NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. LOUIS CRAWFORD, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2659 EDA 2011

Appeal from the Judgment of Sentence entered September 27, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0001010-2011

BEFORE: BENDER, J., LAZARUS, J., and COLVILLE, J.*

MEMORANDUM BY BENDER, J. Filed: February 5, 2013

Louis Crawford appeals the judgment of sentence of 40 to 120 months' imprisonment imposed following his conviction of Burglary, Criminal Trespass, Theft, and Receiving Stolen Property. ***See*** 18 Pa.C.S. §§ 3502(a), 3503, 3921(a), 3925(a) (respectively). Crawford contends that the Commonwealth failed to adduce sufficient evidence to sustain his convictions of Burglary and Criminal Trespass. Upon review, we find the evidence readily sufficient to sustain both charges. Accordingly, we affirm the judgment of sentence.

Crawford's arrest followed his entry, on multiple occasions, of buildings on the campus of the University of Pennsylvania (Penn), during which

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* Retired Senior Judge assigned to the Superior Court.

Crawford removed students' wallets from their unattended backpacks. Although the record suggests that Crawford has a significant history of such conduct, the incidents in question here commenced on November 19, 2010, at approximately 4:00 p.m., when Crawford entered Penn's Houston Hall and removed a wallet from the pocket of a book bag that student Grace Conway had left unattended. Ms. Conway determined immediately that the wallet was missing and reported the theft to campus police, noting that the wallet contained $25 in cash, consisting of three $5 bills and one $10 bill.

Immediately thereafter, at approximately 4:10 p.m., Crawford ventured approximately two and one-half blocks to Huntsman Hall, when he entered a student lounge on the first floor, adjacent to, but separate from an Au Bon Pain café that was open to the public. The entrance to the building and the study room were also within sight of the building security desk, and the door to the room was marked with a "No Trespassing" sign. Upon observing Crawford, security supervisor Allen Watson entered the lounge and asked Crawford to produce a Penn identification card that would demonstrate his entitlement to use the premises. When Crawford was unable to produce such identification, Watson escorted him from the building and reported the unlawful entry to the campus police. Watson remained on the phone with the police dispatcher until officers located Crawford on campus security cameras.

Simultaneously with Watson's telephone call, Penn police broadcast a radio call to report the trespass in Huntsman Hall. The broadcast described Crawford, and security cameras captured his image as he entered 1920 Commons, a university dining hall located approximately one block from Huntsman Hall. Penn police officer Matthew Barber followed Crawford as he ran down a stairway inside 1920 Commons and detained him for identification after Crawford dove under a table, attempting to hide. Moments later, Allen Watson arrived from Huntsman Hall and identified Crawford. While Watson was still on the premises conferring with Penn police, a student called excitedly to the officers and handed them a wallet he had recovered from the area where Crawford had been detained. The wallet contained Grace Conway's identification, and Conway later claimed it at the Penn police station. Although the wallet was emptied of the $25 Conway had in it, consisting of one $10 bill and three $5 bills, $26 in cash was recovered from Crawford's person, including one $10 bill and three $5 bills.

Subsequently, on January 12, 2011, Penn police again sighted Crawford inside Houston Hall, the same building from which Grace Conway's wallet had disappeared two months before. On this occasion, Penn police sergeant Kyeasha Zebley, while on plain-clothes patrol, observed Crawford take a seat near a group of students and lay his coat over a backpack on the floor underneath a table where the students were seated. Zebley then saw Crawford reach under the coat, remove something from the backpack, and

get up and leave. While Zebley approached the students to ask them if they were missing anything from their belongings, her partner stopped Crawford, who then attempted to flee. After the officers succeeded in stopping Crawford a short distance away, Sergeant Zebley noted that a wallet fell from Crawford's jacket. The wallet contained identification for Erin Theyre, who was one of the students in the group Crawford had approached. Sergeant Zebley returned Theyre's wallet and took Crawford into custody.

