

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
KRYSTAL JIMINEZ,	:	
	:	
Appellant	:	No. 1349 EDA 2013

Appeal from the Judgment of Sentence Entered December 3, 2012,
In the Court of Common Pleas of Philadelphia County, Criminal Division,
at Nos. CP-51-CR-0006114-2012; CP-51-CR-0006115-2012.

BEFORE: BENDER, P.J.E., SHOGAN and FITZGERALD*, JJ.

MEMORANDUM BY SHOGAN, J.:

FILED JULY 03, 2014

Appellant, Krystal Jiminez, appeals from the judgment of sentence entered on December 3, 2012, in the Philadelphia County Court of Common Pleas. We affirm.

On May 5, 2012, Appellant broke into her boyfriend’s grandparents’ house, punched her boyfriend’s sister, and beat her boyfriend’s mother unconscious while wearing brass knuckles. Appellant was arrested and charged with burglary, criminal trespass, possessing an instrument of crime, possession of a prohibited offensive weapon, two counts of simple assault, two counts of recklessly endangering another person, and two counts of criminal conspiracy. On August 6, 2012, at the conclusion of a non-jury trial, Appellant was found guilty of all charges.

*Former Justice specially assigned to the Superior Court.

On December 3, 2012, the trial court sentenced Appellant to an aggregate term of four years of probation. Appellant filed a post-sentence motion that was denied by operation of law on April 12, 2013. This timely appeal followed.

On appeal, Appellant raises two issues:

1. Was not the evidence insufficient as a matter of law to sustain [Appellant's] conviction for burglary, conspiracy to commit burglary and criminal trespass where the Commonwealth failed to prove beyond a reasonable doubt that [Appellant] was not licensed or privileged to enter her boyfriend's grandparents['] home, by not producing competent evidence of licensure or privilege from her boyfriend's grandparents, who are the owners of the home and currently reside there, and [Appellant] had previously lived in the house with those individuals?

2. Did not the trial court err as a matter of law and deny [Appellant] a fair trial when it allowed complainant Felicia Anthony to testify, as extrinsic impeachment evidence, about statements made to her by defense witness David Edens, where the Commonwealth did not confront the defense witness with the statements on cross-examination and the defense witness was not given an opportunity to explain or deny the statements, in direct violation of Pennsylvania Rule of Evidence 613(b)?

Appellant's Brief at 4.

In Appellant's first issue, she challenges the sufficiency of the evidence. When reviewing a sufficiency challenge, "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. Cox, 72 A.3d 719, 721 (Pa. Super. 2013) (quoting **Commonwealth v. Koch**, 39 A.3d 996, 1001 (Pa. Super. 2011)). When performing this review, “we may not reweigh the evidence or substitute our own judgment for that of the fact finder.” **Cox**, 72 A.3d at 721 (quoting **Koch**, 39 A.3d at 1001). The trial court, sitting as the finder of fact, was free to believe some, all, or none of the evidence. **Commonwealth v. Hartle**, 894 A.2d 800, 804 (Pa. Super. 2006).

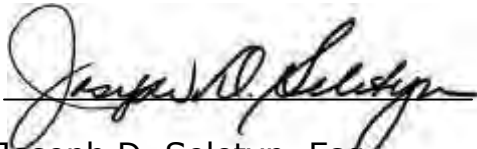
As noted above, Appellant also presents a challenge to the admissibility of evidence. The admissibility of evidence is within the sound discretion of the trial court, and this Court will not reverse a trial court’s decision concerning admissibility of evidence absent an abuse of discretion. **Commonwealth v. Flor**, 998 A.2d 606, 623 (Pa. 2011). An abuse of discretion will not be found based on a mere error in judgment, but rather an abuse of discretion occurs when the trial court has reached a conclusion that overrides or misapplies the law, or where the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will. **Commonwealth v. Eichinger**, 915 A.2d 1122, 1140 (Pa. 2007).

Upon review of the issues raised, the briefs of the parties, the certified record, and the applicable legal authority, we conclude that the trial court’s thorough and well-crafted opinion entered on November 1, 2013 comprehensively outlines the relevant standards and law and correctly

disposes of Appellant's issues. Accordingly, we affirm Appellant's judgment of sentence, and we do so based on the trial court's opinion. The parties are directed to attach a copy of that opinion in the event of further proceedings in this matter.

