

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JONATHAN L. BAILEY,	:	
	:	
Appellant	:	No. 3103 EDA 2010

Appeal from the Judgment of Sentence entered on October 25, 2010  
in the Court of Common Pleas of Philadelphia County,  
Criminal Division, No. CP-51-CR-0015810-2009

BEFORE: MUSMANNO, WECHT and PLATT\*, JJ.

MEMORANDUM BY MUSMANNO, J.:

Filed: January 24, 2013

Jonathan L. Bailey (“Bailey”) appeals from the judgment of sentence imposed following his convictions of terroristic threats, criminal mischief, and criminal trespass. **See** 18 Pa.C.S.A. §§ 2706(a)(1), 3304(a)(5), 3503(a)(1)(ii). We affirm.

The trial court set forth the relevant underlying facts:

On November 17, 2009, at approximately 1:00 a.m., April Collins [“Collins”] and her three children were asleep in her house at 5823 Crittenden Street, Philadelphia, Pennsylvania. Shortly after 1:00 a.m., [ ] Collins was awakened by her son, Isaiah [Collins], and she ran from her bed down to the second floor of the house. When [ ] Collins reached the second floor[, ] she saw [Bailey] walking up the first floor stairs. [ ] Collins told [Bailey] to get out of the house, multiple times. [ ] Collins testified that [Bailey] responded that he just wanted to “talk or something,” then stated that he was going to “burn the house down, you and your kids.”

Shortly [there]after, Officer [John] Crawford arrived at the house observing damage to the front door[, ] which appeared to have

\*Retired Senior Judge assigned to the Superior Court.

been kicked in. [] Collins also testified that the screen door to the front entrance reflected damage, as if it were sliced open with a knife to unlock [the door]. Officer Crawford arrested [Bailey] inside [] Collins's house.

Isaiah Collins, the son of [] Collins and [Bailey], testified that he was awoken by a banging, he thought to be kicking, on the front door. Isaiah Collins notified his mother and went to investigate, when he saw [Bailey] on the first floor steps. Once [Bailey] walked up the stairs, Isaiah Collins told [Bailey] to "get his stuff and get out." [Bailey] had some articles of clothing inside the house. [Bailey] grabbed a shirt and said to Isaiah Collins, "don't touch me or I'll poke you." Isaiah [Collins] felt threatened by this statement as he believed [Bailey] would stab him. Isaiah Collins testified that he told [Bailey] to get out "about four times."

[] Collins testified that [Bailey] had no permission to enter her house. She further testified that he had no key, had made no payments towards the house, and had never entered the house without permission previously.

Trial Court Opinion, 4/3/12, at 2-3 (citations omitted).

Bailey waived his right to a jury trial and was tried by the Honorable Roxanne E. Covington on October 28, 2010. Judge Covington found Bailey guilty of the above-mentioned crimes. Bailey was sentenced to one and one-half to three years in prison, to be followed by four years of intensive reporting probation under the Mental Health Unit.

Bailey filed a timely Notice of appeal. The trial court ordered Bailey to file a Pennsylvania Rule of Appellate Procedure 1925(b) concise statement. Bailey filed a timely Concise Statement and the trial court issued an Opinion.

On appeal, Bailey raises the following question for our review:

Was not the evidence insufficient to sustain [Bailey's] conviction for criminal trespass where the Commonwealth failed to

establish that [Bailey] knew he was not privileged to be in a house in which he received mail, kept clothing and had been living for eight days prior to the incident?

Brief for Appellant at 3.<sup>1</sup>

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. Brown***, 23 A.3d 544, 559-60 (Pa. Super. 2011)  
(citation omitted).

Bailey contends that the evidence was insufficient to support his criminal trespass conviction because he had been living in the home for eight days prior to the incident in question without any issue. Brief for Appellant at 8, 9, 11-12. Bailey argues that he had never been denied entry into the home and that he had not engaged in any argument with Collins regarding

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<sup>1</sup> We note that Bailey raised a claim regarding the trial court's denial of his Motion for a mistrial in his Concise Statement. However, Bailey has abandoned this claim on appeal.

his privileges for entering the home. *Id.* at 8, 9-10. Bailey concedes that he broke Collins's door, but asserts that this did not demonstrate that he was not privileged to enter the home. *Id.* at 8-9. Bailey claims that he was suffering from a bipolar disorder and that his frustration with no one answering his knocks on the door culminated with him forcing open the door. *Id.* at 9.<sup>2</sup> Bailey further claims that his behavior upon entering the home, including walking up the steps and informing Collins that he wanted to speak with her, suggests that he was licensed to enter the home. *Id.* at 9, 12. Bailey contends that he proved the defense to trespass because he reasonably believed that the owner of the home, Collins, licensed him to enter the home. *Id.* at 9-10. Bailey argues that even if his belief was in error, it was a good faith mistake and is a defense to trespass. *Id.* at 11.

