

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Borough of Walnutport	:	
	:	
v.	:	No. 256 C.D. 2014
	:	Argued: March 9, 2015
Timothy Dennis,	:	
Appellant	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE P. KEVIN BROBSON, Judge

OPINION

BY JUDGE SIMPSON

FILED: March 30, 2015

In this, his latest appeal to this Court, Timothy Dennis (Dennis)¹ asks whether the Court of Common Pleas of Northampton County² (trial court) erred by adjudicating him guilty of the summary offense of violating Section 16 of the Walnutport Borough Municipal Solid Waste Ordinance, Ordinance No. 2011-05 (Ordinance),³ for failing to pay a flat fee for solid waste removal services (garbage removal), and ordering him to pay restitution in the amount of \$121 plus fines.

¹ Dennis previously filed other appeals stemming from citations issued by the Borough of Walnutport. See, e.g., Dennis v. Borough of Walnutport (Pa. Cmwlth., No. 1803 C.D. 2014) (pending); Commonwealth v. Dennis (Pa. Cmwlth., No. 1873 C.D. 2013, memorandum opinion filed October 9, 2014), 2014 WL 5044861; Borough of Walnutport v. Dennis (Pa. Cmwlth., No. 819 C.D. 2012, memorandum opinion filed March 27, 2013), 2013 WL 3973377; Commonwealth v. Dennis (Pa. Cmwlth., No. 1900 C.D. 2012, order filed June 17, 2012); Commonwealth v. Dennis (Pa. Cmwlth., No. 610 C.D. 2012, order filed April 19, 2012); see also Borough of Walnutport v. Dennis, 13 A.3d 541 (Pa. Cmwlth. 2010) (appeal from municipal claim for curbing improvements).

² The Honorable Emil Giordano presided.

³ The Ordinance was enacted on May 12, 2011.

Dennis contends the trial court erred or abused its discretion by: not ruling on his double jeopardy claim until after the trial concluded; denying his double jeopardy claim; determining the citation was sufficiently specific; determining the Borough presented sufficient evidence to prove the requisite elements of the offense; and, refusing to invalidate the Ordinance as unconstitutional or contrary to the law. Discerning no error, we affirm.

I. Background

Dennis is the owner of residential property located at 645 Lehigh Gap Street (property), in the Borough of Walnutport (Borough), Northampton County, Pennsylvania. In February 2013, the Borough filed a non-traffic citation and a summons against Dennis for violating Section 16 of the Ordinance for not paying a special tax for garbage removal for the period of January 2013 to June 2013.

Section 16 of the Ordinance provides:

The legal and/or equitable owner(s) of the real estate containing a residential establishment shall be responsible to pay, and shall pay, the fees, fines and penalties as may be imposed pursuant to the provisions of this article. A residential establishment is exempt from this section only if it is an unoccupied dwelling unit as defined pursuant to this article.

An “unoccupied dwelling unit” is defined as “[a] dwelling unit within the Borough of Walnutport which is unfit to live in and/or which is not receiving municipal water and/or sewer service.” Section 2 of the Ordinance.

Dennis pled not guilty. The matter was heard by a magisterial district judge, who found Dennis guilty of the offense and ordered him to pay restitution, plus fines and costs. Dennis timely appealed to the trial court.

The trial court held a non-jury, *de novo* trial on the summary appeal. On behalf of the Borough, Annette Lacko, Secretary and Treasurer for the Borough (Secretary), and Eric Stohl, the Borough's Code Enforcement Officer (Code Officer), testified.

Secretary testified she bills residents for municipal services provided by the Borough as part of her duties. Included among these, she bills residential property owners twice a year for garbage removal services in the amount of \$110 for a total of \$220 per year. Tr. Ct. Hr'g, 12/11/13, Notes of Testimony (N.T.) at 5. Secretary testified she mailed an invoice to Dennis at the property for garbage removal services in October 2012, but he did not pay it. Id. at 8-9. The late fee is \$11. Id. at 9. After Dennis did not pay, she sent out a past due notice, a delinquent notice, and a final notice. Id. at 11. She sent the notices via certified and regular mail. Id. The notices mailed certified came back unclaimed, but the notices sent regular mail were not returned. Id. Secretary testified Dennis paid the 2014 bill on time. Id. at 12.

Secretary explained the only way a property owner is exempt from paying for garbage removal is if the house is uninhabitable or does not receive water or sewer service. Id. On cross examination, Secretary testified she bills every residential property owner, regardless of whether the resident uses the

garbage removal service or lives at the property. Id. at 15-16. The property contains a single-family residence, which receives municipal water service and does not qualify for exemption as an “unoccupied dwelling unit.” Id. at 7, 13.

