IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

LAUREN PURNELL,	)	
	)	
Appellant-Defendant	)	
Below,	)	Case No. 1408003462
	)	
	)	
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Appellee-Plaintiff	)	
Below.	)	

OPINION

This 29th day of April, 2016, having considered Appellant's appeal from her conviction in the Court of Common Pleas, the Response of the State, Appellant's Reply, and the record in this case, it appears that:

1. Appellant Lauren Purnell (the "Appellant") was tried before a jury and convicted on March 12, 2015 in the New Castle County Court of Common Pleas on the charges of Breach of Release in violation of 11 *Del. C.* § 2113(c)(2)[1]

[1] 11 *Del. C.* § 2113(c): "If the accused … knowingly breaches any condition of release, each such failure or breach shall be a separate crime, and upon conviction thereof shall be punished as follows: … (2) If the person was released in connection with 1 or more charges of misdemeanor prior to trial, the person shall be fined not more than $500 or imprisoned not more than 1 year, or both."

and Criminal Trespass Third Degree in violation of 11 *Del. C.* § 821.[2] The Court sentenced Appellant to thirty days at Level V suspended for 360 days of Level I probation, and prohibited Appellant from having contact with Bethel Villas (Breach of Release), and a $50.00 fine which was suspended (Criminal Trespass).

2. Appellant appeals her conviction on both charges.

3. The facts of this case are that Appellant leased an apartment in an apartment complex (the "Property") owned by Bethel Villas 2009 Associates, L.P. ("Bethel Villas"). On March 7, 2013, during the period of her lease, Appellant was arrested on the Property for drug-related criminal activity. On April 2, 2013, Appellant was subsequently evicted from her apartment.[3] Appellant moved out on July 21, 2013.

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[2] 11 *Del. C.* § 821: "A person is guilty of criminal trespass in the third degree when the person knowingly enters or remains unlawfully upon real property."

[3] On June 27, 2013, in case JP13-13-004451, Appellant appealed her eviction. On July 2, 2013, in an Order on Trial De Novo, Appellant was put on notice that the lease provision states that "whether or not the criminal charges mature into convictions, the defendant has violated the terms of her lease which governs her tenancy":

> At the trial de novo, the defendant testified that her criminal charges had been dismissed against her and therefore she is not in violation of her lease. Defendant's lease was entered into evidence. It contains a separately signed addendum. . . "Lease addendum for drug-free housing." This contains in Paragraph 1, "Resident, any member of the resident's household, or a guest or other person under the residents control shall not engage in criminal activity, including drug-related criminal activity, on or near property premises. "Drug-related criminal activity" means the illegal ..... use of a controlled substance (as defined in Section 102 of the Controlled Substances Act 21 U.S.C. 802).
>
> At paragraph 6, the lease addendum states: Violation of the above provisions shall be a material violation of the lease and good cause for termination of tenancy. Whether or not the criminal charges mature into

4. On August 15, 2013, Master Corporal David Jones of the Wilmington Police Department ("Mcpl. Jones") served Appellant with a notice from Bethel Villas banning Appellant from the Property (the "Ban Notice"). The Ban Notice stated that Appellant was "no longer allowed in or around the premises of Bethel Villas ... for any reason whatsoever" and, as it was related to drug activity, Appellant was banned for life.[4]

5. On July 25, 2014, Appellant was charged with Criminal Trespass Third Degree for violating the Ban Notice. She was released on bail and as a condition of Appellant's release, was ordered by the Justice of the Peace Court to have no contact with Bethel Villas as of July 25, 2014 (the "No-Contact Order").

6. Ten days later, on August 4, 2014, Master Corporal Richard Sutton, Sr. of the Wilmington Police Department ("Mcpl. Sutton") saw Appellant on the Property, in violation of the Ban Notice and the No-Contact Order. Mcpl. Sutton obtained a warrant for Appellant's arrest.[5] On August 13, 2014, Appellant was

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convictions, the defendant has violated the terms of the lease which governs her tenancy.

The defendant also testified that she keeps marijuana in her apartment for her personal use. The defendant was under the impression that this act is legal which is not.

