

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 1634-2007
	:	CRIMINAL DIVISION
RICHARD ROGERS, JR.	:	APPEAL
Defendant	:	

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

The Defendant appeals the Order of Court dated November 9, 2010, which decisively dismissed the Defendant's PCRA Petition. The Defendant filed a Notice of Appeal on December 9, 2010, and on December 11, 2010, this Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty days a concise statement of matters complained of on appeal. The Defendant filed his concise statement on January 12, 2011.

The Defendant raises three issues on appeal: 1) in response to the Defendant's argument that the Court responded inappropriately and inadequately to a jury question that clearly demonstrated juror confusion over a pivotal aspect of the jury's fact-finding function, the Court rejected the Defendant's argument by referring solely to the adequacy of its original instructions, rather than determining whether its response to the jury question satisfied the requirement that "[W]here a jury returns on its own motion indicating confusion, the Court has the duty to give such additional instructions on the law as the court may think necessary to clarify the jury's doubt or confusion." Commonwealth v. Davalos, 779 A.2d 1190, 1195 (Pa.Super.2001) (citing Commonwealth v. Washington, 418 A.2d 548, 552 (Pa.Super.1980)); 2) the Court erred in its response to the jury question as the jury question demonstrated that the jury mistakenly believed that the question before it was whether the Defendant was legally entitled to be present on the property, when in fact the question before it was whether the Defendant believed he was legally

entitled to be present on the property; and 3) the trial court's response reinforced, rather than rectified the jury's misunderstanding.

The Defendant appeals the Court's determination that it did not respond either inappropriately or inadequately to a jury question. The Defendant alleges that in making this determination, the Court relied solely on the adequacy of its original jury instruction rather than determining whether its response satisfied the requirement that "[W]here a jury returns on its own motion indicating confusion, the Court has the duty to give such additional instructions on the law as the court may think necessary to clarify the jury's doubt or confusion." Davalos at 1195.

The jury question discussed above came to the Court after the jury retired to deliberate following the jury trial on April 1, 2008 before the Honorable Nancy L. Butts. The jury question stated "If he was paying rent and she asked him to leave does he have to go being that that is his residence. Does he have a legal right to stay even though no evidence of a lease was given." N.T. 190. Judge Butts discussed the question with Counsel for both parties and decided on an appropriate response to the jury. After the jury was brought back into the courtroom, Judge Butts answered the jury's question by stating,

THE COURT: [O]ne of the issues for you to decide in both the criminal trespass and burglary charge is whether or not he was lawfully entitled to be where he was. You heard facts, you heard testimony. You have to find the facts and make a decision based upon the information you were given...."

N.T. 190. The Court finds that this is an accurate statement. While Criminal Trespass does require that a person **know** they are not lawfully entitled to enter or break into a location, it is obvious that they must first be in a place where they are not lawfully entitled to be. Aside from this fact, Judge Butts further stated to the jury:

THE COURT: [U]nfortunately, other than maybe sitting down and giving you 45 minutes on the law of leases and landlord/tenant, which I'm not allowed to do, I

can't really give you anymore. I gave you all the law. I told you to use your common sense, and your practical experiences of each of your every day lives have used it and learn from it and work from it, and that's probably the best advice I can give you, okay?

N.T. 191. Judge Butts referred the jury back to the relevant law she had already provided to them. As the Court confirmed in its Order of October 11, 2010, the Court correctly identified the elements of Criminal Trespass in the Court's charge to the jury, which is found in the transcripts of the Court's Instructions to the Jury on April 1, 2008:

THE COURT: The next offense is criminal trespass. . . . To find the Defendant guilty of this offense you must find all of the following elements have been proven beyond a reasonable doubt. Number one . . . he entered or broke into that address. Broke into includes entrance by force, breaking, intimidation, unauthorized opening of locks or through an opening not designed for human access. Two, that the Defendant knew he did not have permission or lawful authority to enter or break into that location. Three, that that location of Newberry Street, Williamsport, was a building or occupied structure. . . .

N.T. 6-7. Based on these facts, it is clear that the Court did provide the jury with additional instructions on the law as the Court thought necessary to clarify the jury's doubt or confusion. See Davalos at 1195. The Court believes that it did not err in its response to the jury question, nor did the Court's response reinforce rather than clarify the jury's confusion. After the Court gave the jury the above quoted answer, the jury returned to deliberate and arrived at a verdict without further questions of the Court.

It is respectfully suggested that this Court's Order dated November 9, 2010, be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

Cc: Ken Osokow, Esq.
Joel M. McDermott, Esq.
Amanda Browning, Esq. (Law Clerk)
Gary L. Weber (LLA)