**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

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| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellee | : | |
| | : | |
| v. | : | |
| | : | |
| WAYNE MATTHEW RAFFERTY, | : | |
| | : | |
| Appellant | : | No. 1129 EDA 2011 |

Appeal from the Judgment of Sentence April 11, 2011,
Court of Common Pleas, Montgomery County,
Criminal Division at No. CP-46-CR-0007381-2009

BEFORE: DONOHUE, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY DONOHUE, J.: **FILED AUGUST 13, 2013**

Appellant, Wayne Matthew Rafferty ("Rafferty"), appeals from the trial court's April 11, 2011 judgment of sentence imposing six to 23 months of incarceration and restitution after his conviction for burglary (18 Pa.C.S.A. § 3502(a)(2) and related offenses. We affirm.

The trial court's Pa.R.A.P. 1925(a) opinion sets forth the pertinent facts:

> In April, 2009 the housemate of the owners of a home on North Price Street in Pottstown Borough, Montgomery County returned home from work at about 11:00 PM to find the floodlights in the driveway off, portions of the house that were orderly when she left, ransacked, and a safe that was locked when she left, opened. While she had been given the combination of the safe when it was installed, she did not remember the combination. She knew it was locked when she left, because the dog food was kept on top, and she was responsible to feed the dogs and put them outside. The housemate

occupied half the basement and shared the living areas. Although there were scratches that suggested entry was made through the basement door, nothing in her space was disturbed, and a laptop computer and her musical instruments were untouched. The housemate called the homeowners, who called the police, and came back from their weekend camping trip.

Only the areas of the home occupied by the homeowners were disturbed. Items taken were wine and items of a personal nature, including bras, underwear, sex toys, a ring, a stop watch, a stuffed toy pug dog, and old driver's license of the female homeowner, and a wedding picture of the defendant and his wife. Also taken were two laptop computers which had the 'swiglifestyle.com' profile and passwords of the homeowners, while other computers were not taken. Items of value, such as credit cards and electronic equipment, were left. A key, recovered from [Rafferty], was also taken.

All four tires of the husband-homeowner's treasured Corvette were punctured. It was in the driveway where the floodlight bulbs had been unscrewed. Those lights worked when the housemate left for her job that afternoon.

[Rafferty], his wife, and the homeowners had been in what [Rafferty] described as a polyfidelitious [sic] relationship, physical, emotional and sexual, from August 2006 until July 2008, when the homeowners broke it off because they wanted to date other couples. [Rafferty] tried to continue the relationship and sent numerous emails, texts and letters. Just before the breakup he appeared unannounced in the home. He had helped install the safe and knew its combination. The crimes took place shortly after [Rafferty] returned from Army officer training in Georgia. The stolen ring was found behind a plywood panel in [Rafferty's] home, and he turned some of the other missing property over to the police.

Trial Court Opinion, 12/5/12, at 1-3.

Rafferty's bench trial took place on October 12 and 15, 2010. The trial court found Rafferty guilty of burglary (18 Pa.C.S.A. § 3502(a)(2)), criminal trespass (18 Pa.C.S.A. § 3503(a)(1)(i)), theft by unlawful taking (18 Pa.C.S.A. § 3921), theft by receiving stolen property (18 Pa.C.S.A. § 3925), and criminal mischief (18 Pa.C.S.A. § 3304(b)). Rafferty filed a post-sentence motion, which the trial court denied on April 27, 2011. This timely appeal followed. Rafferty challenges the sufficiency and weight of the evidence in support of his convictions. We will address these arguments in turn.

We review Rafferty's challenge to the sufficiency of the evidence as follows:

> 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. 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. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. 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.
>
> The Commonwealth may sustain its burden by means of wholly circumstantial evidence. Significantly, we may not substitute our judgment

> for that of the fact finder; thus, 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 will be upheld.

***Commonwealth v. Pedota***, 64 A.3d 634, 635-36 (Pa. Super. 2013) (citations and quotation marks omitted).

Rafferty argues that the record does not contain sufficient evidence that he entered the home of the victims, Russell and Kim Glantz ("the Glantzes"), with intent to commit a crime therein.[1] Since Rafferty challenges only these elements of his convictions, we will confine our analysis accordingly.[2] ***See Commonwealth v. Gibbs***, 981 A.2d 274, 281 (Pa.

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[1] Rafferty's argument is relevant to his burglary and criminal trespass convictions. The Pennsylvania Crimes Code defines burglary in relevant part as follows:

> § 3502. Burglary.
>
> (a) Offense defined. --A person commits the offense of burglary if, with the intent to commit a crime therein, the person:
>
> [* * *]
>
> (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;

18 Pa.C.S.A. § 3502(a)(2). The Crimes Code defines criminal trespass as surreptitious entry into an occupied structure by a person who knows that he lacks license or privilege to do so. 18 Pa.C.S.A. § 3503.

