NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. ADAM GUY STAMM, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1883 EDA 2012

Appeal from the Judgment of Sentence Entered June 18, 2012
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-000295-2011

BEFORE: BENDER, P.J., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY BENDER, P.J. **FILED DECEMBER 10, 2013**

Appellant, Adam Guy Stamm, appeals *pro se* from the judgment of sentence of $80 restitution and a total of $600 in fines, imposed after he was convicted, following a nonjury summary appeal trial, of criminal mischief and defiant trespass. Appellant challenges the sufficiency of the evidence to sustain his convictions. We affirm.

On September 12, 2011, Appellant was convicted of the above-stated offenses by a District Magistrate. He filed a *pro se* summary appeal with the Court of Common Pleas of Lehigh County and, on June 18, 2012, a summary appeal trial was conducted.[1] At the close thereof, the court found Appellant

---

* Retired Senior Judge assigned to the Superior Court.

[1] Appellant proceeded *pro se* at the summary appeal trial.

guilty of both offenses and, that same day, it imposed the sentenced stated *supra*.

Appellant filed a timely *pro se* notice of appeal, as well as a timely concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Herein, he raises one issue for our review:

1.) Was the verdict supported by sufficient evidence?

Appellant's Brief at 4.

To begin, we note our standard of review of a challenge to the sufficiency of the evidence:

> In reviewing a sufficiency of the evidence claim, we must determine whether the evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to support all elements of the offense. ***Commonwealth v. Moreno,*** 14 A.3d 133 (Pa. Super. 2011). Additionally, we may not reweigh the evidence or substitute our own judgment for that of the fact finder. ***Commonwealth v. Hartzell,*** 988 A.2d 141 (Pa. Super. 2009). The evidence may be entirely circumstantial as long as it links the accused to the crime beyond a reasonable doubt. ***Moreno, supra*** at 136.

Commonwealth v. Koch, 39 A.3d 996, 1001 (Pa. Super. 2011).

Appellant challenges his convictions for criminal mischief and defiant trespass, which are defined, respectively and in relevant part, as follows:

> **(a) Offense defined. --** A person is guilty of criminal mischief if he:
>
> ...
>
> (2) intentionally or recklessly tampers with tangible property of another so as to endanger person or property;

18 Pa.C.S. § 3304(a)(2).

> **(b) Defiant trespasser. --**
>
> (1) A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:
>
> …
>
> (iii) fencing or other enclosure manifestly designed to exclude intruders;

18 Pa.C.S. § 3503(b)(1)(iii).

Assessing the evidence presented in the light most favorable to the Commonwealth, we conclude that there was ample support for Appellant's convictions. At Appellant's summary trial, the Commonwealth first called Susan Miller to the stand. Ms. Miller testified that she lives in a home located at 2501 West Allen Street in Allentown, Pennsylvania. N.T. Trial, 6/18/12, at 4. She explained that her home has a fully fenced-in backyard, and that the fencing located by the front of her house was "a high wooden fence." ***Id.*** at 7. Ms. Miller further testified that there are two gates into the yard. ***Id.*** at 7-8.

Ms. Miller explained that on August 6, 2011, she left for vacation. ***Id.*** at 5. On August 8, 2011, a neighbor called to tell her "that there was a lot of police activity in and around [Ms. Miller's] yard, and around the neighborhood." ***Id.*** When Ms. Miller returned home from vacation on August 13, 2011, she found that the latch on a gate leading into her fenced-in yard had been damaged, and "there was wood broken off" the fence. ***Id.*** at 6. Ms. Miller spent approximately $80 repairing the damage. ***Id.*** Ms.

Miller stated that when she left for vacation on August 6, 2011, there had been no damage to "the fencing or gating" at her home. ***Id.*** at 5.

The Commonwealth also called City of Allentown Police Officer Mike Beidelman to the stand. Officer Beidelman testified that on August 8, 2011, he and several other officers responded to "a report of a theft in the area located at 2501 West Liberty Street for removing copper downspouts in the area."[2] ***Id.*** at 10-11. When Officer Beidelman arrived at the scene, a civilian informed him that he saw Appellant "hop[] the fence" and hide in bushes in front of Ms. Miller's home. ***Id.*** at 11-12, 15. Officer Beidelman discovered Appellant in those bushes and arrested him. ***Id.*** at 12. Appellant did not have shoes on when he was apprehended. ***Id.*** at 12.

