

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
LAMOND V. LAWRENCE	:	
	:	
Appellant	:	No. 398 MDA 2023

Appeal from the Judgment of Sentence Entered February 14, 2023
In the Court of Common Pleas of Cumberland County Criminal Division at
No(s): CP-21-CR-0002949-2020

BEFORE: PANELLA, P.J., McLAUGHLIN, J., and COLINS, J.*

MEMORANDUM BY McLAUGHLIN, J.:

FILED: JANUARY 18, 2024

Lamond V. Lawrence appeals from the judgment of sentence for his defiant trespass conviction.¹ He challenges the admissibility of evidence as well as the sufficiency and weight of the evidence. We vacate and remand for further proceedings.

The Commonwealth presented the following evidence at the nonjury trial. An officer with the Shippensburg University police department, Officer Shawn Fraker, testified that on September 30, 2020, while on patrol, he was dispatched to one of the dormitory halls. N.T., Trial, 1/9/23, at 5. He explained that he “was sent there to make sure that [Lawrence] – he was given – sent

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S.A. § 3503(b)(1)(i).

an email.” **Id.** Counsel raised a hearsay² objection and the court responded, “I don’t know why he’s receiving information, so I don’t know if an exception applies. He was sent an email saying no trespass or something?” **Id.** Officer Fraker told the court that Lawrence “was sent a suspension[.]” **Id.** When Officer Fraker attempted to testify as to the contents of the email, counsel stated, “That’s hearsay.” **Id.** at 6. The court responded by asking, “What did the email say?” **Id.** Officer Fraker testified that he received a copy of the email sent to Lawrence and that “[i]t was a letter of suspension from the university.” **Id.** Counsel again stated, “[H]earsay.” **Id.**

The court sustained the objection “as to the truth of the matter of whether [Lawrence] got suspended or not” and overruled it to the extent that it explained what the officer did after receiving the email. **Id.** at 7. Officer Flaker testified that he gave Lawrence a copy of the email. **Id.** The Commonwealth sought to present the email to the officer for identification purposes and counsel objected. **Id.** Counsel argued that the letter was inadmissible hearsay, and the Commonwealth needed an official from the University to authenticate the letter. **Id.** at 9. The trial court allowed the Commonwealth to tentatively introduce the letter and held counsel’s objection under advisement. **Id.** at 12.

Office Flaker testified that he arrived at Lawrence’s dormitory around 4:31 p.m., handed Lawrence the letter, and informed him that according to

² Hearsay is an out of court statement offered “to prove the truth of the matter asserted in the statement.” Pa.R.E. 801(c).

the letter he had to leave campus by 5 p.m. “because of a suspension.” **Id.** at 14. Officer Flaker testified that the suspension was effective “[u]ntil further review of [Lawrence’s] violations.” **Id.** at 15. Officer Flaker testified that at the time he had worked for the University for 10 years and had served “no[-] trespass notices” on students. **Id.** at 24.

Another Shippensburg University police officer, Sergeant Leonard Lovejoy, Jr., then testified that on October 7, 2020, he saw Lawrence walking on “the University property.” **Id.** at 17. He informed Lawrence that he was not permitted to be on campus due to his suspension and Lawrence told the Sergeant that he was incorrect. **Id.** at 18. After confirming with the Dean of Students that Lawrence was not permitted on campus, Sergeant Lovejoy told Lawrence “that he was no longer permitted on campus for any reason” and “released Mr. Lawrence from the scene with a friend[.]” **Id.** at 19.

The trial court found Lawrence guilty of defiant trespass, graded as a misdemeanor of the third degree, and sentenced him to pay the costs of prosecution and a \$25 fine. **See** Order of Court, filed 1/10/23; Order of Court, filed 2/15/23. The court also held that the email was “inadmissible as an insufficiently authenticated business record.” Order of Court, filed 1/10/23, at 1 n.1. Lawrence filed a post-sentence motion challenging the weight of the evidence. **See** Post-Sentence Motion, filed 2/24/23. The court denied the motion and this timely appeal followed.

Lawrence presents the following issues:

- I. Whether the court violated Mr. Lawrence's procedural due process rights by delaying consideration of a hearsay objection and allowing testimony to continue before ruling on such motion?
- II. Whether the evidence was insufficient to prove beyond a reasonable doubt that Mr. Lawrence was guilty of defiant trespass?
- III. Whether the verdict was against the weight of the evidence so as to shock one's sense of justice where no actions described by the police would have afforded them the ability to prevent Mr. Lawrence, a student at Shippensburg University, of being on university property without any subsequent information, i.e. a notice of exclusion from the university?

Lawrence's Br. at 6 (unnecessary capitalization and suggested answers omitted).

