the Court of Common Pleas of Allegheny County (trial court). The trial court, following a de novo hearing, found Solic guilty of six summary criminal charges based on Solic's alleged violations of the City of Pittsburgh (City) Property Maintenance Code (PMC).¹ We affirm in part and reverse in part.

Solic owns residential property located at 3421 Parkview Avenue in the Oakland section of the City. On or about June 29, 2012, a City building inspector, Robert McPherson, instituted a criminal complaint² against Solic,

¹ The City has adopted the International Property Maintenance Code as part of the City's Code of Ordinances. See PITTSBURGH, PA. CODE § 1011.01.

² See Original Record Item no. 4 (Original Papers Received from Lower Court; MDJ-05-2-27).

charging Solic with violating the following sections of the PMC: § 307.1 (trash and debris throughout property); § 302.4 (high weeds throughout property); § 302.8 (junk and/or illegal vehicle (expired registration) in rear yard); § 302.7 (collapsed retaining wall materials blocking public sidewalk); § 304.13.1 (broken storm window and sash glass); § 306.1 (front entry steps and landing lack hand and guardrails); and § 304.7 (missing slate on rear roof line).

On September 6, 2012, a magisterial district judge (MDJ) held a hearing on the matter. During the hearing, Solic appeared *pro se*. The MDJ found Solic guilty of all violations, with the exception of the charge for broken storm or sash glass.³ The MDJ assessed fines, costs, and restitution in the amount of \$450,000. Solic filed a *pro se* appeal from the conviction to the trial court, which conducted a hearing on January 8, 2013, approximately six months after Mr. McPherson filed the criminal complaint.

During the hearing, the City presented the testimony of Mr. McPherson (the property inspector), adjacent neighbors, and members of a community association. Solic testified on his own behalf. Mr. McPherson testified that he inspected Solic's property on January 12, 2012, approximately six months before he filed the criminal complaint, as a follow-up to a previous citation concerning the condition of Solic's property. Mr. McPherson testified that on January 12, 2012, he observed (1) trash and debris throughout the property, including the front and rear porch; (2) tall weeds; (3) two "illegal" vehicles with expired inspection and registration stickers; (4) a collapsed retaining wall adjacent

³ The MDJ's order imposing sentence lists all of the charges included in the criminal complaint except the charge for broken storm and sash glass under PMC § 304.13.1. For reasons unknown, the MDJ did not address this violation.

to the front sidewalk, with debris blocking public access; (5) broken glass from a window and deteriorated sash; (6) a lack of handrails and/or guiderails for the front entry; and (7) a deteriorated slate roof, missing a section of slate. (Notes of Testimony (N.T.) at 5-6.) Mr. McPherson also testified that he returned to Solic's property on January 7, 2013, a day before the trial court's hearing, at which time he took photographs of the condition of the property. Mr. McPherson testified that Solic failed during the intervening twelve-month period to bring the property into compliance with the PMC with regard to (1) the trash and debris on his property; (2) the inspection and/or registration of the vehicles on his property (although the trial court noted that one vehicle had a valid registration sticker); (3) the broken storm window sash and glass; (4) tall weeds; and (5) the missing section of the slate roof. Mr. McPherson testified that Solic was in the process of repairing the collapsed front retaining wall.

The City also called Solic's immediate neighbor, James Daniels, as a witness. Mr. Daniels testified that Solic's house has no water, heat, or electrical utility service. Mr. Daniels testified that Solic heats his home with wood. Mr. Daniels also testified regarding a photograph he took of a view through a door into Solic's house, which appears to show a large pile of various items, including cardboard boxes. Mr. Daniels also shared a photograph of a similar interior view as seen through a window, and photographs of gasoline and propane containers near the house and areas of the slate roof that appear to be in disrepair. Mr. Daniels' wife, Kristen Kovscic, testified regarding her concern for the safety of her own house because of the manner in which Solic lives and maintains his house.