In advance of trial, Crawford waived his right to a jury and the matter proceeded before the trial judge acting as finder of fact. In its case in chief, the Commonwealth introduced the testimony of Grace Conway, Allen Watson, Officer Matthew Barber, and Sergeant Kyeasha Zebley, each of whom attested to his or her role and observations in the foregoing events. In addition, Allen Watson testified that only students, faculty and staff are permitted inside Penn's buildings and "[t]hat there are signs at every single one of the doors that states [sic] in big white letters 'No Trespassing.'" N.T., Jury Trial, 7/25/11, at 33. Although Crawford's counsel objected on grounds of hearsay, the court overruled that objection and admitted the testimony, limited to the existence of "no trespassing" signs, while excluding testimony of additional qualifying verbiage that appeared on those signs. Crawford presented no evidence on his own behalf, following which the court found him guilty of all charges and ordered a pre-sentence investigation,

specifically in recognition of Crawford's extensive prior record of 15 arrests at Penn for similar offenses.

At the subsequent sentencing hearing, the Commonwealth recommended the sentence of 40 to 120 months' imprisonment on the following rationale:

> This is a person who has continually reoffended despite several incarcerations. As a juvenile, he had eight arrests, he was adjudicated three times and he was committed twice. That didn't work. As an adult, he was arrested 32 times, had ten convictions, was sentenced to prison six different times, violated five times, had five revocations. He did multiple state sentences for the exact same stuff, basically burglarizing U of Penn campuses, Your Honor. He did a state sentence for burglarizing U of Penn already, Your Honor, and, again, he continued to offend. In this case, Your Honor, when he made bail, he again picked up another new arrest at University of Penn for theft of a student . . . ."

N.T., Sentencing, 9/26/11, at 5-6. Following review of the pre-sentence investigation report, the court recognized Crawford's record of recidivism and imposed the Commonwealth's recommended sentence of 40 to 120 months' imprisonment with credit for time served. The court noted initially that all other offenses merged with the Burglary conviction, but later amended the sentencing order to impose a concurrent sentence of two and one-half to five years' imprisonment for Theft by Unlawful Taking.

Crawford has now filed this appeal raising the following questions for our review:

> 1. Did not the trial court err in finding the appellant guilty of burglary where the Commonwealth failed to prove that appellant knew he was not licensed or privileged to enter a

> room, which was located in a room on the University of Pennsylvania campus, and where the room was positioned across from a restaurant which was open to public and no admissible evidence was presented at trial that there were signs posted prohibiting entry?
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> 2. Did not the trial court err in finding the appellant guilty of criminal trespass where the Commonwealth failed to prove that the appellant knew that he was not licensed or privileged to enter a room that was unlocked and positioned across from a public restaurant, where he openly walked inside, sat down and immediately cooperated when asked to leave?

Brief for Appellant at 3.

Crawford's questions both challenge the legal sufficiency of the evidence. Brief for Appellant at 10, 16. As a general matter, our standard of review of sufficiency claims requires that we evaluate the record "in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence." ***Commonwealth v. Widmer***, 744 A.2d 745, 751 (Pa. 2000). "Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt." ***Commonwealth v. Brewer***, 876 A.2d 1029, 1032 (Pa. Super. 2005). Nevertheless, "the Commonwealth need not establish guilt to a mathematical certainty." ***Id***.; ***see also Commonwealth v. Aguado***, 760 A.2d 1181, 1185 (Pa. Super. 2000) ("[T]he facts and circumstances established by the Commonwealth need not be absolutely incompatible with the defendant's innocence."). "[W]here no single bit of

evidence will by itself conclusively establish guilt, the verdict will be sustained where the totality of the evidence supports the finding of guilt." ***Commonwealth v. Thomas***, 561 A.2d 699, 704 (Pa. 1989).

In addition, the Commonwealth may sustain its burden by means of wholly circumstantial evidence. ***See Brewer***, 876 A.2d at 1032. Accordingly, "[t]he fact that the evidence establishing a defendant's participation in a crime is circumstantial does not preclude a conviction where the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence." ***Id***. (quoting ***Commonwealth v. Murphy***, 795 A.2d 1025, 1038-39 (Pa. Super. 2002)). Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances. ***See Commonwealth v. DiStefano***, 782 A.2d 574, 582 (Pa. Super. 2001). Nor may we substitute our judgment for the fact finder's verdict; so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant's crimes beyond a reasonable doubt, the appellant's convictions must be upheld. ***See Brewer***, 876 A.2d at 1032.

In support of his first question, Crawford contends that the evidence was not legally sufficient to sustain his conviction of Burglary. On the date of Crawford's conduct, the Crimes Code defined the offense of Burglary as follows:

> **§ 3502. Burglary**
>
> **(a) Offense defined.**—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.
>
> **(b) Defense.**—It is a defense to prosecution for burglary that the building or structure was abandoned.