After considering the testimony and evidence presented by both parties the court awards possession and judgment in favor of Bethel Villas 2009 Associates L.P. plus Court Costs in the amount of$41.50.

[4] Bethel Villas "Banned Notice" dated August 15, 2013.

[5] *State v. Lauren Purnell*, No. 1408003462, at 93-95 (Del. CCP Mar. 12, 2015) (TRIAL TRANSCRIPT) (hereinafter "Tr.").

arrested for Breach of Release and Criminal Trespass Third Degree.[6]

7. On March 12, 2015, a jury trial was held in the Court of Common Pleas. The current property manager of Bethel Villas, Delores Martin ("Ms. Martin"), Mcpl. Jones, and Mcpl. Sutton were the State's witnesses. Appellant's only witness was her mother, Kimberly Purnell. Appellant did not testify. The State submitted into evidence the No-Contact Order, a modification of the No-Contact Order dated after the arrest, and the Ban Notice. Appellant submitted into evidence a letter from Kimberly Purnell's doctor stating that Appellant is Kimberly Purnell's caregiver.

8. Ms. Martin, testified that her responsibilities as the property manager included issuing notices to anyone who is banned from the Property for various reasons.[7] According to Ms. Martin, Bethel Villas' ban notices let "the person that has been banned from the property know that they are not allowed on the property … [a]nd if they are seen on the property, we will contact Wilmington Police Department and have them arrested for trespassing."[8] Ms. Martin confirmed that

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[6] State's Answering Brief, Dec. 21, 2015. Case # 140702520 (Criminal Trespass Third Degree) was dismissed pursuant to Court of Common Pleas Criminal Rule 48(b) on November 3, 2014.

[7] Tr. at 52-54.

[8] Tr at 57.

Appellant received the Ban Notice on August 15, 2013 when it was hand-delivered to Appellant by Mcpl. Jones.[9]

9. Mcpl. Jones testified that he has been employed with the Wilmington Police Department for twenty-four years and was assigned to the Community Policing Unit in which he patrols Bethel Villas.[10] Mcpl. Jones stated that on August 15, 2013, at Kimberly Purnell's apartment, he served Appellant with the Ban Notice and also gave a copy to Kimberly Purnell.[11] Appellant refused to sign the Ban Notice but Kimberly Purnell signed the copy.[12] Mcpl. Jones also testified that he saw Appellant on the Property numerous times after she received the Ban Notice, gave her numerous warnings, and arrested her numerous times for trespassing on the Property.[13]

10. The State's final witness, Mcpl. Sutton, employed with the Wilmington Police Department for more than twenty-eight years, was also assigned to Bethel Villas.[14] Mcpl. Sutton testified that he was on duty at Bethel

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[9] Tr. at 67-68.

[10] Tr. at 76.

[11] Tr. at 76-78.

[12] Tr. at 78-79.

[13] Tr. at 81-83.

[14] Tr. at 93.

Villas on August 4, 2014 and saw Appellant on the Property.[15] Mcpl. Sutton knew it was Appellant because he had previously spoken to her many times regarding her ban from the Property.[16] Mcpl. Sutton yelled to Appellant to warn her that she should not be on the Property but Appellant said nothing and continued to walk in the direction of her home in a nearby neighborhood.[17] Thereafter, Mcpl. Sutton obtained a warrant to arrest Appellant.[18]

11. Appellant's witness, Kimberly Purnell, corroborated the testimony that Appellant was present on the Property in violation of the Ban Notice and the No-Contact Order.[19] Kimberly Purnell testified that she received notice from Bethel Villas that Appellant was banned from the Property on August 15, 2013.[20] Kimberly Purnell further testified that she needs a caregiver and that, despite the ban, Appellant has been coming to the Property in order to be a caregiver to her.[21]

12. Kimberly Purnell also testified that, on August 4, 2014, Mcpl. Jones approached Appellant and Kimberly Purnell while they were sitting outside of

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[15] Tr. at 93-94.

[16] Tr. at 95.

[17] Tr. at 94-95.

[18] Tr. at 95.

[19] Tr. at 123.