The City offered the testimony of Bruce Kraus, a city councilman who represents the district in which Solic's property is located. Mr. Kraus testified that he had concerns that Solic's house posed a potential fire danger because of the hoarding depicted in Mr. Daniels' photographs. Another witness, Nathan Hart, who was a one-time president of the Oakland Planning Development Corporation, and a neighbor of Solic's, testified that he spoke to Solic regarding the availability of a \$5,000 matching grant for the improvement of neighborhood facades. Mr. Hart testified that Solic did not seek to take advantage of the matching grant.

Solic, who was acting *pro se*, provided comments regarding the alleged violations. Solic indicated that he was working on repairing the retaining wall. He disagreed with the characterization of his property as debris-filled, noting that he had wood on the property and was working with a master gardener to plant his yard with "wild flowers," which he argued did not constitute "overgrowth." He testified that both of the vehicles are registered, one had an emission sticker, and that he was seeking to have the mechanical inspection completed on that vehicle. Solic testified that the retaining wall did not collapse; rather, he had placed the components on the sidewalk the week of the hearing and had begun to reconstruct the wall. Solic testified that he had purchased materials to install handrail and/or guardrails and that he believed it would take him one or two days to complete that work. With regard to the slate roof, Solic testified that he stabilized the roof, applied tar paper, and "created an access opening where" he could install a skylight. (N.T. at 37.) He acknowledged that he needed to place new flashing on the roof peaks and replace missing slate tiles. (N.T. at 38.)

Following the testimony, the trial court asked the parties to explain their positions. The City asked the trial court to uphold the imposition of fines by

the MDJ. Solic stressed that he had taken meaningful measures to respond in part to the violations. The trial court stated that “I sympathize with you, however, I have to make a decision up here. Probably you should sell the property.” (N.T. at 41.) Solic responded that he would not do that and that he had “no place else to live.” (*Id.*) The trial court commented that Solic “was like a cancer in the community . . . you have this house there, it is a nice middle class area And the thing is once this house goes bad, then . . . people can’t sell their homes” (N.T. at 42.) The trial court added that “you are defiant here and you don’t have the money to correct the problem.” (N.T. at 43.) The trial court ultimately determined that the City established the existence of the six violations and found Solic guilty. The trial court imposed fines of \$2,500 for five of the violations, and a fine of \$1,000 for Solic’s maintenance of uninspected vehicles on his property. The trial court’s order thus imposed a total of \$13,500 in fines plus costs. Solic appealed the trial court’s order, and the trial court directed Solic to file a statement of matters complained of on appeal.

On appeal, the primary issue Solic raises is whether the trial court erred as a matter of law in concluding that the City provided sufficient evidence to satisfy its burden of proof with regard to the six violations charged.⁴ In reviewing a summary conviction matter, where the trial court has taken additional evidence in de novo review, our standard of review is limited to considering whether the trial court abused its discretion or committed an error of law. *Commonwealth v. Spontarelli*, 791 A.2d 1254, 1255 (Pa. Cmwlth. 2002).

⁴ Solic does not challenge the amount of the fines assessed for the violations. Rather, he challenges only whether the City established the violations beyond a reasonable doubt.

In *Spontarelli*, we noted that “[i]n summary offense cases, the Commonwealth is required to establish” guilt beyond a reasonable doubt. *Spontarelli*, 791 A.2d at 1258. This court views “all of the evidence admitted at trial, together with all reasonable inferences therefrom, in the light most favorable to the Commonwealth.” *Id.* “The test of sufficiency of the evidence is whether the trial court, as trier of fact, could have found that each element of the offenses charged was supported by evidence and inferences sufficient in law to prove guilt beyond a reasonable doubt.” *Id.*

1. Section 307.1 of the PMC (accumulation of trash or garbage)

Section 307.1 of the PMC provides that “[a]ll exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.” Section 202 of the PMC defines “rubbish” as

Combustible and noncombustible waste materials, except garbage; the term shall include . . . paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

Solic argues that to sustain its charges under Section 307.1 of the PMC, the City was required to establish beyond a reasonable doubt that Solic failed to keep (1) all exterior and interior portions of his property and premises (2) free from an accumulation of (3) rubbish or garbage. Solic contends that the City failed to prove beyond a reasonable doubt that an accumulation existed on his premises or property and also failed to prove that the items on his property constituted rubbish or garbage.

