

COMMONWEALTH V. PALMER, C.P., Franklin County Branch,  
No. 32 of 1982

*Vehicle Code - Weight Restrictions - Amendment of Citation - Motion to Quash -  
Statute of Limitations*

1. Where a District Justice permits the Commonwealth to amend a citation to allege the violation of a different subsection of the Vehicle Code, the amendment has the effect of permitting the institution of a new action after the statute of limitations has run.
2. Section 4902 (a) of the Vehicle Code is an enabling statute allowing the right to impose weight restrictions on bridges and does not set forth a crime in and of itself.
3. Pa. R. Crim. P. 67 is the exclusive means of appealing from a summary conviction.
4. A motion to quash filed by defendant after his notice of appeal is filed is properly before the court and such a motion need not be filed as an Omnibus Pretrial Motion.

*Andrew H. Cline, Esq.* Assistant Counsel for Commonwealth

*John B. Mancke, Esq.*, Attorney for defendant

#### OPINION AND ORDER

EPPINGER, P.J., January 31, 1983:

On August 30, 1982, Carl L. Palmer defendant, drove a tractor and trailer over a stone arch bridge. The weight restrictions on the bridge was 10 tons. At that time he was issued a citation by a state trooper for a violation of the Vehicle Code, 75 Pa. C.S.A. Sec. 4902(a).<sup>1</sup> At a hearing on the charge before the District Justice of the Peace on October 8, 1982, the Commonwealth

<sup>1</sup> (a) Restrictions based on condition of highway or bridge. - The Commonwealth and local authorities with respect to highways and bridges under their jurisdiction may prohibit the operation of vehicles and may impose restrictions as to the weight or size of vehicles operated upon a highway or bridge whenever they determine that the highway or bridge may be damaged or destroyed unless use by vehicles is prohibited or the permissible size or weight of vehicles is reduced. School buses, emergency vehicles and vehicles making local deliveries or pickups may be exempted from restrictions on the use of highways imposed under this subsection.

moved to amend the citation to allege a violation of 75 Pa. C.S.A. Sec. 4902(g)(1).<sup>2</sup> Over the defendant's objection, the motion to amend the citation was granted by the District Justice of the Peace, who offered the defendant a continuance which his counsel declined. The defendant was found guilty of a violation of Sec. 4902(g)(1).<sup>2</sup>

Defendant appealed the conviction, and prior to the hearing filed a motion to quash the case on the ground that the amendment of the citation was improper. One of the Commonwealth's arguments is that the motion to quash is too late; that it should have been filed as an Omnibus Pretrial Motion within thirty days of arraignment, citing Pa. R.Crim.P. 307. Arraignment is a Court case procedure which is defined in Pa. R.Crim.P. 303(b).<sup>3</sup> Even if the appearance before the Justice of the Peace at the time of the hearing was an arraignment for the purposes of Rule 307, and we do not believe it was, there is nothing in the record to show that the defendant was advised of the time period in which he was to file an Omnibus Pretrial Motion.

The defendant's motion is properly before us de novo. He filed a notice of appeal within thirty days in accordance with Pa.R.Crim.P. 67, which is the exclusive means of appealing from a summary conviction.

Apparently the Commonwealth construed Sec. 4902(a) of the Vehicle Code as an enabling statute, granting authorities the right to impose weight restrictions for bridges and decided to amend the citation to set the case under the penalty section, Sec. 4902(g)(1) and was granted leave to do so.

---

<sup>2</sup> (g) Penalty -

(1) Any person operating a vehicle or combination upon a highway or bridge in violation of a prohibition or restriction imposed under subsection (a) is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of \$75, except that any person convicted of operating a vehicle with a gross weight in excess of a posted weight shall, upon conviction, be sentenced to pay a fine of \$150 plus \$150 for each 500 pounds, or part thereof, in excess of 3,000 pounds over the maximum allowable weight.

<sup>3</sup> (b) At arraignment the defendant or counsel shall be advised of the charges in the information or indictment against him, and shall be advised of the time period within which he may commence discovery and file an omnibus pretrial motion . . .

Defendant's objection is that the amendment has the effect of permitting the institution of a new action after the statute of limitations has run.<sup>4</sup> The Commonwealth replies that under Pa.R.Crim.P. 70 the Court is powerless to dismiss the case.<sup>5</sup> While it is admitted that the defendant objected to the amendment of the citation at the hearing before the District Justice of the Peace and therefore the defect was raised before the conclusion of the summary trial, the Commonwealth contends that the defect is not prejudicial to the defendant.

The Commonwealth's own construction of Sec. 4902(a) to be merely an enabling statute suggests that charging a violation of that section does not charge a crime. This also is a conclusion in *Commonwealth v. True*, 69 Del. 90 (1982) where Judge Diggins says that Sec. 4902(a) is only an enabling act which allows the local authorities to control traffic in their jurisdiction.

