

COMMONWEALTH V. MARGARET S. MILSPA W. Fulton County Branch. Criminal Action No. 101 OF 1995. Summary Offense.

*Commonwealth v. Milspaw*

Trial *de novo*; 75 Pa.C.S.A. section 3362(a)(2); Motor Vehicle Code speeding violation; Pennsylvania Bulletin publication of radar equipment stations approved by Penn Dot.

1). The Commonwealth has the burden of proving beyond a reasonable doubt that a timing device used to clock a driver's speed was calibrated and tested for accuracy within the prescribed time period by a station which has been approved by the Pennsylvania Department of Transportation.

2). Where a station has already been approved until the next annual list of qualified stations is published, its viability as a certified testing site is not negated by a typographical dating error in the Pennsylvania Bulletin to the contrary.

*Dwight C. Harvey, Esquire, District Attorney*  
*Candace Cain, Esquire, Counsel for Defendant*

OPINION

Herman, J., December 31, 1996:

The appellant, Margaret S. Milspaw, was found guilty of speeding in violation of 75 Pa.C.S.A. section 3362(a)(2) after a trial on September 26, 1996. Upon receipt of her notice of appeal, we directed her to file a concise statement pursuant to Pa.R.A.P. 1925(b). The statement was filed December 9, 1996 and the transcript of the trial was filed December 16, 1996.<sup>1</sup> Appellant argues the Court erred in taking judicial notice of a statement in the Pennsylvania Bulletin as proof the radar device used to detect her speed was calibrated and tested for accuracy within the prescribed time period by a station which had been approved by the Department of Transportation (PennDot).

State police issued the appellant a speeding ticket on March 10, 1995 after her speed was clocked by radar equipment designated as Serial No. 13250/CC13752. PennDot had published a list of approved radar equipment calibration stations in the January 14, 1995 edition of the Pennsylvania Bulletin. The publication mistakenly indicated particular stations were approved for the period between January 1, 1994 through December 31, 1994, rather than

between January 1, 1995 and December 31, 1995. PennDot corrected this error in the March 4, 1995 edition of the Bulletin. The radar equipment used to clock the appellant's speed was tested at site R-3 on February 23, 1995, more than one week before the correct approval dates were published. The appellant argues that, according to the January 14, 1995 Bulletin, site R-3 in York was not an approved testing station as of February 23, 1995, the date the equipment was tested. The Commonwealth maintained that the March 4, 1995 publication corrected the typographical error appearing in the January 14, 1995 Bulletin, and as such was merely a procedural error which did not alter the fact that this machine had still been tested at a valid test site. The January 14, 1995 Bulletin stated that particular stations were approved for the period January 1 through December 31, 1994, "or until the next annual list is published". The March 4th edition corrected the typographical error and stated that the stations, including the one involved in this case, were approved for the period between January 1 through December 31, 1995, "or until the next annual list is published".

The Court concluded that since the offense occurred after the March 4th correction, the purpose of publishing the Bulletin, which is to give notice of which stations have been approved, was satisfied. Furthermore, the previous annual listing (for calendar year 1994), indicating that previously approved stations would continue as such until the next annual listing was published, effectively nullified the typographical error in the January 14, 1995 Bulletin.

We agree with the appellant that it is the Commonwealth's burden to prove beyond a reasonable doubt that the speed timing device was calibrated and tested for accuracy within the prescribed time period by a station which has been approved by the Department of Transportation. *Commonwealth v. Kittelberger*, 420 Pa. Super. 104, 616 A.2d 1 (1992); 75 Pa.C.S.A. section 3362(a) and section 3368(a)-(e). We disagree, however, that the York site had not, in fact, been approved by PennDot at the time of the equipment's testing and calibration. The station list continued to meet with PennDot's approval "until the next annual list [was] published". This phrase preserved the station's viability as a certified testing site; this status was not negated by the January 14th typographical mistake, which was then corrected before the date of the appellant's offense. Consequently, we disagree that "on the date that the radar equipment

<sup>1</sup>Although not authorized under Pa.R.Crim.P. 1410(D), the appellant initially filed post-trial motions following the conviction. She then filed a notice of appeal on November 1, 1996.

here was tested, the calibration station was not properly authorized as noticed in the Pennsylvania Bulletin." (Appellant's concise statement, page 4).

The appellant cites 45 Pa.C.S.A. section 903, pertaining to the effective date of documents. That section provides:

No otherwise valid document which is required by or pursuant to this part or by any other provision of law to be published under this part, shall be valid as against any person who has not had actual notice thereof until such publication has been effected. Publication shall be deemed to have been effected upon the deposit of the bulletin or the permanent supplement to the code containing such document in the United States mail for distribution. The issue date of the bulletin and of the permanent supplement to the code shall be the day of such deposit and, in the case of the bulletin, such date shall be printed prominently upon the first page of each issue thereof.

We conclude the appellant's reliance on this section is unduly narrow. In this connection, we distinguish this case from *Commonwealth v. Boerner*, 268 Pa. Super. 168, 407 A.2d 883 (1979), cited by the appellant, in which a breathalyzer machine not yet certified was used to convict the defendant of driving under the influence. The key point in the instant case is that the equipment used to clock the appellant's speed had in fact already been approved by PennDot and that status was not altered by the mere typographical mistake appearing in the January 14th Bulletin.

We respectfully submit that no error was made in any aspect of the Court's finding of guilt and request that the appellant's conviction be affirmed.

## **MODERN MYTHS**

**MYTH #1: The disease of alcoholism is caused by drinking alcohol.**

**MYTH #2: Alcoholism is caused by stress.**

**MYTH #3: Alcoholism is the symptom of an underlying psychological disorder.**

**MYTH #4: Alcoholics must drink to excess on a daily basis.**

**MYTH #5: Alcoholism is cured by not drinking.**

### **Alcoholism is:**

**a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by continuous or periodic impaired control over drinking, preoccupation with drug/alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial.**

**There is no cure for alcoholism; however, with proper treatment the disease can be placed in remission.**

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