[20] Tr. at 135-36.

[21] Tr. at 123, 127-28, 130-32.

Kimberly Purnell's apartment and he told Appellant that she was not allowed on the Property.[22] Appellant told the officer that her charges were dismissed and accused him of harassing her.[23] Kimberly Purnell testified that she made Appellant leave the Property at that time.[24]

13. The jury convicted Appellant of both charges. For the Breach of Release conviction, Appellant was sentenced to thirty days at Level V suspended for 360 days of Level I probation and prohibited from having any contact with Bethel Villas. Appellant's sentence to pay a fifty dollar fine for the Criminal Trespass Third Degree conviction was suspended.

14. In this appeal, Appellant seeks reversal of the jury's guilty finding. Appellant argues that the State's witnesses were not credible, lied under oath, and did not provide sufficient evidence for a jury to convict Appellant.

15. Next, Appellant asserts that the trial judge was biased because Appellant was a self-represented litigant and had filed a recusal motion against the previous presiding judge. According to Appellant, if there were no bias, the judge would have admitted the arrest warrant into evidence and should have dismissed the case after trial was rescheduled twice.

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[22] Tr. at 123-24.

[23] Tr. at 124.

[24] *Id.*

16. Lastly, Appellant argues that her constitutional rights were violated by Bethel Villas, Mcpl. Jones, and Mcpl. Sutton and that the Court's sentence was cruel and unusual punishment and an abuse of discretion.

17. The State challenges each of Appellant's arguments. The State argues that there was sufficient evidence for a jury to convict Appellant of the charges, that the Court did not have any bias against a self-represented litigant, and Appellant did not object to the judge. Indeed, the judge explained the logistics of the trial to Appellant, including direct and cross-examination of a witness, amending an Information, opening statements, closing arguments, admitting evidence, and Appellant's right to testify or not testify.[25] The transcript shows:

> THE COURT: So what - - so what - - Officer Sutton, the State is calling him and he's testifying.
>
> MS. PURNELL: I'm fine with that.
>
> THE COURT: What is your request?
>
> MS. PURNELL: Let's go forward.
>
> THE COURT: Okay. We will have that trial as soon as we clear the Calendar, and you'll pick a Jury and we'll go through the process of opening statements before the Jury, and the whole - - all the witness presentation, your closing. You'll do all that, and we'll go for it and we'll do that as you stated.
>
> Officer Sutton's here. Whenever we get a chance, we get through the rest of this, Mr. Smith will call up the Jury.
>
> MR. SMITH: Okay.
>
> MS. PURNELL: Okay. Thank you.
>
> (Pause)
>
> (Recess)
>
> (No initial recording)
>
> THE COURT: And, again, what people like to do is come up and say to the Officer - - you ask him a question, you don't like the answer. So actually what happened is this, this, this, and this.

[25] *See* Tr. at 6-9, 16, 18-19.

That's not how it works. It's your time to ask questions. If you don't like the answer, you can ask another question, but it's not a time to give information.

MS. PURNELL: Right. It will be for the witnesses.

THE COURT: You then come - - when it comes to your case, you can decide to testify. But you ask cross-examination questions. The State gets a chance to redirect. You get a chance to recross.

Then they say, we're finished with this witness. Maybe they call another witness. Maybe they attempt to put some documents in.

Do you have any documents, Ms. Song, or is it going to be a witness only?

MS. SONG: Your Honor, I do have two documents - - two or three documents that will come into evidence.

THE COURT: Okay. And while I go upstairs to work on - - to get the Jury Instructions, will you show the items you're going to be putting into evidence to Ms. Purnell.

MS. SONG: Yes, Your Honor.

THE COURT: And, then, Ms. Purnell, after the State finishes with its witnesses, and whatever evidence it's putting in, the State will say, I rest.

Then what you do is, you get up and you present your witnesses.

MS. PURNELL: Okay.

THE COURT: Is it going to just be you?

MS. PURNELL: No, I have a witness.

THE COURT: Okay. So you call your witness. You go up to the podium and you ask them questions.

Then the State gets to cross-examine them.

MS. PURNELL: Okay.

