

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:
	:
vs.	: NO. 1280-2007
	:
STEPHEN LYONS,	:
	:
Defendant	: 1925(a) OPINION

*Date: December 12, 2008*

**OPINION IN SUPPORT OF THE ORDER OF AUGUST 25, 2008 IN COMPLIANCE  
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Stephen Lyons (hereafter “Lyons”) has appealed from this court’s order of August 25, 2008 in which Lyons was sentenced on the charges of Criminal Trespass, a felony of the second degree, Simple Assault, a misdemeanor of the second degree, and a summary charge. Lyons asserts that his conviction regarding both Criminal Trespass and Simple Assault were against the weight of the evidence.

The court sentenced Lyons following a jury trial held on September 22, 2007 and September 23, 2007 in which Lyons was found guilty. Lyons asserts that his conviction of Criminal Trespass was against the weight of the evidence because the evidence demonstrated that he reasonably believed he was entitled to enter the premises. Lyons asserts that his conviction of Simple Assault was against the weight of the evidence because the evidence demonstrated that he was acting in self defense. For the following reasons Lyons’s appeal should be denied.

## **BACKGROUND**

Lyons committed Criminal Trespass and Simple Assault against Nina Ball (hereafter “Ball”). At the time the crimes were committed, Ball lived at 150 Mohawk Drive. At this address Ball owns her own trailer and she rents a lot from Peterman’s Trailer Court located in Hughesville, PA. N.T., 9/22/2007, p. 17. Ms. Ball is the only person on the lease of the lot at Peterman’s Trailer Court. N.T., 9/22/2007, p. 17, 126.

On June 10, 2007, after sleeping over at Ball’s home the night before, even though Lyons and Ball had been arguing earlier that morning Lyons was “in and out” of the Ball’s residence throughout the day. N.T., 9/22/2007, p. 18, 65. Ball testified that she and Lyons had been arguing a lot at the time but that they had been together for about nine months and during some periods, this being one of those periods, she had allowed Lyons to live with her at 150 Mohawk Drive. N.T., 9/22/2007, 233. Ball, her mother, and her cousin had all tried to get Lyons to leave Ball’s residence the week prior to June 10, 2007. N.T., 9/22/2007, p. 18. *See also* N.T., 9/23/2007, p. 114. Lyons had never assaulted Ball prior to June 10, 2007. N.T., 9/22/2007, p. 18, 121, 136. The mobile home park manager explained that Lyons had verbal permission from him to live with Ball, because Ball owns her own trailer and so it did not matter whether she was the only one on the lease of the lot or not; he explained that because the mobile home park has no rental units “however that’s worked out between them is between them. I have no say in that.” N.T., 9/22/2007, p. 126-127, 135. Ball explained to the court the reasons that she wanted Lyons to move out of her residence: “I wanted it over. He started drinking heavily. He was doing drugs. He was -- we were arguing about my ex-husband.

Everything. I just -- I wanted it over and he was asked to leave, to go back to his house.” N.T., 9/22/2007, p. 18-19.

Early that afternoon, June 10, 1007, Lyons, Ball, and Ball’s cousin all got into an argument outside Ball’s home. N.T., 9/22/2007, p. 19, 105. After the argument, Lyons followed Ball into her house where he and Ball continued to argue. N.T., 9/22/2007, p. 19. Ball told Lyons that he had until the end of the weekend to get his belongings out of her residence and go back to live with his mother. N.T., 9/22/2007, p. 20. Ball threatened Lyons that if he did not move out by the end of the weekend, she would call his Parole Officer on Monday and “make him leave.” N.T., 9/22/2007, p. 20. After Ball made this threat, Lyons spat on her face and pushed her shoulder. N.T., 9/22/2007, p. 20.