Here, the trial court has addressed Bailey's claims on appeal and determined that they are without merit. **See** Trial Court Opinion, 4/3/12, at 4-6. We adopt the sound reasoning of the trial court for the purpose of this appeal. **See id.**; **see also Commonwealth v. Thompson**, 778 A.2d 1215, 1219 (Pa. Super. 2001) (concluding that evidence was sufficient to support criminal trespass conviction where credible testimony indicated that defendant entered the premises without permission and did not leave until the police arrived).

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<sup>2</sup> Bailey concedes that he did not have a key to the front door of the home. Brief for Appellant at 9.

As an addendum, we note that we are not persuaded by Bailey's argument that he should not have been convicted of criminal trespass since he "reasonably believed" that Collins provided him license to access the home. While such an affirmative defense exists under 18 Pa.C.S.A. § 3503(c)(3), we conclude that the trier of fact was free to disbelieve Bailey's version of the events. **See *Brown***, 23 A.3d at 559-60 (stating that this Court must view all of the evidence in a light most favorable to the Commonwealth, as the verdict winner, and that the fact-finder is free to believe all, part, or none of the evidence presented). Similarly, the fact that Bailey had clothes at the home and that he had some mail delivered there does not undermine the verdict under the relevant standard of review. **See *id.*; see also *Commonwealth v. Andrews***, 768 A.2d 309, 317 (Pa. 2001) (stating that while some evidence supported the defendant's sufficiency argument, an appellate court may not reweigh the evidence or substitute its judgment for that of the fact-finder). Furthermore, Bailey's claims that he did not have notice that he was not allowed in the home and that his entry into the home was a mistake due to his belief that he could enter the home do not demonstrate that the evidence was insufficient. Indeed, the fact that Bailey forced open the door indicates that he did not have license to enter the home. **See *Commonwealth v. Hopkins***, 747 A.2d 910, 917 (Pa. Super. 2000) (stating that "[b]oth license and privilege can be vitiated if induced by force, duress or deception of a kind sought to be prevented by

the law defining the offense.”); **see also** 18 Pa.C.S.A. § 311(c)(4). Here, the trial court was free to believe Collins’s testimony that Bailey did not have permission to enter the home, that Bailey forced open the front door, that Collins repeatedly told Bailey to leave the home, and that Officer Crawford arrested Bailey inside of the home. **See** N.T., 7/28/10, at 16-20; **see also id.** at 33-37 (wherein Isaiah Collins testified that Bailey kicked in the front door, that Bailey did not have permission to enter the home, and that the police made Bailey leave the home). Thus, based upon the foregoing, the evidence was sufficient to support Bailey’s criminal trespass conviction.

Judgment of sentence affirmed.

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

COMMONWEALTH OF PENNSYLVANIA : CP-51-CR-0015810-2009  
: :  
vs. : 3103 EDA 2010  
: :  
JONATHAN BAILEY : :

OPINION

COVINGTON, J.

FILED

APR 03 2012

Criminal Appeals Unit  
First Judicial District of PA

Procedural History

The defendant appeals a conviction of Criminal Trespass-Breaking into a Structure (18 § 3503 §§ A1II), a felony, as well as a denial of an oral motion for mistrial. On July 28, 2010, the defendant appeared before the Court and was found guilty of Terroristic Threats with Intent to Terrorize Another (18 § 2706 §§A1), Criminal Mischief (18 § 3304 §§ A5) and Criminal Trespass-Breaking into a Structure (See *infra*). The defendant was sentenced on October 25, 2010 to one and a half (1 ½) to three (3) years of incarceration followed by four years of intensive reporting probation under the Mental Health Unit.

On October 28, 2010, 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.