THE COURT: Then after you present that witness, it's your time to decide whether you're going to testify or not testify.

You don't have to.

MS. PURNELL: Yes.

THE COURT: That's your constitutional right not to. But at the same time you do have the right to. So you - - when you decide, if you're going to decide to testify, then you're going to come up to the witness stand.

But you're not going to ask yourself questions. You're just going to make your statement.

MS. PURNELL: Gotcha.

THE COURT: When you're done, the Prosecutor will cross-examine you.

If at that point you're done, and you don't have any other witnesses, you'll say, I rest.

Then it goes back to the State to say, do we have any rebuttal witnesses. The State may say, I'd like to recall so and so for this purpose. If not, they'll say, they rest.

Then we go to closing arguments and closing instructions from the Court.

MS. PURNELL: Okay.

THE COURT: Okay. I'm going to go upstairs and get Jury Instructions done.[26]

. . .

MS. PURNELL: Okay. Well, I would like to amend the address, 'cause they wrote down the wrong address off of my arrest date. That lot doesn't exist.

THE COURT: Okay. You don't want to amend the Info sheet.

MS. PURNELL: Right. I don't.

THE COURT: It's their Information. If you - -

MS. PURNELL: Oh, my own.

THE COURT: - - want to argue later - - if you want to argue that it's wrong, but you don't want the Information amended.

Any other issues? The evidence, Ms. Song, that you were going to put in, did you show it to the Defendant?

MS. SONG: Your Honor, I did.

THE COURT: Okay. And did you see the things they're going to put into evidence?

MS. PURNELL: Yes.

THE COURT: Do you have any legal objections to anything?[27]

. . .

THE COURT: A Ban Notice. All right. If you would please bring them forward to the Clerk. And, Madam Clerk, you can note those as State's 1, 2 and 3. Ms. Purnell, when you want to refer to any of those in questions or in opening or closing, it's - - you refer to the exhibit you're talking about.

If you were going to ask your witness, I'm going to show you what's been marked as State's 1.

MS. PURNELL: Okay.

THE COURT: So everybody knows what you're talking about.

MS. PURNELL: And that's the State's evidence.

THE COURT: It is. They're admitting it, but you use it however you like also.

MS. PURNELL: Okay.

THE COURT: So if you want to ask questions about it, you say, I've got State's 1 here.

MS. PURNELL: Okay.

THE COURT: And you present it to your witness, or you can use it in argument however you want. They're presenting it, but it's open to everyone to comment on.

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[26] Tr. at 6–9.

[27] Tr. at 16.

MS. PURNELL: Yes.
THE COURT: Okay. I just wanted to make sure you knew that.
MS. PURNELL: Thank you.
THE COURT: Do you have any documents you're moving in other than your witness?
MS. PURNELL: Yes.
THE COURT: Have you shown them to the Prosecutor yet?
MS. PURNELL: Yes, I have.
THE COURT: Okay. We'll get to that in a minute.
Let me get these three marked.[28]

18. The State challenges the assertion that Appellant's case should have been dismissed instead of rescheduled. Trial was originally scheduled for December 15, 2014. Because of witness issues, trial was rescheduled to March 9, 2015, however, it was rescheduled to March 12, 2015 in anticipation of a full-day trial.

19. The State further argues that Appellant's claims against Bethel Villas, Mcpl. Jones, and Mcpl. Sutton for defamation, slander, and violation of First Amendment rights, are improperly brought before this Court on appeal. Finally, the State argues that the Court of Common Pleas did not abuse its discretion in sentencing Appellant.

20. The law is clear that Defendants convicted of a crime in the Court of Common Pleas may appeal the decision to Superior Court.[29] Legal determinations will be reviewed *de novo* and findings of fact will only be overturned if found to be

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[28] Tr. at 18–19.

[29] 11 *Del. C.* § 5301(c).