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/3/2014

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PA : CP-51-CR-006114-2012
: CP-51-CR-006115-2012
v. : TRIAL DIVISION
KRYSTAL JIMENEZ : SUPERIOR COURT DOCKET NO.:
FILED : 1349 EDA 2013

NOV 01 2013

Criminal Appeals Unit
First Judicial District of PA

OPINION OF THE TRIAL COURT

This is the appeal of defendant, Krystal Jimenez, from this Court's judgment of sentence issued on December 3, 2012 following a non-jury trial which took place on August 6, 2012, in two matters. Both matters were tried together. Thereafter, Post-Sentence Motions were filed on December 12, 2012 and were denied by operation of law on April 12, 2013. The defendant then filed timely Notices of Appeal in both matters on May 2, 2013.

The defendant was arrested and tried for criminal actions occurring on May 5, 2012. A non-jury trial of these matters was held on August 6, 2012. On Docket Number CP-51-CR-0006114-2102, the defendant was found guilty of burglary (18 P.S. §3502); conspiracy to commit burglary (18 P.S. §903); criminal trespass-entering a structure (18 P.S. §35030); possession of an instrument of crime (18 P.S. §907); prohibited offensive weapons (18 P.S. §908); simple assault (18 P.S. §2701); and, reckless endangerment of another person (18 P.S. §2705).

On Docket Number CP-51-CR-6-0006115-2012, the defendant was found guilty of simple assault (18 P.S. §2701); conspiracy to commit simple assault (18 P.S. §903); and, reckless endangerment of another person (18 P.S. §2705). A Pre-Sentence Investigation was ordered at that time.

On November 30, 2012, defendant filed a Motion for Extraordinary Relief. This Motion was denied on December 3, 2012 and the matters proceeded immediately to sentencing.

On Docket Number CP-51-CR-0006114-2102, the defendant was sentenced to 4 years reporting probation on the burglary conviction with no further penalty on the other crimes. This conviction also qualified as a First Strike. On Docket Number CP-51-CR-0006115-2102, the defendant was sentenced to 2 years reporting probation on the simple assault charge with no further penalty on the remaining charges. This sentence runs concurrent with the sentence imposed in the former case. The defendant does not raise any issues on appeal in regard to the sentence imposed by this Court.

On appeal, the defendant raises three (3) issues:

1. The evidence was insufficient as a matter of law to sustain appellant's convictions for burglary, conspiracy to commit burglary, and criminal trespass, where the Commonwealth failed to prove beyond a reasonable doubt that appellant was not licensed or privileged to enter, where appellant had lived in the house in the past with the co-defendant's grandparents and sister, and where there was no testimony from any of these three individuals.
2. The verdicts were against the weight of the evidence, where neither victim suffered injuries consistent with their testimony.
3. The trial court erred as a matter of law and denied appellant a fair trial, when it allowed Felicia Anthony to testify as a rebuttal witness to a statement allegedly made by appellant's co-defendant, where the co-defendant's statement was not given to defense counsel and where the witness was not given an opportunity to explain the statement, in direct violation of Pa.R.E. 613(b).

The issues raised on appeal are not supported by the record and it is requested that this Court's evidentiary rulings and determinations of guilt be affirmed on appeal for the reasons set forth herein.

On August 6, 2012, this matter was tried as a non-jury matter before this Court. Prior to taking testimony, this Court performed an oral colloquy to determine if the defendant's execution of the written jury waiver form was valid. Upon conclusion of the colloquy, this Court determined defendant's jury trial waiver to have been knowingly, voluntarily and intelligently made.

The Commonwealth presented the testimony of several witnesses, Loretta Edens Anthony, Alease Edens, and Police Officer Keith Samarco in its case-in-chief. It also presented the testimony Felicia Anthony in rebuttal.

The defense presented the testimony of David Edens and Detective Kenneth Fleming in its case-in-chief, and Jenna Garcia, as a character witness.

Loretta Edens Anthony is the mother of the defendant's boyfriend, David Edens, and has known her for six years. (N.T. 08-06-2012, P. 12, L. 13-16). The defendant has lived with her sister and parents, but never with her. (N.T. 08-06-2012, P. 12, L. 21-22).

On May 5, 2012, Ms. Anthony lived at 1600 E. Johnson St., Philadelphia, PA. This home is owned by her parents and she moved there about 1½ to 2 years before this occurrence. Her elderly parents also live there, along with her daughter, Alease, and her older sister. (N.T. 08-06-2012, P. 13, L. 3-21).

