

In the Court of Common Pleas

Wayne County, Pennsylvania

Number: 040-2018-SA

Commonwealth of Pennsylvania

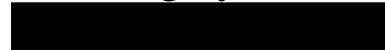
v.

Jack Gregory Monte

Brief for Defendant

Requested by the Honorable President Judge Janine Edwards

Jack Gregory Monte



Hawley, PA 18428

Pro se

3/10/19

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[ALL THE DOCUMENTS AVAILABLE FROM STOP-SIGN-TICKET.COM](#)

[CAN BE FOUND AT THE END OF THIS BRIEF.](#)

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STATEMENT OF THE QUESTION INVOLVED

Is an illegal stop sign enforceable?

(Not answered by the Court)

STATEMENT OF THE CASE

Defendant Jack Gregory Monte was issued a citation by Hawley Borough police officer Moser for an alleged violation of Title 75, Section 3323(b). She testified that the defendant failed to stop at the stop sign at the intersection of Wellwood Avenue and Church Street in Hawley, PA on September 15, 2018. There was no testimony from the defendant.

Witness for the defense, Gregory Monte, testified that he received a letter from the Pennsylvania Department of Transportation (signed and sealed), which indicated that PennDOT did not install the stop sign at issue. The Hawley open public records officer stated in Defense Exhibit 6 that she "... did not find any record that Hawley Borough Council passed an ordinance ... to install the stop sign at the intersection ..."

Defense Exhibit 1 (a picture of the intersection taken in November, 2018) and Defense Exhibit 2 (the same location but from September, 2018), show that the stop sign was moved closer to the intersection after the alleged offense. The Hawley Borough open public records officer (Defense Exhibit 6) verified that the Borough Council "... approved the construction that was performed at the intersection ... in October 2018 ..."

At the end of the trial, the Court acknowledged that the stop sign at the intersection of Wellwood Avenue and Church Street in Hawley, PA was illegal. When the Court then asked the Commonwealth its opinion about whether an illegal stop sign was enforceable, it responded in the affirmative. The defendant, citing 75 Pa Code, Section 102, suggested that the sign did not meet the definition of an official traffic-control device and so was not enforceable.

SUMMARY OF THE ARGUMENT

The Commonwealth is entitled to the presumption that a traffic-control device (like a stop sign) is properly authorized and that it complies with required statute. The defendant needs to provide evidence to overcome these presumptions if he wishes to prevail. A review of the evidence presented at trial indicates that the Commonwealth's statutory presumptions were overcome – the stop sign was not properly authorized nor was it compliant with the Pennsylvania Vehicle Code. Related case law cited suggests that an unauthorized and non-compliant traffic-control device is not enforceable.

ARGUMENT

Commonwealth v. Kingsley, (Pa. Superior Court, 2018) indicates that “Section 3111 provides a defense to Section 3323.” While the judge in that case rightly noted that “Kingsley presented insufficient evidence to overcome the presumption that the placement of the stop signs was proper,” the defense in the present case did provide this evidence at trial.

First Presumption Addressed - The Stop Sign was not Authorized

Title 75, Section 3111(c) - “the devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.”

Was the stop sign at the intersection of Wellwood Avenue and Church Street “so placed by the official act or direction of lawful authority?” That would depend on what “official act or direction of lawful authority” means. Fortunately, Title 75, Section 6109 clarifies this meaning. Subsection (a)(2) and (6) authorize PennDOT to install traffic control devices anywhere in the Commonwealth. Under those same subsections, local authorities are also authorized to install traffic-control devices “within their physical boundaries.” However, Title 75, Section 6109(b)

applies a restriction upon local authorities when they wish to “exercise their police powers” to install traffic-control devices. “Action taken by local authorities ... shall be by ordinance ...”

The argument about the need for an ordinance stretches back decades. In *Commonwealth v. Hostetter*, 29 Pa. D. & C. 3d 562 (Pa. Court of Common Pleas, 1984), the court made the following comment: “There is a divergence of authority as to whether either an ordinance or warning signs are required. Unfortunately, no case has been decided by an appellate court.” The court then proceeds to trace the history of this topic without coming to a firm decision: “We are not called upon to determine if ordinances and signs are required ...”

The Pennsylvania Supreme Court, however, appears to have settled this once and for all in *Commonwealth v. DePasquale*, 476 A. 2d 419 (Pa. Supreme Court, 1984). “The provisions of the Vehicle Code, at 75 Pa.C.S. § 6109(a) ... do not prevent local authorities from exercising their police powers ... The establishment ... however, must be by ordinance. 75 Pa.C.S. § 6109(b)(1).”

