

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 1280-2007
	:	CRIMINAL DIVISION
STEPHEN LYONS,	:	
Defendant	:	PCRA

ORDER

On March 9, 2010, the Defendant filed a Pro Se Petition for relief under the Post Conviction Relief Act (PCRA). Conflicts Counsel, Edward J. Rymzsa, Esquire, was appointed to represent the Defendant on April 22, 2010. After receiving several extensions of time in which to file an amended PCRA Petition, Counsel filed an amended PCRA Petition on November 4, 2010. A court conference on the amended Petition was held February 8, 2011. Counsel raises three issues in the amended Petition: 1) trial counsel was ineffective for failing to raise a sufficiency of the evidence challenge either at trial and/or post trial challenging the sufficiency of the evidence of the count of Criminal Trespass, where, among other things, the Commonwealth failed to establish the Defendant's unlicensed/unprivileged entry; 2) trial counsel was ineffective for failing to raise the foregoing sufficiency of the evidence claim regarding the count of Criminal Trespass on direct appeal; 3) trial counsel was ineffective for failing to request a lesser included instruction of Defiant Trespass and/or Simple Trespass.

Background

The facts of the record, as recounted by the trial court, are as follows:

On June 10, 2007, after sleeping at [Nina] Ball's home the night before, even though [Defendant] 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, 25. 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, 121, 136. 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, 2007, 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 up 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., 09/22/2007, 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’ [sic] 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. 31, 175. The stand that Ball hit with the back of her head hit [sic] 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., p. 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. 37-38. After Lyons ripped Ball's shorts, trying to take them off of her, he tried to take off his underwear; while Lyon's [sic] was taking off his underwear, Ball was able to move her legs enough to where she was able 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 [o]f 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 [sic] home a couple of minutes later; Ball unlocked the door only when she heard that is was her 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 flesh 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 of the above quoted evidence to be credible.

Trial counsel was ineffective for failing to raise a sufficiency of the evidence challenge either at trial and/or post trial, or on direct appeal, challenging the sufficiency of the evidence of the count of Criminal Trespass

The Defendant contends that trial counsel was ineffective for failing to raise a sufficiency of the evidence challenge either at trial and/or post trial, or on direct appeal, challenging the sufficiency of the evidence of the count of Criminal Trespass, where, among other things, the Commonwealth failed to establish the Defendant’s unlicensed/unprivileged entry. The standard to apply in reviewing the sufficiency of the evidence is:

[w]hether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. *Any doubts*

regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced is free to believe all, part or none of the evidence.

Commonwealth v. Abed, 989 A.2d 23, 26 (Pa.Super.2010). See Commonwealth v. Hutchinson, 947 A.2d 800 (Pa.Super.2008). In order to prove the Defendant guilty of 18 Pa.C.S. §3503 Criminal Trespass, the Commonwealth had to prove beyond a reasonable doubt that the Defendant, knowing that he was not licensed or privileged to do so, broke into any building or occupied structure or separately secured or occupied portion thereof. “Broke into” is defined in Pa.C.S. §3503(a)(3) to mean “to gain entry by force, breaking, intimidation, unauthorized opening of locks, or through an opening not designed for human access.” In this case, the Commonwealth did prove that the Defendant broke into 150 Mohawk Drive knowing that he was not licensed or privileged to do so. The Defendant, after being told to leave by Ball, forced his way into her residence as she was trying to shut her front door. Although the Defendant had stayed with Ball in the past, he knew that he was not licensed or privileged to enter her residence on June 10, 2007, as Ball had evicted him from the residence earlier that day. From the testimony quoted above, Ball unmistakably told the Defendant to take his belongings and leave the residence. 150 Mohawk Drive was clearly a building or occupied structure as it was Ball’s residence. Furthermore, although the mobile home park manager had given the Defendant verbal permission to stay at 150 Mohawk Drive, his consent only had import to the extent that Ball allowed the Defendant to stay in her residence.

In light of the ample evidence quoted above, the Court finds that all of the elements of Criminal Trespass were most certainly established beyond a reasonable doubt. Therefore, the Court finds the Defendant's argument that trial counsel was ineffective in failing to raise a sufficiency of the evidence argument at pretrial, trial, or on direct appeal, to be without merit.

Trial counsel was ineffective for failing to request a lesser included instruction of Defiant Trespass and/or Simple Trespass

The Defendant contends that trial counsel was also ineffective for failing to request a lesser included instruction of Defiant Trespass and/or Simple Trespass. In support of this argument, the Defendant cites to N.T. 6/23/08¹. at 47- 49, 135, 172-186; 6/22/08, at 72. The testimony at N.T., 9/23/2008, p. 47-49 is of April Snyder, the Defendant's sister. Ms. Snyder indicated that the Defendant had permission to be at 150 Mohawk Drive as Ball gave oral permission, and permission through a text message. The text message was quoted at trial as stating "[H]is stuff is ready. He can get it whenever he wants." N.T., 9/23/2008, p. 49. This fact was already recognized by the Court in the facts quoted above, "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., 9/22/2008, p. 88-89. N.T., 9/23/2008, p. 135. relates to the Defendant's testimony that Ball opened the door for him and he entered the residence. However, Ball's testimony as quoted above demonstrated that once Lyons showed up at her residence, she directed him to leave and told him that he was not welcome there. As the Court quoted above, "the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced is free to

¹ The Court believes that the correct citations are 9/22/08 and 9/23/08, as these were the dates of the Defendant's trial before Senior Judge Clinton W. Smith. The Court notes that the citations listed in the facts quoted above are also incorrect, as the year of the trial was 2008, not 2007.

believe all, part or none of the evidence.” Abed at 26. The remainder of the testimony cited by the Defendant relates mainly to discussion between Counsel and the Court regarding the proper charge to provide the jury. The Defendant believes that his counsel was ineffective for failing to request a lesser included instruction of Defiant Trespass or Simple Trespass.

As the jury found above that all of the elements to prove Criminal Trespass were established beyond a reasonable doubt, the Court finds that a lesser included instruction was not needed. Therefore, the Court finds the Defendant’s argument that trial counsel was ineffective for failing to request such an instruction to be without merit.

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant’s PCRA petition. Additionally, as the Court finds that no purpose would be served by conducting any further hearing, none will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of the Court’s intention to deny the Petition. The Defendant may respond to this proposed dismissal within twenty (20) days.

ORDER

AND NOW, this ____ day of April, 2011, the Defendant and his attorney are notified that it is the intention of the Court to dismiss the Defendant's PCRA petition unless he files an objection to that dismissal within twenty days (20) of today's date.

By the Court,

Nancy L. Butts, President Judge

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