Her son, David Edens, did not live there and was not permitted in the house on May 5, 2012. (N.T. 08-06-2012, P. 14, L. 2-5). She never gave him or the defendant permission to be in the house on that date. (N.T. 08-06-2012, P. 14, L. 19 to P. 15, L. 7).

On May 5, 2012, Ms. Anthony testified that the defendant and her son called her and were both fighting with her on the speakerphone. They were arguing over her son's and defendant's need for money. She stated this is a common theme with them. (N.T. 08-06-2012, P. 15, L. 8-24). Her son and the defendant then came to the Johnson Street residence and :

(N.T. 08-06-2012, P. 17)

- [7] A. They came to the front door. There's a
[8] security door in front of it, and they banged on it.
[9] And I wouldn't let them in. I told them to go away.
[10] I called 911. My son said, Oh, you're not going to
[11] let me in. And they went around -- it's a corner
[12] property, so there's a door to the basement. By my
[13] son knowing the house and living in the house, he
[14] knows how to get in the house. The alarm system was
[15] off because hospice comes every day, so we take the
[16] alarm system off when we get up in the morning. He
[17] opened the window --
[18] Q. What window are you referring to?
[19] A. The basement window. Put his --
[20] Q. Is that on ground level?
[21] A. It's on ground level.
[22] Q. Okay.
[23] A. Opened the door, came in the house, come
[24] running up the steps from the basement with her
[25] following behind him. I'm coming down the steps

(N.T. 08-06-2012, P. 18)

- [2] where the bedrooms are to the living room. Because
[3] I'm tending to my parents. They're bedridden. She
[4] jumps up behind him, and she hits me with brass
[5] knuckles.

- ...
[21] A. And she catches me in the middle of the steps.
[22] Q. So you're in the middle of the steps.
[23] Are you facing her?
[24] A. Yes, we're facing each other like this.
[25] Q. And is she directly in front of you, or is

(N.T. 08-06-2012, P. 19)

[2] David in front of her?
[3] A. She's in front of me. He's in back of her.
[4] Q. And then you said she hits you?
[5] A. Yes.
[6] Q. With brass knuckles?
[7] A. Yes.
[8] Q. You saw the brass knuckles on her hand?
[9] A. Yes, and she left them. She dropped them when
[10] the police was on the way. They ran. And the
[11] police picked them up several blocks away.

...

[15] Q. So where did she hit you?
[16] A. She hit me in the forehead.
[17] Q. The right side where you're touching?
[18] A. Right here. Left side.
[19] Q. The left side?
[20] A. Right.
[21] MS. GOLDEN: Indicating, for the
[22] record, the witness is touching the left side
[23] of her forehead.

[Emphasis added.]

Ms. Anthony was hit "about four" times by the defendant with a closed fist and brass knuckles. (N.T. 08-06-2012, P. 20, L. 2-5). While Ms. Anthony's encounter with the defendant was taking place, her daughter, Alease, came from the kitchen towards the living room and was pushed by David Edens. (N.T. 08-06-2012, P. 20, L. 17-23). When Alease was pushed by David, she fell back onto a table and broke her phone as she was calling 911. (N.T. 08-06-2012, P. 21, L. 10-14).

Ms. Anthony testified that at that point, she "sort of blacked out" and was later taken to the hospital via ambulance. She underwent an MRI, was told she had a concussion and was given medication. (N.T. 08-06-2012, P. 21, L. 12-22). She did not sustain any other physical injuries. (N.T. 08-06-2012, P. 22, L. 20-21).

Photographs of this witness' injuries were marked as Exhibit C-1(a) - (d). These pictures showed swelling and an indentation where Ms. Anthony was hit on the face and in the back of her head where she hit the step when she fell backwards. (N.T. 08-06-2012, P. 24, L. 4-6; L. 20-25).

Ms. Anthony reiterated that she gave neither her son, David Edens, nor the defendant, permission to be in the house on May 5, 2012. (N.T. 08-06-2012, P. 25, L. 7-13).

On cross-examination, Ms. Anthony testified that her son lived in the house for three years when he was younger. (N.T. 08-06-2012, P. 26, L. 4-5). She agreed that the photographs of her injuries showed no blood on her forehead. (N.T. 08-06-2012, P. 26, L. 19-22). She does not know if she hit the defendant that day, stating "all I know is she hit me." (N.T. 08-06-2012, P. 26, L. 23-24). She also does not know if the defendant received stitches on her forehead. (N.T. 08-06-2012, P. 27, L. 2-4).