Lawrence maintains that the court violated his procedural due process rights to a fair hearing before an impartial court. He argues that the court violated this right when it failed to make a contemporaneous ruling on the hearsay objection to the contents of the email. Lawrence maintains that because the court failed to rule immediately on the objection and instead allowed Officer Fraker to testify as to its contents, "[a]n unacceptable risk of actual bias materialized" on the part of the trial court as fact-finder. ***Id.*** at 18. Lawrence likens the instant case to ***Commonwealth v. Levanduski***, 907 A.2d 3, 20 (Pa.Super. 2006), where this Court concluded that a trial court improperly admitted hearsay evidence in the form of a letter from the deceased victim. ***See id.*** at 19. He further argues that the court's ultimate conclusion that the email was inadmissible prejudiced him because "[t]he delay in ruling subjected the court's verdict to improper influence," namely

Officer Fraker's testimony about the contents of the email. **Id.** at 22. Additionally, he claims that, unlike in **Levanduski**, here, "no independent evidence of record established the same information" as Officer Fraker's testimony about the email. **Id.** Because the Commonwealth was required to prove that Lawrence was not allowed to be on campus and that an authorized person told him to leave the premises, Lawrence claims the court's delayed ruling was so prejudicial that it denied him his right to due process.

"Article I, Section 9 of the Pennsylvania Constitution guarantees a criminal defendant the right to due process of law." **Commonwealth v. Turner**, 80 A.3d 754, 763 (Pa.Super. 2013). Procedural due process requires that a defendant be given "adequate notice, the opportunity to be heard, and the chance to defend . . . before a fair and impartial tribunal having jurisdiction over the case." **Id.** at 764. "A question regarding whether a due process violation occurred is a question of law for which the standard of review is *de novo* and the scope of review is plenary." **Commonwealth v. Smith**, 131 A.3d 467, 472 (Pa. 2015).

In any trial, the trial court has the authority to determine the order, presentation, and admissibility of evidence. **See Commonwealth v. Safka**, 141 A.3d 1239, 1249 (Pa. 2016). In a bench trial, the trial court performs dual roles "as the gate keeper, ruling on the admissibility of evidence" and "as the fact-finder, affording weight to the admissible evidence." **Id.** "[A] trial court, acting as finder of fact, is presumed to know the law, ignore prejudicial

statements, and disregard inadmissible evidence.” ***Commonwealth v. Smith***, 97 A.3d 782, 788 (Pa.Super. 2014).

The trial court did not deny Lawrence his due process rights by delaying its ruling. We presume that the court sitting as fact-finder disregarded the hearsay testimony from Officer Flaker. ***See id.*** Additionally, despite Lawrence’s suggestion, the record does not support a finding of bias. The court determined that even if it had made a contemporaneous ruling to exclude the email at trial, “Officer Fraker still would have been permitted to testify to his own actions as he did at trial . . . that he told [Lawrence] to leave University property by 5:00 p.m. that day.” Rule 1925(a) Opinion, filed 5/10/23, at 5-6. Moreover, Lawrence’s reliance on ***Levanduski*** affords him no relief. Levanduski challenged the admission of evidence, not a due process violation. ***See Levanduski***, 907 A.2d at 11.

Next, Lawrence claims that the Commonwealth presented insufficient evidence that he was not permitted on campus at the time Sergeant Lovejoy saw him on October 7. He also claims that the Commonwealth failed to show that he knew or had notice that he was not permitted on campus that day. He contends that under ***Commonwealth v. Downing***, 511 A.2d 792 (Pa. 1986), “while campus police or security may enforce the University’s choice to exclude individuals from campus, it is the University itself who decides whether to extend or terminate an individual’s privilege to access its grounds.” Lawrence’s Br. at 29. Thus, he claims that the Commonwealth was required to show that “Lawrence was not licensed or privileged to be on campus [and]

that he had knowledge of such an exclusion.” **Id.** He maintains that “without evidence from the University verifying when Mr. Lawrence’s campus presence was reviewed,” the Commonwealth failed to meet its burden to prove that Lawrence “knew he was not licensed or privilege to be on campus[.]” **Id.** at 30.

When reviewing a challenge to the sufficiency of the evidence, we must determine “whether, when viewed in a light most favorable to the verdict winner, the evidence at trial and all reasonable inferences therefrom is sufficient for the trier of fact to find that each element of the crimes charged is established beyond a reasonable doubt.” **Commonwealth v. Wanner**, 158 A.3d 714, 718 (Pa.Super. 2017) (citation omitted). The Commonwealth may satisfy its burden by wholly circumstantial evidence. **See id.** (citation omitted).

The Commonwealth meets its burden for establishing the crime of defiant trespass when it presents evidence that the defendant, “knowing that he is not licensed or privileged to do so, . . . enters or remains in any place as to which notice against trespass is given by actual communication to the actor.” 18 Pa.C.S.A. § 3503(b)(1)(i). The notice may be “direct or indirect.” **Wanner**, 158 A.3d at 718 (quoting **Commonwealth v. Namack**, 663 A.2d 191, 194 (Pa.Super. 1995)).

