NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. BERNARD RUCKER, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1937 EDA 2011

Appeal from the Judgment of Sentence May 6, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0003663-2010

BEFORE: BOWES, GANTMAN, and MUSMANNO, JJ.

MEMORANDUM BY BOWES, J.: **FILED MAY 08, 2013**

Bernard Rucker appeals from the judgment of sentence of fifteen to thirty months imprisonment followed by three years probation that was imposed after he was convicted at a bench trial of burglary, trespass, terroristic threats, theft, and receiving stolen property. We affirm.

The trial court extensively delineated the facts adduced at Appellant's trial. For purposes of disposing of this appeal, we adopt its factual outline contained at pages two through four of its September 26, 2012 opinion. To summarize, the events occurred at 714 East Chelten Avenue, Philadelphia, a double house that shared a common wall with 716 Chelten Avenue. The victim, Bedner Emile, purchased 714 East Chelten Avenue at a sheriff's sale on May 4, 2009, and began to conduct improvements at the property, including restoring the wall that separated that residence from 716 East

Chelten Avenue. From February 26, 2010, until March 10, 2010, Mr. Emile took a break from his construction efforts at that location. As he left, he locked all the doors and windows and left behind various construction materials, including tools and valuable copper piping.

When Mr. Emile returned to the house with his business partner on March 10, 2010, his key no longer fit the lock to the front door. He discovered that his back door had been broken open and that the residence was robbed of all his tools and construction materials, including paint, tiles, cabinets, and doors. Additionally, someone had placed various items on the property, including a bed, clothing, and pictures. While Mr. Emile was inspecting the house, Appellant arrived, opened the front door with a key, and entered the residence. Appellant demanded that Mr. Emile leave. When Mr. Emile informed Appellant that he owned 714 East Chelten Avenue, Appellant became irate, claimed that he had bought 714 East Chelten, and threatened Mr. Emile. Appellant was then joined by five friends who began to yell at Mr. Emile to leave.

Mr. Emile recovered the deed to the property and returned with police on March 12, 2010. Appellant was arrested and proceeded to a nonjury trial on February 7, 2011, when he was convicted of the above-described offenses. At trial, Appellant claimed that he mistakenly thought he was legally entitled to enter and reside at 714 East Chelten Avenue. He maintained that he specifically was advised by a legal assistant at the City

Law Department that he could enter vacant property in Philadelphia with delinquent taxes and live on and improve the premises and that he would be reimbursed for his expenses at any sheriff's sale. Appellant represented that he knew that 716 East Chelten Avenue was vacant and that he researched its tax records, discovering that there was a significant amount of unpaid tax debt on the premises. He stated that he entered 714 East Chelten Avenue under the reasonable but mistaken belief that he was legally entitled to do so based on the advice from the city official.

Appellant admitted that he was aware that 714 East Chelten Avenue and 716 East Chelten Avenue had separate addresses, that he observed the wall separating 714 East Chelten Avenue from 716 East Chelten Avenue, and that 714 East Chelten Avenue had functioning electricity and plumbing while 716 East Chelten Avenue did not. As noted, Appellant also had to break into 714 East Chelten Avenue through the back door, even though 716 East Chelten Avenue's front door was damaged. He denied taking any objects from 714 East Chelten Avenue. Based on this proof, the trial court rejected Appellant's defense that he had a reasonable belief that he was entitled to enter 714 East Chelten Avenue, and it convicted him of the above-described offenses.

Appellant was originally scheduled to be sentenced on March 28, 2011, but he disappeared during the course of that proceeding. He was apprehended on a bench warrant, and claimed at the second sentencing

hearing on May 6, 2011, that he fled because he panicked. Appellant, who had a prior record score of five and had committed felony offenses in three different states, was sentenced to fifteen to thirty months imprisonment followed by a three-year probationary term. Also, the victim was awarded restitution in the amount of $5,726 for the value of the items taken from his property.