On re-direct questioning, Ms. Anthony testified that it had been longer than 6 years from the time her son last lived at this house. (N.T. 08-06-2012, P. 27, L. 22 to P. 28, L. 2).

The Commonwealth next called Alease Edens to testify. Ms. Edens also lives at 1600 Johnson Street. (N.T. 08-06-2012, P. 28, L. 20-22). She identified the defendant as the person she encountered on May 5, 2012. (N.T. 08-06-2012, P. 29, L. 3-11). Ms. Edens is Ms. Anthony's daughter and David Edens' sister.

Ms. Edens was in the living room and did not see the defendant break into the house. (N.T. 08-06-2012, P. 29, L. 20-23). She first saw the defendant and David when they ran up the basement steps and ran towards her. (N.T. 08-06-2012, P. 30, L. 6-12). The defendant punched her in the nose one time. (N.T. 08-06-2012, P. 29, L. 14-22). The defendant then "jumped on"

her mother. (N.T. 08-06-2012, P. 30, L. 23-24). She stated the defendant repeatedly, and with brass knuckles, punched her mother, who was on the steps. (N.T. 08-06-2012, P. 31, L. 2-7).

While this attack on her mother was occurring, Ms. Edens was pushed onto a glass table by her brother. (N.T. 08-06-2012, P. 31, L. 10-13). She sustained a bloody nose and bruises between her legs. She too was taken to the hospital. (N.T. 08-06-2012, P. 31, L. 16-23).

On cross-examination, she testified that she did not see her mother hit the defendant. She also did not hit her. (N.T. 08-06-2012, P. 32, L. 4-8). She does not know how the defendant sustained her injuries. (N.T. 08-06-2012, P. 32, L. 9-12).

The Commonwealth then called Police Officer Keith Samarco, Badge No. 3558, of the 14th Police District. Officer Samarco testified that he had received a radio call of a person with a weapon and upon arrival at the residence he was approached by Loretta Edens Anthony and Alease Edens. Both women had scratches on their face, bloody noses and "big lumps" on their heads. Alease also had scratches on her knees (N.T. 08-06-2012, P. 34, L. 2-18). Officer Samarco was handed black brass knuckles from one of the complainants and later placed them on property receipt 3029193. (N.T. 08-06-2012, P. 34, L. 23 to P. 35, L. 6).

On cross-examination, Officer Samarco testified that the older woman [Loretta Edens Anthony] stated to him she was struck in the face numerous times with the brass knuckles, but did not state an exact number of times. (N.T. 08-06-2012, P. 35, L. 21-25).

Upon conclusion of this officer's testimony, the Commonwealth moved the photographs marked as Exhibit C-1(a)-(d) into evidence without objection and then rested.

At this time, defense counsel made a motion for judgment of acquittal on the burglary, conspiracy and criminal trespass charges based upon the fact that the homeowners were not present to testify as to the non-permission of the defendant being in the home.

Ms. Anthony and Ms. Edens, both of whom lived in the home on May 5, 2012, indicated that David and the defendant did not live at the address and neither had permission to be in the house. This Court finds both of these women's testimony to be credible and consistent. The motion was denied, as this Court concluded, based upon all of the evidence taken to that point, the defendant had entered this residence by criminal means with David Edens and committed an assault therein.

Therefore, in light of the testimony, it was inferred by this Court that the defendant had an intended criminal purpose for entering the house. This conclusion was based upon the totality of the circumstances. There was sufficient evidence of record that the defendant had committed burglary, conspiracy and criminal trespass as a basis to deny the motion for judgment of acquittal. *Cf. Commonwealth v. Lambert*, 795 A.2d 1010, (Pa.Super. 2002), *appeal denied* 805 A.2d 521, 569 Pa. 701.

The defense then proceeded with its case-in-chief and presented the testimony of David Edens. Mr. Edens was appointed 5th Amendment counsel, Jeffrey Azzarano, Esquire, who counseled this witness as to the possible exposure to criminal charges should he choose to testify. Mr. Azzarano stated on the record that without an immunity agreement, his advice to this witness was for him to not testify. Despite counsel's advice, Mr. Edens disregarded this recommendation and voluntarily chose to testify as a defense witness. (N.T. 08-06-2012, P. 39, L. 17 to P. 40, L. 18).