"clearly erroneous."[30] If the Court of Common Pleas' findings of fact are "sufficiently supported by the record and are the product of an orderly and logical deductive process, they must be accepted notwithstanding the fact that the Superior Court may have reached opposite conclusions."[31]

21. When considering the sufficiency of the evidence, the standard of review is "whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[32] The test is "not whether the defendant is guilty ... beyond a reasonable doubt, but whether there is sufficient evidence to support the findings of the Trial Court."[33]

22. The law is also clear that the elements of Breach of Release that must be proven beyond a reasonable doubt are that Appellant was released on bail, there was a condition of Appellant's release on bail, and that she knowingly breached that condition.[34] The elements of Criminal Trespass Third Degree that must be

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[30] *State v. Munden*, 891 A.2d 193, 196 (Del. Super. 2005).

[31] *State v. Karg,* 2001 WL 660014, at *1 (Del. Super. May 31, 2001) (citation omitted).

[32] *State v. Godwin*, 2007 WL 2122142, at *2 (Del. Super. July 24, 2007) (citation omitted).

[33] *Bennefield v. State*, (quoting *State v. Cagle*, 332 A.2d 140, 142 (Del. 1974).

[34] 11 *Del. C.* § 2113(c)(2).

proven beyond a reasonable doubt are that Appellant knowingly entered, or remained unlawfully, on real property (owned by Bethel Villas).[35]

23. Here, there was sufficient evidence presented at trial to prove the essential elements of each crime. There was testimony that a Ban Notice and No-Contact Order had been issued and they were submitted into evidence. There also was testimony that Appellant had notice and was aware that she should not be on the Property. Ms. Martin testified that Appellant had been given the Ban Notice. Mcpl. Jones testified that he personally served Appellant with the Ban Notice. Mcpl. Sutton testified that he saw Appellant on the Property in violation of the Ban Notice and the No-Contact Order on August 4, 2014.

24. The testimony and exhibits were not contradicted. Furthermore, Appellant's witness, her mother, testified that Appellant was on the Property on the date in question, after the Ban Notice and No-Contact Order were issued.

25. Upon viewing the evidence in the light most favorable to the non-moving party, this Court finds that a rational trier of fact could have found the essential elements of both crimes beyond a reasonable doubt. It was undisputed that Appellant was banned from the Property, that she had knowledge of her ban from the Property and the no-contact order, and that she was present on the Property after the Ban Notice and the No-Contact Order were issued.

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[35] 11 *Del. C.* § 821.

Additionally, Mcpl. Jones and Mcpl. Sutton testified that they saw Appellant several times on the Property after the ban.[36]

26. Appellant argues that her convictions should be overturned because the State's witnesses were not credible and provided false testimony.

27. The standard of appellate review after a jury trial "is deferential to the extent that 'the jury is the sole trier of fact responsible for determining witness credibility, resolving conflicts in testimony and for drawing any inferences from the proven facts.'"[37] A jury has the right to believe as much or as little of a witness' testimony as it believes proper, even when the testimony was "evasive, conflicting or severely impaired."[38] In considering all of the evidence presented, "it is within the jury's discretion to accept one portion of a witness' testimony and reject another part."[39]

28. Appellant contends that Mcpl. Sutton and Mcpl. Jones were biased and gave false testimony because she had filed a civil complaint with the Wilmington Police Department against both of them on July 25, 2014 for

[36] Tr. at 81, 95.

[37] *Church v. State*, 2010 WL 5342963, at *1 (Del. 2010) (quoting *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

[38] *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992) (citing *United States v. Luciano,* 343 F.2d 172, 173 (4th Cir.), *cert. denied,* 381 U.S. 945 (1965) ("No matter how impaired [the] evidence, the jury had the right to believe all or so much of it as they thought proper.")).

[39] *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982) (citing *State v. Matushefske,* 215 A.2d 443 (Del. Super. 1965)).

harassment; however, Appellant had an opportunity to cross-examine both officers during trial and even questioned Mcpl. Jones during trial regarding any possible bias.[40] Furthermore, Mcpl. Jones testified that he had no prior knowledge of any harassment complaint Appellant allegedly lodged against him by Appellant.[41]

29. The determination of whether the officers were biased against Appellant is left to the jury as the sole trier of fact. So too, it is the jury's responsibility to determine which witnesses were credible. Here, the jury could reasonably accept the testimony of each witness, along with the supporting documentary evidence, to find Appellant guilty of the charges.

