

APPENDIX A

OPINION OF NORTHAMPTON COUNTY

COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
 COMMONWEALTH OF PENNSYLVANIA
 CRIMINAL DIVISION—LAW

COMMONWEALTH OF PENNSYLVANIA,	:	No. SA-119-2016	No. SA-125-2016
	:	No. SA-135-2016	No. SA-123-2016
	:	No. SA-134-2016	No. SA-121-2016
v.	:	No. SA-133-2016	No. SA-126-2016
	:	No. SA-132-2016	No. SA-129-2016
ALVIN S. KANOFSKY,	:	No. SA-131-2016	No. SA-122-2016
	:	No. SA-130-2016	No. SA-124-2016
Defendant	:	No. SA-127-2016	No. SA-120-2016

ORDER OF COURT

Judge Zito Order of August 26, 2016

The rules require the Court to announce the verdict and sentence in open court at the conclusion of the proceedings.

Do we agree that the proceedings are concluded?

Mr. Deschler: We are, Judge, the Commonwealth has no rebuttal.

THE COURT: Very well.

There are seventeen separate appeals.

As to appeal number 119 of 2016, the defendant is found guilty. Ordered to pay a fine for the amount of \$235, and \$1,031.25. For the two corresponding citations.

In appeal 120 of 2016, the defendant is found guilty. Ordered to pay a fine in the amount of \$1,084, and \$535 on the two corresponding citations.

On appeal numbers 121 of 2016, the defendant is found guilty. He is ordered to pay a fine in the amount of \$1,091.26, and \$1,035.50 for the two corresponding citations.

In appeal number 122, 2016, the defendant is found guilty. He is ordered to pay a fine of \$1,084.50 and \$1238.50 on the two corresponding citations.

On appeal number 122 of 2016, the defendant is found guilty, and ordered to pay a fine in the amount of \$1,084,

IN appeal number 124 of 2016, the defendant is found guilty, and ordered to pay a fine in the amount of \$1,035.50

In appeal 125 of 2016, the defendant is found guilty. Ordered to pay a fine in the amount of \$1,084.50

In appeal 126 of 2016, the defendant is found guilty and ordered to pay a fine in the amount of \$1,84.50.

In appeal number 127 of 2016, the defendant is found guilty, and ordered to pay a fine in the amount of \$1,084.50, and \$1,035.50 for the two corresponding citations.

In appeal 129 of 2016, the defendant is found guilty. Ordered to pay a fine in the amount of \$1,091.25 and \$1,035.0 on the two corresponding citations.

In appeal number 130 of 2016, the defendant is found guilty, ordered to pay a fine in the amount of \$1,091.25, and \$1,035.50 on the two corresponding citations.

In appeal number 131 of 2016, the defendant is found guilty, Ordered to pay a fine in the amount of \$1,091.26, and \$1,035.35 on the two corresponding citations.

In appeal 132 of 2016, the defendant is found guilty. Ordered to pay a fine in the amount of \$1,084.50 and \$1,035.50 on the two corresponding citations.

In appeal number 133 of 2016, the defendant is found guilty. Ordered to pay a fine in the amount of \$1,084.50, and \$1,032.50 on the two corresponding citations.

In appeal number 134 of 2016, the defendant is found guilty. Ordered to a a pay a fine in the amount of \$1,084.50, and a additional \$1,084.50 on the two corresponding citations.

On appeal 135 of 2016, the defendant is found guilty. Ordered to pay a fine in the amount of \$1,091.25, and \$1,084.50 on the two corresponding citations.

Finally, in appeal number 150 of 2016, the defendant is found guilty. Ordered to pay a fine in the amount of \$1,091.25.

In addition, as to all seventeen appeals, the defendant will be required to pay the costs.

The defendant will also be sentenced to period of incarceration in the Northampton County Prison for a period of five days. He's to report on August the 29th, 2016, unless an appeal is taken from the proceeding to the Superior Court by the defendant.

The defendant is advised that he has the right to appeal from the findings and verdict in this proceeding, within thirty days.