Solic contends that the evidence is insufficient to satisfy the City’s burden of proof because the City did not demonstrate that there is an accumulation

of garbage and rubbish throughout his property, and that his own testimony refutes the City's evidence. We note, however, that this Court may not reweigh the evidence; the trial court has the sole authority to determine credibility and render factual findings. *Spontarelli*, 791 A.2d at 1258-59.

Mr. McPherson testified that on January 12, 2012, when he visited the property, he “found trash and debris throughout the property, both front and rear porch had items on them and various items in the rear yard scattered about.” (N.T. at 5-6.) Mr. McPherson testified that he visited the property the day before the hearing and took photographs and that he believed that Solic had not brought the property into compliance with the PMC provisions regarding “trash and debris.” (N.T. at 7.) Mr. McPherson testified that he did not look into the interior of the premises to consider compliance with regard to the requirements of Section 307.1 of the PMC. The City also introduced testimony of Mr. Daniels, Solic's neighbor, who commented that he could observe and had taken photographs of the interior of Solic's home on August 12, 2012, and more recently, which depict the stacking of items (some of which look like cardboard boxes) more than several feet high in a room in the house. Mr. Daniels also had taken photographs in December 2012, which he described as a “[g]as and propane tank next to wood pile.” (N.T. at 15.)

The photographs in the record depicting the front and rear porches of Solic's property on January 7, 2013, as well as the photographs taken by Mr. Daniels during 2012, demonstrate that, as of the date the photographs were taken, the porches and interior of the house are cluttered and piled with various

unidentified items.⁵ The trial court, as finder of fact, could reasonably infer that the photograph does indeed depict a condition constituting an accumulation of debris and/or rubbish. The trial court could reasonably infer, based upon the photographic evidence of the randomly scattered and piled items on the porches, that the materials constitute rubbish. The trial court could reasonably infer that a property owner would not treat objects of even minimal value in such a manner. Mr. McPherson testified generally that the conditions over time have not changed. Thus, based upon the reasonable inference that the conditions which were found to be objectionable at the time Mr. McPherson filed the charges against Solic remained essentially unchanged up through the time of the trial court's hearing, we conclude that the City proved beyond a reasonable doubt that Solic did not maintain his property in a manner that was free from an accumulation of rubbish.

2. Section 302.8 of the PMC (unlawful vehicles on property)

Section 302.8 of the PMC provides:

Except as provided for in other regulations, no inoperative, uninspected, or unlicensed motor vehicle shall be parked, kept or stored on any premises.

The basis for the City's citation of Solic under this provision was Mr. McPherson's belief that two vehicles on Solic's property did not have valid registrations and inspections. Mr. McPherson testified that both vehicles were unlawful, either because they were not registered or not inspected. In fact, as the trial court noted, one of the photographs clearly shows that one of the vehicles has

⁵ The picture of the rear porch shows items scattered all over the porch. One item appears to be a roller paint pan, but the overall impression the photograph provides is that there appears to be no easy means of entry into the premises.

a valid registration. Solic contends, therefore, that McPherson's testimony was inaccurate and equivocal regarding the status of the vehicles, and, consequently, that his testimony is insufficient as a matter of law to carry the City's burden to establish the violations by proof beyond a reasonable doubt.

While Mr. McPherson's testimony concerning the registration of the vehicles may have been inaccurate, he testified specifically regarding the fact that the vehicles had no current inspection stickers. (N.T. at 9.) Solic himself corroborated this in his comments, stating that one vehicle had an emissions sticker and that he was planning to have "the mechanical finished." (N.T. at 36.) Based upon the complete testimony, the trial court had sufficient competent evidence from which to conclude that the City established a violation of Section 302.8 of the PMC beyond a reasonable doubt.

3. Section 306.1 of the PMC (handrails and guardrails)

Section 306.1 of the PMC provides:

Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches (762mm) above the floor or grade below shall have guards.

