

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

SEAN FORD,
Defendant

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No.: 1714-2006; 753-2007; 1131-2007

APPEAL

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

The Defendant appeals this Court’s Opinion and Order dated October 6, 2006, denying Defendant’s Post Sentence Motion. The Court notes a Notice of Appeal was timely filed on October 16, 2008, and that the Defendant’s Concise Statement of Matters Complained of on Appeal was then filed on October 31, 2008. Defendant raises four issues on appeal; the Court will address each issue *seriatim*.

Background

At a jury trial held on March 31, 2008, before this Court, the jury found the Defendant, in a highly intoxicated state, entered the residence of a former girlfriend without permission, where he removed most of his clothing and fell asleep in the victim’s bed. The jury convicted Defendant of one count of Criminal Trespass at 18 Pa.C.S. § 3503(a)(1)(ii) and acquitted him of one count of Criminal Mischief at 18 Pa.C.S. § 3304(a)(5).

On July 11, 2008, a conference with counsel was held on Defendant’s Motion to Determine Restitution. Following the conference, the District Attorney’s Office was to determine the basis for a claim for the mattress. Assistant District Attorney Mary C. Kilgus wrote a letter to Defense Counsel and this Court explaining that “[a]t some point prior to entering the bed of the

victim the Defendant sustained an injury that broke the skin. Fresh blood was found on the bed after the Defendant was removed rendering the bedding contaminated.” On July 14, 2008, this Court dismissed Defendant’s Motion.

Discussion

The jury verdict was against the weight of the evidence, the evidence was insufficient to sustain a verdict of guilt, and the trial court violated the terms of the plea agreement under 753-2007 and 1131-2007 and abused its discretion in doing so

By way of Opinion, this Court will rely on its previous Opinion and Order filed on October 6, 2008.

The Court improperly ordered restitution under 1714-2006 as the Defendant was acquitted of Criminal Mischief

Defendant asserts this Court erred by ordering him to pay restitution under 1714-2006 when he was acquitted of the Criminal Mischief charge.

“Upon conviction for any crime wherein property has been . . . converted or . . . its value substantially decreased as a direct result of the crime . . . the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.” 18 Pa.C.S. § 1106. According to the Pennsylvania Superior Court, “restitution is proper only if there is a direct causal connection between the crime and the loss.” Commonwealth v. Harriott, 919 A.2d 234, 237 (Pa. Super. Ct. 2007).

The evidence presented at trial shows the Defendant entered the residence, without permission, removed most of his clothing and then fell asleep on the victim’s bed. When the

Defendant was removed from the bed, his blood was found on the mattress, thus contaminating it. The Defendant's actions in entering the residence without permission and then lying on the victim's bed caused the loss of the mattress. Therefore, the Court finds the restitution ordered in this case was proper.

Conclusion

As none of the Defendant's contentions appear to have merit, it is respectfully suggested that the Defendant's conviction and this Court's restitution and sentencing orders be affirmed.

By the Court,

Dated: _____

Nancy L. Butts, Judge

xc: DA (MK)
PD (RC)
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)