Finally, the Commonwealth called City of Allentown Detective Michael Popovich as a witness. He testified that he also responded to 2501 West Allen Street on August 8, 2011, for the reported theft. ***Id.*** at 20. Detective Popovich stated that he inspected the area and "observed [a] wooden fence on the south side of the home that was smashed inward." ***Id.*** at 21. The detective also stated:

> [Detective Popovich]: Two sneakers were found. One was found in the front of the house, in the flower, I don't remember what

---

[2] The theft of copper downspouts involved the home of Ludwig Schlecht, who lives close to Ms. Miller. While Appellant was charged with several offenses regarding that theft, those charges were later withdrawn when Mr. Schlecht was unable to identify Appellant as the perpetrator of those crimes.

> we call it, the flower bed area, very close to the house. And the other one was found within a few feet of the [broken] gate.

Id. at 22. Detective Popovich also explained that a K-9 officer arrived at the scene and tracked Appellant's trail "through the victim's yard, through an alley, back to where he had dropped or discarded a bicycle along with some other clothing and a jewelry box." ***Id.***

In challenging the sufficiency of this evidence to support his conviction of criminal mischief, Appellant first avers that there were no eyewitnesses who saw him damage Ms. Miller's fence. However, it is clear that a conviction may rest solely upon circumstantial evidence. ***Koch***, 39 A.3d at 1001. Thus, his first argument is meritless.

However, Appellant also claims that the Commonwealth's circumstantial evidence, namely the testimony of Detective Popovich, cannot support the verdict because it was refuted by photographs entered into evidence by Appellant. For instance, Appellant cites to a photograph, admitted as "Exhibit C," allegedly showing that his shoe was found "at least 30 to 40 feet away from the damaged fencing." Appellant's Brief at 8. Appellant contends that this picture contradicts Detective Popovich's testimony that the shoe was only a few feet from the broken gate.

Appellant also challenges the detective's testimony "that the gate was smashed inward, towards the interior of the yard." ***Id.*** (citing N.T. Trial, 6/18/12, at 21). Appellant points to two photographs entered into evidence at trial, which show Ms. Miller's gate opened outward. ***Id.*** (citing Exhibits A

and D). He avers that these pictures prove "that the gate was 'yanked' or 'pulled' open," contrary to Detective Popovich's testimony. ***Id.***

Initially, the alleged discrepancies between Detective Popovich's testimony and the photographs are minor and do not compel a conclusion that the evidence, as a whole, was insufficient to sustain Appellant's conviction of criminal mischief. Furthermore, Appellant cross-examined Detective Popovich on these inconsistencies as follows:

> [Appellant]: Just quickly, you said that the fence was pushed in. The fence clearly was not pushed in. Again, with the picture, the fence was pulled out, as if, and I don't know if, afterwards, if any police officers went into the back of the home, but the fence is clearly pulled out as if someone yanked the door open.
>
> [Detective Popovich]: I see pieces of wood lying inside the yard at approximately, and I'm guessing from looking at the picture, at least three feet. That would indicate to me that the fence was kicked in.
>
> [Appellant]: The door is pulled outward. Okay. And the next thing I wanted to say was, you also said that the shoe was found [several] feet outside the gate, right outside the gate.
>
> [Detective Popovich]: There were two shoes.
>
> [Appellant]: Right. Well, I have pictures of both of the shoes. And the one shoe, it's not even in the yard. It's on the sidewalk.
>
> [Detective Popovich]: Which is in close proximity to the gate.
>
> [Appellant]: Okay. … But what I'm saying is it's not in close proximity to the fence. It's on the sidewalk.
>
> [Detective Popovich]: It's within feet of the gate.
>
> [Appellant]: Okay.

N.T. Trial, 6/18/12, at 22-24.

