

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	CRIMINAL DIVISION
vs.	:	
	:	CR-882-2013
DAVID SEITZER,	:	OTN: T 326735-3
Defendant/Appellant	:	2018 MDA 2014

ORDER

Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)

This Court issues the following Order pursuant to Pennsylvania Rule of Appellate Procedure 1925(a). On September 25, 2014, following a non-jury trial, the Court entered a verdict of Guilty against Defendant as to Count 1, criminal mischief, a misdemeanor of the second degree. On October 28, 2014, this Court imposed a sentence requiring the defendant to serve a period of two years' probation, perform 75 hours of community service, and make restitution. The Defendant filed its concise statement of matters complained of on appeal on December 22, 2014 which identified the following matters for appeal.

- a. The Defendant avers that his conviction for Criminal Mischief following the September 25, 2014 non-jury was not supported by sufficient evidence, as the Commonwealth could not have established the factual predicate necessary to convict him of this offense, specifically that Mr. Seitzer intentionally damaged George Seitzer's property.

At issue is whether there was sufficient evidence of Mr. Seitzer's intent to damage the property. This Court respectfully relies upon its Order entering verdict on September 25, 2014 and the following opinion in support of affirmance of the verdict in this case.

The evidence was sufficient to sustain the guilty verdict for criminal mischief. The evidence and all reasonable inferences are viewed in favor of the Commonwealth as verdict winner. Commonwealth v. Solano, 906 A.2d 1180, 1186 (Pa. 2006); Commonwealth v. Chapney, 832 A.2d 403, 408 (Pa. 2003). A person is guilty of criminal mischief if he

“intentionally damages real or personal property of another[.]” 18 Pa.C.S. § 3304(5). Intent may be established through circumstantial evidence and inferred from the facts and circumstances. See, e.g., Pa. SSJI (Crim) 7.02B, *citing*, Commonwealth v. Boden, 159 A.2d 894 (Pa. 1960), *cert. denied*, 364 U.S. 846 (1960); Commonwealth v. Finnie, 202 A.2d 85 (Pa. 1964); Commonwealth v. Williams, 362 A.2d 244 (Pa. 1976).

The Court notes that in Commonwealth v. Moll, 543 A.2d 1221, 1226 (1988), the Court applied the *de minimus* statute, 18 Pa.C.S.A. § 312(a)(2), when determining that there was no intent to violate a different section of the criminal mischief statute. In Moll, the defendant altered a drain pipe to protect his property from flooding rather than to damage the property belonging another. This Court believes the present case is distinguishable from Moll. Here, there was no claim that the acts or damage was *de minimus*. In Moll there was minimal property damage, whereas in the present case there was \$3,323.79 of intentional damage. Moreover, there was no valid reason offered for the damage that occurred in the present case. The Defendant admitted causing at least some of the property damage out of anger (the holes in the wall). Finally, the nature of the property damage suggests intentional damage.

In the present case, the Court found that the evidence and all reasonable inferences were sufficient to establish that the Defendant intended to damage the victim’s property and caused intentional damage in the amount of \$3,323.79. The victim and the Defendant are brothers. There was conflict surrounding the Defendant’s occupancy of property owned by the victim. The victim testified that the Defendant lived alone at the property without permission for about nine months. Notes of Testimony 9/25/14 (N.T.) at 5-6; 11:3-4. As to intent, the Defendant wrote to the victim and admitted that he punched a hole in the victim’s walls because of emotional pain. Defendant further wrote: “By the way, do you know why I punched a hole in the wall? The stupid shrinks have been telling mom that anger is good to vent. It is never good

to vent.” N.T. at 9: 25; 10:1-5. Defendant also admitted changing things regarding the furnace to reduce his bills. N.T. at 8:7-9. Further, the victim testified that the nature of the damage was such that one could tell it was intentional. N.T. at 18:20

In addition, an Erie insurance adjuster, Darlene Moretz, testified regarding her investigation of the property damage at issue for an insurance claim for vandalism. Ms. Moretz testified as to her training, knowledge and experience with investigating property damage to distinguish between ordinary wear and tear and intentional damage. N.T. 24:3-7. Ms. Moretz testified in detail as to specific damage she observed how she determined what was intentional and what was not. For example, Ms. Moretz determined that the carpet issues were ordinary wear and tear. However, Ms. Moretz determined the following damage was intentional: removal of deadbolts, punching out of outlets, circular holes cut in duct work, broken windows, dry-wall covering holes in walls, dead bolts that had been removed, and alterations to the hot water heater and furnace. N.T. at 26:17-18; 27:13-14, 24-25; 30; 32:16-22; 7:14-15. Ms. Moretz calculated the total costs of intentional damage to be \$3,323.79. N.T. at 25:20-21.

This Court found Ms. Moretz credible. Further, upon review of evidence, and the credibility of the witnesses, and the circumstances presented by the evidence, the Court inferred and found that Defendant intended to damage the victim’s property and that Defendant caused intentional damage in the amount of \$3,323.79.

Conclusion

For these reasons and for the reasons stated in this Court's previous Order issued on September 25, 2014 this Court respectfully requests that the verdict be affirmed.

BY THE COURT,

January 23, 2015

Date

Richard A. Gray, J.

cc: District Attorney's Office (KO)
Public Defender's Office (KG)
(Superior Court & 1)