Code Officer testified he issued the citation because Dennis did not pay the garbage bill. Id. at 19. Code Officer posted the third and final notice to the door of the house before issuing the citation. Id. at 20. On cross examination, Code Officer acknowledged he issued Dennis a citation in 2004 for not paying for garbage removal, which was dismissed. Id. at 23. He also confirmed he issued another citation in 2008 because Dennis did not contract or pay for garbage removal services, which was also dismissed. Id. Code Officer testified the property receives municipal water service as evidenced by Dennis’ water bill. Id. at 25. Other than the bill, Code Officer did not know if or how Dennis actually uses the municipal water service. Id. Code Officer did not know whether there is a well on the property. Id. at 22-23.

On redirect examination, Code Officer testified even if a residence has a well, it will still have a water meter. Id. at 26. The Borough calculates sewer fees based on the gallons of water used as reflected on the meter. Id. at 26-27. In other words, if a resident uses one gallon of water, he is charged with using one gallon of sewer. Id. at 27. As for the prior citations, Code Officer testified they were issued under prior ordinances. He acknowledged the Borough amended prior ordinances to reflect past litigation. Specifically, the Ordinance changed the definition of “unoccupied dwelling unit.” Id. at 28. It also changed the waste

hauler and the billing process. Id. at 29. Under the current Ordinance, the Borough collects the fees, not the waste hauler. Id.

Dennis did not testify. However, Dennis stipulated that: he did not pay the garbage bill; he was the exclusive owner of the property; and, the property is habitable and receives water service. N.T. at 9, 13; see C.R., Item No. 6, Def.'s Br. in Support of Post-Trial Args. at 2.

At the conclusion of the trial, Dennis raised a double jeopardy argument. Id. at 35. The trial court, with the assent of both parties, requested the parties file briefs in support of post-trial arguments. In his post-trial brief, Dennis presented the same arguments raised now on appeal.

Based on the evidence and arguments presented, in January 2014, the trial court entered a verdict of guilty. The trial court ordered Dennis to pay restitution in the amount of \$121 plus fines. In support, the trial court filed a 16-page opinion.⁴ From this decision, Dennis appealed to this Court.

II. Issues

On appeal,⁵ Dennis contends the trial court procedurally erred by not addressing his double jeopardy claim until after the trial. He argues the trial court

⁴ At the direction of the trial court, Dennis filed a concise statement of errors complained of on appeal. In its 1925(a) statement, the trial court confirmed the reasons provided in its 16-page opinion and offered no additional statement.

⁵ Where the trial court receives additional evidence in deciding whether there was a summary violation of an ordinance, our review is limited to determining whether constitutional **(Footnote continued on next page...)**

substantively erred by not dismissing the citation on double jeopardy grounds as he was previously prosecuted for the same offense.

In addition, Dennis argues the trial court should have dismissed the citation for lack of specificity. According to Dennis, the citation does not include the basic elements of the charged offense. Further, he contends the Borough did not present sufficient evidence to prove beyond a reasonable doubt the requisite elements of the offense.

Finally, Dennis asserts the trial court erred by not invalidating the Ordinance as unconstitutional or contrary to the law. Dennis claims the ordinance violates equal protection because there is no rational nexus between having water or sewer service and paying for garbage removal. He further contends the ordinance is invalid because it imposes criminal penalties for civil citations and it makes the individual, rather than the property, liable for the alleged violation.

III. Discussion

A. Double Jeopardy – Procedural Error

First, Dennis contends the trial court procedurally erred or abused its discretion by not ruling on his assertion of a constitutional right against being twice placed in jeopardy for the same offense raised at trial. Dennis claims the trial court abrogated his constitutional right by denying an immediate interlocutory appeal.

(continued...)

rights were violated or whether the trial court abused its discretion or committed an error of law. Commonwealth v. Stone, 788 A.2d 1079 (Pa. Cmwlth. 2001).

According to Dennis, he was prejudiced because he was forced to expend resources of time and money to defend the action.

The Borough responds that Dennis' assertion of procedural error is frivolous. Dennis did not move for dismissal until *after* the testimony was taken. Because the parties agreed to brief the issue after trial, the trial court deferred ruling on the motion. Moreover, a determination as to whether or not this case constituted a prohibited second prosecution of the same criminal episode was not possible without a complete record. Thus, the trial court did not violate Dennis' constitutional rights by addressing his double jeopardy motion after the submission of post-trial briefs.