[2] Rafferty mentions his other convictions in passing, but develops no argument with respect to them.

Super. 2009) (defendant must specify which element or elements of his conviction are not supported by sufficient evidence), *appeal denied*, 607 Pa. 690, 3 A.3d 670 (2010).

Rafferty argues that the evidence implicating him as the perpetrator is purely circumstantial. As noted above, the Commonwealth can meet its burden based wholly on circumstantial evidence. ***Pedota***, 64 A.3d at 636. In the case of a burglary, circumstantial evidence is sufficient to establish that the defendant was at the scene at the time of the burglary. ***Commonwealth v. Whitacre***, 878 A.2d 96, 99-100 (Pa. Super. 2005), *appeal denied*, 586 Pa. 750, 892 A.2d 823 (2005).

The record reflects that Rafferty and his wife were involved in a spouse sharing relationship with the Glantzes beginning in 2006. N.T., 10/12/10, at 49-50. The relationship ended in 2008 when the Glantzes decided they wanted to see other couples. ***Id.*** at 50. Rafferty was upset by the Glantzes' decision. ***Id.*** Rafferty continued to communicate with the Glantzes, and on one occasion showed up in the Glantz house uninvited and unannounced. ***Id.*** at 52-53. The Glantzes then informed Rafferty that they wanted no further contact with him. ***Id.*** Nonetheless, Rafferty's attempts to revive the relationship persisted. ***Id.*** at 55. Rafferty eventually demanded the return of a ring he had given Kim Glantz and texted her that there would be trouble if she did not return the ring. ***Id.*** at 56-59. Rafferty also threatened to release compromising pictures of the Glantzes. ***Id.*** at 59.

Items stolen in the burglary of the Glantz home were items of significance from the relationship between the Raffertys and the Glantzes. Among those items were laptop computers that contained private photographs of the Glantzes as well as their passwords for the swinglifestyle.com website through which the Raffertys and the Glantzes first met. ***Id.*** at 69. The Glantzes' swinglifestyle.com password was used on the night of the burglary; Kim Glantz received an email from the website notifying her of a request to delete her profile. ***Id.*** at 70. Also stolen were 18 to 20 bottles of wine from a wine refrigerator that was a gift from Rafferty to Kim Glantz. ***Id.*** at 70-71. A sex toy and a stuffed animal that Rafferty gifted to Kim Glantz were missing. ***Id.*** The thief also gained access to the Glantzes' safe. The Glantzes had given Rafferty the combination to the safe when the couples were on good terms. ***Id.*** at 74. Other items of apparent value, such as televisions, game consoles, and credit cards, were not stolen.

Drawing inferences in favor of the Commonwealth as verdict winner, we conclude that the record contains more than sufficient evidence that Rafferty was guilty of burglary and criminal trespass. He repeatedly sent harassing emails and texts to the Glantzes after the couples broke off their relationship, and threatened to cause trouble for them. The stolen items all were significant in some way to the spouse sharing relationship between the couples, while other items of value were left behind. The perpetrator did not

steal anything that belonged to the Glantzes' housemate. Moreover, police found Rafferty in possession of several items stolen from the Glantz home. All of this evidence supports the Commonwealth's theory that the burglary was motivated by personal animus toward the Glantzes and that Rafferty was the perpetrator. Rafferty's first argument lacks merit.

Next, Rafferty argues that the trial court abused its discretion in denying Rafferty's motion for a new trial based on weight of the evidence. We review this argument as follows:

> The finder of fact is the exclusive judge of the weight of the evidence as the fact finder is free to believe all, part, or none of the evidence presented and determines the credibility of the witnesses.
>
> As an appellate court, we cannot substitute our judgment for that of the finder of fact. Therefore, we will reverse a […] verdict and grant a new trial only where the verdict is so contrary to the evidence as to shock one's sense of justice. […].
>
> Furthermore, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

***Commonwealth v. Cruz***, 919 A.2d 279, 281-82 (Pa. Super. 2007) (citations omitted), *appeal denied*, 593 Pa. 725, 928 A.2d 1289 (2007).

In a single paragraph in support of his argument, Rafferty argues only that the evidence was circumstantial and that no "smoking gun" confirmed Rafferty's presence at the scene of the crime. Rafferty's Brief at 9. As set

forth in our analysis of Rafferty's first argument, the record contains a substantial body of evidence implicating Rafferty as the perpetrator. The trial court did not abuse its discretion in denying Rafferty's motion for a new trial.

Since we have concluded that both of Rafferty's arguments lack merit, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

Prothonotary

Date: 8/13/2013