Furthermore, the need for an ordinance was highlighted in the Pennsylvania Department of Transportation’s 2014 Local and Technical Assistance Program Sheet #137 entitled “Effective Stop Sign Placement.” This is a publicly available

document published on its official government website. Page two of this document states: “A STOP sign needs an ordinance to make it ‘legal’ and enforceable.”

Does what PennDOT say matter? According to the court in *Commonwealth v. DePasquale*, 476 A. 2d 419 (Pa. Supreme Court, 1984), it does: “PennDOT has been charged with administering the Vehicle Code, 75 Pa. C.S. § 6102(a). Its construction of the statute, therefore, is entitled to great weight and will not be disregarded unless it is clear that its interpretation is incorrect.”

Consider the evidence introduced at trial related to authorization and required ordinances. Witness for the defense, Gregory Monte, testified that he submitted an open public records request to PennDOT and received a certified response, signed and sealed by the department. This document stated that the stop sign at the intersection of Wellwood Avenue and Church Street was not installed by PennDOT. Defense Exhibit 6, a certified letter, signed and sealed by the Hawley open records officer, stated that Borough Council did not pass an ordinance to authorize the stop sign at that intersection.

Second Presumption Addressed - The Stop Sign is Non-Compliant

Title 75, Section 3111(d) - “devices shall be presumed to comply with the requirements of this title, unless the contrary shall be established by competent evidence.”

Does the stop sign at the intersection of Wellwood Avenue and Church Street “comply with the requirements of this title?” In the preceding section, the defense established one way that the sign does not comply with the requirements of Title 75 – it was not placed by official act or direction of lawful authority. However, there is a second way that it doesn’t comply. Defense Exhibits 1 and 2 show pictures of the intersection of Wellwood Avenue and Church Street. Those pictures indicate that the stop sign was moved closer to the intersection after the alleged violation in September 2018. Defense Exhibit 6 indicates that construction work was performed at that intersection in October 2018.

According to the Federal Manual on Uniform Traffic Control Devices (MUTCD), the location of the stop sign is relevant. Compliance with the MUTCD is required under Title 67, Chapter 212.2: “Consistent with the authority contained in 75 Pa.C.S. ... the Department hereby adopts the MUTCD, as published by the Federal Highway Administration. The MUTCD is adopted in its totality ...” Because Title 67 was issued under the Vehicle Code (Title 75), it must be taken into account in determining whether a stop sign is in compliance as specified in Section 3111(d).

Chapter 2B.10 of the MUTCD says: “The STOP or YIELD sign shall be

located as close as practical to the intersection it regulates ...” At the time of the alleged violation, the stop sign was not “located as close as practical to the intersection it regulates,” because it was subsequently moved closer.

Improper Position and Enforceability - Title 75, Section 3111(b)

Given the MUTCD requirement, the proper placement of the traffic-control device at Wellwood Avenue and Church Street on the day of the alleged offense is questionable. Title 75, Section 3111(b) is relevant in this regard: “No provision of this title for which official traffic-control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position ...” Considering the plain language of this subsection, since the stop sign was not “as close as practical to the intersection it regulates,” it was not in proper position, and so cannot be enforced.

Returning to the Question Asked by this Court

At this point, the defense has established that the stop sign at the intersection of Wellwood Avenue and Church Street is illegal because it does not comply with Title 75, Section 3111, both in its authorization and its placement. In light of this fact, *Commonwealth v. Heenan*, 22 Pa. D. & C. 3d 396 (Pa. Court of Common

Pleas, 1982), provides an answer to the question posed by this court (underline added):

“When placed, such devices are presumed to have been placed by the official act or direction of lawful authority, 75 Pa.C.S.A. §3111(c), and are presumed to comply with the requirements of the Vehicle Code: 75 Pa.C.S.A. §3111(d). It is clear, therefore, that a traffic-control device is an instrument approved and erected ... Absence of such approval and placement renders the Commonwealth unable to enforce those sections of the code mandating the posting of such devices.”

Commonwealth v. Masters, 737 A. 2d 1229 (Pa. Superior Court, 1999), echoes this very same basic idea, but then expands upon it. Although this particular case was not about stop signs (it was about speed limits), because both stop signs and speed limit signs are traffic-control devices, this case applies, in general, to all traffic-control devices. To make the comparison between Master and the present case clear, the relevant statutes which apply are included in brackets:

“The rules of statutory construction compel us to find that the requirements of section 3368 [6109, Chapter 212 and the MUTCD] must be met before a violation of section 3111 may be sustained. If two sections of a statute relate to the same subject matter, those sections must be construed consistently ... To establish a violation of section 3362 [3323], evidence of the use of a speed timing device as specified in section 3368 [evidence of an ordinance, etc. as specified in section 6109, Chapter 2121 and the MUTCD] must be presented.”