In reply, Dennis concedes he did not move for dismissal at the start of the hearing. Dennis explains he discussed a previous case on the same issue and same ordinance at the beginning of the trial. Dennis did not move for dismissal because the trial court previously denied such relief in his other summary appeals. See, e.g., Commonwealth v. Dennis (Pa. Cmwlth., No. 1873 C.D. 2013, filed October 9, 2014) (unreported), 2014 WL 5044861 (Dennis I). Dennis claims it was "essentially an agreed upon motion as to double jeopardy to be subsequently formally filed ... as a matter of judicial economy." Appellant's Reply Br. at 1.

"A motion to dismiss on double jeopardy grounds shall state specifically and with particularity the basis for the claim of double jeopardy and the facts in support of the claim." Pa. R. Crim. P. 587(B)(1). Typically, a motion

to dismiss on double jeopardy grounds is presented as a pre-trial motion, not post, so that a hearing can be held on the motion. See Pa. R. Crim. P. 587.

Generally, criminal defendants have a right to appeal a trial court's pre-trial double jeopardy determination, even though the ruling is technically interlocutory. Commonwealth v. Orié, 22 A.3d 1021 (Pa. 2011) (per curiam) (citing Commonwealth v. Bolden, 373 A.2d 90 (Pa. 1977) (plurality opinion)); Commonwealth v. Dimmig, 456 A.2d 198 (Pa. Super. 1983). “[P]retrial orders denying double jeopardy claims are final orders for purposes of appeal.” Orié, 22 A.3d at 1024 (quoting Commonwealth v. Haefner, 373 A.2d 1094, 1095 (Pa. 1977) (per curiam)) (emphasis omitted); accord Commonwealth v. Brady, 508 A.2d 286 (Pa. 1986).

Here, Dennis claims he:

requested that if the [t]rial [c]ourt did not dismiss these charges that the [c]ourt stay or continue his trial on these charges in the present proceeding while Dennis promptly took a direct appeal of the Court's ruling denying his request to dismiss said charges on the basis of double jeopardy.

Appellant's Br. at 10. As Dennis concedes in his reply brief, he never made such a request. Dennis' claim that his double jeopardy motion was “understood” by the trial court is not supported by the record. Appellant's Reply Br. at 1. Although we recognize that Dennis previously raised unsuccessful double jeopardy claims before the trial court, the fact remains Dennis did not present a motion at the start of this case. Furthermore, the parties agreed to brief the issue after trial. Thus, the

trial court did not err or violate Dennis' constitutional rights by ruling on Dennis' double jeopardy claim after the submission of post-trial briefs.

Even if Dennis properly raised the motion at the start of the hearing, we find no error. At the onset of the trial, it was not clear whether double jeopardy attached. Some of the testimony elicited at the hearing on the merits of the citation was necessary to make a determination on a motion to dismiss on grounds of double jeopardy. See Pa. R. Crim. P. 587(B)(2) (a court may conduct a hearing on a motion to dismiss on double jeopardy grounds). For these reasons, we conclude Dennis' assertions of procedural error are unavailing and without merit.

B. Double Jeopardy – Substantive Error

Next, Dennis claims the trial court erred by not dismissing the citation on double jeopardy grounds. The Borough previously cited Dennis for the same violation – nonpayment of a special tax for mandatory garbage removal service. Given the fact that three prior prosecutions were dismissed, and the last case resulted in a guilty verdict, the present prosecution should be dismissed as a violation of his right to be free of double jeopardy.

Under the Double Jeopardy Clauses of both the United States and Pennsylvania Constitutions, as well as under the Crimes Code,⁶ a second prosecution for the same offense is prohibited. See U.S. CONST. amend. V; PA. CONST. art. I, §10; 18 Pa. C.S. §109(1). This rule barring retrial is confined to cases where the prosecution's failure to meet its burden is clear, and a second trial

⁶ 18 Pa. C.S. §§101-9402.

would merely afford the prosecution another opportunity to supply evidence that it failed to put forth in the first proceeding. Commonwealth v. Gibbons, 784 A.2d 776 (Pa. 2001). “[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” Commonwealth v. Baldwin, 985 A.2d 830, 836 (Pa. 2009) (quoting Blockburger v. United States, 284 U.S. 299, 304 (1932)).