Law of Dec. 6, 1972, P.L. 1482, No. 334, § 1, effective June 6, 1973 (amended Law of Dec. 19, 1990, P.L. 1196, No. 201, § 1, effective July 1, 1991) (current version at 18 Pa.C.S. § 3502 (2012)).[1,2] Thus,

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[1] Significantly, the legislature has since amended the Burglary statute to recognize that the extent to which a premises was open to the public at the time of the offense, or the actor was licensed or privileged to enter, are defenses to the charge of burglary rather than elements of it. Nevertheless, our prior case law appears to recognize those factors as elements of the offense, ***see e.g.***, ***Commonwealth v. Harrison***, 663 A.2d 238, 240 (Pa. Super. 1995) (noting that knowledge is not an element of crime of burglary and one defending against burglary charge would have no reason to establish that he believed his presence in building or occupied structure was privileged or licensed). Consequently, we shall address lack of license or privilege, and public access, as elements of proof for the Commonwealth.

[2] The pertinent language of the current statute follows.

> **§ 3502. Burglary**
>
> **(a) Offense defined.**—A person commits the offense of burglary if, with the intent to commit a crime therein, the person:
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> (1) enters a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense any person is present;

(Footnote Continued Next Page)

> [i]n order to prevail on a charge of burglary, the Commonwealth must prove beyond a reasonable doubt that there was an entry of the building or occupied structure by the defendant, with contemporaneous intent on the part of the defendant of committing a crime therein, at a time when the premises were not open to the public and the defendant was not then licensed or privileged to enter.

Commonwealth v. Hardcastle, 546 A.2d 1101, 1108-1109 (Pa. 1988). Crawford argues, in addition, that because section 3502 does not otherwise define the *mens rea* necessary to establish culpability, we are constrained to

(Footnote Continued) ———————————

> (2) enters a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense no person is present;
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> (3) enters a building or occupied structure, or separately secured or occupied portion thereof that is not adapted for overnight accommodations in which at the time of the offense any person is present; or
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> (4) enters a building or occupied structure, or separately secured or occupied portion thereof that is not adapted for overnight accommodations in which at the time of the offense no person is present.
>
> **(b) Defense.**—It is a defense to prosecution for burglary if any of the following exists at the time of the commission of the offense:
>
> (1) The building or structure was abandoned.
>
> (2) The premises are open to the public.
>
> (3) The actor is licensed or privileged to enter.

18 Pa.C.S. § 3502.

apply the general culpability standard of 18 Pa.C.S. § 302. Brief for Appellant at 11-12. That provision mandates expressly that "[w]hen the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts intentionally, knowingly or recklessly with respect thereto." 18 Pa.C.S. § 302(c). Hence, Crawford concludes that, to sustain his conviction, the evidence must establish that he acted intentionally, knowingly or recklessly in the knowledge that the places he entered were not public and that he was neither licensed neither privileged to enter. Brief for Appellant at 12-14. Assuming *arguendo* that Crawford's interpretation of the Burglary statute is correct, the evidence demonstrates that he acted with at least recklessness in entering each of the rooms where he was observed, including the study lounge in Huntsman Hall.

Crawford argues specifically that the evidence is not sufficient to sustain the requisite *mens rea* underlying his Burglary conviction for the Huntsman Hall entry because the study room he entered was adjacent to an Au Bon Pain café that was open to the public, and he had no other reason to be aware that his entry was not privileged. Brief for Appellant at 12-14. This argument relies on a tendentious interpretation of the testimony and the trial court's rulings that is not supported by the record. When considered together, the testimony and related rulings demonstrate that Crawford was fully aware that his entry was prohibited and that he acted

nonetheless in a transparent effort to identify students whose belongings might be easily pilfered.