Following this act, Ball promptly pushed Lyons toward the door and “told him that he had to leave.” N.T., 9/22/2007, p. 20. Lyons stepped outside but remained on the premises. N.T., 9/22/2007, p. 20. Unsatisfied with Lyons’ actions, Ball “told him that he needed to go,” that she “didn’t want him there anymore.” N.T., 9/22/2007, p. 20. Lyons told Ball to pack up his things. N.T., 9/22/2007, p. 20. To this, Ball responded “that was not a problem, [she] would pack his things. They would be ready for him and that he just needed to leave and that if anything, [her] cousin could bring ‘em out to his mom’s house or [they] could drop ‘em off at [her] friend’s house, which lived in the trailer court as well.” N.T., 9/22/2007, p. 20-21. At this point, both Lyons and Ball were outside the residence again and another altercation ensued. N.T., 9/22/2007, p. 21. As Ball’s cousin was calling the police, Lyons drove away. N.T., 9/22/2007, p. 21.

After Lyons left, Ball packed the majority of Lyons' belongings in black plastic bags and placed them outside her residence. N.T., 9/22/2007, p. 23-24. At about eight o'clock, Lyons came back to the residence. N.T., 9/22/2007, p. 23, 25. Once there, Lyons picked up his belongings that were packed in the plastic bags and continued to argue with Ball. N.T., 9/22/2007, p. 25. After Lyons left he continued to try to contact Ball and he and his sister were texting and calling Ball. N.T., 9/22/2007, p. 26. Lyons' sister had been in and out of a relationship with Ball's ex-husband. N.T., 9/23/2007, p. 110. At nine forty eight p.m. Ball text messaged Lyons that he could pick up the few belongings that were left in her home. N.T., 9/22/2007, p. 88-89. Ball related, however, that she started to get scarred "because they just kept going and going and going," but that finally it stopped when she texted Lyons' sister back expressing a need for the discourse to end: "stop texting me. Stop calling me. I wasn't going to play the games anymore. I didn't want anything to do with it anymore and stop." N.T., 9/22/2007, p. 26. After Ball sent this message Ball reported that the calls and texts did stop. N.T., 9/22/2007, p. 26-27.

That night, Ball's cousin left at about 10:30 p.m. N.T., 9/22/2007, p. 27, 92, 110. Ball fell asleep on her couch. N.T., 9/22/2007, p. 26, 92. Ball's two children were also asleep at 150 Mohawk Drive. N.T., 9/22/2007, p. 27-28. Ball awoke by a knock at the door at about eleven o'clock p.m. N.T., 9/22/2007, p. 28. Figuring it was her cousin coming back because she heard her families' familiar knock, she unlocked the door and opened it. N.T., 9/22/2007, p. 28-29. When Ball opened the door she was startled to find Lyons standing on the other side, already inside of the screen door. N.T., 9/22/2007, p. 29, 88-89. Ball told Lyons that he was not welcome at her home and directed him to leave. N.T., 9/22/2007, p. 30. Lyons, however,

did not leave. Instead of leaving Ball's residence when requested to do so, he looked at Ball until she tried to shut the door. N.T., 9/22/2007, p. 30. It was while Ball was attempting to shut her door, leaving Lyons outside, that Lyons shoved the door back open and committed the crimes against Ball. N.T., 9/22/2007, p. 31, 175.

According to Ball, "he ended up shoving the door, pushing the door, but he did it with such force that it actually made me fly backwards, and I have a [television] stand in my living room, and when I flew backwards I ended up hitting the back of my head on the stand." N.T., 9/22/2007, p. 30, 164, 175. The stand that Ball hit with the back of her head hit was about five feet away from the door. N.T., 9/22/2007, p. 31. There was nothing to trip over; it was the sheer force of Lyons' shove to open the door that propelled Ball into the stand. N.T., 9/22/2007, p. 31, 175. Ball was dazed and her head hurt badly. N.T., 9/22/2007, p. 31.

While Ball was on the ground in her living area, after having been pushed by the door, Lyons entered Ball's residence without being invited. N.T., 9/22/2007, p. 32. Ball tried to stand and reach for her cell phone, but Lyons knocked her cell phone out of her hands. N.T., 9/22/2007, p. 32. While Ball was still trying to stand, Lyons punched her on the left side of her face with a closed fist. N.T., 9/22/2007, p. 33. Next Lyons grabbed Ball by her hair and threw her onto her couch. N.T., 9/22/2007, p. 33-34. Lyons began undoing his pants as he walked over to Ball on the couch and hit Ball across the face with an open hand three or four times. N.T., 9/22/2007, p. 34-35. While Lyons was assaulting Ball he told her that he would "treat [her] like the whore that [she] was." N.T., 9/22/2007, p. 35.