BROBSON decision

BROBSON OPINION. ON ZITO ORDERS

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :

No. 1938 C.D. 2016

v. :

Alvin S. Kanofsky :

Appellant :

BEFORE: HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE JULIA K. HEARTHWAY, Judge
 HONORABLE BONNIE BRAGANCE LEADBETTER, Senior

judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE BROBSON

FILED: August 14, 2017

Appellant Alvin S. Kanofsky (Kanofsky) pro se, appeals from sixteen orders of the court of Common Pleas of Northampton County (trial) , dated August 24, 2016. Following a de nova hearing, the trial court found Kanofsky guilty on thirty one summary criminal charges for violations of certain provisions of the International Property Maintenance Code (2009 Ed.) (IPMC) and the Pennsylvania Uniform Construction Code (UCC), (1)st both of which have been made part of the Codified Ordinances of the City of Bethlehem, Pennsylvania (Ordinances).(2nd) For the reasons sent forth below, we affirm the trial court's orders

Kanofsky is the owner of commercial property located at 30 East Third Street (Property) in the City of Bethlehem(City).In February 2016, Craig B. Hynes (Hynes) the City's chief code official issued thirty one citations to Kanofsky , sixteen for failure to obtain a certificate of occupancy for the Property in violation of Section 403.46 of the UCC (3rd) and fifteen for failure to repair the Property's leaking roof in violation of Section 304.7 of the IPMC (4th) On April 5, after holding a summary trial, a Magisterial District Judge (MDJ) found Kanofsky guilty of all thirty one violations, fined Kanofsky in the amount of \$29, 700 , plus costs, and sentenced him to a period of imprisonment.

Kanofsky appealed the MDJ's determinations to the trial court. The trial court held a de nova hearing on August 24, 2016. At the hearing, the City (5th) presented the testimony of Hynes. Hynes explained that these proceedings are just another step in a lengthy process involving correcting violations at the Property. (Reproduced Record (R.R. At 30-31.) Hynes stated that the City first informed Kanofsky about the subject violations in 2014. (Id at 30-31). Approximately years later, after Kanofsky was given an opportunity to cure the violations, Hynes issued citations to Kanofsky and the parties appeared before a magisterial district judge (Id at 33,, 35-36) During these proceedings, the parties agreed to a timeline for the completion of certain repairs to the Property. (I'd at 33, 36) When the parties returned to the magisterial district judge, the majority of the repairs had not been completed. (Id, at 33,36.) The magisterial district judge found Kanofsky guilty, and Hynes informed Kanofsky that he would begin issuing daily citations for the violations (Id. At 30, 33, 36.) Subsequent thereto, in February 2016, Hynes visited the property on sixteen different dates and cited Kanofsky on each of those dates for failure to obtain a certificate of occupancy in violation of Sec. 403.46 of the UCC and for failure to repair the Property's leaking roof in violation of Sec. 304.7 of the IPMC. (Id. At 33-35; Certified Record), Ex C-8

Hynes testified further that the property is in a substantially deteriorated condition; the building's roof has partially collapsed and water is leaking into the adjacent structure. (R.R. At 31, 35) Hynes explained that on the third floor of the building one of the roof trusses has failed, the roof has collapsed in certain places, light is entering the building through the collapsed roof, ceiling material, insulation and the filed truss litter the floor and mold is growing on the walls. (I'd at 41.) Hynes also explained that water has as entered the second floor of the building, causing a portion of the ceiling to deteriorate and fall, the wood floor to buckle , and a floor joist to deteriorate.e (I'd.. At 31-32.) Hynes indicated that the property's leaking roof has persisted since 2007 ((d. At 32) At that time, in order to prevent the water from destroying, the building, Kanofsky had placed thirty-gallon trash barrels on the third floor to collect the water entering through the roof and then had pumped the water into the radiate or sanitary system using two small pumps. (Id.)