In this timely appeal following imposition of judgment of sentence, Appellant raises these claims:

> Did the trial court err as a matter of law by finding the defendant guilty of crimes that require a criminal intent?
>
> Did the trial court err as a matter of law by failing to recognize the defendant's defenses of justification and excuse, in that his conduct was in reliance on the advice, guidance, and information he received from the Law Department of the City of Philadelphia, regarding the concept of Equity or Right of Redemption?

Appellant's brief at 3.

Appellant's first position is that he did not commit the crimes of burglary, trespass, theft, and receiving stolen property because he lacked the necessary *mens rea.* Under the Crimes Code, "A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter." 18 Pa.C.S. § 3502(a). Thus, in connection with this crime, Appellant maintains that he was licensed or privileged to enter 714

East Chelten Avenue and that, based on that license or privilege, he did not intend to commit a crime therein. The Crimes Code defines criminal trespass as follows:

> (1) 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; or
> >
> > (ii) breaks into any building or occupied structure or separately secured or occupied portion thereof.

18 Pa.C.S. § 3503(a)(1). Consistent with his position as to burglary, Appellant posits that he is not guilty of criminal trespass in that he thought he was licensed or privileged to break into the real estate in question.

Theft is committed when a person, *inter alia*, "unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof." 18 Pa.C.S. § 3921(a)(1). The crime of receiving stolen property is outlined in 18 Pa.C.S. § 3925(a), which provides, "A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner." Appellant's position in connection with these two crimes is that he was unaware that the construction items that he removed from 714 East Chelten Avenue belonged to another person

due to his belief that the property was abandoned. Hence, he claims he is innocent of theft and receiving stolen property.

To summarize, Appellant's position is that he operated under the reasonable but mistaken belief that he was legally permitted to enter 714 East Chelten Avenue and take possession of the premises and the objects since he thought that they did not belong to anyone.

> The standard we apply in reviewing the sufficiency of the evidence is 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 every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Knox, 50 A.3d 749, 754 (Pa.Super. 2012) (quoting ***Commonwealth v. Brown***, 23 A.3d 544, 559–60 (Pa.Super. 2011) (*en banc*)).

Appellant presented a mistake-of-fact defense, and, in seeking reversal of his convictions for burglary, trespass, theft, and receiving stolen property, he relies upon our decision in ***Commonwealth v. Namack***, 663

A.2d 191 (Pa.Super. 1995), and ***Commonwealth v. Compel***, 344 A.2d 701 (Pa.Super. 1975).

> It is well established that a *bona fide*, reasonable mistake of fact may, under certain circumstances, negate the element of criminal intent. 18 Pa.C.S.A. § 304 (providing, inter alia, that ignorance or mistake as to a matter of fact, for which there is a reasonable explanation or excuse, is a defense if "the ignorance or mistake negatives the intent, knowledge, recklessness, or negligence required to establish a material element of the offense"); ***Commonwealth v. Compel****,* 236 Pa.Super. 404, 344 A.2d 701 (1975); ***Commonwealth v. Bollinger****,* 197 Pa.Super. 492, 179 A.2d 253, 255 (1962). "It is not necessary that the facts be as the actor believed them to be; it is only necessary that he have 'a bona fide and reasonable belief in the existence of facts which, if they did exist, would render an act innocent.' ***Commonwealth v. Lefever****,* 151 Pa.Super. 351, 30 A.2d 364, 365 (1943). ***See generally, Morissette v. United States****,* 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288 (1952)." ***Commonwealth v. Compel****,* ***supra****,* at 702-03. When evidence of a mistake of fact is introduced, the Commonwealth retains the burden of proving the necessary criminal intent beyond a reasonable doubt. ***Commonwealth v. Cottam****,* 420 Pa.Super. 311, 616 A.2d 988, 1000-01 (1992). In other words, the Commonwealth must prove either the absence of a *bona fide*, reasonable mistake, or that the mistake alleged would not have negated the intent necessary to prove the crime charged.