Further, double jeopardy protections may be asserted for a violation of a municipal ordinance. Although local ordinance violations are not listed as “crimes” in the Crimes Code, they are treated as criminal violations because they can result in the imposition of criminal penalties. Shahid v. Borough of Eddystone, (E.D. Pa., No. 11-2501, filed May 22, 2012) (unreported), 2012 WL 1858954, aff’d (3rd. Cir., No. 12-2634, filed November 6, 2012) (per curiam), cert. denied, ___ U.S. ___, 134 S. Ct. 92 (2013); see Borough of W. Chester v. Lal, 426 A.2d 603 (Pa. 1981) (holding proceedings charging violations of a municipal ordinance, which provides for imprisonment upon conviction or imposition of a fine or penalty, are criminal in nature); Commonwealth v. Stone & Co., 788 A.2d 1079 (Pa. Cmwlth. 2001) (same). “Thus, those prosecuted for violating municipal ordinances that provide for criminal penalties are afforded basic protections available to criminal defendants generally, including those afforded by the Rules of Criminal Procedure and the Constitution.” Dennis I, slip op. at 10-11, 2014 WL 5044861 at *5 (quoting Shadid, slip op. at 4, 2012 WL 1858954 at *4). This includes double jeopardy protections. Lal.

Under the Crimes Code, a prosecution for a violation of the same provision of a statute, based on the same facts as a former prosecution, is barred if the former prosecution resulted in an acquittal or conviction or was terminated. 18 Pa. C.S. §109. Even where a prosecution is for a violation of a different provision of the statute or is based on different facts, it is likewise barred if such former prosecution resulted in an acquittal or in a conviction and the subsequent prosecution is for:

(i) any offense of which the defendant could have been convicted on the first prosecution;

(ii) any offense based on the same conduct or arising from the same criminal episode, if such offense was known to the appropriate prosecuting officer at the time of the commencement of the first trial and occurred within the same judicial district as the former prosecution unless the court ordered a separate trial of the charge of such offense; or

(iii) the same conduct, unless:

(A) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil; or

(B) the second offense was not consummated when the former trial began.

18 Pa. C.S. §110.

Here, the Borough charged Dennis with violating Section 16 of the Ordinance because he did not pay his 2013 biannual garbage removal fee.

Although Dennis was previously prosecuted and found not guilty in 2004 and 2008 for violating the prior ordinance for not paying his prior garbage bills, the current citation implicated a different ordinance, different elements, and different facts. Under the prior ordinance, the Borough cited Dennis for not contracting with a waste hauler for garbage removal service. Under the current Ordinance, the Borough cited Dennis for failing to pay the Borough for the service.⁷ The Ordinance contains a new definition of unoccupied dwelling. Thus, the elements of the offense are different.

In addition, Dennis was previously found guilty of violating the current Ordinance for not paying the garbage removal bill for the second half of 2011. However, the current violation deals with the failure to pay the bill for services rendered in the first half of 2013, which is a new violation. Thus, a single criminal episode does not exist between any of the prior citations and the 2013 citation. The trial court did not err in determining double jeopardy protections did not attach. To conclude otherwise would essentially give Dennis a free pass from paying all future bills for garbage removal.

C. Elements of the Offense

Next, Dennis claims the trial court erred or abused its discretion by failing to dismiss the citation as the Borough did not allege the basic elements of the charged offense. Specifically, Dennis asserts the Borough did not allege that Dennis: used the garbage removal service, resides at the property, is registered to

⁷ Although Dennis refers to other citations from the early 1990s, see Appellant's Br. at 12, this allegation is not supported by the record.

vote in the Borough, has a Pennsylvania driver's license with the property's address, or registers his vehicles at the address. Significantly, the citation does not state the time period of the offense. The Borough made only a general allegation of non-payment of a "garbage bill" without other necessary elements.

Article I, Section 9 of the Pennsylvania Constitution provides, "[i]n all criminal prosecutions the accused hath a right ... to demand the nature and cause of the accusation against him." PA. CONST. art. I, §9. In addition, Pennsylvania citation procedures provide: "[e]very citation shall contain ... the specific section of the ... ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged." Pa. R. Crim. P. 403(A)(6).

"[T]he essential elements of a summary offense must be set forth in the citation so that the defendant has fair notice of the nature of the unlawful act for which he is charged." Commonwealth v. Nicely, 988 A.2d 799, 806 (quoting Commonwealth v. Borriello, 696 A.2d 1215, 1217 (Pa. Cmwlth. 1997), aff'd, 723 A.2d 1021 (Pa. 1999)). In other words, "[a] defendant should not have to guess which charges have been placed against him. If charges in an indictment are not clear and explicit a defendant cannot properly defend against them." Commonwealth v. Wolfe, 289 A.2d 153, 155 (Pa. Super. 1972).

When a citation contains defects, the court must turn to the state rules of criminal procedure for the consequences of that defect. Commonwealth v.