## **Factual History**

On November 17, 2009, at approximately 1:00 a.m., April Collins and her three children were asleep in her house at 5823 Crittenden Street, Philadelphia, Pennsylvania. N. T. 7/28/2010 at 11. Shortly after 1:00 a.m. Mrs. Collins was awakened by her son, Isaiah, and she ran from her bed down to the second floor of the house. Id at 12. When Mrs. Collins reached the second floor she saw the Defendant walking up the first floor stairs. Id at 13. Mrs. Collins told the Defendant to get out of the house, multiple times. Id. at 17. Mrs. Collins testified that Defendant responded that he just wanted to “talk or something,” then stated he was going to “burn the house down, you and your kids.” Id. at 35.

Shortly after, Officer Crawford arrived at the house observing damage to the front door which appeared to have been kicked in. Id. at 43. Mrs. Collins also testified the screen door to the front entrance reflected damage, as if it were sliced open with a knife to unlock. Id. at 18. Officer Crawford arrested the Defendant inside Mrs. Collin’s house. Id. at 18-19.

Isaiah Collins, the son of April Collins and the Defendant, testified he was awoken by a banging, he thought to be kicking, on the front door. Id. at 33. Isaiah Collins notified his mother and went to investigate, when he saw the Defendant on the first floor steps. Id. at 33. Once the Defendant walked up the stairs, Isaiah Collins told the Defendant to “get his stuff and get out.” Id. at 39. Defendant had some articles of clothing inside the house. Id. at 26. Defendant grabbed a shirt and said to Isaiah Collins, “don’t touch me or I’ll poke you,” Id. at 36. Isaiah felt threatened by this statement as he believed the Defendant would stab him. Id. Isaiah Collins testified he told the Defendant to get out “about four times.” Id. at 34.



Mrs. Collins testified that Defendant had no permission to enter her house. N. T. 7/28/2010 at 17. She further testified that he had no key, had made no payments towards the house, and had never entered the house without permission previously. Id. at 17-19.

During Mrs. Collins testimony, the Defendant's attorney asked on cross, "Ma'am when he said this stuff allegedly about burning the house and this and that, is it fair to say he seemed a little bit out of it an angry at the time; is that right?" N. T. 7/28/2010 at 29. The Commonwealth objected to the question as calling for the Defendant's state of mind. Id. The Court overruled the objection. Id. Mrs. Collins proceeded to say, "I don't know what he was, but he's done violent things before." Id. Defendant's attorney then moved for a mistrial, on the grounds that Mrs. Collins testified to prior incidents evidence, unsolicited by his question. Id. The court denied the motion for mistrial.

### **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.

A trial court's decision to deny a motion for mistrial will be upheld absent an abuse of discretion. *Commonwealth v. Robinson*, 543 Pa. 190, 200 (Pa. 1995) (citing *Commonwealth v. Green*, 525 Pa. 424, 460 (Pa. 1990)).

### **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 support the conviction for Criminal Trespass; and (2) the trial court erred in denying defendant's motion for a mistrial.

#### **I. The Evidence Presented was Sufficient to Sustain the Conviction for 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) breaks into any building or occupied structure . . . ." 18 Pa.C.S.A § 3503(a)(1)(ii). The statute defines "breaks into" as gaining entry by force breaking intimidation, unauthorized opening of locks, or by using an opening not designed for human access. *Id.* § 3503(a)(3). 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.<sup>1</sup> *Id.* Like consent, both license and privilege can be vitiated if induced by force, duress or deception of a kind sought to be prevent by the law defining the offense. *Id.*

In *Hopkins*, the defendant was convicted of Criminal Trespass after the complaining witness testified the defendant forced his way into the house. 2000 Pa. Super. 47, P16. T

defendant forced his way in, struck the complaining witness and beat the complaining witness inside the premises. The forcible entry followed by the beating of the victim was sufficient to establish unlicensed status beyond a reasonable doubt. *Id.*

In *Commonwealth v. Francis*, the defendant was convicted of criminal trespass after testifying that he was told that he wasn't supposed to be in the property, but broke into the property by ripping off duct tape from a plastic window to unlock the door. 2006 Pa. Dist. & Cnty. Dec. LEXIS 338, 19. Though the defendant previously shared the residence with his ex-girlfriend, there was sufficient to prove criminal trespass beyond a reasonable doubt. *Id.* at 20.

