IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Commonwealth of Pennsylvania | : | |
| | : | No. 3 C.D. 2013 |
| v. | : | |
| | : | Submitted: May 10, 2013 |
| Ronald Heckman, | : | |
| Appellant | : | |

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge

***OPINION NOT REPORTED***

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: July 3, 2013

Ronald Heckman appeals, pro se, from the July 30, 2012 order of the Court of Common Pleas of Berks County (trial court) finding him guilty of a summary offense for violating section 704.5 of the City of Reading's Property Maintenance Code (Code), entitled Fire Protection Systems.[1] In pertinent part, section 704.5 of the Code states that a minimum of one approved smoke detector shall be installed in the bedroom area of a dwelling unit; this provision also states that where a residential building contains three or more dwelling units, smoke detectors are required on every story of the dwelling unit, including hallways and corridors that provide a means of egress. (Reproduced Record (R.R.) at 64a.)

[1] Defendant was also cited for violating section 308.1 of the Code, Structure to be Free of Insect and Rodent Infestation, but the trial court found him not guilty of this offense.

On January 11, 2012, City Code Inspector Carol Koehn responded to a complaint from a tenant and inspected Defendant's rental building on 101 Walnut Street in the City of Reading (City), Berks County. Inspector Koehn cited Defendant for violating section 704.5 of the Code because the building had a malfunctioning hard-wired smoke alarm system and was missing smoke detectors. On March 29, 2012, a magisterial district judge found Defendant guilty. Defendant subsequently appealed, and the trial court conducted a trial de novo, with Defendant appearing pro se.

At the trial de novo, the Commonwealth presented the testimony of Inspector Koehn. He testified that he met the complainant/tenant on January 11, 2012, and walked through the common areas and some of the units in the building. Inspector Koehn stated that he observed that two units did not have a smoke detector and that the hardwired system in the common areas contained missing and broken heads and was not functioning properly. Inspector Koehn said that he issued Defendant a violation notice and provided Defendant with five days, or until January 16, 2012, to remedy the violations. The violation notice stated that Defendant had a right to appeal the notice by requesting a hearing in writing within 5 days to the Property Maintenance Administrator. Inspector Koehn testified that he re-inspected Defendant's building on January 25, 2012, and observed that smoke detectors were still missing within the dwelling units. Inspector Koehn took a photograph on January 25, 2012, depicting plastic "rings" on a wall with no smoke detector attached to the rings, and this photograph was admitted into evidence. Inspector Koehn stated that after conducting his re-inspection, he issued Defendant citations, condemned the building, and ordered its occupants to vacate because the smoke detectors were not

replaced in the allotted time-frame. (Trial court op. at 6-7; Notes of Testimony (N.T.) at 11, 29; R.R. at 47a-48a, 56a.)

When Inspector Koehn finished his testimony on direct examination, the trial court stated, "Why don't you step down, and let me hear from [Defendant]." Defendant replied, "What, I don't cross examine?" The trial court said, "I'd rather have you tell me directly what your side of this is. Then we can kill two birds with one stone." (N.T. at 13.)

Defendant testified that after he received the January 11, 2012 violation notice, he mailed a timely appeal to the Property Maintenance Administrator on January 17, 2012, the day after Martin Luther King's Day. Defendant argued that he never received a hearing with the City's appeal board prior to receiving the citations and requested that the trial court dismiss the case for lack of jurisdiction. Defendant then stated that on January 15, 2012, he replaced two missing smoke detectors in the hallways and the common areas and also installed five newly-purchased smoke detectors throughout the building. To prove that he purchased additional smoke detectors and placed them in the building, Defendant admitted documentary evidence in the form of receipts and a photograph. In addition, Defendant testified that the notice of violation did not inform him that there were smoke detectors missing from within individual dwelling units, but he stated that every dwelling unit had a smoke detector when Inspector Koehn re-inspected the building. (Trial court op. at 7-8; N.T. at 24-26, 31, 33-34; R.R. at 58.)