Borriello, 696 A.2d 1215 (Pa. Cmwlth. 1997), aff'd, 723 A.2d 1021 (Pa. 1999).

Rule 109 of the Pennsylvania Rules of Criminal Procedure provides:

A defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of a complaint, citation, summons, or warrant, or a defect in the procedures of these rules, unless the defendant raises the defect before the conclusion of the trial in a summary case ... and the defect is prejudicial to the rights of the defendant.

Pa. R. Crim. P. 109 (emphasis added).

In order for a summary citation to be dismissed for defects in a citation, the defendant must have suffered actual prejudice. Borriello. Actual prejudice will not be found where the content of the citation, taken as a whole, sufficiently notifies the defendant as to the nature of the summary offense or where the defect or omission does not involve the basic elements of the offense charged. Id.

The Ordinance sets forth the basic elements of the offense:

The legal and/or equitable owner(s) of the real estate containing a residential establishment shall be responsible to pay, and shall pay, the fees, fines and penalties as may be imposed pursuant to the provisions of this article. A residential establishment is exempt from this section only if it is an unoccupied dwelling unit as defined pursuant to this article.

Section 16 of the Ordinance

A “residential establishment” is defined as:

Any premises utilized primarily as a residential dwelling unit, including but not limited to, homes and mobile homes; apartment are considered commercial establishments. A commercial establishment containing not more than two residential dwelling units may elect to have the residential units considered a residential establishment by written notice to the Borough Secretary.

Section 2 of Ordinance. The Ordinance defines dwelling unit as “[a]ny structure, or part thereof, designed to be occupied as living quarters as a single house keeping unit.” Id. The Ordinance defines “unoccupied dwelling unit” as “[a] dwelling unit within the Borough of Walnutport which is unfit to live in and/or which is not receiving municipal water and/or sewer service.” Id.

Here, the citation placed Dennis on notice of the charges against him. The citation charged Dennis with violating Section 16 of the Ordinance, and it described the nature of the offense as “the defendant failed to pay the garbage bill for the garbage removal services provided to the property.” Certified Record, Item No. 3 (Non-Traffic Citation); see N.T. at 6, 16. Contrary to Dennis’ assertions, the Borough did not need to allege that Dennis resided at the property or used the garbage removal service. See Section 16 of the Ordinance.

Although the notice did not set forth the time period of the violation, Dennis cannot reasonably claim surprise or resulting prejudice warranting dismissal. Prior to issuing the citation, the Borough mailed Dennis an invoice and past due notices regarding the 2013 garbage bill by both certified and regular mail. N.T. at 8-11. Code Officer testified he posted the third and final notice to the door of the house. Id. at 20. Dennis stipulated he did not pay the 2013 garbage bill. Id. at 9. The content of the citation, taken as a whole, sufficiently notified Dennis of

the nature of the summary offense and the violation charged. Therefore, the trial court did not err by not dismissing the citation for lack of specificity.

D. Beyond a Reasonable Doubt

Next, Dennis argues the trial court erred and abused its discretion by finding the Borough proved the elements of the offense beyond a reasonable doubt. Specifically, Dennis claims the Borough did not prove: (1) garbage removal service was provided to the property; (2) the property used the garbage removal service; (3) the property is a residential establishment; (4) there was water usage at the property; (5) water usage is a nexus to the creation of solid waste; or, (6) the existence of a contract between the Borough and the waste hauler.

In summary offense cases, the prosecution is required to establish a person's guilt beyond a reasonable doubt. Stone & Co. The test for evaluating the sufficiency of the evidence in a conviction for a summary offense is whether, viewing all the evidence admitted at trial, together with all reasonable inferences therefrom, in the light most favorable to the prosecution, the trier of fact could have found that each element of the offense charged was supported by evidence and inferences sufficient in law to prove guilt beyond a reasonable doubt. Commonwealth v. Geatti, 35 A.3d 798 (Pa. Cmwlth. 2011).

As discussed above, in order to show Dennis violated Section 16, the Borough needed to prove: (1) Dennis was the legal and/or equitable owner of Borough property; (2) the property contains a "residential establishment," not an "unoccupied dwelling unit"; and, (3) Dennis did not pay requisite fee. Section 16

of the Ordinance. Under the Ordinance, the Borough did not need to establish that Dennis resided at the property or used the garbage removal service. See id.