The citation itself, in describing the charge says: "RESTRICTIONS ON USE OF HIGHWAYS & BRIDGES GROSS WGT - 48,500 LBS LESS 3% of 1455 LBS = 47045 LBS. BRIDGE REST. WGT - 20000 LBS OVER WGT ON BRIDGE 27,045 LBS." There are problems in interpreting this description of the charge because in itself it does not say defendant did anything illegal. But that is a matter we do not have to consider. Pa.R.Crim.P. 52 A.1 (e) requires that every citation include a reference to the specific section and subsection of the statute allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged. We conclude that the rule intends to make the reference to the section and subsection an integral part of the allegation of the offense committed and that if the section referred to does not charge a crime, then defendant cannot be convicted. *Hill v. Commonwealth*,

---

<sup>4</sup> 75 Pa.C.S.A. Sec. 6302(a) provides that proceedings in summary offenses shall be instituted within 30 days after the commission of the offense or within 30 days after the discovery of the commission of the offense of the identity of the offender, which ever is later, and not thereafter.

<sup>5</sup> A defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of the complaint, citation, summons, or warrant, or a defect in the procedures of this Chapter unless the defendant raises the defect before the conclusion of the summary trial and the defect is prejudicial to the rights of the defendant.

---

# FIRST NATIONAL

*bank and trust co.*

13 West Main St.  
WAYNESBORO, PA. 17268  
717-762-3161



**TRUST SERVICES  
COMPETENT AND COMPLETE**

---



WAYNESBORO, PA 17268  
Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS:  
Potomac Shopping Center - Center Square - Waynesboro Mall  
24 Hour Banking Available at the Waynesboro Mall

---

Pa. Cmwlth. , 448 A.2d 106 (1982) The Commonwealth does not seem to take exception to this, having opted to amend the citation but argues that even without knowing the correct section and subsection number defendant knew the charges against him.

When the Commonwealth was permitted to amend a citation which did not allege a crime, assuming the amended citation does allege a crime, it was permitted to transform the citation into one that did and that is prohibited. *United States v. Milestone*, 626 F.2d 264 (U.S. 3d Cir. 1980). Even the amended citation does not seem to allege a crime. In *Hill*, supra a charge against a defendant brought under a penalty section of an ordinance was dismissed, the Court observing that the citation was ineptly drawn.

We need not consider defendant's other contention that the bridge was improperly posted.

The motion to dismiss will be granted.

#### ORDER OF COURT

January 31, 1983. The motion to dismiss the case is granted and the costs are placed on the County of Franklin.

COMMONWEALTH V. CUMMINGS, C.P., Franklin County Branch, Miscellaneous No. 3 - 1982

*Vehicle Code - Speeding - Certificate of Accuracy - Photocopy*

1. Under 75 Pa. C.S.A. Sec. 3368 (d), a certificate of accuracy from the testing station where tests were made on a timing device is competent and prima facie evidence of the facts set forth in the certificate.
2. A photocopy of a certificate of accuracy is not admissible in evidence as proof of the facts contained in the original certificate.
3. A certificate of accuracy is not a business record as contemplated by 42 Pa. C.S.A. Sec. 6108 (b), which permits the use of photocopies of business records at trial.

*John F. Nelson, Esquire*, Attorney for Commonwealth

*Philip S. Cosentino, Esquire*, Attorney for Defendant

#### OPINION

EPPINGER, P.J., February 4, 1983:

At the beginning of the summary hearing in this case on appeal from the District Justice of the Peace, the District Attorney announced that there was a substantial legal question as to some of the Commonwealth's evidence. Apparently in this speeding charge a stop watch was used to check the time it took the defendant to pass between two lines on the highway. The watch was being used by a trooper in a state police aircraft.

The Commonwealth proposed to introduce "what purports to be a photostatic copy of a certificate of mechanical speed time and device accuracy." The photocopy was said to be of a certificate issued October 19, 1981 under 75 Pa. C.S.A. Sec. 3368(d). That provides that a certificate from the testing station that tests were made on the timing device and the device was accurate, shall be competent and prima facie evidence of those facts in these cases.

The Commonwealth contends that absent the certificate, a photocopy may be introduced under 42 Pa. C.S.A. 6109. Section 6109 permits the introduction of photocopies of memorandum, writing, entry, print, representation, or combination thereof of any act, transaction, occurrence or event which in the regular course of business has been recorded, copied or photostated.

A state trooper was to identify the photostat of the certificate, the original of which he had not seen. He was not able to testify that the copy the Commonwealth proposed to introduce was a true copy of the original. All he could say was that it is customary for the State Police to send a form such as the one proposed to be introduced to the testing station to be returned to Troop Headquarters where it was photostated and copies sent to different stations. There was no representation that the original certificate was not available for use in the trial of this case.

If Commonwealth claims this to be a business record, then before the photocopy could be admitted, it would have to be identified first by a qualified witness, 42 Pa. C.S.A. Sec. 6108(b). The trooper's testimony would not fulfill that requirement.