Appellant's cross-examination informed the trial court of the ostensible inaccuracies of Detective Popovich's testimony. However, it also permitted the detective to explain how his testimony was not inconsistent with the photographs. The trial court considered all of this evidence in rendering its verdict, which we conclude was supported by sufficient evidence. Namely, Appellant fled from officers in the vicinity of Ms. Miller's home; his shoes were found in close proximity to the damage to Ms. Miller's fence and gate; a K-9 officer tracked Appellant's path through Ms. Miller's yard; and Appellant was hiding from police in bushes on Ms. Miller's property. This circumstantial evidence was sufficient to prove that Appellant was the perpetrator of the damage to Ms. Miller's fence, supporting his conviction of criminal mischief.

This evidence was also sufficient to prove that Appellant committed the crime of defiant trespass and, for the reasons that follow, Appellant's arguments to the contrary are meritless. Appellant maintains that the only evidence that he entered Ms. Miller's yard was "clearly hearsay." Appellant's Brief at 10. For instance, he points to Officer Beidelman's testimony that a witness at the scene told him he saw Appellant 'hop' Ms. Miller's fence. Appellant contends that because this witness did not testify at trial, it was improper for the court to consider Officer Beidelman's testimony regarding what that witness said. Similarly, Appellant claims that it was improper for the court to allow Detective Popovich to testify that the K-9 officer tracked

Appellant's path through Ms. Miller's yard when the K-9 officer did not take the stand. Again, Appellant characterizes this testimony as hearsay.

First, we disagree with Appellant that Detective Popovich's testimony regarding the K-9 officer's actions was hearsay. "Hearsay" is defined by our Rules of Evidence as "a statement that … a party offers in evidence to prove the truth of the matter asserted in the statement." Pa.R.E. 801(c)(2). Here, Detective Popovich did not testify about any statement made by the K-9 officer. Instead, he testified about the K-9 officer's tracking of Appellant's path, which the detective observed first-hand at the scene of the crime. Therefore, this testimony was not impermissible hearsay.

Moreover, regarding Officer Beidelman's testimony that a witness at the scene told him he saw Appellant 'hop' Ms. Miller's fence, Appellant failed to timely object to the admission of that evidence, thus waiving any challenge to its admission on appeal.[3] ***See Commonwealth v. Henkel***,

---

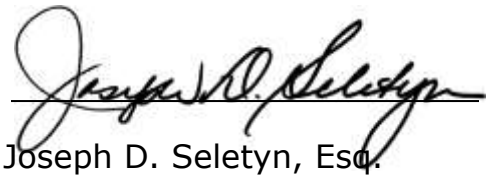
[3] Appellant did object to the officer's testimony as being hearsay, but not until well after that statement was first admitted. Specifically, during direct examination, Officer Beidelman described what the witness told him at the scene, and Appellant did not object. On cross-examination, Appellant asked the officer, "Now, you also said that a witness told you that he saw someone hop a fence?" N.T. Trial, 6/18/12, at 15. When, in response, the officer began discussing what the witness told him, Appellant stated, "This is hearsay, Your Honor." ***Id.*** The court overruled that objection on the basis that Appellant elicited the officer's disputed testimony. ***Id.*** Appellant offers no argument that the court's ruling was erroneous. Moreover, Appellant's objection to the officer's testimony, elicited by Appellant during his cross-examination, was not timely for purposes of preserving a challenge to its admission on appeal.

(Footnote Continued Next Page)

938 A.2d 433, 445 (Pa. Super. 2007) (citing ***Commonwealth v. Bryant***, 855 A.2d 726, 740 (Pa. 2004), ***Commonwealth v. Burkholder***, 595 A.2d 59 (Pa. 1991) (failure to raise contemporaneous objection to evidence at trial waives claim on appeal)). This testimony, in conjunction with the Commonwealth's other circumstantial evidence (namely, the K-9 officer's tracking Appellant's path through Ms. Miller's yard), was enough to prove that Appellant entered Ms. Miller's fenced-in property. Therefore, his conviction of defiant trespass must stand.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/10/2013

(Footnote Continued) ———————————