Mr. Edens testified that the day before the incident, May 4, he had spoken to his mother about him and the defendant coming to the home for breakfast the following day, but they arrived later in the day because they had been out late the night before. . (N.T. 08-06-2012, P. 41, L. 23 to P. 42, L. 3).

On May 5, 2012, he states that:

(N.T. 08-06-2012, P. 42)

[4] I called my grandmother -- well, I called the house,
[5] actually, to speak to my mother, but my grandmother
[6] answered the phone and said she didn't know where
[7] she was and that her and my grandfather hadn't eaten
[8] all day.

[9] Now, these two, my grandmother and
[10] grandfather, are in hospice care. So she said they
[11] haven't eaten. So I called my mother's cell phone.
[12] She didn't answer. I called my sister's cell phone.
[13] She didn't answer. I called my grandmother back,
[14] and I told my grandmother that I was on my way
[15] there. So I went over to the house, to 1600 Johnson
[16] Street.

[17] Q. And when you got there, what happened?

[18] A. When I got to the house, I was knocking on the
[19] door. I hear my aunt and I hear my sister in the
[20] kitchen yelling at each other. So I'm banging on
[21] the door. Nobody is answering the door. So I went
[22] to the basement door, unlocked it, and entered the
[23] house.

[Emphasis added.]

Mr. Edens stated that he lived in this house for the first 20 years of his life and has been over to visit with the defendant and their children. He has been dating the defendant for nearly 9 years. (N.T. 08-06-2012, P. 43, L. 2-10).

He continued describing the events of the day in question, testifying that:

(N.T. 08-06-2012, P. 43)

[22] A. I unlocked the back door. I unlocked the
[23] basement door. So I came in, went upstairs. Me and
[24] Krystal came upstairs. Krystal sat on the love seat
[25] right next to the stairs to go to the second floor

(N.T. 08-06-2012, P. 44)

[2] of the house. My mom was coming down the steps, I
[3] asked my mom -- my exact words was, Mom, what the

[4] hell is going on? Grand mom said she hasn't eaten
[5] all morning. And my mom said to me, Well, you don't
[6] worry about what's going on in my mother f-ing
[7] house. You worry about putting that trick --
[8] pointing at Krystal -- on the stroll to make you
[9] some money. Krystal stood up and said, What the
[10] hell did I do to you. That's when my mom struck her
[11] with, like, a porcelain, like, a knickknack, like,
[12] that goes on your coffee table. It looked like a
[13] porcelain cat. It was small, like about this big.
[14] But when she struck her with it, like,
[15] it exploded. Krystal's face was covered in blood.
[16] And Krystal defended herself. And Krystal, like --
[17] her and my mom started going at it. And then my
[18] sister jumped on Krystal's back. So I had to pull
[19] my sister off to pull -- I pulled my sister off of
[20] Krystal and told Krystal, Enough. And then I got
[21] Krystal off of my mom. And Krystal's face was
[22] bleeding. She had blood coming all down her face.
[23] So I just said, Come on, let's hurry up and go to
[24] the hospital. Because her face was cut, like,
[25] completely open, her head -- forehead was cut open.

(N.T. 08-06-2012, P. 45)

[2] Q. And did you see either your mother or your
[3] sister hit my client?
[4] A. Yes.
[5] Q. Did you see Krystal hit either one of them
[6] with brass knuckles?
[7] A. No.

On cross-examination, Mr. Edens admitted that no one answered when he knocked on the door. (N.T. 08-06-2012, P. 45, L. 21-24). He saw the defendant hit his mother after she struck the defendant with a porcelain figurine. (N.T. 08-06-2012, P. 47, L. 24-25). He stated that the defendant defended herself, but did not use brass knuckles. (N.T. 08-06-2012, P. 48, L. 6-7). He could not see where his mother was hit by the defendant because he was trying to get Alease off of the defendant. (N.T. 08-06-2012, P. 48, L. 9-16). The defendant did not hit Alease and he never saw her bleeding. (N.T. 08-06-2012, P. 49, L. 18-23). He testified that he did not push his

sister, but pulled her off of the defendant. Alease did fall because he "flung her" off of the defendant. (N.T. 08-06-2012, P. 49, L. 23 to P. 50, L. 4).

He stated he spoke with his sister several days after this incident, but has not had any further contact with them. He never gave a statement to detectives regarding this incident. (N.T. 08-06-2012, P. 51, L. 3-14).

