

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **No. CR-826-2012**
 :
 v. :
 : **CRIMINAL DIVISION**
 KEVIN LATTIE, :
 Defendant :

OPINION AND ORDER

The Defendant filed a Post-sentence Motion on February 21, 2013.¹ Argument on Defendant’s Motion was held on March 26, 2013. Defendant argues that the guilty verdict for the Criminal Trespass charge rendered by the Court after a non-jury trial was based on insufficient evidence and against the weight of the evidence.

Background

On May 9, 2012, at approximately 11:30 AM, Kevin Lattie (Defendant) entered the address of 61 Round Hill Road through an unlooked door that lead to the kitchen. N.T., January 31, 2013, p. 6. Robert Hunton (Hunton), the homeowner, asked the Defendant who he was as he had never seen him before. Id. at 5. The Defendant responded by asking, “who are you?” Id. Hunton put his hand on his shoulder and walked him out of the house, while doing so the Defendant was muttering. Id. “My general impression was somewhere in there it snapped to him that he made a mistake and it was kind of like oh, shoot.” Id. at 6. After Hunton escorted the Defendant outside of the house, he observed him begin to ride a bike on Round Hill Road towards Grimesville Road. Id. at 7. The Defendant then turned his bike around and coasted

¹ The Court shall decide a post-sentence motion within 120 days of the filing of the motion. Pa.R.Crim.P. 720(B)(3)(a).

down Round Hill Road. Id. Hunton believed that the Defendant was “loaded” or “intoxicated.” Id. at 10.

Hunton called police and reported that a black male, wearing army green pants and riding a yellow bike had entered his house. Id. at 7. Office Chris Kriner (Kriner) of Old Lycoming Township Police responded to Round Hill Road within minutes and observed a black male, wearing green pants riding a yellow bike. Id. at 12. Kriner rolled down the window of his vehicle and told the Defendant to stop, which he did not acknowledge and kept on riding his bike. Id. at 13. Kriner activated his lights and siren and followed the Defendant on his bike. Id. The Defendant did not stop and continued to flee Kriner. Id. The Defendant rode his bike around an apartment building in an attempt to evade police. Id. at 14. Eventually, the Defendant fled south on Dewey Avenue and during the chase fell off his bike due to making contact with Kriner’s vehicle. Id. The Defendant continued to flee Kriner on foot. Id. Kriner exited his vehicle, chased the Defendant a short distance, and pulled him to the ground. A “little tussle” ensued as Kriner tried to handcuff the Defendant. Id. at 15.

The Defendant was searched incident to arrest by Kriner and an empty cough syrup bottle, a piece of aluminum foil, and a lighter were found in his possession. Id. at 20. The Defendant’s speech was slurred and he had white foam coming from his mouth. Id. at 15. The Defendant stated that he was smoking “wet,” which is a combination of marijuana and PCP. Id. at 21.

The Defendant testified at his non-jury trial on January 31, 2013. The Defendant stated that he was at a woman’s house, her first name was Michelle, and they had been taking drugs. Id. at 61. The Defendant volunteered to go to the store to get food and was directed by Michelle to go to a convenience store nearby and to use her son’s bike. Id. at 62. The Defendant became

lost and talked to the woman on the phone and she told him to go back to her place. Id. at 62-63.

The Defendant stated:

So I was so high I didn't come on the right block and all I seen was the road so I thought that the house I was entering was the house I went and opened the door, the door was opened so I entered the house I seen one lady and I remember saying like who are you because I knew she wasn't there when I left the first time. So as soon as I walked into the littler further past the kitchen and I seen the fella that testified earlier, Mr. Robert, he said something I remember who are you? That's when I looked oh, oh, shit I'm in a wrong...

Id. at 62. The Defendant did not remember the last name of Michelle and knows that she lives somewhere on Grimesville [Road]. Id. The Defendant testified that Michelle's house had a side door and was a single floor. Id. at 65-66. The Defendant also did not tell police his version of events or about Michelle because they did not ask him. Id. at 67.