Here, Secretary testified Dennis owned the property. N.T. at 7-8. According to Secretary, the property contains a single-family residence, which receives municipal water service and does not qualify for exemption as an “unoccupied dwelling unit.” Id. at 7, 13. She testified she generated and sent an invoice and multiple notices requiring payment for garbage removal services, which Dennis did not pay. Id. at 4-5, 8-9. Dennis himself stipulated he did not pay the garbage bill; he was the exclusive owner of the property; and, the property is habitable and receives water service. N.T. at 9, 13; see C.R., Item No. 6, Def.’s Br. in Support of Post-Trial Args. at 2. This evidence proves beyond a reasonable doubt that Dennis violated Section 16 of the Ordinance.

E. Invalidity of Ordinance

1. Equal Protection

Next, Dennis contends the trial court erred or abused its discretion by not invalidating the Ordinance as unconstitutional or contrary to the law. Citing Ridley Arms v. Township of Ridley, 531 A.2d 414 (Pa. 1987), Dennis claims the Borough violated his equal protection rights because other similarly situated properties are treated disparately. He claims there is no rational nexus between having water or sewer service and paying for garbage removal. Dennis submits the classification is unreasonable and constitutes a violation of his equal protection rights.

The Borough responds that Dennis waived the issue by not raising the issue at trial. However, the trial court afforded Dennis the opportunity to brief his arguments before the trial court made a final determination. See N.T. at 35. Dennis included the issue in his post-trial brief. The trial court, upon determining the issue was not waived, addressed the issue in its opinion. See Tr. Ct., Slip Op., at 8 n.5. As the trial court addressed the issue, we decline to find waiver.

Equal protection clause challenges of a borough's taxing legislation are subject to the "rational basis" standard. Ridley Arms, 531 A.2d at 547. Under this standard, "the classification is analyzed 'to determine whether it is reasonable, not arbitrary, and rests upon a difference having a fair and substantial relation to the object of the legislation.'" Id. (quoting Snider v. Thornburgh, 436 A.2d 593, 597 (Pa. 1981)). An ordinance will not be declared unconstitutional unless it "clearly, palpably, and plainly violates the constitution." Id. at 549 (quoting Snider, 436 A.2d at 598); accord Trigona v. Lender, 926 A.2d 1226 (Pa. Cmwlth. 2007). The party challenging the constitutionality bears a heavy burden of proving the classification is not reasonable. Ridley Arms.

In Ridley Arms, the taxpayer challenged the reasonableness of the classification between residential and commercial users in a refuse collection ordinance. The ordinance provided municipal trash services to residential properties, and required commercial users to privately contract for such services. The taxpayer argued that it was an impermissible classification. The Supreme Court found the purpose of the classification was "to promote public health and safety for those least able to bargain for favorable rates (individual homeowners),

while excluding those who might overburden the system (commercial establishments) were they included.” 531 A.2d at 548. Although taxpayer “raised questions” as to the reasonableness in relation to the purpose of the ordinance, it did not provide sufficient information to find that collection fees bore no reasonable relation to the governmental purpose of safe and economical collection of refuse. Id. at 547. Thus, the taxpayer did not meet its burden of showing the ordinance violated equal protection.

Here, the Ordinance regulates the collection, transportation and disposal of solid waste and requires all residential property owners to pay for such services. The Ordinance classifies residential properties as occupied and unoccupied. Generally speaking, occupied dwellings generate garbage, while unoccupied dwellings do not. The Borough classifies properties without water or sewer as not occupied and therefore exempt from the fee.

Contrary to Dennis’ assertion, there is a rational nexus between having water or sewer service and paying for garbage removal service. If a property is not using water or sewer, it may be assumed that the property is not occupied and therefore not generating garbage. Although Dennis raises questions about other scenarios when a property may not be occupied, he did not demonstrate the unreasonableness of the Borough’s classification in relation to the purpose of the Ordinance. Thus, the Ordinance’s criteria used to classify those properties that are excluded are rational and constitutionally permissible.

2. Imposition of Criminal Penalties

Next, Dennis claims the Ordinance must be invalidated because it improperly imposes criminal penalties for nonpayment of an invoice for municipal services. Invoices for municipal services, such as garbage collection, should not be deemed criminal in nature when the person neither requested nor used the service. Rather, invoices for such services are special taxes, which are civil in nature. A municipal body is only authorized to collect special taxes under what is commonly referred to as the Municipal Claims and Tax Liens Act (MCTLA).⁸ Under the MCTLA, Dennis argues, the Borough is not authorized to bring a criminal action against him for the failure to pay for municipal services.

