

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-212-2003
: (03-10,212)
vs. :
:
:
:
BENJAMIN RAYMOND BROWN, :
Defendant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's judgment of sentence dated May 24, 2005 and docketed May 26, 2005. The relevant facts follow.

On September 5, 2002, Kevin Skelly, John Damico and Justin Wicke-Coamey were students at the Pennsylvania College of Technology and roommates who shared an apartment at 1068 Vine Avenue in the City of Williamsport. When they went to bed that evening, they locked their doors, but left the living room window open a few inches because it was warm that night and they did not have an air conditioner. When they awoke the next morning, the living room window, the back door and the back porch door were wide open. Numerous items of personal property were missing including, but not limited to, a stereo, a Play Station game system, video games, CDs, DVDs, videos, calculators and backpacks. They called the police. The police lifted fingerprints from the living room window and a bottle that had been inside on the windowsill but was found outside the next morning. The police identified some of the fingerprints from the living room window as coming from Appellant's right middle finger and ring finger. A neighbor, Athan Spanos, also saw an individual matching Appellant's description going up to or into 1068 Vine Avenue around

12:30 a.m.

In January 2003, the police arrested Appellant and charged him with burglary, criminal trespass, theft by unlawful taking and receiving stolen property. A jury trial was held November 17 and 18, 2003. The jury found Appellant guilty of criminal trespass, but acquitted him of the other charges. On May 24, 2005, the Court sentenced Appellant to undergo incarceration at a state correctional institution for a minimum of 14 months and a maximum of 5 years. On June 23, 2005, Appellant's counsel gave notice that Appellant was appealing the guilty verdict for the offense of criminal trespass.

In his statement of matters complained of on appeal, Appellant attempts to challenge the witnesses' identification of Appellant at the preliminary hearing, Athan Spanos' identification testimony at trial. Appellant's counsel, however, never raised these issues to this court. Although counsel contends he objected to Mr. Spanos' testimony at trial, the court could not find any such objection in the trial transcript and it does not recall such an objection being made. "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a); see also Commonwealth v. Jones, 876 A.2d 380, 385-386 (Pa. 2005). Since Appellant's counsel has not preserved either of the issues raised in the statement of matters complained of on appeal, the court will not address the merits of either issue.

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

cc: Kenneth Osokow, Esquire (ADA)
James Cleland, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)