30. Appellant also argues that the trial judge was biased because Appellant filed a motion to recuse the prior presiding judge from this matter. Appellant did not, however, object to this presiding judge.[42] Appellant fails to set forth any factual basis for her claim of bias other than to speculate that evidence

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[40] Tr. at 83-86 ("Q: Is it true that I have filed a civil complaint against you? A: No, not to my knowledge. Q: So there's nothing as of 7/25/2014 on record against you? A: No. Q: None? A: No. Q: I have a copy. … Q: Okay. It seems that that day on -- it's July 25th of 2014, when I had went down to the Police Station and filed a Complaint, did you not arrest me? A: Since then? Q: No, did you not arrest me on that day? A: I'm not sure what day I arrested you. I don't have the date in front of me. Q: Yes, you did. You arrested me on the day at the Police Station after I filed the Complaint.")

[41] Tr. at 83.

[42] *See Hurst v. State*, 2013 WL 85109, at *2 (Del. 2013) (finding that appellant did not object to the judge's presiding over the trial, therefore, preventing an opportunity for the trial judge to address on the record whether he can proceed to hear the case free of bias and prejudice).

would not have been excluded and the case would have been dismissed instead of rescheduled if there were no bias.[43]

31. Appellant also contends that the judge showed bias by not admitting the arrest warrant into evidence. However, neither Appellant nor the State requested that the arrest warrant be admitted into evidence and the record does not reflect that any impediment existed that prevented Appellant from moving the admission of the arrest warrant when she moved the admission of her other evidence.[44] Furthermore, Appellant did not raise an issue regarding the admission of the arrest warrant at any point during trial.

32. Indeed, the admission of the arrest warrant did not arise until jury deliberations began and the jury requested to see it during deliberations.[45] The judge informed Appellant of the request and thoroughly explained to her the reason why the jury's request would be denied, then the judge brought the jury back into

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[43] Appellant's Reply Brief at 5 ("Yes, the judge may have explained the jury process to myself [sic], but what is in question is that why the judge did not abide to the jury's right to see all evidence that was presented in trial.")

[44] Tr. at 21-38. Appellant, moved to admit four other documents into evidence: (1) proof of the refund of a security deposit from Bethel Villas; (2) the outcome of the summary possession action; (3) a letter stating that Appellant is her mother's caregiver; and (4) the Order from Appellant's last hearing with Bethel Villa in JP Court. The Judge admitted the letter into evidence but excluded the other evidence as irrelevant because it predated the Ban Notice. Appellant does not dispute the exclusion of this evidence.

[45] Tr. at 162.

the courtroom and informed it that the request was denied on the basis that the arrest warrant was never admitted into evidence.[46]

33. The record reflects the following:

> THE COURT: I'll bring them in and tell them what is standard in a situation, which is the Jury gets to see everything I gave them, all right. They get to see the State's three exhibits, your exhibit. They get to rely on their recollections of the testimony. Nothing's provided that didn't come into evidence.
>
> They must consider only the things that came into evidence. And so they're not going to get it, and they'll go back and consider - - continue to deliberate.
>
> But that's how it's standard, for your knowledge, Ms. Purnell. When they ask for things that didn't come into evidence, we don't give them to them. If it didn't come into evidence, it's not part of the record. It's not part of the evidence.
>
> So we'll just have to tell them they'll have to rely on any testimony they've heard plus the documents that were admitted. And I'm just letting you know before we bring the Jury in.[47]

34. Evidentiary issues may not be raised for the first time on appeal.[48] Contentions not raised below and fairly presented to the trial court for decision will not be reviewed unless there were "plain errors affecting substantial rights" of the parties on appeal.[49] Under this standard, the error "must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[50]

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[46] Tr. at 161-63.

[47] Tr. at 161–62.

[48] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1996).

[49] *Id.*; *see* Del. R. Evid. 103(d).

[50] *Wainwright,* 504 A.2d at 1100 (citing *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982).