Commonwealth v. Hamilton, 766 A.2d 874, 878-79 (Pa.Super. 2001) (quoting ***Namack***, ***supra***, at 194-95). Specifically, 18 Pa.C.S. § 304 provides:

> Ignorance 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 negatives 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.

In ***Namack***, the first case relied upon by Appellant, Namack was convicted of defiant trespass. We reversed that conviction based upon our conclusion that he had presented a valid mistake-of-fact defense. Specifically, Namack's conviction stemmed from his use of a trail located over the victims' property that led to a river. The owners of the path had given various neighbors, including Namack, permission to use it to access the river.

However, in 1993, the owners decided that they wanted Namack to execute an agreement releasing them from liability if he hurt himself while using the trail to reach the river. Namack refused to execute the agreement on the ground that it might compromise his ability to use the route. Namack was presented with a revised contract, which he took into his possession, stating that he would consider executing. At that time, the property owners advised Namack that he was no longer allowed to access the river over their property until he signed the document. When Namack began to use the path, one of the property owners confronted him. Namack responded that, while he had not signed the agreement, he had consulted a lawyer regarding his legal right to use the trail. He was charged by private complaint and convicted of defiant trespass in connection with this incident.

We concluded that Namack's conviction of defiant trespass was infirm since he lacked the *mens rea* to commit that crime. In so doing, we noted that Namack and his ancestors had used the route for years to gain access to the river, and that when the purported trespass occurred, Namack had consulted with a lawyer and been advised that he had a legal right to continue to use it as an easement by prescription. We held that even if Namack had not, in fact, acquired such an easement, the evidence nevertheless established that he reasonably, if mistakenly, believed that he had the legal right to travel on the path over the victims' property.

Commonwealth v. Compel, ***supra***, involved convictions for burglary, larceny, and receiving stolen goods that were premised upon the defendant's removal of four horses from a stable. The defendant claimed that he reasonably believed that the horses belonged to him. We agreed that the defendant lacked the *mens rea* to commit the crimes on this basis under the following facts. The defendant arranged to board his five horses at the stable and paid for several months of board.

After one of the defendant's five horses died, the defendant blamed the stable owner for the death, sued him for the loss, and ceased paying for the other four animals' stabling fees. The stable owner informed the defendant that he was in arrearages and arranged for a public auction of the four horses. While notice of the auction was posted at the stable, notice was not published and there was no indication that the defendant saw the

posting at the stable. Under advice of his attorney and without knowledge of the ensuing auction of his four horses, the defendant openly drove to the stable with a truck capable of carrying the horses and removed them from the stable.

In reversing his convictions of burglary, larceny, and receiving stolen goods, this Court concluded that the Commonwealth failed to establish that the defendant lacked a reasonable basis for his belief that the horses still belonged to him. This conclusion was premised upon the fact that the Commonwealth never established that the defendant had actual notice that his horses were sold and the existence of a reasonable dispute over the defendant's monetary obligation to continue to pay for board in light of the death of his other horse.

The facts herein bear no resemblance to those in ***Namack*** and ***Compel***. Herein, the Commonwealth's evidence was sufficient beyond a reasonable doubt to refute that Appellant was operating under a reasonable but mistaken belief that he was privileged or licensed to enter 714 East Chelten Avenue and take the construction materials located therein because those items did not belong to anyone. Its proof was as follows. Appellant was aware that 714 and 716 East Chelten Avenues were separate addresses, and he admittedly thought that he had the legal right to enter 716 East Chelten Avenue, which was the vacant property with unpaid taxes. The latter property had a broken front door while 714 East Chelten's front door

was locked; thus, Appellant had to enter that address by breaking the back door. When Appellant entered 714 East Chelten Avenue, it contained various building materials and tools and had a visible wall separating it from 716 East Chelten Avenue. Appellant admitted that 714 East Chelten Avenue had working electricity and plumbing while 716 East Chelten Avenue did not. Finally, there was a discrepancy between what Appellant told the victim on March 10, 2010, and Appellant's testimony at trial. Appellant informed Mr. Emile that he "bought that property so that's his property," and not that he was there because there were back taxes owed on it and that he was improving it. N.T. Trial, 2/7/11, at 21.