Following the non-jury trial, this Court found the Defendant not guilty of Possession of Drug Paraphernalia, an ungraded misdemeanor;² and Escape, a felony of the third degree.³ The Court, however, found the Defendant guilty of Criminal Trespass, a felony of the third degree;⁴ two counts of Driving Under the Influence of a Controlled Substance, ungraded misdemeanors;⁵ Resisting Arrest, a misdemeanor of the second degree;⁶ and Public Drunkenness, a summary offense.⁷

Discussion

Whether the Defendant's guilty verdict was against the weight of the evidence

The Defendant alleges that the guilty verdict for Criminal Trespass was against the weight of evidence. "The standard to apply in reviewing the sufficiency of the evidence is

² 35 Pa.C.S. § 780-113(a)(32).

³ 18 Pa.C.S. § 5121(a).

⁴ 18 Pa.C.S. § 3503(a)(1)(i).

⁵ 75 Pa.C.S. § 3802(d)(1)(i).

⁶ 18 Pa.C.S. § 5104.

whether, 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 that every element of the crime has been proven beyond a reasonable doubt.” Commonwealth v. Back, 389 A.2d 141 (Pa. Super. 1987). “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.’” Id. (citing Commonwealth v. Brown, 648 A.2d 1177, 1198 (Pa. 1994).

The determination of whether to grant a new trial because the verdict is against the weight of the evidence rests within the discretion of the trial court, and we will not disturb that decision absent an abuse of discretion. Where issues of credibility and weight of the evidence are concerned, it is not the function of the appellate court to substitute its judgment based on a cold record for that of the trial court. The weight to be accorded conflicting evidence is exclusively for the fact finder, whose findings will not be disturbed on appeal if they are supported by the record. A claim that the evidence presented at trial was contradictory and unable to support the verdict requires the grant of a new trial only when the verdict is so contrary to the evidence as to shock’s one’s sense of justice.

Commonwealth v. Young, 692 A.2d 1112, 1114-15 (Pa. Super. 1997) (citations omitted). “It is well established that the finder of fact is free to believe all, part, or none of the evidence.”

Commonwealth v. Carter, 546 A.2d 1173, 1182 (Pa. Super. Ct. 1988). “It is [also] well settled that it is within the province of the trial judge, sitting without a jury, to judge credibility of the witnesses and weigh their testimony. Consequently, credibility determinations are generally not subject to review.” Id.

On the issue of credibility, this Court did not find the Defendant’s testimony to be credible. The Defendant had admitted that he had consumed illegal drugs prior to entering the victim’s home and fleeing police. In addition, the testimony from the police regarding the

Defendant's behavior while in custody reflects an individual not of a normal state of mind.⁸ The Defendant could somehow remember specific details from May 9, 2012 but was unable to remember general information like the name and address of the woman he had been taking drugs with. Finally, the Defendant never told police about Michelle or the story he provided at trial, but he did tell them he was smoking "wet."

Regarding Criminal Trespass, the crime is defined by 18 Pa.C.S. Section 3503(a)(1)(i), which states:

A person commits an offense if, knowing that he is not licensed or privileged to do so, he: (i) enters, gains entry by subterfuge or surreptitiously remains in any building or occupied structure or separately secured or occupied portion thereof.

Here, the Defendant alleges that the Commonwealth failed to establish the intent element of the crime. After being escorted out of 61 Round Hill Road by Hunton, the Defendant refused to stop to talk to police. The Defendant then ignored a police vehicle's siren and lights and tried to elude police by riding his bike off road around an apartment complex. After the Defendant fell off his bike he continued to flee on foot and disregarded verbal commands to stop. Even after being placed in custody and brought to the police station, the Defendant continued to not cooperate with police and kicked his legs. The Defendant's actions blatantly show knowing of wrongdoing as he chose to engage in a police chase than to explain why he entered a house without prior consent.