In the the instant matter, defense argues there is insufficient evidence to prove all elements beyond a reasonable doubt because the defendant had stayed over night a few times and received mail at that residence. N.T. 7/28/2010 at 26, 46. This claim lacks merit. The record reflects that the defendant was given no permission to enter the premises that night and did not possess any legal right to the property. N.T. 7/28/2010 at 13. Evidence presented shows defendant broke into the property by cutting the outer screen door to unlock it, then kicking in the interior door. N.T. 7/28/2010 at 15. The Commonwealth overwhelmingly proved the defendant caused the damage to the doors where prior to going to bed Mrs. Collins observed the front door was intact, then a loud banging heard preceding Defendant's entry, and the damages observed after the incident. N.T. 7/28/2010 at 14. These same acts also supported the defendant's conviction of Criminal Mischief.

In line with the *Hopkins* analysis, the entry in the case at hand negates the possibility of the Defendant having permission to enter the premises. The Defendant forced an entry, like *Hopkins*, then made threats, in an analogous matter to the attacks in *Hopkins*. Additionally, the address the defendant provided to the police when they arrived to escort him out of the residence

did not match the residence of the complaining witness. N.T. 7/28/2010 at 42. Like *Francis*, the defendant's relationship with the complaining witness and sharing a son does not mitigate the fact that the defendant broke into the residence without permission.

In conclusion, the evidence, viewed in light most favorable to the Commonwealth, was sufficient to prove beyond a reasonable doubt that the defendant knew he had no permission to enter the residence that night, but broke into it regardless by destroying the two doors leading into the complaining witness' residence.

## II. The Trial Court did Not Err in Denying Defendant's Motion for Mistrial

The Defendant's motion for mistrial was properly denied. A mistrial is required only when the incident upon which the motion is based is of such a nature that its unavoidable effect is to deprive appellant of a fair trial. *Commonwealth v. Hernandez*, 498 Pa. 405 (Pa. 1982) (citing *Commonwealth v. Brown*, 489 Pa. 285 (Pa. 1980)). It is well-settled that a passing reference to a previous criminal activity on the part of a defendant is insufficient to entitle that defendant to a mistrial unless the record illustrates definitively that prejudice resulted from the reference. *Commonwealth v. Johnson* 446 Pa. Super. 192, 200 (Pa. Super. 1995) (citing *Commonwealth v. Sattazahn*, 428 Pa. Super. 413, 434 (Pa. Super. 1993)). The nature and whether the remark was intentionally elicited by the Commonwealth are additional factors to determining whether a mistrial is necessary. *Id.*

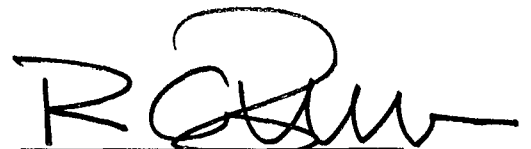
The statement upon which the motion for mistrial was based had no effect of depriving Defendant of a fair trial. The statement, "...he's done violent things before," by Commonwealth's witness, Mrs. Collins, was elicited on cross-examination by defense counsel, in response to a question regarding defendant's demeanor and emotional state of mind. This passing reference to prior acts by the Defendant had no effect to definitively prejudice the fact-finder or deprive the Defendant of a fair trial. The statement itself is relevantly vague as to loose

all prejudicial meaning. A statement that someone has done violent things before fails to establish a clear tendency or propensity towards violence or crime. Beyond this, the crimes Defendant was convicted of were not violent crimes, and thus his tendency towards violence is irrelevant. Defendant was convicted of Terroristic Threats with Intent to Terrorize Another (18 § 2706 §§A1), Criminal Mischief (18 § 3304 §§ A5) and Criminal Trespass-Breaking into a Structure. Terroristic Threats only requires a threat, judged by the credibility of the witness and all the evidence, and the veracity of the threat is irrelevant. Finally, as the statement was not elicited by the Commonwealth, and was in response to a cross-examination question by the defense attorney, the motion for mistrial is moot.

**Conclusion**

The defendant has failed to demonstrate his claim that the evidence was insufficient to support this Court's conclusions beyond a reasonable doubt. The defendant has also failed to demonstrate an abuse of discretion to invalidate the denial of motion for mistrial. Viewing the evidence in the light most favorable to the Commonwealth, the Court respectfully requests the Appellate Court to affirm the trial court's determination of guilt.

BY THIS COURT:

A handwritten signature in black ink, appearing to read 'Roxanne E. Covington', written over a horizontal line.

Roxanne E. Covington

April 3, 2012