By order dated July 30, 2012, the trial court found Defendant guilty of violating section 704.5 of the Code and ordered him to pay a $200 fine and court costs within 30 days or face imprisonment. In making this determination, the trial court found that the credible testimony of Inspector Koehn established, beyond a

reasonable doubt, that Defendant's building did not have required smoke detectors within the dwelling units.[2] The trial court also found Defendant's evidence not credible, noting that three of Defendant's new smoke detectors were purchased two days after the date for compliance had passed; Defendant's photograph depicting the purported corrections did not have a time or date stamp; and statements in Defendant's appeal to the Property Maintenance Administrator undermined his assertion that all the dwelling units had operable smoke detectors. Further, the trial court denied Defendant's request to dismiss the case for lack of jurisdiction, concluding that "[w]hether or not other intermediate steps could have been taken prior to the appeal being taken to this court does not negate our jurisdiction to hear the case de novo." (Trial court op. at 7-8.) Thereafter, Defendant filed an appeal to this Court.[3]

Defendant first argues that the trial court erred in failing to dismiss the case for lack of jurisdiction because he filed a timely appeal to the Property Maintenance Administrator upon receiving the violation notice. Defendant contends

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[2] On the record, the trial court stated that he was acquitting Defendant for the smoke detectors allegedly missing in the hallway and common areas, but finding him guilty for the missing smoke detector(s) located within the individual units. In so doing, the trial court stated that "[i]f Defendant is guilty with one smoke detector missing as with all smoke detectors missing, then he's guilty, and that's the end of that." (N.T. at 37.)

[3] Our review of a trial court's order on appeal from a summary conviction is limited to determining whether there has been an error of law or whether competent evidence supports the trial court's findings. Commonwealth v. Nicely, 988 A.2d 799, 803 n.3 (Pa. Cmwlth. 2010). In summary offense cases, the Commonwealth has a never-shifting burden of proving all elements of the offense beyond a reasonable doubt. Id.

By per curiam order dated May 3, 2013, this Court precluded the Commonwealth from filing a brief in this matter because the Commonwealth did not file a brief within the prescribed time-frame.

that under section 111.8 of the Code,[4] his appeal stayed enforcement of the violation notice until the City's appeals board conducted a hearing, and when no such hearing occurred, the trial court was deprived of jurisdiction to decide the case. We disagree.

Pursuant to section 1515(a) of the Judicial Code, 42 Pa. C.S. §1515(a), magisterial district judges have jurisdiction to decide summary offenses, and under Pa.R.Crim.P. 400 and 406, a summary case may be instituted by issuing a citation to the defendant and filing it with the magisterial district judge. If the proceedings before a magisterial district judge result in a guilty plea or a conviction, Pa.R.Crim.P. 462 grants a defendant the right to a de novo, non-jury trial before a judge of the court of common pleas. See also section 932 of the Judicial Code, 42 Pa. C.S. §932 (granting the courts of common pleas "exclusive jurisdiction of appeals from final orders of the minor judiciary established within the judicial district.").

Here, it is undisputed that a violation of section 704.5 of the Code constitutes a summary offense and that Inspector Koehn issued Defendant a citation for violating that provision and filed the citation with the magisterial district judge. Consequently, the magisterial district judge - and later the trial court - were vested with jurisdiction, per the authority of section 1515(a) of the Judicial Code and Pa.R.Crim.P. 462, to adjudicate Defendant's summary offense. Although section 111.8 of the Code purports to stay the City's enforcement of an appealed violation notice, this provision cannot operate to condition, restrict, or divest the courts of their statutorily-authorized jurisdiction when a citation is properly filed with the magisterial district judge. See Western Pennsylvania Restaurant Association v. City

[4] According to Defendant, this section states that "[a]ppeals of notice and orders (other than imminent danger notices and emergency measures per section 109) shall stay the enforcement of the notice and order until the appeal is heard by the appeals board." (Defendant's brief at 10.)

of Pittsburgh, 366 Pa. 374, 381, 77 A.2d 616, 620 (1951) ("It is of course self-evident that a municipal ordinance cannot be sustained to the extent that it is contradictory to, or inconsistent with, a state statute").