Ball was trying to get Lyons off from on top of her, Lyons had straddled her on the couch wearing only his tee shirt and underwear, but she could not use either of her arms or one

leg because Lyons had grabbed her hands and pinned her leg. N.T., 9/22/2007, p. 35. Lyons used one hand to hold Ball's hands and the other to continue to undress. N.T., 9/22/2007, p. 35. Ball was trying to fight back, and when Lyons let go of Ball's hands to pull his arm out of his shirt, she pushed him, scratched him, and bit him to try to get him off of her. N.T., 9/22/2007, p. 36-37. After Lyons ripped Ball's shorts, trying to take them off of her, he tried to take off his underwear; while Lyons was taking off his underwear, Ball was able to move her legs enough to where she was able to use her legs to push him off of her. N.T., 9/22/2007, p. 37-38. See also, Commonwealth's Exhibit No. 2 (Ball's ripped shirts).

As Ball got up and reached for her telephone, Lyons grabbed Ball by the hair again and threw her, this time to the floor. N.T., 9/22/2007, p. 38. Again, Lyons straddled Ball, pinning her to the ground. N.T., 9/22/2007, p. 38. Again, Lyons hit Ball repeatedly in her face telling her that he would "treat [her] like the whore that [she] was." N.T., 9/22/2007, p. 39. Ball continued to struggle against Lyons by scratching and pushing him which made him angry. N.T., 9/22/2007, p. 39. Lyons then grabbed Ball by the hair and ears and banged her head against the floor. N.T., 9/22/2007, p. 39.

Lyons hit Ball again and grabbed her again by the hair forcing her to turn over onto her stomach on the ground. N.T., 9/22/2007, p. 41. While he did this, Ball was able to move her leg enough to try to use it to push him off of her; it did not work and she was pinned, now stomach down, on the floor. N.T., 9/22/2007, p. 41.

Ball jerked away from Lyons and was able to get up and get away from him. N.T., 9/22/2007, p. 42. Ball ran into her bedroom and closed the door, there was no lock, and called her mother who lives only about a mile away. N.T., 9/22/2007, p. 44, 147. The phone rang but

before it could be answered, Lyons came into the bedroom, hit the left side of Ball's face with an open hand and hung up the phone. N.T., 9/22/2007, p. 44. Ball's mother reported that she received this telephone call at about eleven thirty p.m. N.T., 9/22/2007, p. 148.

After the attempted phone call, Lyons dragged Ball by her hair back into the living room on her hands and knees, her children were in her bedroom. N.T., 9/22/2007, p. 45. Lyons threw Ball back onto her couch, straddled her, and began to choke her by strangling her neck with his hands. N.T., 9/22/2007, p. 45. Ball tried to pull his hands off of her neck, she scratched his stomach, sides and neck. N.T., 9/22/2007, p. 46. Lyons retaliated by hitting Ball on the left side of her face twice more, once with a closed fist and once with an open hand. N.T., 9/22/2007, p. 46. This time, he ended up hitting her nose. N.T., 9/22/2007, p. 46.

When Ball's telephone rang, Lyons was startled and his grip on Ball loosened enough for her to grab his hands, get her foot out from underneath him and shove him as hard as she could causing Lyons to fall backwards. N.T., 9/22/2007, p. 48. Ball picked up the phone; it was her mom. N.T., 9/22/2007, p. 48. Ball relayed that she needed help, that Lyons was beating her. N.T., 9/22/2007, p. 48. Ball's mother testified that she could hear Lyons in the background: "[h]e laughed and then he said, what the hell do you think she's going to do about it?" N.T., 9/22/2007, p. 149.

