

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JESSE RYAN HAFER

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2633 EDA 2012

Appeal from the Judgment of Sentence July 23, 2012
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0000175-2012

BEFORE: BOWES, J., PANELLA, J., and FITZGERALD, J.*

MEMORANDUM BY PANELLA, J.

FILED NOVEMBER 26, 2013

Appellant, Jesse Ryan Hafer, appeals from the judgment of sentence entered by the Honorable Douglas G. Reichley, Court of Common Pleas of Lehigh County. After careful review, we affirm.

Hafer was charged with breaking into a 12 unit apartment building on October 29, 2011. At the time, Doall Construction Company, the building's owner, was renovating the building and it was therefore vacant. The renovation project began in December of 2010 and was more than 80 percent complete, however, there was no functioning heating system and none of the units or common areas had been furnished.

* Former Justice specially assigned to the Superior Court.

Following a jury trial, Hafer was convicted of burglary, criminal trespass, theft by unlawful taking, conspiracy to commit burglary, and conspiracy to commit theft by unlawful taking. Thereafter, the trial court sentenced Hafer to an aggregate period of incarceration of 33 months to 10 years. Hafer filed post-sentence motions, which were denied *via* order dated August 13, 2012. This timely appeal followed.

On appeal, Hafer concedes that the evidence at trial was sufficient to support a conviction for burglary. However, he argues that the evidence was insufficient to establish that he burgled a building that was adapted for overnight accommodation. **See** Appellant's Brief, at 9.

"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." ***Commonwealth v. O'Brien***, 939 A.2d 912, 913 (Pa. Super. 2007) (citation omitted). "Any doubts concerning an appellant's guilt were to be resolved by the trier of fact unless the evidence was so weak and inconclusive that no probability of fact could be drawn therefrom." ***Commonwealth v. West***, 937 A.2d 516, 523 (Pa. Super. 2007) (citation omitted). An appellate court "may not weight the evidence and substitute our judgment for the fact-finder." ***Commonwealth v. Brumbaugh***, 932 A.2d 108, 109 (Pa. Super. 2007) (citation omitted). Further, "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.” *Id.*, at 110 (citation omitted). Additionally, “[t]he Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence.” ***Commonwealth v. Perez***, 931 A.2d 703, 707 (Pa. Super. 2007) (citations omitted).

Hafer’s argument is directed at the grading of his conviction. The Supreme Court of Pennsylvania has recently addressed this issue:

Under the Crimes Code, a burglary is generally a felony of the first degree. If, however, the building, structure, or portion entered is not adapted for overnight accommodation, and no individual is present at the time of entry, burglary is a felony of the second degree.

Commonwealth v. Graham, 607 Pa. 580, 582, 9 A.3d 196, 197 (2010) (citations omitted). Here, as in ***Graham***, there is no dispute that the relevant building was unoccupied at the time of Hafer’s burglary. However, the jury found that the apartment building was adapted for overnight accommodation and therefore Hafer’s conviction was graded as a first-degree felony.

Hafer contends on appeal that the evidence at trial was insufficient to establish that the apartment building he burgled was adapted for overnight accommodation. In ***Graham***, the Supreme Court of Pennsylvania held that “the primary focus, in assessing adaptation, should be the nature of the structure and its intended use, as distinguished from present use for

inhabitation.” **Id.**, 607 Pa. at 594, 9 A.3d at 204. In considering the nature of the structure in construction scenarios, a court should consider the progress of the work on the structure. **See id.** However,

a finding of adaptation is substantially more reasonable in circumstances in which an already adapted structure lacks features supporting continuous overnight accommodation for some temporary period, than in a situation in which the structure has not yet been adapted for overnight accommodation, albeit the adaptation may be planned and underway.

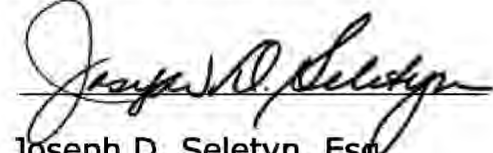
Id.

In the present case, the Commonwealth presented evidence at trial that the apartment building had been an apartment complex for decades. **See**, N.T., Trial, 5/23/12, at 57. Hafer identifies no evidence of record that it had ever been used for any other purpose. When Hafer burgled the apartment building, the renovations were approximately 80 percent complete. **See id.**, at 58. The apartment that Hafer broke in to had hardwood flooring, running water, and a refrigerator installed. **See id.**, at 125-126.

We conclude that these circumstances were sufficient to allow the jury to find that the apartment building was adapted for overnight accommodation. As a result, Hafer’s only issue on appeal merits no relief.

Judgment of sentence affirmed. Jurisdiction relinquished.

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: 11/26/2013