Moreover, by its very nature, section 111.8 of the Code is a procedural device for the City's board of appeals to decide, as a matter of administrative discretion and grace, whether a violation notice should result in the issuance of a citation and the initiation of summary offense proceedings. Unlike a magisterial district judge or a trial court, the City's board of appeals lacks the authority and jurisdiction to find Defendant guilty or not guilty as a matter of criminal law. For purposes of this case, it matters not how or through what process the City decided to issue a citation and commence a summary offense proceeding. The fact of the matter is that the City did, and, as a result, the magisterial district judge and the trial court obtained jurisdiction over the summary offense for which Defendant was charged. Therefore, we conclude that Defendant's jurisdictional argument fails.

Defendant next asserts that the trial court contravened his constitutional rights in failing to afford him the opportunity to cross-examine Inspector Koehn.[5]

In its opinion, the trial court asserts that Defendant's claim regarding cross-examination was waived for failing to object at trial. (Trial court op. at 6.) We disagree. The record reflects that the trial court informed Inspector Koehn to step-down from the stand, Defendant then requested to cross-examine Inspector Koehn, but the trial court told Defendant to take the stand and testify in order to "kill two birds with one stone." (R.R. at 7a; N.T. at 13.) We conclude that the trial court's

[5] With respect to evidentiary matters, we review a trial court's decision under an abuse of discretion standard. Commonwealth v. Brown, 592 Pa. 376, 925 A.2d 147 (2007).

denial of Defendant's request to conduct cross-examination was sufficient to operate as a preserved objection; accordingly, we proceed to address Defendant's argument on its merits.

Here, the trial court denied Defendant's request to cross-examine Inspector Koehn, and we agree with Defendant that the trial court abused its discretion in this regard. However, "the denial of the opportunity to cross-examine an adverse witness does not fit within the limited category of constitutional errors that are deemed prejudicial in every case," and any error in denying the right of cross-examination "is subject to … harmless-error analysis." Delaware v. Van Arsdall, 475 U.S. 673, 682-84 (1986). In conducting a harmless-error analysis, "[t]he correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt." Id. at 684. If an appellate court concludes that the error complained of did not contribute to the verdict, the error is harmless and no new trial is required. Commonwealth v. French, 578 A.2d 1292 (Pa. Super. 1990). The harmless error rule derives from the notion that although a defendant is entitled to a fair trial, he is not entitled to a perfect one. Commonwealth v. Story, 476 Pa. 391, 383 A.2d 155 (1978).

Pursuant to Pa.R.E. 611(b), the scope of cross-examination of a witness in a criminal case "should be limited to the subject matter of the direct examination and matters affecting credibility." Under Pa.R.E. 607(b), the credibility of any witness may be impeached only by evidence relevant to that issue. "Since the credibility of any witness depends upon his or her powers of perception, capacity to remember, ability to communicate accurately and honesty or integrity, it may always be attacked by showing shortcomings in any of those areas." Id., *Comment.*

As a proffer, Defendant proposes that if given the chance, he would have cross-examined Inspector Koehn with the following questions: why didn't the Commonwealth call any tenants to testify; if there were missing smoke detectors, what did the tenants do with them; and why did Inspector Koehn not invite him along for the January 25th re-inspection. (Defendant's brief at 18-19.) However, these lines of inquiry are irrelevant because any reasonable response from Inspector Koehn would not tend to undermine his credibility or prove a fact material to issues in this case; further, the questions related to the tenants most likely seek information of which Inspector Koehn has no personal knowledge. Under Pa.R.E. 607(b), the trial court could have properly prohibited Defendant from cross-examining Inspector Koehn with these questions on grounds of irrelevancy. Id., *Comment* ("The methods that may be used to impeach credibility are subject to Pa.R.E. 401, which defines relevant evidence."). Accordingly, we conclude that Defendant's inability to pose the above questions would not have affected the trial court's verdict because the questioning, by virtue of being inadmissible, does not possess any kind of "damaging potential." Van Arsdall, 475 U.S. at 684.