Based upon this witness' demeanor and testimony, this Court determined his testimony to be not credible, biased and self-serving. He admitted to entering into a house where he did not live at the time without permission. The defendant entered the house with him. This Court finds his reason for doing so (allegedly checking on his grandparents who had not eaten) as unjustified and significantly lacking credibility. This Court also concludes that his testimony in regard to the defendant being hit first with a porcelain figurine by his mother lacks any indicia of truthfulness.

The defense next called Detective Kenneth Fleming, Badge No. 9275, of the Northwest Detective Division. Detective Fleming prepared the 75-49 report for this incident, which was marked as D-1. Detective Fleming testified that the 75-49 states "The complainant stated that she was struck in the head with brass knuckles ten times. Complainant No.1 and 2 injuries did not correspond to being struck with brass knuckles." (N.T. 08-06-2012, P. 53, L. 3-21).

The defendant was taken to the hospital. Detective Fleming testified he took several photographs of the defendant. These photographs were marked as Exhibits D-2 to D-5 and moved into evidence without objection. (N.T. 08-06-2012, P. 54, L. 2-20).

On cross-examination, Detective Fleming testified:

(N.T., 08-06-2012, P. 55)

- [6] Q. Detective, you don't know where those injuries
- [7] came from on the defendant, correct?
- [8] A. Correct.
- [9] Q. No one ever told you how she got that cut on

[10] her forehead?

[11] A. I believe the defendant told me how she got

[12] the injuries.

[13] Q. Did the defendant's boyfriend, David Edens,

[14] the complainant's son, did he ever give a statement?

[15] A. I spoke to him on the phone, but he never gave

[16] me a formal statement.

[17] Q. Did you ask him to come in to give one?

[18] A. Yes.

[19] Q. And he never came in?

[20] A. Correct.

The defense next presented the testimony of Jenna Garcia as a character witness. Ms. Garcia testified that she has known the defendant all of her life (N.T., 08-06-2012, P. 57, L.7) and that she has a reputation in the community for being peaceful, honest and law-abiding (N.T., 08-06-2012, P. 58, L. 3-6). On cross-examination, the witness admitted that she is a relative of the defendant (N.T., 08-06-2012, P. 58, L. 12). She knows of the defendant's reputation from children, neighbors and people from corner stores. (N.T., 08-06-2012, P. 59, L. 2-23). With this testimony, the defense rested.

The Commonwealth then called Felicia Anthony, another sister of David Edens, as a rebuttal witness to his testimony. The defense objected to this witness, claiming *Brady* violations and the failure to provide this witness' identity or statements. The Commonwealth made a proffer that this witness was not an eyewitness to the events of May 5, 2012 and that it did not have in its possession any statements from Ms. Anthony that it would be required to disclose. The Commonwealth had no knowledge of this witness until the day of the trial and, based upon her knowledge, was strictly being presented to rebut the testimony of a defense witness. The admission of rebuttal testimony is within the discretion of the trial court. *Commonwealth v. Mathis*, 317 Pa.Super. 362, 370, 464 A.2d 362, 367 (1983). With that rule as guidance, this Court allowed Ms. Anthony to testify strictly as a rebuttal witness only.

Ms. Anthony clearly rebutted the testimony of David Edens as it related to his reason for going to his grandparents' home that day. Ms. Anthony stated:

(N.T., 08-06-2012, P. 55)

- [3] Q. Ma'am, what was the conversation you had with
[4] your brother that day?
[5] A. David called me and said that he was on his
[6] way -- he was very upset. He was cursing. He said
[7] he was on the way to my mother's house and that him
[8] and Krystal was on their way there and that he was
[9] going --
[10] Q. You can say it, ma'am.
[11] A. -- whip her ass.
[12] Q. When he said "whip her ass," who was he
[13] referring to?
[14] A. My mother. And I begged him. I said -- well,
[15] my mother and them, they usually sometime have
[16] arguments. And I would -- I was like, don't go,
[17] calm down, just stay in the house, don't call mommy,
[18] don't talk to her, have your distance. And he was
[19] like, Look, I advise you and Maya to come up here
[20] because it's going down. That's exactly what he
[21] said.
[22] Q. And who is Maya?
[23] A. Maya is my cousin.
[24] I didn't believe that he was going to
[25] go there. I couldn't believe that he did it.

[Emphasis added.]

Prior to cross-examining this witness, the defense made a motion for a mistrial, which was denied for the foregoing reasons.