“As a general rule, a municipality does not possess and cannot exercise any other than the following powers: 1) those expressly granted; 2) those necessary or fairly implied in or incident to the powers expressly granted; and 3) those indispensable to the declared objects and purposes of the municipality.” Trigona, 926 A.2d at 1234 (citing In re Valley Deposit & Trust Co. of Belle Vernon, 167 A. 42 (Pa. 1933)). A municipality is powerless to enact ordinances except as authorized by statute, and ordinances not in conformity with its enabling statute will be void. Id. (citing City of Phila. v. Schweiker, 858 A.2d 75 (Pa. 2004)).

⁸ Act of May 16, 1923, P.L. 207, as amended, 53 P.S. §§7101-7505.

The Borough Code⁹ expressly grants boroughs legal authority to regulate garbage collection and removal service within its jurisdiction. Section 1202(8) of the former Borough Code, 53 P.S. §46202(8); see 8 Pa. C.S. §1202(8). Pursuant to Section 3321 of the former Borough Code,¹⁰ a borough ordinance “shall prescribe the fines and penalties which may be imposed for its violation ... and shall designate the method of its enforcement.”

⁹ Act of February 1, 1966, P.L. (1965) 1656, as amended, 53 P.S. §§45101-48501, which was in effect at the time the Ordinance was adopted and the citation was issued, was repealed and replaced by 8 Pa. C.S. §§101-3501, effective June 17, 2014. However, as the historical and statutory notes to Section 1202 explain:

[T]he addition of 8 Pa.C.S. Pt. I is a continuation of the act of February 1, 1966 (1965 P.L. 1656, No. 581). ... Except as otherwise provided in 8 Pa.C.S. Pt. I, all activities initiated under The Borough Code shall continue and remain in full force and effect and may be completed under 8 Pa.C.S. Pt. I. Orders, regulations, rules and decisions which were made under The Borough Code and which are in effect on the effective date of section 3(2) of this act [June 17, 2014] shall remain in full force and effect until revoked, vacated or modified under 8 Pa.C.S. Pt. I.

8 Pa. C.S. §1202, Comment.

¹⁰ Added by the Act of May 17, 2012, P.L. 262, 53 P.S. §48321. This section was repealed and replaced by Section 3321 of the Borough Code, 8 Pa. C.S. §3321. As explained in the Comments to Section 3321, “[t]his new section is based on section 1601(c.1) of the Second Class Township Code [Act of May 1, 1933, P.L. 103, as amended, 53 P.S. §§65101-68701], and, therefore, enforcement of ordinances is now bifurcated with violations for certain ordinances to be enforced civilly (clause (1)) and others to be enforced as summary offenses (clause (2)). (Previously, any violation or failure to comply with any provision of any borough ordinance constituted a summary offense. *See* old section 3301 of the Borough Code).” 8 Pa. C.S. §3321, Comments. Like its predecessor, Section 3321 continues to permit enforcement for ordinances regulating health and public safety by a criminal action in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. 8 Pa. C.S. §3321(b)(2).

For an ordinance regulating health and public safety, the ordinance shall provide that its enforcement shall be by action brought before a magisterial district judge in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. Former 53 P.S. §48321(2). A borough may prescribe criminal fines not to exceed \$1,000 per violation and may prescribe imprisonment to the extent allowed by law. Id. Ordinances that regulate the collection, transportation and disposal of solid waste promote public health, public safety and welfare. Ridley Arms; Nat’l Props., Inc. v. Borough of Macungie, 595 A.2d 742 (Pa. Cmwlth. 1991); see Section 102 of the Solid Waste Management Act¹¹ (declaring “improper and inadequate solid waste practices create public health hazards, environmental pollution, and economic loss, and cause irreparable harm to the public health, safety and welfare”); Section 102(b)(3) of the Municipal Waste Planning, Recycling and Waste Reduction Act¹² (providing the express purpose of the act includes “[p]rotect[ing] the public health, safety and welfare from the short- and long-term dangers of transportation, processing, treatment, storage and disposal of municipal waste.”).

In addition to enforcement as a summary offense, boroughs may bring an action in equity. Former 53 P.S. §48321(4); see also 8 Pa. C.S. §3321(c). The Borough is also authorized to collect delinquent taxes by utilizing the method and specific procedures afforded by the MCTLA, which provides for liens against the property. Section 4 of the MCTLA, 53 P.S. §7107.

¹¹ Act of July 7, 1980, P.L. 380, 35 P.S. §6018.102.

¹² Act of July 28, 1988, P.L. 556, 53 P.S. §4000.102(b)(3).