In addition, Defendant proposes that he would have cross-examined Inspector Koehn as to why the photograph taken on January 25th failed to adequately depict that the "rings" were located within dwelling units. (Defendant's brief at 18-19.) Although the trial court did not technically permit Defendant to cross-examine Inspector Koehn on this issue, the trial court was extremely active in facilitating the questioning of and dialogue between Defendant and Inspector Koehn, and the trial court judge himself engaged in cross-examination, often on behalf of pro se Defendant. For instance, when Defendant was on the stand, he challenged the veracity of Inspector Koehn's photograph, stating: "[T]he one photo [Inspector

Koehn] has is a place that … isn't designed to have [a smoke detector.] He has it inside[,] … you walk into the front door and … he shows a ring up there, but that's not one of the bedrooms." (N.T. at 25.) The trial court then questioned Inspector Koehn, and Inspector Koehn conceded that Defendant was correct that the photograph only depicted rings on a wall. The trial court asked Inspector Koehn if the photograph was taken inside a tenant's apartment, and Inspector Koehn stated that it was. Consistent with Defendant's previous testimony, the trial court next asked Inspector Koehn if it was possible that a smoke detector was located within the dwelling and that a tenant could have taken the smoke detector down. (N.T. at 29.)

In light of this record, it is apparent that the trial court was aware of Defendant's assertion that the January 25th photograph was not taken within a dwelling unit and essentially cross-examined Inspector Koehn on this issue. In his proffer, Defendant does not articulate a factual foundation upon which he would have utilized to inquire further into the issue via cross-examination, let alone provide this Court with information or details that would tend to undermine the accuracy of the photograph or impeach Inspector Koehn's credibility. Consequently, we conclude that there was no "damaging potential" to be realized if Defendant were permitted, in essence, to ask Inspector Koehn the very same question that the trial court asked. It is well-settled that the erroneous exclusion of evidence constitutes harmless error where the excluded evidence is merely cumulative of other evidence admitted during the trial. Commonwealth v. Hawkins, 549 Pa. 352, 701 A.2d 492 (1997). Because Defendant now seeks to cross-examine Inspector Koehn on an issue explored at trial with a question that Inspector Koehn answered at trial, his proffer is cumulative to that which has already been addressed during trial and considered by the trial court as fact-finder. Therefore, although the trial court abused its discretion in failing to

permit Defendant the opportunity to personally cross-examine Inspector Koehn, we conclude that the error was harmless and does not necessitate a new trial.[6]

Next, Defendant claims that his conviction must be set aside pursuant to the doctrine of unclean hands and due process violations and requests that this Court declare all of the City's Code null, void, and unenforceable. We summarily reject these contentions because they merely recast Defendant's first legal argument concerning jurisdiction (which we have found to be proper) under the rubric of new legal theories.

Finally, Defendant asserts that he was denied his right to present a closing argument. However, the record reveals that Defendant never made an objection or request to orate a closing argument at trial; therefore, this issue is waived for purposes of this appeal. Pa.R.A.P. 302(a) (stating that issues not raised before the trial court cannot be asserted for the first time on appeal).

Accordingly, for the above-stated reasons, we affirm the trial court's order.

PATRICIA A. McCULLOUGH, Judge

[6] With this being stated, this Court by no means condones the practice and procedure employed by the trial court in adjudicating this summary case. We simply hold that given the facts of this case and Defendant's proffer, the trial court's error was harmless.

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***ORDER***

AND NOW, this 3rd day of July, 2013, the July 30, 2012 order of the Court of Common Pleas of Berks County is affirmed.

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PATRICIA A. McCULLOUGH, Judge