Solic contends that the City failed to prove all necessary elements of this charge. Solic claims that Mr. McPherson's testimony does not establish that the condition of the stairs falls within Section 306.1 of the PMC. Solic also argues that there is insufficient testimony to establish a violation of the requirement to provide a guardrail on his porch. Solic is correct with regard to this provision. The photographic evidence does not establish that the stairs consist of more than four risers, and Mr. McPherson's testimony does not indicate that he counted the

risers. The photographs in the record do not include any proportional hints indicating that the distance between ground level and the porch deck is equal to or greater than thirty inches. Nor did Mr. McPherson testify that he measured the distance. Consequently, we agree with Solic that the City did not present proof beyond a reasonable doubt that Solic violated Section 306.1 of the PMC.

4. Section 304.7 of the PMC (roofs and drainage)

Section 304.7 of the PMC provides:

The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure.

Solic argues that there is insufficient evidence regarding his roof to prove a violation of Section 304.7 of the PMC. Solic argues that Mr. McPherson's testimony indicates only that when he observed the roof in January 2012, the slate roof had deteriorated and a missing section of slate was covered with tar paper. Solic also argues that the testimony of his neighbor, Mr. Daniels, in which he discusses the status of the roof as depicted in photographs taken in December 2012, is insufficient to support the charged violation of Section 304.7 of the PMC. Mr. Daniels testified that, based upon his observations, "serious leakage is my assumption at that stage." (N.T. at 19.) While that testimony may be insufficient to establish that the condition of the roof caused water to leak into the premises, Ms. Kovscic, Mr. Daniels's wife, testified that the roof has "a big hole. I have seen Mr. Solic standing up in that hole like a gopher bailing water out of it." (N.T. at 22.) This testimony was sufficient to establish that the roof admitted rain. Consequently, we conclude that the trial court did not err in determining that the condition of Solic's roof violated Section 304.7 of the PMC.

5. Section 302.7 of the PMC (accessory structures)

Section 302.7 of the PMC provides that “[a]ll accessory structures, including detached garages, fences, and walls, shall be maintained structurally sound and in good repair.” The City’s charge of violation was based upon an allegation that, at the time Mr. McPherson visually inspected the property in June 2012, the stone retaining wall that is immediately adjacent to the sidewalk had collapsed onto the sidewalk. Solic argues that Mr. McPherson’s testimony only established that he observed Solic working on the sidewalk and that the process of completely repairing the retaining wall was not complete as of the day when Mr. McPherson inspected the property (January 7, 2013). Solic relies upon his own comments regarding the retaining wall:

When [Mr. McPherson] talked about the accessory structure deteriorating and the fact [that] the front retaining wall collapsed, it never separated one bit, never moved. This week when I started to disassemble it, it took me about two hours to break it up with a sledgehammer and chisel to get it to move. It never did collapse.

(N.T. at 37.) Mr. McPherson, however, in discussing the status of the property in January 2012, testified that “the front retaining wall by the sidewalk had collapsed and materials were into the sidewalk blocking the public egress.” (N.T. at 6.) Mr. McPherson also testified that at the time of his inspection on January 7, 2013, just before the trial court’s hearing, each of the items for which Solic had been cited were “in various stages [of] . . . correction” or had not been corrected at all. (*Id.*) While Solic asserts that the retaining wall never collapsed, the trial court, as the ultimate finder of fact, had the authority to reject Solic’s testimony entirely. As indicated above, this Court may not reweigh the evidence or interfere with the trial court’s determinations regarding witness credibility. Consequently, we conclude

that the trial court did not err in concluding that the condition of the retaining wall constituted a violation of Section 302.7 of the PMC.