In addition, the Defendant stated at trial that he entered the wrong house because he was under the influence of drugs. As stated by 18 Pa.C.S. § 308, "[n]either voluntary intoxication nor voluntary drugged condition is a defense to a criminal charge, nor may evidence of such

⁸ While police drove the Defendant to the police station "[h]e started screaming don't go under the bridge, don't go under the bridge my friend died on that bridge and then obviously when I went under the underpass or the overpass he started screaming." *Id.* at 22. The Defendant also started kicking his legs and flailing when they arrived at the police station. *Id.* at 23.

conditions be introduced to negative the element of intent of the offense . . .” The Defendant may not use his voluntary use of drugs as a defense to the intent element of Criminal Trespass. See Commonwealth v. Blakeney, (stating that intoxication may only be offered to reduce murder from a high degree to a lower degree and it must be shown that the defendant was overwhelmed to the point of losing his faculties and sensibilities). While Hunton corroborated the fact that the Defendant was on drugs and confused, it is irrelevant with regard to intent. The Defendant cannot take illegal drugs and use it as an excuse to engage in committing a Criminal Trespass offense.

Finally, the Defendant argues that there was no intent for the Criminal Trespass charge because of Ignorance or Mistake. 18 Pa.C.S. § 304 states that “[i]gnorance or mistake as to a matter of fact, for which there is *reasonable explanation* or excuse, is a defense if: (1) the ignorance or mistake negates the intent, knowledge, belief, recklessness, or negligence required to establish a material element of the offense; or (2) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.” (emphasis added).

Once again, the Defendant’s use of drugs cannot be used as a defense to the intent element of the offense. Further, the Defendant did not provide a reasonable explanation for entering 61 Round Hill Road, as is required by 18 Pa.C.S. § 304. The Defendant testified that he thought he was entering Michelle’s house, however, he stated at trial that he knew she lives on Grimesville. See Commonwealth v. Namack, 663 A.2d 191 (Pa. Super. 1995) (explaining that for mistake to negate the element of criminal intent it must be reasonable). The Defendant did not explain why he entered a house on Round Hill Road if he knew she lived on Grimesville or how the two houses looked the same. The Defendant did not provide any evidence to suggest that he committed a reasonable mistake.

As the Defendant unreasonably entered 61 Round Hill Road and then fled from police after they attempted to talk to him showing his consciousness of guilt, the guilty verdict for Criminal Trespass was not against the weight of evidence.

Whether the verdicts of guilt were not supported by sufficient evidence

The Defendant argues that the guilty verdict for Criminal Trespass was not supported by sufficient evidence. Specifically, the Defendant claims there was no evidence that he entered 61 Round Hill Road knowing that he was not licensed or privileged to do so. A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Commonwealth v. Karkaria, 625 A.2d 1167 (Pa. 1993). The Commonwealth's burden of proving the elements may be sustained by means of wholly circumstantial evidence. Commonwealth v. Thomas, 350 A.2d 847, 849 (Pa. 1976). A court is required to review the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Commonwealth v. Chambers, 599 A.2d 630 (Pa. 1991).

As stated in the previous section, the Court finds that there was sufficient evidence to find that the Defendant committed the crime of Criminal Trespass and did so "knowingly."

Conclusion

Based upon the foregoing, the Court finds no reason upon which to grant Defendant's Post-Sentence Motion. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4)(a), Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of this Order to the Pennsylvania Superior Court; "(b) the right to assistance of

counsel in the preparation of the appeal; (c) the rights, if the defendant is indigent, to appeal in forma pauperis and to proceed with assigned counsel as provided in Rule 122; and (d) the qualified right to bail under Rule 521(B).”

ORDER

AND NOW, this _____ day of May, 2013, based upon the foregoing Opinion, it is hereby ORDERED and DIRECTED that the Defendant’s Post Sentence Motion is DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
PD (JL)