NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
LEWIS LANGLAIS,	:	
	:	
Appellant	:	No. 1029 EDA 2012

Appeal from the Judgment of Sentence October 12, 2011,
Court of Common Pleas, Philadelphia County,
Criminal Division at Nos. CP-51-CR-0004488-2011
and CP-51-CR-0012328-2010

BEFORE: DONOHUE, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY DONOHUE, J.: **FILED AUGUST 16, 2013**

Lewis Langlais ("Langlais") appeals from the judgment of sentence entered on October 12, 2011, by the Court of Common Pleas, Philadelphia County. We affirm.

On August 12, 2010, following a two day trip to Atlantic City, Tyrone Springs ("Springs") returned to his home at 5948 Lawndale Street in Philadelphia at approximately 3:30 p.m. to find his back door ajar and his front door unlocked. Upon entering his home with his girlfriend, he saw that his first floor furniture had been damaged and there were liquor bottles on the floor. They heard footsteps in the basement, exited the house and called the police. Springs then reentered the home and went upstairs, finding jewelry, watches, clothes, and more liquor bottles in the front bedroom, none of which belonged to him. While waiting for the police to

arrive, he saw three men exit his home carrying items Springs had seen in his home – two walked south down the street to an apartment building, and Langlais walked north. Springs observed the men from a distance of approximately 40 feet. He was able to view Langlais, who was wearing a yellow shirt, head-on from a distance of approximately 20 to 25 feet as he walked towards Springs out of the house.

When the police arrived, Springs showed them around the house and surveyed the damage. They then took Springs to the apartment building down the street that he had seen the two men enter. There they located the two men who had walked south from the house. In the basement of the apartment building, police found some of the jewelry and other items Springs had seen in his bedroom. When Springs and his girlfriend returned from the apartment building, they saw Langlais, still wearing a yellow shirt, sitting on Springs' neighbor's steps. Springs identified him to police and Langlais was arrested.

At approximately 9:30 p.m. that evening, Springs' neighbor, Azubuika Akobundu ("Akobundu") returned home to find the door to his house kicked in and the interior of his house ransacked. There were items missing from the house, including, *inter alia*, some of Akobundu's jewelry, clothes, and bottles of alcohol. He called the police who brought Akobundu to the apartment building where police had apprehended Langlais' two cohorts. Akobundu located some of his missing items in the basement of the

apartment building that Springs had previously seen in the second floor bedroom of his home. He recovered more of his property when he arrived at the police station.

On August 25, 2011, Langlais proceeded to a bench trial, following which the trial court found him guilty of two counts each of first-degree felony burglary, criminal mischief, criminal trespass, conspiracy, theft by unlawful taking, and receiving stolen property.[1] On October 12, 2011, the trial court sentenced him to an aggregate term of four to eight years of imprisonment.

Langlais filed a timely *pro se* post-sentence motion on October 17, 2011, raising several claims of trial counsel's ineffectiveness and asserting that the evidence was insufficient to convict him as a matter of law. The motion was denied by operation of law on February 15, 2012.

Langlais filed a timely *pro se* notice of appeal. The trial court appointed counsel, who complied with the trial court's order to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). On November 2, 2012, this Court granted Langlais' motion to supplement the record with transcripts of the proceedings that counsel had requested and not yet received. We remanded the case and retained jurisdiction. The case is now before us for disposition.

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[1] 18 Pa.C.S.A. §§ 3502(a), 3304(a)(4), 3503(a)(1)(i), 903(c), 3921(a), 3925(a).

Langlais raises two issues for our review:

> A. Whether the evidence was insufficient as a matter of law to convict [Langlais] of burglary and related charges where none of [the] eyewitnesses saw [Langlais] enter or leave the premises and there was inconsistent testimony with regard to when and where [Langlais] was seen after the burglary allegedly occurred?
>
> B. Whether the trial court erred in the grading of the burglary where the residence was unoccupied at the time of the burglary pursuant to the testimony of the Commonwealth?

Langlais' Brief at 5.