Hynes also testifies that as of the dge of the hearing, none of the Property's roof defects had been repaired. (I'd tag 43). When asked whether the property's current condition presents a danger to the public, Hynes stated that if the roof is not repaired, The entire building could collapse, (I'd. At 36) He explained that a heavy rain or snow could cause the roof to fail, and, if the roof fails, the walls could fall, the floor as, could pancake, and the entire building could collapse (I'd) Hynes also stated that as a result of water pouring into the Building on the south wall, the stucco has buckled, cracked and separated approximately fourteen to eighteen inches away from the building and is in imminent danger of failing on an adjacent vacant property (I'd) Hynes testified further that Kanofsky is also storing materials

inside the building located on the property (Id0) Hynes explained that the storage of these items at the Property requires a certificate of occupancy, which Kanofsky does now have and has never had during the sixteen years that Hynes had been employed by the City. (I'd. At 32-33, 43)

Kanofsky,, who was acting pro-se made a statement at the hearing on his own behalf. Kanofsky stated that he had used the Property in prior years as a flea market, for a drama club, and music hall, and that those times he had a certificate of occupancy for the Property. (I'd, at 44-45) Kanofsky stated further that at some point later, he decided to close the flea market and use the Property to store his research and personal items. (I'd at 45) Kanofsky claimed that the City knew that he was using the Property for this purpose and had permitted it. (I'd) Nevertheless, Kanofsky admitted to the trial court that he did not have a certificate of occupancy for the Property. (I'd. At 44.) Kanofsky also acknowledged receiving notice from the City in 2014 regarding violations at the Property. (I'd. At 45) Kanofsky claimed that he began to address these violation and had obtained estimates for the required work, the contractors could not work on the estate riot. Of the building during the winter months. (I'd). Nonetheless, on cross-examination, Kanofsky admitted since the time that he had been notified of the violations at the Property, spring summer and fall of 2015, and spring and summer of 2016 had passed and no work had been performed to correct the roof defects. (Id at 46-47) Kanofsky further admitted that since he had been found to have violated the Ordinance and had been convicted on previous citations, he had not done anything to correct the roof defects or obtain a certificate of occupancy for the Property. (Id. At 47.)

At the conclusion of the hearing, the trial court found Kanofsky guilty of all charges, fined him in the amount of \$29,700, plus court costs, and sentenced him to five days of imprisonment. Kanofsky then appealed to this Court.

On appeal(8th), Kanofsky appears to argue that the summary convictions should be overturned because he was not responsible for the condition of and damages to the property and he had permission to store his personal items in the property(9th). In response, the City argues that the trial court property convicted Kanofsky of violating Section 304.7 of the IPMC and 403.46 of the UCC because the evidence supporting such convictions was overwhelming.

In Commonwealth v. Spontarelli, we previously noted that in summary offense cases, the Commonwealth is required to establish guilt beyond a reasonable doubt. Spontarelli at 125 8. This Court views all of the evidence admitted at trial, together with other reasonable inferences the from, in the light most favorable to the Commonwealth. The test of sufficiency of evidence is whether the trial court, as trier of fact, could have found that each element of the offenses charged was supported by evidence and inferences sufficient in law to prove guilt beyond a reasonable doubts. As a reviewing court, this Court may not reweigh the evidence

and substitute our judgement for that of the fact-finder. Matters of credibility and evidentiary weight are within the exclusive discretion of the fact finder below. The fact finder is free to believe all, part or none of the evidence presented.

Here, the trial court found Kanofsky guilty of sixteen summary criminal offenses for failure to obtain a certificate of occupancy for the Property in violation of Section 403.46 of the UCC and fifteen summary criminal offenses for failure to repair the property's leaking roof in violation of section 304.7 of the IPMC. Although the trial court did not set forth its credibility determinations in writing^(10th), we can infer that the trial court found Hynes testimony to be credible and Kanofsky's testimony to be not credible. Hynes credible testimony supports the trial court's conclusion in this matter. ^(11th)By arguing that the summary convictions should be overturned because he was not responsible for the condition and damage to the Property and he had permission to store his personal items at the Property, Kanofsky is essentially asking this Court to select his preferred version of events and, in so doing to relight the evidence and make different credibility determinations. This we cannot and will not do. See Hoffman, 918 A.2d at 1160 n.10.

Accordingly, we affirm the trial court's orders.

P. KEVIN BROBSON, JUDGE

Footnotes:

1. 34 Pa. Code Sec. 401.1-405.42
2. Article 1735 of the Ordinance adopted the IPMC with certain additions, deflections, and modifications as noted therein. Atypical 1701 of the Ordinance adopted the UCC with certain additions, deletions, and modifications as noted therein.
3. Section 403.46 of the UCC provides, in relevant part: "(a) A building, structure or facility may not be used or occupied without a certificate of occupancy issued by a building code official."
4. Section 304.7 of the IMC provides: "Roofs and drainage. The roof and flushing shall be sound, right, and at have any defects that admit rain. Rain drainage shall be adequate to prevent dampness or deterioration of the walls in interior portion of the structure. Roof drains, gutters, and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance." (Emphasis in original.)