Thus, the Commonwealth disproved that Appellant had a reasonable belief that he was authorized to enter 714 East Chelten Avenue and take the items contained therein because no one owned them. Any purported evidence as to Appellant's good faith related only to 716 East Chelten Avenue, which was a distinct property from 714 East Chelten Avenue. Hence, we conclude that Appellant possessed the *mens rea* to commit burglary, trespass, theft, and receiving stolen property.

Appellant's challenge to his terroristic threats conviction differs. He contends that he did not actually threaten the victim. This position rests on the fact that Appellant's native language is Creole and told Mr. Emile that he would "blow him out" of the house if he did not leave. N.T. Trial, 2/7/11, at

21. Appellant maintains that he actually meant that he was going to throw him out and, accordingly, did not threaten the victim.

However, Appellant's conviction for terroristic threats was not premised upon this communication to Mr. Emile. Rather, the court concluded that the crime of terroristic threats occurred after Appellant told Mr. Emile that "someone would get hurt" if he did not leave on March 10, 2010, quickly followed by Appellant, together with five friends, screaming at the victim to leave or "[s]omething will happen." ***Id.*** at 21, 23.

The crime of terroristic threats is outlined in 18 Pa.C.S. § 2706(a), which provides in pertinent part that a person is guilty of that crime if he "communicates, either directly or indirectly, a threat to . . . commit any crime of violence with intent to terrorize another[.]" To establish commission of that crime,

> the Commonwealth must prove that 1) the defendant made a threat to commit a crime of violence, and 2) the threat was communicated with the intent to terrorize another or with reckless disregard for the risk of causing terror. Neither the ability to carry out the threat nor a belief by the persons threatened that it will be carried out is an essential element of the crime. Rather, the harm sought to be prevented by the statute is the psychological distress that follows from an invasion of another's sense of personal security.

In re B.R., 732 A.2d 633, 636 (Pa.Super. 1999) (citations omitted).

In this case, on March 10, 2010, Mr. Emile informed Appellant that he had to leave the house because Mr. Emile legally owned it. Appellant responded that he had purchased the house. When the victim asked for a

deed, Appellant told Mr. Emile and his partner, "[L]ook, if you don't get out somebody would get hurt." N.T. Trial, 2/7/11, at 21. Since Appellant was uttering this language, he meant that either Mr. Emile or his partner would be harmed if they did not leave the house. Then, when Mr. Emile informed Appellant that his words constituted a threat, Appellant told him "that he doesn't care if it's a threat or not[.]" ***Id***. Next, Appellant was joined by about five male friends, who yelled at Mr. Emile and his partner that they had to leave or "[s]omething will happen." ***Id***. at 23. This verbiage by Appellant and his cohorts also clearly communicated a threat to physically harm Mr. Emile and his partner in order to frighten them into exiting 714 East Chelten Avenue. Accordingly, Appellant's conviction of terroristic threats rests on sufficient evidence.

Appellant's second position on appeal is that the trial court did not consider his defense of justifiable reliance, which was premised on the information that he was provided by the Philadelphia official that he could enter, reside on, and improve vacant property with delinquent taxes and then be reimbursed for his efforts at any ensuing tax sale. However, the court did consider this position by examining and rejecting it. ***See*** Trial Court Opinion, 9/26/12, at unnumbered pages 8-9.