Initially, Allen Watson attested that only students, staff, and faculty members or those having business with them are permitted in University buildings. N.T., Trial, 7/25/11, at 33. As Crawford makes no pretense of falling into one of these categories, Watson's testimony is sufficient in itself to establish that Crawford was not privileged to be there. ***See Commonwealth v. Tate***, 445 A.2d 1250, 1251 (Pa. Super. 1982) (noting that testimony of chief security officer for city housing development corporation that defendant did not have permission to enter corporation-owned house where he was found was sufficient to sustain Commonwealth's burden of proving defendant's lack of permission to enter for purposes of Burglary and Criminal Trespass convictions). Watson also testified that the study room Crawford entered was posted with a "No Trespassing" sign on the door. N.T., Trial, 7/25/11, at 33. Although defense counsel objected to that testimony, the court overruled the objection, thus admitting evidence sufficient to show that Crawford (and any other unauthorized person) was on notice not to enter the room. ***See id.*** Although the court did sustain Crawford's additional objection to the witness's attempt to recite additional verbiage that appeared on the sign, the record leaves no doubt that the sign was present and that it was sufficient to provide notice to outsiders not to enter the room. ***See id.*** at 33-34. In the absence of any evidence that

Crawford could not read the simple language that appeared on the "No Trespassing" sign, we find no cause to doubt the circumstantial evidence of his *mens rea* in entering the room. It was a posted room on private property with which Crawford's prior record establishes he was intimately familiar. We conclude accordingly that the evidence sustains at least a finding that Crawford's entry was at least knowing and therefore sufficient to sustain his conviction of Burglary.[3] Consequently, we find no grounds for relief on the basis of Crawford's first question.

In support of his second question, Crawford alleges that the same omissions that render the record insufficient to sustain his conviction of Burglary also undermine his conviction of Criminal Trespass. Brief for Appellant at 16. The Pennsylvania Crimes Code defines Criminal Trespass, in pertinent part, as follows:

§ 3503. Criminal trespass

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[3] Crime Code section 302 provides that:

> A person acts knowingly with respect to a material element of an offense when:
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> (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
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> (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

18 Pa.C.S. § 302(b)(2).

> **(a) Buildings and occupied structures.**--
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> (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[.]

18 Pa.C.S. § 3503(a)(1)(i).[4] In accordance with these provisions,

> [t]he crime of criminal trespass is committed when a person enters a building or occupied structure knowing that he is not licensed to do so . . . . [T]he basic element of this crime is an unprivileged entry and that this same element is the first element in any burglary. What makes burglary more serious in nature is the added element of intent to commit a crime while inside the building or occupied structure.

Commonwealth v. Thomas, 561 A.2d 699, 709 (Pa. 1989). Accordingly, to the extent evidence is sufficient to establish the license and privilege

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[4] In its opinion, the trial court avers that "[d]efendant was convicted of criminal trespass as a felony of the second degree under 18 Pa.C.S.A. § 3503(a)(1)(ii)." Trial Court Opinion, 5/1/12, at 10. The opinion goes on to note that "this [c]ourt agrees that the Commonwealth failed to present evidence of a 'breaking,' and believes a remand is appropriate to regrade the criminal trespass offense as a felony of the third degree under 18 Pa.C.S.A. § 3503(a)(1)(i)." Upon review of Crawford's brief, we note that he acknowledges the court's "concession;" however, he presents no argument relative to it and focuses his analysis entirely on the sufficiency of the evidence to sustain a conviction under 18 Pa.C.S. § 3503(a)(1)(i). Consequently, we deem any claim that Crawford may have raised in this regard abandoned. Moreover, we note our agreement with the Commonwealth that "[c]riminal trespass merged with burglary for sentencing purposes . . . ." as consequence of which "[r]emand is not necessary because the overall sentencing scheme is unaffected." Brief for Appellee at 6.

elements of Burglary, it must also be sufficient to sustain a conviction of Criminal Trespass. ***See id.***

Crawford contends, as he did in his challenge to his Burglary conviction, that "the Commonwealth failed to prove beyond a reasonable doubt that the appellant knew he was not licensed or privileged to be in the study room." Brief for Appellant at 16. Crawford continues that "the door to the room was neither locked nor closed and it was located within close proximity to the Au Bon Pain, a restaurant which was open to the public." ***Id.*** As we noted above, this same argument, presented in opposition to Crawford's Burglary conviction, discounts Allen Watson's testimony that Penn's buildings were for the use of students, staff and faculty, and that the door to the room Crawford entered was posted with a "No Trespassing" sign. This testimony, coupled with Crawford's entry of the building in the plain view of the security desk, which he did not approach or acknowledge, is more than sufficient to sustain a conviction of Criminal Trespass. Thus, we conclude accordingly, that Crawford's challenge to the sufficiency of the evidence to sustain his Criminal Trespass conviction is of no merit.

For the foregoing reasons, we affirm Crawford's judgment of sentence.

Judgment of sentence **AFFIRMED**.