6. Section 302.4 of the PMC (weeds)

Section 302.4 of the PMC provides in pertinent part as follows:

All premises and exterior property shall be maintained free from weeds or plant growth in excess of [10] inches.^[6] All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

In order to establish a violation of Section 302.4 of the PMC, the City was required to prove that weeds or plant growth on Solic's property for which the City cited Solic exceeded ten inches in height. Solic argues that the City failed to establish that the height of the weeds and/or plant growth on his property was ten inches or more. Solic contends that Mr. McPherson did not testify specifically that he took any measurements of the weeds or plant growth. As Solic argues, the photographic evidence also provides no scale from which the trial court could determine the precise height of the weeds or plant growth. Solic also argues that the last sentence of Section 302.4 of the PMC is a separate and affirmative negative element that the City bore the burden to demonstrate—*i.e.*, that weeds and plant growth on the property in excess of ten inches are not cultivated flowers or gardens.

As with many of the specific violations of which the trial court found Solic guilty, the City offers no argument in response to Solic's specific argument.

⁶ Section 1004.02 of the Pittsburgh Code of Ordinances provides that weeds may not exceed ten inches in height for the purposes of Section 302.4 of the PMC.

Our review of the record indicates that Mr. McPherson testified only that there were “high weeds throughout the property,” (N.T. at 6), and that he told Solic when he inspected the property on January 7, 2013, that “the high weeds in the front or the grass were still going to count as weeds,” (N.T. at 9-10).

Solic relies upon this court’s decision in *Commonwealth v. Stone*, 788 A.2d 1079 (Pa. Cmwlth. 2001), which involved a noise ordinance. This Court rejected the Commonwealth’s claim that an adjudicator or reviewing court can take judicial notice of the fact that construction equipment is noisy. Rather, the proper standard was whether the operation of machinery was likely to be sufficiently loud to disturb the peace. *Stone*, 788 A.2d at 1084. While *Stone* does not seem to be on point, we agree with Solic that the evidence the City submitted is insufficient to establish that the height of his weeds and/or plant growth exceeded the ten-inch limitations of Section 302.4 of the PMC. Mr. McPherson’s testimony that the weeds were high, with nothing more, and no basis for determining height from the photographs do not establish guilt beyond a reasonable doubt.⁷ Consequently, we conclude that the trial court erred in finding Solic guilty on this charge.

Accordingly, we affirm the trial court’s order with regard to the following violations of the PMC and the fines the trial court imposed for those violations: (1) Section 307.1 (accumulation of rubbish) (\$2,500); (2) Section 302.8 (unlawful motor vehicles on property) (\$1,000); (3) Section 302.7 (accessory structures (retaining wall)) (\$2,500); and (4) Section 304.7 (roofs and drainage)

⁷ We note however, that we need not address Solic’s claim that the City failed to carry its burden based upon his argument that the City failed to dispute his claim that the weeds and/or plant growth are a cultivated wildflower garden (based upon his testimony and a letter from a master gardener to that effect). This sentence appears to provide a property owner with an affirmative defense, rather than constitute a discrete element of the alleged violation.

(\$2,500). We reverse the trial court's order regarding the alleged violations of Section 306.1 (handrails and guardrails) (\$2,500), and Section 302.4 (overgrown weeds and plant growth) (\$2,500). Thus, the amount of fines the trial court imposed is reduced to \$ 8,500.

P. KEVIN BROBSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 168 C.D. 2013
	:	
Nickolas Solic,	:	
	:	
Appellant	:	

ORDER

AND NOW, this 15th day of October, 2013, the order of the Court of Common Pleas of Allegheny County (trial court) is affirmed in part and reversed in part. We AFFIRM the trial court’s order with regard to the determinations of guilt and the imposition of fines for the following violations: (1) Section 307.1 of the City of Pittsburgh Property Maintenance Code (PMC) (accumulation of rubbish) (\$2,500); (2) Section 302.8 of the PMC (unlawful motor vehicles on property) (\$1,000); (3) Section 302.7 of the PMC (accessory structures (retaining wall)) (\$2,500); and (4) Section 304.7 of the PMC (roofs and drainage) (\$2,500). We REVERSE the trial court’s order regarding the alleged violations of Section 306.1 of the PMC (handrails and guardrails) (\$2,500), and Section 302.4 of the PMC (overgrown weeds and plant growth) (\$2,500). Thus, the amount of fines the trial court imposed is hereby reduced to \$ 8,500.

P. KEVIN BROBSON, Judge