Lyons got up, gathered his things and walked out the door. N.T., 9/22/2007, p. 48-49. Lyons threatened Ball even as he was leaving: "he said I was going to fucking regret everything, that his sister was going to beat my ass..." N.T., 9/22/2007, p. 49. Ronald Sweet, the mobile home park manager, saw Lyons driving away at a "pretty good rate of speed" from Ball's home. 30. N.T., 9/22/2007, p. 123-124. Ball's neighbor saw Lyons walk out to the car

parked outside, put clothes in the car, and hurriedly drive away from Ball's home, his tires were spinning and squealing. N.T., 9/22/2007, p. 138, 142.

Ball's mother arrived at Balls home a couple of minutes later; Ball unlocked the door only when she heard that it was mother. N.T., 9/22/2007, p. 52-53, 163. Upon seeing Ball, Ball's mother observed that she had bruises and marks all over her, especially around her eyes. N.T., 9/22/2007, p. 149-150. Upon entering Ball's residence, Ball's mother observed that some things were knocked over off a stand and torn clothing was on the floor. N.T., 9/22/2007, p. 151. On the way to the hospital with her mother, Ball was crying, shaking, and throwing up. N.T., 9/22/2007, p. 154. Arriving at Ball's residence at eleven thirty eight p.m. in response to a call for a domestic disturbance, Pennsylvania State Trooper Justin Bieber observed that Ball had the following fresh wounds: two black eyes, a bloody nose, red marks around her neck, redness on her left wrist, and some brush burn on her elbows. N.T., 9/22/2007, p. 172-173, 182. Trooper Bieber also observed torn clothing on the floor. N.T., 9/22/2007, p. 173-174. Ball had trouble facing her children after being assaulted by Lyons, in part because she was embarrassed that her face was heavily bruised and swollen. N.T., 9/22/2007, p. 59, 112. The court, including the jury, found all the above quoted evidence to be credible.

### **DISCUSSION**

The guilty verdict rendering Mr. Lyons guilty of Criminal Trespass and Simple Assault, respectively, was not against the weight of the evidence in either respect. It is well settled that a weight of the evidence claim is primarily addressed to the discretion of the judge who actually presided at trial. *Armbruster v. Horowitz*, 813 A.2d 698, 702 (2002). It is axiomatic that it is the function of the jury as the finder of fact to determine the credibility of the



witnesses. *Commonwealth v. Champney*, 832 A.2d 403, 408 (2003) (citing *Commonwealth v. Johnson*, 668 A.2d 97, 101 (1995)). A new trial should be granted only in truly extraordinary circumstances, *i.e.*, “when the jury’s verdict is *so contrary to the evidence as to shock one’s sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail.*” *Abruster*, 813 A.2d 703 (emphasis in original). Without specific evidence detailing an “extraordinary circumstance,” a jury’s finding of fact as to the credibility of witnesses must not be disturbed on appeal.

In Mr. Lyons case, the jury’s finding of guilt was not so contrary to the evidence as to shock one’s sense of justice thereby necessitating a new trial. In fact the extensive evidence against Mr. Lyons was so overwhelming that the court would have been shocked at an acquittal.

**I. Mr. Lyons Conviction of Criminal Trespass was not Against the Weight of the Evidence**

Mr. Lyons asserts that his conviction of Criminal Trespass was against the weight of the evidence. To find Lyons guilty of committing the offense of criminal trespass, 18 Pa.C.S. § 3503(a)(1)(ii), the jury must first find all of the following elements have been proven beyond a reasonable doubt. First, that the defendant entered or broke into 150 Mohawk Drive, Hughesville, PA. “Broke into” includes entrance by force or breaking. Second, the defendant knew he did not have permission or lawful authority to enter or break into 150 Mohawk Drive. Third, that 150 Mohawk Drive was a building or occupied structure.

Mr. Lyons asserts that his conviction of Criminal Trespass was against the weight of the evidence because the evidence demonstrated that he reasonably believed he was entitled to

enter the premises because he resided there, he had permission from the trailer court manager to reside there, and the victim emailed him and gave him permission to enter the premises.