The subject matter of all five of the statutes included in brackets is the same – traffic-control devices.

- Title 75 Section 3111: Obedience to traffic-control devices
- Title 75 Section 3323: Duties at a stop sign (which is a traffic-control device).
- Title 75 Section 6109: Ordinance needed for a traffic-control device
- Title 67, Chapter 212: Official traffic-control devices
- Federal MUTCD: Manual on Uniform Traffic Control Devices

Therefore, in order to establish a violation of section 3323, evidence that all of the other statutes were complied with “must be presented.” The evidence offered at trial shows that Title 75, Section 3111 and 6109 were not complied with and neither were Title 67, Chapter 212 and the Federal MUTCD.

CONCLUSION

Due to the reasons set forth above, the defense respectfully requests that this court find Jack Gregory Monte not guilty.

APPENDIX

Original Citation

COMMONWEALTH OF PENNSYLVANIA				CITATION NO. 55337434-4			
CITATION/SUMMONS							
1. Magisterial District No. 12-9-D1		2. Docket Number					
3. Address of Magisterial District Office 97 MAIN AVE HAWLEY PA 18428							
4. Driver Number 32793 1019		5. C.D.L. <input type="checkbox"/> PA		6. State <input checked="" type="checkbox"/> PA		7. D.O.B. 7/27/01	8. Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F
9. Defendant Name - First Middle Last TACY GREGORY MONTE							
10. Defendant Address (Street-City-State-Zip Code) [REDACTED] HAWLEY PA 18428							
11. Veh. Reg. No. PA 2192		12. Reg. Yr. 19	13. State <input checked="" type="checkbox"/> PA	14. Make HONDA	15. Type SDA	16. Color GEY	
17. Veh. Reg. No.		18. Reg. Yr.	19. State <input type="checkbox"/> PA	20. Make	21. Type	22. Color	
23. Owner/Lessee or Carrier Name & Address GREGORY [REDACTED] MONTE SAME ADDRESS							
24. Charge				26. <input type="checkbox"/> STATUTE <input checked="" type="checkbox"/> ORDINANCE VC			
<input type="checkbox"/> Maximum Speed Limits				<input type="checkbox"/> Drivers Required to be Licensed			
<input type="checkbox"/> Stop Signs & Yield Signs				<input type="checkbox"/> Careless Driving			
<input type="checkbox"/> Driving Vehicle at Safe Speed				<input type="checkbox"/> Registration & Certification of Title Required			
<input type="checkbox"/> Operation of Vehicle without Official Certificate of Inspection				<input type="checkbox"/> Unlawful Activities			
<input type="checkbox"/> Driving while Operating Privilege is Suspended or Revoked				<input type="checkbox"/> Traffic-Control Signals			
<input type="checkbox"/> Other							
25. Nature of Offense				27. SEC. 3303			
<input type="checkbox"/> Speeding _____ MPH Allowed _____ MPH				28. SUB SEC. B			
<input type="checkbox"/> Operated Vehicle with Expired Inspection				29. FINE 25.00			
<input type="checkbox"/> Operated Vehicle with Suspended/Revoked License				30. E.M.S. 10.00			
<input type="checkbox"/> Violated 67 Pa. Code _____ Ref. 49 CFR				31. SURCHARGE 45.00			
<input type="checkbox"/> Other ABOVE DEF DID FAIL TO STOP AT A PROPERLY POSTED STOP SIGN.				32. COSTS 39.50			
				33. J.C.P./A.T. \$22.00			
				34. TOTAL DUE \$141.50			
Fines were doubled because: <input type="checkbox"/> Highway Safety Corridor <input type="checkbox"/> Active Work Zone							
35. Location WELWOOD AVE / CHURCH ST				36. Zone All			
37. Route		38. Twp./Boro./City HAWLEY		39. Code 600		40. Dir. of Travel N S E W	
41. Date 11/5/13		42. Time 7:50	43. Day SAT	44. County WAYNE		45. Code 63	
46. Defendant's Signature - Acknowledges Receipt of Citation (X) [Signature]				47. Date 11/5/13			
48. I verify that the facts set forth in this citation are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn fabrication to authorities. I certify this filing complies with the US Case Records Public Access Policy.				OFFICER'S SIGNATURE [Signature]			
				BADGE NO. 27			
49. Station Address of Police Officer 75 MAIN AVE HAWLEY PA 18428				50. ORI Number PA0640310			
51. Speed Timing Device Operator		52. Miles Followed		53. Miles Timed		54. Secs. Timed	
55. Speed Equip. Serial No.		56. Station Equip. Tested		57. Date Equip. Tested			
58. Accident Report No.		59A. Juvenile <input type="checkbox"/> YES	59B. Parents Notified <input type="checkbox"/> YES <input type="checkbox"/> NO	60. Comm. Veh. <input type="checkbox"/> YES <input type="checkbox"/> NO	61. Haz. Mat. <input type="checkbox"/> YES <input type="checkbox"/> NO		
62. Confidential Information Section							
63. Remarks/Subpoena List DEF WAS DRIVING AT A HIGH RATE OF SPEED AND WAS WARNED.							
NOTICE							
If you plead guilty or are found guilty, points may be assessed against your driver's record. An accumulation of points may result in the suspension of your driving privilege. Also, your driving privilege WILL BE SUSPENDED if you plead guilty or are found guilty of certain offenses under the Vehicle Code, including but not limited to: 75 Pa.C.S. §§ 1371, 3341, 3345, 3367, 3718, 3733, 3734, 3736, subsequent convictions of 75 Pa.C.S. § 1501, a violation of 75 Pa.C.S. § 3361 when occurring in an active work zone and an accident report is submitted by the police, and a violation of 75 Pa.C.S. § 3362 when occurring in an active work zone.							
4000 11/05 Rev. 04/2010				DEFENDANT'S COPY			

