IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PA, Plaintiff	: :	
v.	:	CR 917-04
STACY GREGG HUGHES, Defendant	: :	

OPINION
Issued Pursuant to Pa. R.A.P. 1925(a)

This is an appeal from a judgment of sentence entered by the court on January 26, 2006. On that date, the jury found the defendant not guilty of Loitering and Prowling, and the court entered a guilty verdict for the summery offense of Criminal Trespass, Simple Trespasser, 18 Pa. C.S.A. §3503(b.1)(1)(i).

The defendant first asserts the evidence presented by the Commonwealth is insufficient to prove beyond a reasonable doubt that the defendant had the *mens rea* to commit the offense of Simple Trespass, and that the evidence was insufficient as a matter of law to establish the elements of Simple Trespass.

The crime of Simple Trespass requires the Commonwealth to prove beyond a reasonable doubt that the defendant, knowing he is not licensed or privileged to do so, enters or remains in any place for the purpose of threatening or terrorizing the owner or occupant of the premises.

The victim, Brenda Merloe (then Brenda Crisp), testified she and the defendant met in December 2000, dated for a short period of time, and resided together beginning in January or February 2001. In October 2003, Mrs. Merloe told the defendant she wanted to end the relationship. The defendant initially stated he would leave in November 2003, but he remained at the residence. On February 1, 2004, Mrs. Merloe

met Mr. Merloe at a Superbowl party, and became romantically involved with him. On February 6, 2004, Mrs. Merloe told the defendant their relationship was over, and that he had to leave the residence by February 14, 2004. When he remained at the residence, Mrs. Merloe moved out of the house on February 14, 2004, and went to live with Michael Merloe, whom she married sixteen months later.

The defendant called Mrs. Merloe at work on March 19, 2004, to arrange a meeting at which they could discuss their financial affairs. Mrs. Merloe wanted the meeting to occur at a public place, because she felt threatened by the defendant. She felt this way because the defendant had previously told her, "[W]hen somebody does something wrong to you or you feel you've been wronged you need to hit them back; hit them where it hurts and do it in a way that nobody knows it was you." N.T. p. 68. In addition, the defendant made a veiled threat toward Mrs. Merloe's cat, whom she had left at the residence. The defendant had told her, "Well, maybe some day you'll come back to the house and something will have happened to the cat, you know." N.T. p. 69. Moreover, before Mrs. Merloe left the residence to reside with Mr. Merloe, the defendant had caught her talking on the phone. He took the phone, threw it across the yard, and threatened to restrain her.

And finally, Mrs. Merloe had never told the defendant where she was living, and he had attempted to find out in numerous ways. He had followed her in his car, and had admitted to her he would drive around for a whole day at a time looking for her vehicle. N.T. p. 69. He also attempted to find out where Mr. Merloe lived by calling and visiting the people who hosted the Superbowl party, using a false identity. Mrs. Merloe

testified the defendant even showed her a "script" he wrote, pretending to be someone who was at the party. N.T. p. 70.

For these reasons, Mrs. Merloe felt threatened by the defendant, and requested to meet the defendant in a public place to discuss their financial affairs. The meeting occurred at Burger King on March 19, 2004. During the meeting, the defendant propositioned her for sex. Fearing the defendant would follow her home, Mrs. Merloe did not go straight back to her residence.

Three days later, on March 22, 2004, the incident in question occurred. Mrs. Merloe testified that at approximately 10:10 p.m. she was in her kitchen, checking on the hard boiled eggs in the sink that were cooling in a pan of water. A motion in the corner of the window above the sink caught her eye, and she looked to the window and saw Mr. Hughes' face peering at her from the patio outside, a mere three inches from the window. She specifically stated seeing his distinctive glasses. She screamed, jumped back, and cried, "It's Greg, it's Greg."[1] The couple immediately crouched down to the floor, and moved to another room. Mr. Merloe asked her several times if she was certain it was Greg, and she said she was. Both Mr. and Mrs. Merloe heard a crash shortly after Mrs. Merloe cried out, and it was later discovered that the top of Mr. Merloe's grill had been disturbed. Mr. Merloe called the police, who came to the residence and eventually filed the charges at issue. The court found the testimony of Mrs. Merloe to be credible.

Mrs. Merloe's testimony regarding the evening of the incident was buttressed by the testimony of Mr. Merloe, whom the court found to be very credible. Although Mr.

[1] The defendant chooses to use his middle name, "Greg".