On cross-examination, Ms. Anthony stated that she spoke with the Commonwealth's attorney on the morning of the trial, revealing to counsel the contents of the discussion with her brother on the morning of May 5, 2012. (N.T., 08-06-2012, P. 68, L. 11-23). She also stated that she went to the 35th Police District and reported this, but she does not know if the police wrote down her statement, as she was only there a few minutes. (N.T., 08-06-2012, P. 69, L. 7-22).

The defense renewed its request for a mistrial, which was again denied by this Court, as there was no impropriety in the presentation of this witness by the Commonwealth solely as a rebuttal witness. It was clear that this witness was a true rebuttal witness, as she only testified to rebut the testimony presented by her brother. Had he not testified, she would not have been presented as a witness. The defense opened the door to a rebuttal witness by presenting the testimony of David Edens.

The issue on appeal that the prosecution violated Rule 613(b) is without merit. Defendant claims this Court committed an error by allowing "Felicia Anthony to testify as a rebuttal witness to a statement allegedly made by appellant's co-defendant, where the co-defendants' statement was not given to defense counsel." Clearly, there was no statement made by David Edens in the Commonwealth's possession, which would be required to be disclosed. Further, this Court has no knowledge that he is a co-defendant as that was not in the record. Mr. Edens was presented by defense counsel as an eyewitness. David Edens stated, when he was on the witness stand, that he never gave a statement to detectives, which was confirmed by defense witness, Detective Fleming. Since he never gave a statement to anyone, he could not be impeached by prior inconsistent testimony. His alleged eyewitness testimony was, however, properly impeached by a rebuttal witness, with whom he had conversations prior to this event. This issue by defendant is without merit.

As for the issues raised in regard to the Commonwealth's failure to meet its burden in proving that defendant was not licensed or privileged to enter this residence, the Commonwealth presented testimony to support this Court's finding of guilt on each of the charges. The Commonwealth's witnesses presented credible and consistent testimony which this Court relied upon in reaching its decision that the defendant did not live in the residence, entered

into the residence without permission with David Edens and once inside, committed assaults upon Ms. Anthony and Ms. Edens. Clearly, the rebuttal witness provided sufficient evidence that the defendant and Mr. Edens were going to the house to physically confront his mother which shows a conspiracy between these two individuals. Under the totality of the circumstances, each element of the crimes was met, thereby supporting this Court's determinations.

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. In order to prove a criminal conspiracy to commit burglary, the Commonwealth must prove beyond a reasonable doubt that: (1) defendant agreed with another person that one or both of them would engage in conduct which constitutes the crime of burglary; (2) that the defendant and the other person intended to promote or facilitate the committing burglary; and (3) that the defendant or the other person did an overt act to further the conspiracy. 18 Pa.C.S. §903.

This Court concluded that the defendant and David Edens agreed to go to 1600 E. Johnson St, an occupied structure where they did not live, for the purposes of attacking Loretta Edens Anthony. They entered the same without a privilege or license to do so. They then consummated the criminal aspect this conspiracy with the assault upon Ms. Anthony and Ms. Edens. The totality of the circumstances and the evidence supports this conclusion. This evidence was also sufficient to convict defendant of the lesser offense of criminal trespass. *Commonwealth v. Jones*, 590 Pa. 356, 912 A.2d 815 (2006).

The defendant also claims that the injuries of the victims did not correspond with their testimony. The two witnesses clearly testified they were each punched by the defendant.

Photographs of Ms. Anthony's injuries were introduced into evidence. Police Officer Samarco testified that he personally observed the injuries to both women. The defense maintains that the injuries were inconsistent with being punched by brass knuckles. This fact is irrelevant. The injuries proved that an assault took place. Mr. Edens confirmed the defendant was punching his mother. Simple assault requires proof that bodily injury occurred. The Court accepted the fact that these injuries were sustained by defendant's intentional actions. The extent of the injuries sustained by the victims is irrelevant, bodily injury must be shown to prove an assault had occurred. The Commonwealth's evidence satisfied this element of the crime.

For all of the foregoing reasons, it is requested this Court's evidentiary ruling to permit Felicia Anthony to testify as a rebuttal witness and its determinations of guilt on the charges of burglary, conspiracy to commit burglary, and criminal trespass be upheld on appeal.

BY THE COURT



ANGELO J. FOGLIETTA

Dated: November 1, 2013