Defense Exhibit 1



Defense Exhibit 2

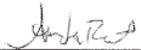


Defense Exhibit 6

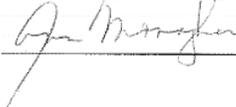
*Hawley Borough
P.O. Box 197
Hawley, PA 18428
570-226-9545
570-226-4869 (Fax)*

February 8, 2019

- 1) After examination of the records, I did not find any record that the Hawley Borough Council passed an ordinance, set up a commission or appointed a public official to establish and install the stop sign at the intersection of Welwood Avenue and Church Street. Hawley Borough does not pass ordinances to establish and install stop signs.
- 2) After examination of the records, I did not find any record that the Hawley Borough Council passed an ordinance, set up a commission or appointed a public official to authorize the regulation of traffic by means of police officers or official traffic-control devices. Hawley Borough has not passed a Code specific to the Borough, but instead relies on the general Pennsylvania Borough Code regarding these matters.
- 3) Hawley Borough Council approved the construction that was performed at the intersection of Welwood Avenue and Church Street in October 2018 as part of the Levee Repair Project.

Signature:  Date: 2.8.19
Open Records Officer

I certify, under seal, that the above signer has set forth the Officer's official capacity to attest to the information set forth above, and the signature is genuine.

Signature:  Date: 2/8/19

All the Documents Available from Stop-Sign-Ticket.com



- 1) [The Pennsylvania Stop Sign Defense Strategy in a Nutshell.](#)
 - A one-page, eight-point summary of the strategy I discovered.
 - Available for free.

- 2) [My Son's Opening Trial Statement at the Court of Common Pleas.](#)
 - An elegant, one-page, powerfully concise expression of my defense strategy.
 - Available for free.

- 3) [How My Son Beat an Unfair Stop Sign Ticket in Pennsylvania.](#)
 - A 23-page analysis of my initial stop sign strategy.
 - Initially prepared for my son's trial in Magisterial Court.
 - Available for \$2.48.

- 4) [The Full Pennsylvania Stop Sign Ticket Defense.](#)
 - A 100+ page detailed analysis of my defense strategy.
 - A 32-Item Checklist covering all the possible ways to challenge a stop sign ticket.
 - All the traffic-control device statutes which apply to stop signs.
 - Twenty court case citations to back up my strategy.
 - Available for \$9.98.

- 5) [The Script – My Detailed Outline for a Trial in a Pennsylvania Court.](#)
 - A 50+ page step-by-step application of the Pennsylvania Stop Sign Ticket Defense
 - Full details about the preparation, trial and ultimate victory in my son's case.
 - An excellent companion to the full Pennsylvania Stop Sign Ticket Defense.
 - Available for \$4.98

- 6) [My Son's Case Brief for the Court of Common Pleas.](#)
 - An eighteen-page argument for why an illegal stop sign is not enforceable.
 - Requested by the President Judge at Wayne County, PA, Court of Common Pleas.
 - A highly distilled application of the Pennsylvania Stop Sign Ticket Defense.
 - Available for \$1.48