In ***Commonwealth v. Kratsas***, 764 A.2d 20 (Pa. 2001), our Supreme Court discussed the doctrine of reliance on the advice of governmental officials as a defense to actions that constitute a crime. It noted that the

doctrine is considered an exception to the maxim that ignorance of the law is not a defense to a crime. It continued that the defense in question is permitted only in narrow circumstances in the jurisdictions to apply it and that it contained these elements:

> First, in order to support invocation of the doctrine, most jurisdictions require that there be an affirmative representation that certain conduct is legal. It is frequently observed that mere laxity in law enforcement will not satisfy this condition, nor will vague or contradictory messages. Second, the representation should be made by an official or a body charged by law with responsibility for defining permissible conduct respecting the offense at issue. Third, actual reliance upon the official's statements should be present, which condition has also been stated as a requirement that the defendant believe the official. Finally, the view is commonly held that reliance must be in good faith and reasonable given the identity of the government official, the point of law represented, and the substance of the statement. Reliance is reasonable and in good faith only where a person truly desirous of obeying the law would have accepted the information as true, and would not have been put on notice to make further inquiries. Courts generally impose the burden upon the defendant to satisfy all elements.

Id. at 33-34 (citations and footnote omitted).

The trial court rejected the defense in the present case because Appellant's reliance on governmental advice related to occupancy of 716 East Chelten Avenue while he, instead, entered, stole items and began to live at 714 East Chelten Avenue. Hence, the trial court's refusal to apply the reliance doctrine was sound in this case.

Judgment of sentence affirmed.

Judgment Entered.

Prothonotary

Date: 5/8/2013

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	CP-51-CR-0003663-2010
	:	
vs.	:	1937 EDA 2011
	:	
BERNARD RUCKER	:	

OPINION

COVINGTON, J.

Procedural History

On February 7, 2011, following a bench-trial, the defendant was found guilty of Criminal Trespass-Breaking into a Structure (18 § 3503 §§ A1II), Terroristic Threats With Intent to Terrorize Another(18 § 2706 §§ A1), Burglary (18 § 3502 §§ A), Theft By Unlawful Taking (18 § 3921 §§ A), and Receiving Stolen Property (18 § 3925 §§ A). On May 6, 2011, the defendant was sentenced to fifteen (15) to thirty (30) months of incarceration followed by three (3) years of reporting probation.

A motion for extraordinary relief was filed on May 10, 2011, and heard and denied on July 5, 2011. On July 21, 2011, the defendant filed a timely Notice of Appeal. The Court ordered the defendant to file a Supplemental Statement of Errors Complained of on Appeal, in accordance with Pa. R. A. P. 1925(b). The Court received the defendant's Statement of Errors Complained of on Appeal on August 11, 2011.

Factual History

Mr. Bedner purchased the house at 714 East Chelten Ave on May 4, 2009, in order to make improvements and sell it for a higher price. N. T. 2/7/2011, p. 11. On February 26, 2010, after working on the house, he locked the windows, locked the doors, and left. *Id.* at 13. Mr. Bedner did not return to the house again until March 10, 2010. *Id.* Upon arrival he found his key would not fit in the front door, despite never changing the locks nor giving anyone permission to do so. *Id.* at 14. Mr. Bedner walked around to the rear of the house, saw that the back door was broken, pushed it open, and entered the property. *Id.* at 15. Mr. Bedner noticed that copper piping, paint, and various supplies were missing from the house. *Id.* at 16-17. Mr. Bedner also noticed that someone had hung up personal pictures, built a bed, and brought clothes into the dwelling. *Id.* at 28.

While Mr. Bedner was inside trying to repair the back door, the Defendant arrived at the front door, and used a key to enter. *Id.* at 20-21. Defendant prdered Mr. Bedner to get off his property. *Id.* at 21. Mr. Bedner informed Defendant the house was his property, and he should leave. *Id.* Mr. Bedner then asked Defendant to show some paperwork of ownership. *Id.* The Defendant responded by saying, "If you don't get out someone will get hurt." *Id.* Mr. Bedner told Defendant that his statement was a threat. *Id.* Defendant replied he didn't care if it was a threat or not, the house was his property, and if Mr. Bedner didn't get out he would blow him out.[1] Then approximately five other people came into the house. *Id.* at 22. They all began yelling for Mr. Bedner to leave or, "something would happen." *Id.* at 22-23. Mr. Bedner then exited the property. *Id.* at 23.