Langlais' first issue challenges the sufficiency of the evidence to support his convictions. He does not contest that the crimes were committed, only that he was the person who committed them. ***Id.*** at 13. Specifically, Langlais argues that Springs' identification testimony was not worthy of belief, as Springs only viewed Langlais for a short period of time from a distance of 40 feet; there was no testimony that Langlais attempted to run from police; he was not observed entering the homes; and he was not found to be in possession of any of the proceeds from the burglary. ***Id.*** at 13. Furthermore, according to Langlais, Springs' testimony was "wrought with inconsistencies throughout the trial," which rendered his identification testimony incredible. ***Id.*** at 13-14.

When reviewing a challenge to the sufficiency of the evidence, our standard of review requires that we view the evidence and all reasonable

inferences drawn therefrom in the light most favorable to the Commonwealth to determine whether the finder of fact could have found every element of the crime beyond a reasonable doubt. ***Commonwealth v. Harvard***, 64 A.3d 690, 699 (Pa. Super. 2013). It is uncontested that Springs identified Langlais as one of the people he observed exiting his home following the burglary. N.T., 8/25/11, at 15. Langlais' argument that the identification was not credible raises a challenge to the weight, not the sufficiency of the evidence. ***See, e.g., Commonwealth v. Gibbs***, 981 A.2d 274, 281-82 (Pa. Super. 2009).

This Court has explained that weight and sufficiency arguments are distinct:

> Weight and sufficiency of the evidence are not one and the same legal concepts. As our Court has summarized in a prior case: Weight of the evidence and sufficiency of the evidence are discrete inquiries[.] In reviewing the sufficiency of the evidence, we must view the evidence presented and all reasonable inferences taken therefrom in the light most favorable to the Commonwealth, as verdict winner. The test is whether the evidence, thus viewed, is sufficient to prove guilt beyond a reasonable doubt[.]
>
> A motion for new trial on grounds that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict but contends, nevertheless, that the verdict is against the weight of the evidence. Whether a new trial should be granted on grounds that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial judge, and his decision will not be reversed on appeal unless there

> has been an abuse of discretion. The test is not whether the court would have decided the case in the same way but whether the verdict is so contrary to the evidence as to make the award of a new trial imperative so that right may be given another opportunity to prevail.

Commonwealth v. Davis, 799 A.2d 860, 864-65 (Pa. Super. 2002) (citation omitted). Langlais did not raise a weight of the evidence claim on appeal. Therefore, this argument affords him no relief.

As his second and final issue, Langlais asserts that the trial court erred by grading the burglary of Springs' home as a first-degree felony, as the residence was unoccupied at the time of the burglary.[2] Langlais' Brief at 14. In support of this argument, Langlais relies upon Springs' prior statement that his house had been "empty for a couple of weeks" while undergoing repairs, despite his testimony that he was living in his home on August 10 prior to his trip to Atlantic City. ***Id.*** at 15-16 (citing N.T., 8/25/11, at 59).

Assuming for the sake of this argument that Langlais' interpretation of the testimony is correct and that Springs was not living in the home at the

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[2] The burglary statute in effect at the time of Langlais' trial stated:

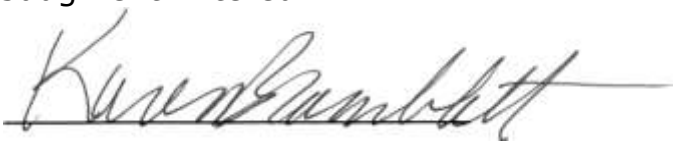
> (1) Except as provided in paragraph (2), burglary is a felony of the first degree.
>
> (2) If the building, structure or portion entered is not adapted for overnight accommodation and if no individual is present at the time of entry, burglary is a felony of the second degree.

18 Pa.C.S.A. § 3502(c) (amended effective September 4, 2012).

time of the burglary, this argument still fails. As the trial court observed, this Court has held that "a burglary of a structure adapted for overnight accommodation 'in which at the time of the offense any person is present,' includes burglaries where a person enters the structure ***while the perpetrator is still inside the structure***." ***Commonwealth v. Knowles***, 891 A.2d 745, 748 (Pa. Super. 2006) (emphasis supplied) (citing ***Commonwealth v. Stepp***, 652 A.2d 922, 924 (Pa. Super. 1995)); ***see*** Trial Court Opinion, 1/4/13, at 7. As there is no question that Springs entered the house during the commission of the burglary, the trial court did not err by grading the burglary as a first-degree felony.

Judgment of sentence affirmed.

Judgment Entered.



Prothonotary

Date: 8/16/2013