

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

RICHARD NICOLETTI,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2748 EDA 2012

Appeal from the Judgment of Sentence September 21, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0000614-2012

BEFORE: BOWES, LAZARUS, and WECHT, JJ.

MEMORANDUM BY BOWES, J.:

FILED DECEMBER 04, 2013

Richard Nicoletti appeals from his judgment of sentence of nine to eighteen months incarceration imposed by the trial court after it found him guilty of criminal trespass, simple assault, possession of an instrument of crime ("PIC"), and terroristic threats. We affirm.

The trial court relayed the following pertinent facts.

In October of 2011, the Appellant and his mother, Debby Blood, were living at William Landolf's house at 2606 Eddington Street in Philadelphia, Pennsylvania. At some point, Mr. Landolf [, Appellant's uncle,] asked the Appellant and his mother to leave the residence due to some undisclosed conflict between the parties. On the night of October 17, 2011, Mr. Landolf texted the Appellant and told him that he could pick up his possessions from the house and then went to dinner at his neighbor Joe Degan's house, at 2600 Eddinton Street.

At approximately 5:00-5:30 p.m., Mr. Landolf received a text message from the Appellant saying, "You're throwing my stuff out. You son of a bitch. That is my baby's clothes. I'm

going to come and kick your ass. . ." Mr. Landolf ignored this message.

Sometime after dinner the Appellant appeared at the back gate of Mr. Degan's property looking for Mr. Landolf. After getting no response from anyone inside the house, the Appellant walked through the gate, entered the back patio and approached the back door of Mr. Degan's house. The Appellant saw Mr. Landolf through the screen door and start[ed] "mouthing off[.]" At this point neither Mr. Landolf nor Mr. Degan had invited the Appellant over to Mr. Degan's house or given the Appellant permission to enter Mr. Degan's yard via the fence gate.

The screen door was not locked and the Appellant opened the door and proceeded to enter Mr. Degan's house. Mr. Landolf, Mr. Degan and Mary Mason, Mr. Degan's girlfriend who was present in the kitchen during this incident, testified that the Appellant entered saying that he had a knife and Mr. Landolf also testified that the Appellant was saying he was looking for him to "kick his ass." Mr. Degan and Ms. Mason testified to seeing the knife in the Appellant's hand while Mr. Landolf only saw something shiny. In response to the Appellant entering his home, Mr. Degan told the Appellant to get off his property and rose to get his rifle from a nearby closet. As Mr. Degan was getting his gun, Mr. Landolf confronted the Appellant and both of them left Mr. Degan's kitchen and went out to the patio area of the property via the screen door. The Appellant's mother, Debby, testified that she saw her son "flying" out of the back door into the patio area. Outside, Mr. Landolf tells the Appellant that he is on private property and that he should leave and the Appellant again threatens Mr. Landolf saying[,] "I'm going to kick your ass."

Eventually the Appellant leaves Mr. Degan's property and lingers in the public alley behind Mr. Degan's house. While the Appellant is in the alley Mr. Landolf hears a gun being cocked and sees Mr. Degan standing inside his home at the back door with his rifle. Mr. Degan tells the Appellant to "get the hell off my property." Mr. Degan disappears back inside the house to call the police and eventually the Appellant gets into a car with his mother and leaves the area.

Trial Court Opinion, 3/4/13, at 3-5 (internal citations omitted).

Police arrested Appellant and he proceeded to a non-jury trial. The court found Appellant guilty of simple assault, terroristic threats, PIC, and criminal trespass graded as a third degree felony. The court imposed a nine-to-eighteen-month term of incarceration for the criminal trespass charge and no further penalty for the remaining convictions. This timely appeal ensued. The parties have complied with Pa.R.A.P. 1925. The matter is now ready for our review. Appellant's sole contention on appeal is as follows.

Was not the evidence insufficient as a matter of law to sustain [A]ppellant's conviction for criminal trespass as a felony of the third degree where the Commonwealth failed to prove beyond a reasonable doubt that [A]ppellant had the *mens rea* necessary to commit the crime in that the Commonwealth did not prove that [A]ppellant knew he was not privileged to enter his neighbor's open back door looking for his uncle?

Appellant's brief at 3.

Appellant's challenge is to the sufficiency of the evidence. Specifically, he argues that the Commonwealth failed to establish that he did not know that he was not allowed to enter his neighbor's residence. In deciding a sufficiency challenge, "we must determine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as verdict winner, support the conviction beyond a reasonable doubt." ***Commonwealth v. Brown***, 52 A.3d 320, 323 (Pa.Super. 2012). The Commonwealth can meet its burden "by wholly circumstantial evidence and 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.” **Id.**

This Court cannot “re-weigh the evidence and substitute our judgment for that of the fact-finder.” **Id.** Additionally, “the entire record must be evaluated and all evidence actually received must be considered.” **Id.** Further, we must draw all reasonable inferences from the evidence in favor of the Commonwealth as the verdict-winner. **Commonwealth v. Hopkins**, 67 A.3d 817, 820 (Pa.Super. 2013). “Where there is sufficient evidence to enable the trier of fact to find every element of the crime has been established beyond a reasonable doubt, the sufficiency of the evidence claim must fail.” **Brown, supra** at 323. “[T]he evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented.” **Id.**

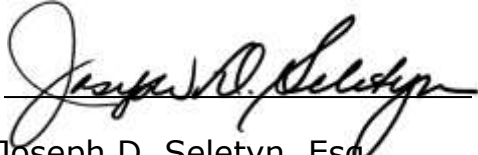
Criminal trespass graded as a third degree felony requires the Commonwealth to prove that the defendant, knowing that he is not licensed or privileged to do so, enters a building or occupied structure. 18 Pa.C.S. § 3503(a)(1)(i). In the instant case, the evidence shows that Appellant threatened to beat up Landolf while outside the residence in question. Without being invited inside, Appellant then opened a door to the home and entered without permission, continued to threaten Landolf, and pulled out a knife. Appellant was directed to leave the property by the owner, but did not immediately do so. This evidence, and the reasonable inferences

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derived therefrom, is sufficient to establish that Appellant was not licensed or privileged to enter the home.

Judgment of sentence affirmed.

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: 12/4/2013