[1] Mr. Rucker's native language is Creole, and he had some difficulties with English phrases. It is possible the Defendant said "throw out," or some other phrase.

On March 12, 2010, Mr. Bedner went to the local police precinct and returned to 714 East Chelten Avenue with police officers. N. T. 2/7/2011, p. 26. Mr. Bedner again attempted to use his key to enter the house, but it again did not fit. *Id.* The police then knocked on the door twice and identified themselves and police officers. Id at 26. Defendant answered the door and told the police the property belonged to him. *Id.* at 34. Mr. Bedner confirmed it was his house and provided proof of ownership. *Id.* at 35. The police subsequently arrested the Defendant and removed him from the property. *Id.*

The premises at 714 East Chelten Avenue was half of a twin-house, connected on one side to 716 East Chelten Avenue. N. T. 2/7/2011, p. 30. When Mr. Bedner purchased 714 East Chelten Ave, there was no wall dividing the two properties. *Id.* at 31. Mr. Bedner replaced a wall dividing the two properties one week after he purchased 714 East Chelten Avenue. *Id.* at 45.

Defendant testified he knew the previous owner of 716 East Chelten Avenue and did some repair work for her. N. T. 2/7/2010, p. 49. Defendant had not visited the house in a few years, but heard the previous owner was now in a nursing home. *Id.* at 51. The Defendant testified that in December of 2009, 716 East Chelten Avenue the front door was broken into two pieces and the side window was shattered. Additionally, the back door of 714 East Chelten was kicked in. *Id.* at 50. Defendant stated he went to the sheriff's department on December 22, 2009, to determine the status of the house and was subsequently directed him to go to the Board of Revision of Taxes to look up the property. *Id.* at 52. Defendant testified that $16,000 in back taxes was owed on the property. *Id.* Defendant stated he later visited the City's Law Department and spoke to Miss Carmen Sanchez, a legal assistant. *Id.* at 53. The Defendant further testified that he came to understand a legal principle called the "law of equity of

redemption." *Id.* at 54. Defendant explained he understood the law to mean that he could go into a property owned by the city, establish residency, fix it up, and then file a petition 90 days before it goes up for sheriff sale, and then the costs of improvements would be deducted from the house's market value. *Id.*

Defendant testified he returned to the property through the damaged front door of 716 East Chelten Avenue and found, to his surprise, a wall now separating 716 from 714 East Chelten Avenue. *Id* at 55. Defendant stated he then walked around to the back of the properties and entered 714 East Chelten Ave through the broken back door. *Id.* at 57. Once inside, Defendant saw painting materials, cement bags, some sinks, and a bag filled with tiles. *Id.* Defendant noticed that unlike 716 East Chelten, on the 714 East Chelten side of the house, there was functioning electricity and plumbing. *Id.* at 63. In spite of these observed renovations, Defendant testified he had no knowledge that that 714 East Chelten Ave was a property separate from 716 East Chelten Ave, nor 714 East Chelten was sold at a sheriff sale to Mr. Bedner. *Id.* at 59-61. Defendant testified he believed Mr. Bedner to be a robber when he approached him at 714 East Chelten claiming he owned the property. *Id.* at 68.

Standard of Review

The test for sufficiency of the evidence is "whether the evidence, viewed in the light most favorable to the Commonwealth as verdict winner, is adequate to enable a reasonable jury to find every element of the crime beyond a reasonable doubt." *Commonwealth v. Rega*, 933 A.2d 997 (2007). Moreover, in applying the above test, the entire trial record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact, while passing upon the credibility of witnesses and the weight to be afforded the evidence produced, is free to believe all, part or none of the evidence introduced at trial. *Commonwealth v. Proetto*, 771 A.2d 823,

833 (Pa. Super. Ct. 2001). Under these standards, the Commonwealth's evidence was more than sufficient to sustain the convictions.