Lyons' conviction of Criminal Trespass, however, was not against the weight of the evidence. Lyons did not reasonably believe that he was entitled to enter the premises. Lyons did not reside with Ball when he committed Criminal Trespass as she has evicted him earlier that day. The trailer court manager gave Lyons permission to reside at Ball's residence only as long as Ball allowed Lyons to reside there. Far from giving Lyons permission to enter the residence, when the crime occurred, Ball attempted to keep Lyons from entering her residence.

150 Mohawk Drive was a building or occupied structure. 150 Mohawk Drive was Ball's home, a trailer she owned in a trailer lot that she was the sole renter of. N.T., 9/22/2007, p. 17, 126. In his testimony Lyons referred to 150 Mohawk Drive as Ball's home, not his: "I was Nina's boyfriend. I lived with her at her trailer at Peterman's Trailer Court, 150 Mohawk Drive..." N.T., 9/23/2007, pp. 110.

The defendant entered or broke into 150 Mohawk Drive. "Broke into" includes entry by force. Lyons gained entry into Ball's apartment by forcing himself through the door. Lyons did not have permission or lawful authority to enter or break into 150 Mohawk Drive. On June 10, 2007, before Lyons committed Criminal Trespass, Ball made it clear to Lyons that he no longer had permission to enter. Furthermore, when Lyons appeared at Ball's doorstep in an attempt to gain entry to Ball's home, she told him not to enter. Ball was so adamant about keeping Lyons out of her home that she attempted to block his entry by closing the door. It was only after Lyons overpowered Ball, pushing the door into her causing the door to shove her backwards onto the floor, that he gained entry.

It is the function of the jury as the finder of fact to determine the credibility of the witnesses. *Commonwealth v. Champney*, 832 A.2d 403, 408 (2003) (*citing Commonwealth v. Johnson*, 668 A.2d 97, 101 (1995)). Without specific evidence detailing an “extraordinary circumstance,” a jury’s finding of fact as to the credibility of witnesses must not be disturbed on appeal. *Abruster*, 813 A.2d 703. A new trial should not be granted. The jury found Ball to be credible and the facts strongly support a finding of guilty as to Criminal Trespass.

## **II. Mr. Lyons Conviction of Simple Assault was not Against the Weight of the Evidence**

Mr. Lyons asserts that his conviction of Simple Assault was against the weight of the evidence. To find Lyons guilty of committing the offense of Simple Assault, 18 Pa.C.S. § 2701(a)(1), the jury must first find all of the following elements have been proven beyond a reasonable doubt: First, that the defendant engaged in conduct that constituted a substantial step toward causing bodily injury to Nina Ball. An act is a “substantial step” if it is a major step toward commission of the crime and one that strongly corroborates the belief that the defendant, at the time he did the act, had a firm intent to commit the crime of simple assault. Second, the defendant’s conduct in this regard was intentional, or, in other words, that it was his conscious object or purpose to cause such bodily injury. “Bodily injury” means impairment of physical condition or substantial pain.

Mr. Lyons asserts that his conviction of Simple Assault was against the weight of the evidence because the evidence demonstrated that he was acting in self-defense. Ball’s physical capabilities versus Lyons’ physical capabilities combined with the degree of injury sustained by Ball, proves that self-defense is not a viable defense for Lyons. At the time the incident

occurred Ball was five feet three inches tall and weighed 105 pounds. N.T., 9/22/2008, p. 33. Lyons was five feet nine inches tall and weighed about 170 pounds. N.T., 9/22/2008, p. 33. It is evident in light of the above testimony that the court found to be credible, as did the jury, and the nature of Ball's injuries that Lyons attacked and assaulted Ball and that he could not have been acting in self-defense.