On each of February 4-5, 8, 10-12, 16-19, and 22-26, 2016, Hynes issued two citations to Kanofsky, one for failure to obtain a certificate of occupancy for the Property in violation of Section 403.46 of the UCC and another for failure to repair the Property's leaking roof in violation of Section

304.7 of the IPMC. On February 9, 2016, Hynes issued a citation to Kanofsky for failure to obtain a certificate of occupancy in violation of Section 403.46 of the UCC.

5. The City assumed responsibility for the prosecution of the violations of the Ordinance in behalf of the Commonwealth of Pennsylvania (Commonwealth). All references to the City shall also be considered references to the Commonwealth.
6. The trial court imposed the following fines against Kanofsky (1) a \$200 fine plus costs for Kanofsky's February 4, 2016 offense for failure to obtain a certificate of occupancy in violation of Section 403.46 of the UCC; (2) a \$1000 fine plus costs for each of Kanofsky's Feb. 4-5, 10-12, 16-19 and 22-26, 2016 offenses of failure to repair the Property's leaking roof in violation of Section 3014.7 of the IPMC; (3) a \$500 fine plus costs for Kanofsky's February 5, 2016 offense of failure to obtain a certificate of occupancy in violation of Section 403.46 of the UCC; and a (4) a \$1,000 fine plus costs for each of Kanofsky's February 8-12, 16-18, and 22-26, 2016 offenses for failure to obtain a certificate of occupancy in violation of Section 403.40 of the UCC.

At the conclusion of the August 24, 2016 hearing, the trial court also found Kanofsky guilty of another violation of Section 3014.7 of the IPMC and fined Kanofsky in the amount of \$1000 plus court costs at Docket number SA-150-2016. Kanofsky appealed that conviction, and his appeal is currently pending before this court at docket number 1955 C.D. 2016.

7. Kanofsky initially filed his appeal with the Pennsylvania Superior Court. By order dated October 11, 2016, the Superior Court transferred the matter to this court, as this Court has exclusive jurisdiction over the matter pursuant to Section 762(a) (4) of the Judicial Code, 42 Pa. C.S. Sec. 782(a) (4).
8. In reviewing a summary conviction matter, where the trial court has taken additional evidence in de novo review, our standard of review is limited to considering whether the trial court abused its discretion or committed an error of law. *Commonwealth v. Spontarelli*, 791 A.2d 154, 1255 n.2 (Pa. Cmwlth. 2002).
9. In the questions asked section of his brief, Kanofsky identifies fourteen issues for consideration by this Court on appeal. The majority of Kanofsky's issues, however involve matters that are irrelevant and in no way relate to this appeal and/ or have no basis in the record. As a result, such issues are not properly before this Court and will not be addressed in this opinion.

10. In its 1925 opinion, the trial court indicted that it was relying on the record and that no further statement was necessary. (Trial Ct.Op. Dated Sept. 29, 2016)
11. Our review of the record further reveals that the trial court rejected some of the testimony and documents upon which Kanofsky attempts to rely in support of his arguments as irrelevant to the City's objection.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :

No. 1938 C.D. 2016

v.

Alvin S. Kanofsky :

Appellant

ORDER

AND NOW, This 14th day of August, 2017, the orders of the Court of Common Pleas of Northampton County are AFFIRMED.

S/ _____
P. KEVIN BROBSON

APPENDIX C

**DENIAL OF PETITION FOR REHEARING BY
PENNSYLVANIA SUPREME COURT OF APPEALS**

COMMONWEALTH OF PENNSYLVANIA

V.

ALVIN S. KANOFSKY

CASE 798 MAL 2017

ORDERS: SUPREME COURT OF PENNSYLVANIA.

AND NOW, this 16th day of April, 2018 the Petition for Allowance of Appeal is
DENIED.

Per Curiam

AND NOW, this 21st day of May, 2018 the Application for Reconsideration is
DENIED.

Per Curiam