Merloe did not see the face at the widow, he testified that he was in the kitchen with Mrs. Merloe when she screamed, that he heard the loud clanging on the porch after the scream, and that Mrs. Merloe stated several times it was the defendant. The court did not find the testimony of the defendant to be credible.

Given this evidence, the court concluded the defendant, knowing he was not permitted to be on the property, went to the back patio and peered into the kitchen window, with the intention of threatening her and/or frightening her. As to *mens rea*, the defendant knew he was not permitted at Mrs. Merloe's residence, and that she was frightened because of his reaction to her decision to end their romantic relationship. He had threatened her twice, threatened harm to her cat, had followed her, and had attempted to find out where she lived by using deception. Surely the defendant realized his sudden appearance at her kitchen window out of the darkness of the patio at 10:10 p.m. in the evening would terrorize her, and under such circumstances, it is reasonable to conclude the defendant intended that result.

The defendant next complains the court erred in permitting the introduction of testimony concerning the defendant's prior bad acts. Rule 404 of the Rules of Evidence establishes that evidence of other crimes, wrongs, or acts may not be introduced to prove the character of a person in order to show action in conformity with that character. However, such evidence may be admitted for other purposes, such as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident." Rule 404(b).

During the trial, the court permitted the Commonwealth to introduce evidence regarding instances in which the defendant had threatened Mrs. Merloe and followed

her, as described above. The purpose of this evidence was not to establish the defendant had a bad character and was therefore likely to commit the crimes for which he was charged. Rather, the purpose was to establish intent and motive—specifically, malice necessary to prove Loitering and Prowling, 18 Pa.C.S. §5506. "Malice" for that crime is defined as "an intent to do a wrongful act or having as its purpose injury to the privacy, person or property of another." Commonwealth v. Belz, 295 Pa. Super. 183, 441 A.2d 410, 411 (1982). Similarly, it was admitted to show the defendant's intention to threaten or terrorize Mrs. Merloe, to prove the *mens rea* necessary for the crime of Simple Trespass. Specifically, that the defendant was distraught over the breakup of his three year romantic relationship with Mrs. Merloe, and intended to threaten and terrorize her.

In ruling that such evidence was admissible, the court was mindful of Rule 404(c), which states that evidence of such acts may be admitted only upon a showing that the probative value of the evidence outweighs its potential for prejudice. Here, the court was satisfied that test had been met. The probative value of the evidence introduced was very high, as it established the defendant's mental state regarding Mrs. Merloe, which led to his pursuing her and ultimately committing the crime of Simple Trespass.

The defendant next complains the prosecution was barred by Rule 600(A)(3) of the Pennsylvania Rules of Criminal Procedure, which states that when the defendant is not incarcerated, the trial must commence no later than 365 days from the filing of the complaint. However, in calculating this time period, the court shall exclude delays resulting form the unavailability of the defendant or the defendant's attorney, and any

continuance granted at the request of the defendant or the defendant's attorney. Rule 600(C)(3)(a) and (b).

Initially, the court notes this issue may well be waived. The defendant, acting pro se, on June 13, 2005 filed a Motion to Dismiss based upon a Rule 600 violation. However, as he did not file the proper cover sheet, the matter was never scheduled. After the re-entrance of defense counsel, the matter was not raised prior to trial. However, in the interest of caution, the court will address the Rule 600 issue.

The complaint in this case was filed on March 30, 2004. Trial commenced on January 25, 2006. In reviewing the file, the court notes the granting of numerous continuances, all requested by defense counsel, which appear on the docket as: September 7, 2004; October 4, 2004; November 4, 2004; February 23, 2005; June 17, 2005; September 9, 2005, and November 17, 2005.[2] The time periods of delay resulting from these continuances account fully for the Rule 600 delay. Although the defendant may argue he personally did not want some or all of these continuances, Rule 600(C)(3)(a) and (b) specifically exclude from Rule 600 calculation all delays due to the unavailability of defense counsel and continuances requested by defense counsel.

BY THE COURT,

Date: _____ _____

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
District Attorney (HM)
Christian Fry, Esq.
Gary Weber, Esq.

[2] In addition, Judge Brown had initially ordered a continuance due to the defendant's non-permissive interlocutory appeal. However, by order of June 10, 2005 Judge Brown decided to proceed to trial despite the appeal, per R.A.P. No. 1701(b)(6). The time period resulting from this delay could arguably be chargeable to the defendant.