Trooper Bieber, Ball, and Ball's mother's accounts of Ball's injuries were substantiated by Bonnie Eck, a registered nurse for Susquehanna Health System in the Williamsport emergency department: "She had blackened eyes, both of them. She had a swollen and lack and blue nose. She... also had some bruising, I think I could see initially around her neck, but of course, when I took the photographs I could see those more clearly. N.T., 9/22/2008, pp. 188, 192. *See also* Commonwealth Exhibit No. 5. Nurse Eck evaluated Ball at about four thirty a.m., approximately six hours after Lyons assaulted Ball in her home. N.T., 9/22/2008, 197. Nurse Eck explained that bruises will show up on a person's body right away if extensive trauma was experienced; frequently, the bruising is the same color as the bruising that Nurse Eck witnessed on Ball, a color that is consistent with a fresh injury. N.T., 9/22/2008, p. 199-200. Nurse Eck estimated Ball's injuries as being inflicted several hours before the evaluation. N.T., 9/22/2008, p. 200.

As part of her evaluation, Nurse Eck took photographs of Ball to depict her injuries. N.T., 9/22/2008, 197. *See also* Commonwealth Exhibits No. 6-24. The pictures depicted extensive bruising to Ball's face, neck, and legs. Ball suffered periorbital ecchymosis bilaterally, colloquially referred to as raccoon's eyes, the kind of injury sustained from a lot of trauma to the head such as blows to the head and face. N.T., 9/22/2008, p. 198, 205. *See also*

Commonwealth Exhibit No. 6, 22. Ball sustained petechial hemorrhages, frequently associated with strangulation, and bruising to her nose. N.T., 9/22/2008, 198, 205. *See also* Commonwealth Exhibit No. 6, 22. Ball's entire cheek was bruised and Nurse Eck opined that that bruise looked as if would get much worse with time. N.T., 9/22/2008, 205. *See also* Commonwealth Exhibit No. 22. Blood vessels ruptured in Ball's left eye due to excessive force or pressure to the face. N.T., 9/22/2008, 199, 205. *See also* Commonwealth Exhibit No. 7, 22.

Ball showed bruising around the neck, clavicle, and left side of her collar bone that indicated intensive soft tissue trauma to those areas. N.T., 9/22/2008, 199. *See also* Commonwealth Exhibit No. 8. Along the back of Ball's neck the bruising is in a linear fashion consistent with the pattern of a hand. N.T., 9/22/2008, 200. *See also* Commonwealth Exhibit No. 9. Similarly, Ball had a bruise along her chin, jaw line, which Nurse Eck identified as extensive and looking like it may have been caused by a finger from someone trying to hold Ball down or move her around. N.T., 9/22/2008, 200, 205-206. *See also* Commonwealth Exhibits Nos. 9, 10, 23, 24. Bruising behind Ball's ear was of the type that Nurse Eck referred to as a "battle sign" and often indicates a fracture in the skull itself. N.T., 9/22/2008, 201. *See also* Commonwealth Exhibit No. 10. On Ball's ear there was bruising of the pinna, the mastoid, and the soft tissue of the back of the ear. N.T., 9/22/2008, 201, 206. *See also* Commonwealth Exhibits Nos. 11, 24.

Ball had bruising to both legs, but the bruising to her right leg was far more extensive. N.T., 9/22/2008, 203-205. *See also* Commonwealth Exhibit No. 16-21. Bruising to Ball's lower right leg was especially extensive with a lot more soft tissue trauma. N.T., 9/22/2008,

203-205. *See also* Commonwealth Exhibit No. 16-21. The pattern of bruising along the side of her right leg was indicative of hand stress to that area. N.T., 9/22/2008, 204. *See also* Commonwealth Exhibit No. 17. Ball's entire right foot was bruised. N.T., 9/22/2008, 204. *See also* Commonwealth Exhibit No. 17. Nurse Eck identified bruises on the inside of Ball's ankle as what she believed imprinted from fingers. N.T., 9/22/2008, 205. *See also* Commonwealth Exhibit No. 20.

Nurse Eck identified each one of Ball's injuries as consistent with Ball's description of Lyon's assault on her. N.T., 9/22/2008, 197-207. Even though Ball shared her description of the assault against her with Nurse Eck, the nurse did a "full examination" of Ball's body. N.T., 9/22/2008, 203. Nurse Eck stated that Ball "looked like someone who had been severely beaten," and in her opinion, it was not possible that the bruising she evaluated on Ball's body could have been self inflicted. N.T., 9/22/2008, 206, 208.