We first address Lawrence’s claim that **Downing** should direct our decision. In **Downing**, the defendant was arrested and charged with defiant trespass after demanding entry to Temple University’s law library and being

told to leave. In that case, our Supreme Court addressed “whether the law library [at Temple University] was open to members of the public at the time of the trespass, for, if it were, then [the defendant] was licensed and privileged to enter the library regardless of the no-trespassing notice.” 511 A.2d at 794. The Court noted that it is an affirmative defense to defiant trespass that “the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises[.]” **Id.** at 793 n.2 (quoting 18 Pa.C.S.A. § 3503(c)(2)). The Court explained that although the law school had issued the defendant a library card, it had revoked access to non-law students because it was finals and had given the defendant notice orally, both by university staff and police, and by posting. **Id.** at 793-94. The Court thus found the evidence sufficient. **See id.** at 795.

Downing affords Lawrence no relief. Lawrence did not raise the affirmative defense raised in **Downing** and **Downing** does not require that the Commonwealth prove “evidence from the University verifying when Mr. Lawrence’s campus presence was reviewed.” As the trial court explained, the evidence established the required elements of defiant trespass:

The evidence in this matter is sufficient to sustain the conviction of defiant trespass. First, [Lawrence] entered onto Shippensburg University Property. Shippensburg University Police Sergeant Leonard Lovejoy stated that on October 7, 2020, he was assisting another officer with a traffic stop when he “observed the male that was known to [him] to be Lamond Lawrence.”

Second, [Lawrence] knew that he was not licensed or privileged to be on University property. [Lawrence] received actual communication by an agent of the University to

vacate the premises. Shippensburg University Police Officer Shawn Fraker testified that at 4:31 p.m. on September 30, 2020, he told [Lawrence] that he had to be off campus by 5 p.m. that day[.] Officer Fraker's foregoing testimony also supports that [Lawrence] received direct notice against the trespass.

Rule 1925(a) Op. at 7-8 (footnotes omitted).

We agree. The testimony and evidence at trial shows that Officer Flaker informed Lawrence that he had to leave campus by 5:00 p.m. on September 30. One week later, Sergeant Lovejoy saw Lawrence on University property and informed him that he was not permitted on campus. This evidence was sufficient.

Lawrence also maintains that the evidence was insufficient to grade the conviction as a misdemeanor of the third degree because the Commonwealth failed to show that he was ordered to leave campus and refused to comply with the order as required by Section 3503(b).

Section 3503(b) provides that the offense of defiant trespass is graded as a misdemeanor of the third degree "[e]xcept as provided in paragraph (1)(v), . . . if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person." 18 Pa.C.S.A. § 3503(b)(2). "Otherwise it is a summary offense." ***Id.*** Additionally, "the grading of the offense is dependent upon the actions of the perpetrator *once he is found to be in violation of the statute.*" ***Commonwealth v. Crosby***, 791 A.2d 366, 372 (Pa.Super. 2002) (emphasis in original).

Here, there is no evidence that after Sergeant Lovejoy ordered Lawrence to leave the area, that Lawrence defied that order. Sergeant Lovejoy testified

that after verifying that Lawrence was not permitted on campus, he informed Lawrence and released Lawrence from the scene with a friend. As such, we agree that the Commonwealth presented insufficient evidence to sustain the conviction graded as a misdemeanor of the third degree and the proper grading is that of a summary offense. **See** 18 Pa.C.S.A. § 3503(b)(2).

Finally, Lawrence challenges the weight of the evidence. He claims that the verdict here shocks the conscience “where no testimonial or physical evidence on record established the Shippensburg University Police Officers, independently wielded the authority to prevent a student from being on campus.” Lawrence’s Br. at 39. He argues that “the record reflects no direct evidence establishing the core of defiant trespass: that a person authorized to prevent individuals from being at the University, prevented Mr. Lawrence from doing so.” **Id.** at 41.

We review a challenge to the weight of the evidence for an abuse of discretion. **See Commonwealth v. Blakeney**, 946 A.2d 645, 653 (Pa. 2008). An abuse of discretion is present “where the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill-will.” **Commonwealth v. Clay**, 64 A.3d 1049, 1055 (Pa. 2013) (citation omitted).

Lawrence claims that there was no evidence that the officers were authorized to prevent him from being on campus. Such a claim challenges the

sufficiency rather than the weight of the evidence. Having already addressed Lawrence's challenge to the sufficiency of the evidence, this claim fails.

Judgment of sentence vacated. Case remanded to trial court for resentencing on the summary offense of defiant trespass. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/18/2024