Here, pursuant to its express powers under the Borough Code, the Borough adopted the Ordinance for the collection, transportation and disposal of solid waste. The Ordinance prescribes the fines and penalties which may be imposed for its violation and designates the method of its enforcement. Section 17 of Ordinance. Specifically, “[a]ny person ... who shall violate any provision of this article shall, upon conviction thereof, be sentenced to pay a fine of not less than \$300.00 or more than \$1,000.00 plus costs and, in default of payment of said fines and costs, to a term of imprisonment not to exceed 30 days.” Id.

As the collection, transportation and disposal of garbage is a health, safety and welfare issue, the Borough was permitted to penalize any residential property owners for refusing to comply with the terms of the Ordinance. See Former 53 P.S. §48321(2). The fact that other methods of enforcement were available to the Borough did not negate the Borough’s right to issue a non-traffic summary citation. As no fundamental laws have been clearly, palpably and plainly violated, Dennis’ argument is without merit.

3. Liability of Person not Property

Finally, Dennis contends the trial court erred and abused its discretion by not invalidating the Ordinance based on the fact it made the individual, rather than the property, liable for the violation. Relying on Pentlong Corporation v. GLS Capital, Inc., 820 A.2d 1240 (Pa. 2003), superseded by statute on other grounds, Section 3 of the MCTLA, 53 P.S. §7106, and Trigona, Dennis asserts special taxes are subject to *in rem* proceedings, i.e., against the property, not against the person.

Historically, municipal taxes fell into categories: general and special taxes. Pentlong; Trigona. General taxes applied to all properties, and special taxes paid for improvements that enhanced the value of specific properties. See Pentlong; Trigona.

This distinction is further observed in the statutory collection methods authorized by the MCTLA. Trigona. Under the MCTLA, claims arising to recover unpaid general taxes are “tax claims,” and claims arising to recover special taxes are “municipal claims.” Section 1 of the MCTLA, 53 P.S. §7101. Specifically, Section 1 of the MCTLA defines a “municipal claim” as a claim arising out of or resulting from a tax assessed by a municipality to recover for a taxpayer's benefits from local improvements, services supplied, work done, or improvements authorized and undertaken by the municipality, although the assessment amount is not definitely ascertained at the time of the claim and a lien has not yet been filed. Id. Thus, the MCTLA makes an explicit distinction between tax claims filed as a result of unpaid general taxes, and municipal claims filed as a result of unpaid special taxes. Taxes for municipal services, such as garbage removal for a specific property, fall into the municipal claim category under the MCTLA. See Trigona. Under the MCTLA, a borough may recover unpaid special taxes by placing a municipal lien against the property. 53 P.S. §7107.

In Trigona, a taxpayer challenged a city ordinance that compelled payment of municipal obligations through the denial of licenses and permits required for real property development. For several reasons, we held the ordinance

was in excess of the city's powers to collect taxes and municipal claims. First, it imposed a legal disability on individuals, although such a tax collection method was not authorized by any statute. Second, we explained:

[The ordinance] raises, therefore, a procedure against persons, as opposed to an *in rem* or property-based remedy. In fact, the personal disability extends to other persons of business affiliation with a delinquent property owner, so as to potentially prohibit the approval of their otherwise valid license and permit applications for other properties. Thus, under ... the [o]rdinance, if any shareholder, officer or director of a business entity is in default, permits and licenses will be withheld from the entire business.

926 A.2d at 1236 (emphasis added). We held that this created an impermissibly broad remedy. Id.

However, Trigona is readily distinguishable from this case. In Trigona, we found no express grant of authority allowing the city to employ other methods of municipal obligations collection. In contrast, the Borough Code expressly authorizes the Borough to bring an action against the person for violating the Ordinance in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure and to impose criminal fines. Former 53 P.S. §48321(2).

Moreover, unlike the city's ordinance in Trigona, which could be applied against persons only distantly related to the property, there is no suggestion here that the Ordinance impermissibly reaches persons other than legal or equitable owners of a property.

Thus, the Ordinance here is not in excess of the Borough's powers to collect special taxes. Although boroughs may enforce ordinances through an action in equity, former 53 P.S. §48321(4), or by placing a lien on the property under the MCTLA, such alternate enforcements do not render the criminal enforcement against the person unlawful or unconstitutional.

IV. Conclusion

Upon review, we conclude the respected trial court did not abuse its discretion, commit an error of law, or violate Dennis' constitutional rights. Accordingly, we affirm.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Borough of Walnutport	:	
	:	
v.	:	No. 256 C.D. 2014
	:	
Timothy Dennis,	:	
Appellant	:	

ORDER

AND NOW, this 30th day of March, 2015, the order of the Court of Common Pleas of Northampton County is **AFFIRMED**.

ROBERT SIMPSON, Judge