Discussion

Pursuant to the 1925(b) Statement of Errors Complained of on Appeal, the defendant asserts the following arguments for appeal: (1) the evidence was insufficient to prove the mens rea necessary for conviction; and (2) the trial court erred in not recognizing the defense of justification and excuse.

I. The Evidence Presented was Sufficient to Prove the Mens Rea for the Convictions

A. Criminal Trespass

To be found guilty of Criminal Trespass, the Commonwealth must prove beyond a reasonable doubt that the defendant: (1) knowing that he is not licensed or privileged to do so . . . (2) enters, gains entry by subterfuge or surreptitiously remains in any building or occupied structure or separately secured or occupied portion thereof. . . ." 18 Pa.C.S.A § 3503(a)(1)(ii). License means permission to act, and privilege means a right or immunity as a peculiar benefit, advantage, or favor. *Commonwealth v. Hopkins*, 2000 PA Super 47 (Pa. Super. Ct. 2000) (*citing Commonwealth v. Starkes*, 268 Pa. Super. 108 (1979) (*citing Webster's Third International Dictionary*). The element of "license" and "privilege" in this context is similar to that of the defense of consent. *Id.*

The Defendant clearly possessed the mens rea necessary for Criminal Trespass. The mens rea for Criminal Trespass requires a defendant to know he is not licensed or privileged to enter a building. It is not credible for the Defendant to believe that he had license to enter 714 East Chelten Avenue. The Defendant asserts, based on the City's Law Department's advice, that he had permission to clean, and repair 716 East Chelten for his own purposes. The Defendant

further claims that his occupation of 714 East Chelten was under the assumption that the residence was actually all part of 714 East Chelten Avenue. The Court finds this claim to be unfounded. In order for Defendant to enter 714 East Chelten Avenue, he had to walk around the building and enter through the broken back door. The two properties were separated by a wall. Once the Defendant entered 714 East Chelten Avenue, he saw evidence of renovations to the property, observing paint, sinks, tiles, and various tools typical of repairing a house. Beyond this, the Defendant observed that the 714 East Chelten Avenue property had functioning plumbing and electricity, unlike 716 East Chelten Avenue. The Defendant was then given specific notice by Mr. Bedner on March 10, 2010, that the property belonged to him. The combination of the Defendant's observations and actions demonstrate he entered 714 East Chelten Avenue knowing it was not part of the 716 East Chelten Property without permission or license.

B. Terroristic Threats

A defendant commits the crime of terroristic threats when he communicates a threat to commit any crime of violence with intent to terrorize another. 18 Pa.C.S.A § 2706(a)(1). Defendant doesn't need specific intent to terrorize his victim because the elements of terroristic threats are established so long as the evidence shows even "reckless disregard" for the risk of causing terror pursuant to 18 Pa.C.S. § 2706(a)(3). *Commonwealth v. Sinnott*, 976 A.2d 1184, (Pa. Super. 2009).

At minimum, the Defendant acted with reckless disregard for the risk of causing terror to Mr. Bedner. The Defendant said, "If you don't get out someone will get hurt." This statement could reasonably be interpreted as a threat to assault Mr. Bedner. In *Commonwealth v. Butcher*, despite no specific crime of violence, the Defendant's statement "don't let me get physical" was

affirmed to be reasonably interpreted as a threat to assault the victim and intent to terrorize. 644 A.2d 174, (Pa. Super. 1994). The statement made by the Defendant in this case rises to a clear threat of violence.

C. Burglary

A person is guilty of burglary if he enters a building with intent to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. 18 Pa.C.S.A. § 3502(b). The Defendant entered 714 East Chelten on several occasions with the intent to commit a crime. Circumstantial evidence supports Defendant stole Mr. Bedner's supplies and copper wiring from inside the property. The Defendant also entered the building with the intent to exercise illegal possession over the property, and to subsequently alter (i.e. damage) said property.