When Trooper Bieber located Lyons at his mother's house, the Trooper observed that Lyons had scratches on his face, neck, and stomach. Later that morning on same day, June 11, 2007, Nurse Eck received a search warrant on Lyons for photographs, blood samples, and fingernail scrapings. N.T., 9/22/2008, 208, 212-213. Photographs that Nurse Eck took of Lyons' injuries depict bruising; a fingernail mark, tiny surface in a circumferential pattern; and fingernail scratches and a small surface abrasion, linear and parallel pattern. N.T., 9/22/2008, 213-214. *See also* Commonwealth Exhibit No. 27-31. Nurse Eck described the injuries as "potentially defensive wounds, trying to scratch and push away." N.T., 9/22/2008, 221. Nurse Eck did caution that had she no preconceived notion of the events that caused the injuries to Lyons, that she would not have been able to access whether she believed Lyons' scratches to be

defensive or offensive. N.T., 9/22/2008, 224. Nurse Eck explained frequently what is seen when someone is trying to fight off an attacker. N.T., 9/22/2008, pp. 224.

Testimony was presented showing that Lyons may have sustained these injuries earlier in the day during the altercation with Ball's cousin and/or while roughhousing with his friends when they were fishing. N.T., 9/23/2008, p. 27, 28, 34. Even if all the injuries that Lyons had on his person on June 11, 2008 were from Ball, Lyons would not have to injure Ball to the point she was injured for the purpose of self-defense. As Nurse Eck stated and as evidenced by the pictures of Ball's injuries, after Lyons assaulted Ball she "looked like someone who had been severely beaten." N.T., 9/22/2008, p. 208.

Pennsylvania State Trooper Brad Eisenhower found Ball's description of Lyons' assault against her very credible, and as a result filed charges against Lyons:

By interviewing the victim, Nina Ball, witnessed by Linda Egli, Jaylee Remley, trailer park manager, Ron Sweet, everything substantiated what Nina Ball was telling me, specifically her injuries. Every injury, every bruise I saw on her body, everything she reported to me, how she was assaulted to me by Stephen Lyons was corroborated, from the bruises around the ears. She said he held her down by the ears. There was bruise marks behind the ears to substantiate that to the injuries to her ankles. Told be that he drug her across the floor by her ankles. There was injuries on her ankles. The DNA evidence, the fingernail scrapings came back indicating that there was DNA belonging to Nina Ball under Stephen Lyons' fingernails.

N.T., 9/23/2008, pp. 5-6. Like Nurse Eck and Trooper Eisenhower, the jury found Ball credible and found Lyons to have committed Simple Assault against her on the evening of June 10, 2008. The jury found that Lyons engaged in conduct that caused bodily injury, to Ball, and his conduct in this regard was intentional, it was his conscious object or purpose to cause the substantial pain that he did inflict upon Ball.

It is the function of the jury as the finder of fact to determine the credibility of the witnesses. *Commonwealth v. Champney*, 832 A.2d 403, 408 (2003) (*citing Commonwealth v. Johnson*, 668 A.2d 97, 101 (1995)). Without specific evidence detailing an “extraordinary circumstance,” a jury’s finding of fact as to the credibility of witnesses must not be disturbed on appeal. *Abruster*, 813 A.2d 703. A new trial should not be granted. The jury found Ball to be credible and the facts strongly support a finding of guilty as to Simple Assault.

### CONCLUSION

Ball’s testimony was not only credible but corroborated, namely by the pictures of the injuries she sustained as a result of Lyons’ assault against her, following his trespass into her home. Accordingly, Lyons’s appeal should be denied and the order of August 25, 2008 affirmed.

BY THE COURT,

Clinton W. Smith, Sr. Judge

cc: James Protasio, Esquire  
DA  
Senior Judge Clinton W. Smith  
Judges  
Gary L. Weber, Esquire (Lycoming Reporter)