D. Theft By Unlawful Taking

A person is guilty of theft if he exercises unlawful control over, immovable property of another with intent to benefit himself. 18 Pa.C.S.A. § 3921(b). The Defendant clearly intended to benefit himself in the current case by occupying 714 East Chelten Ave, while repairing 716 East Chelten Ave. The Defendant intended to reap the benefits of living in the building next-door with plumbing and utilities.

E. Receipt of Stolen Goods

A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner. 18 Pa.C.S.A. § 3925. The Defendant entered 714 East Chelten Avenue intentionally, while

knowing that it did not belong to him, as discussed *supra*. The Defendant also took supplies and copper piping that he was aware did not belong to him.

II. The Trial Court did Not Err in Denying The Defense of Justification and Excuse

A. Justification and Excuse is not Applicable in the Defendant's Situation

The Reliance Doctrine (also known as the justification and excuse defense) has been described as a narrow exception to the maxim that ignorance of the law is no excuse. *Commonwealth v. Kartsas*, 764 A.2d 20, 29 (Pa. 1999). Courts, in attempting to apply the doctrine within appropriate constraints, have framed a series of relevant considerations, which vary to some degree among jurisdictions. *Id.* "First in order to support invocation of the doctrine, most jurisdictions require there be an affirmative representation that certain conduct is legal. Second the representation should be made by an official or a body charged by law with responsibility for defining permissible conduct respecting the offense at issue. Third, actual reliance upon the official's statements should be present. Finally the view is commonly held that the reliance must be in good faith and reasonable given the identity of the government official, the point of law represented, and the substance of the statement." *Id.*

The Justification and Excuse defense, also known as the Reliance Doctrine, is not applicable because it doesn't meet the standard requirements. According to the Defendant's testimony there was an affirmative representation made, and act with reliance on this advice, satisfying the first and third requirements. Though advice was given, the advice came from a legal assistant at the City Law Department, not an official responsible for defining permissible conduct. Beyond this, it was unreasonable for the Defendant to rely on this advice, given the

advice was from a legal assistant, was of a specific obscure area of law, and seemed substantively questionable. A reasonable person would seek more advice than that of a legal assistant before occupying and rehabilitating a city-owned property. These circumstances infer Defendant was not acting in good faith.

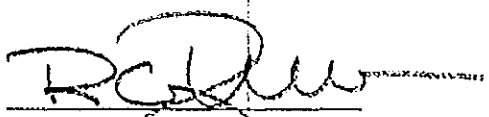
B. Justification and Excuse is not Applicable to the Specific Property

Even if the defense of justification and excuse based on the right of redemption was proper for this Defendant, it was unreasonable for him to believe it applied to 714 East Chelten Avenue. As demonstrated by the Defendant's own testimony and behavior, Defendant never believed or received advice that he could properly own 714 East Chelten Avenue, only 716 East Chelten Avenue. Defendant testified he understood the equity of redemption to mean he was, "allowed to go enter a city owned property... take pictures of the property, establish residency, fix it up, and then file a petition." The Defendant's own testimony requires his belief that 714 East Chelten Avenue was a city owned property. The Defendant explains this by saying that he believed 714 East Chelten Avenue to be part of the 716 East Chelten Property. The Court finds this to lack credibility. The Defendant immediately noticed a wall separating the two properties, had to enter a separate door, saw supplies in the 714 East Chelten Avenue property, and noticed the functioning utilities on the 714 East Chelten. Despite all the clear signs that 714 East Chelten was a property separate from 716 East Chelten, Defendant claims to have assumed the properties were one.

Conclusion

The Defendant possessed the necessary mens rea for all crimes committed and has no appropriate defense for his actions.

BY THIS COURT:



Roxanne E. Covington
September 18, 2012