35. Here, neither Appellant nor the State sought to introduce the arrest warrant at trial. Therefore, this evidentiary issue may not be reviewed unless there were plain errors affecting Appellant's substantial rights. This Court finds no such errors. Appellant had an opportunity to seek the admission of the arrest warrant prior to trial and during trial. Moreover, Appellant explored the contents of the arrest warrant during trial and cross-examined its affiant, Mcpl. Sutton.[51] Therefore, the exclusion of the arrest warrant did not affect the substantial rights of the Appellant. Furthermore, Appellant did not object when the trial judge denied the jury's request to view the document that was not in evidence.

36. Appellant also claims that the Court of Common Pleas exhibited bias when it allowed the trial to be rescheduled. According to the State, the trial was rescheduled so that all witnesses could be present and again, so that the trial court would have the resources available for a full-day trial.

37. The trial court has discretion to retain a trial date or reschedule it.[52] An abuse of discretion will only be found when the court has "exceeded the bounds of reason in view of the circumstances, [or] ... so ignored the rules of law or practice so as to produce injustice."[53] This Court does not find abuse of

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[51] Tr. at 101-05.

[52] *See Christian v. Counseling Resource Associates, Inc.*, 60 A.3d 1083, 1088 (Del. 2013).

[53] *Graves v. State*, 2006 WL 496140, at *1 (Del. Super. Feb. 2, 2006) (quoting *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (1988)).

discretion and Appellant does not set forth any facts suggesting bias or that she was prejudiced in any way by the rescheduled trial.

38. Appellant also alleges several violations of her constitutional rights. Appellant claims that her First Amendment rights were violated by Bethel Villas, Mcpl. Sutton, and Mcpl. Jones. Appellant further alleges that the arrest warrant has "shown conspiracy, bias, prejudice and defamation against [her] character."[54] However, Appellant's claims are unsupported and she sets forth no factual basis for the claims.[55]

39. Each of these claims is inappropriately brought on appeal from a criminal conviction. The claim against Bethel Villas is inappropriate because Bethel Villas is not a party in this criminal appeal. The civil claims against Mcpl. Sutton and Mcpl. Jones are also inappropriate in this criminal appeal. Additionally, Appellant did not raise any of these issues during trial. Therefore, this Court will not consider the merits of these claims.

40. Lastly, Appellant alleges that her Eighth Amendment rights were violated because she was sentenced to probation and will not be able to care for her

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[54] *Id.* at 7-8.

[55] Appellant's Op. Brief at 2 ("Bethel Villa Apartments and the Wilmington Police Officers has [sic] slandered my name and shown defamation against my character.").

mother who continues to live in Bethel Villas.[56] Appellant believes that the judge "was being cruel and showing unusual punishment" by sentencing her to probation.[57]

41. Sentencing orders are reviewed for abuse of discretion.[58] "Appellate review of a sentence generally ends upon determination that the sentence is within the statutory limits presented by the legislature."[59] An abuse of discretion will not be found "unless it is clear that the sentencing judge relied on impermissible factors or exhibited a closed mind."[60]

42. The sentence that Appellant received was well within the statutory limits.[61] Furthermore, the judge gave Appellant an opportunity to present any mitigating factors for sentencing:

> THE COURT: I'm going to decide what happens. I'm going to decide what your sentence is. You get to have input. . . . The State's made a recommendation. You can say anything positive about yourself, and you can recommend what happens at the sentence.
>
> MS. PURNELL: Okay.
>
> THE COURT: So go ahead. They've made their recommendation.
>
> MS. PURNELL: Well, I believe that I should not be placed on probation due to this matter because I have the -- I as of the date I was

[56] Appellant's Op. Brief at 12-13.

[57] *Id.*

[58] *White v. State*, 2002 WL 31873703, at *1 (Del. Dec. 20, 2002).

[59] *Id.* (citation omitted).

[60] *Id.*

[61] *See* 11 *Del. C.* § 2113(c)(2) ("[T]he person shall be fined not more than $500 or imprisoned not more than 1 year, or both.").

> arrested, I was legally a caregiver, and I'm legally to this day a caregiver, not just for Kimberly Purnell, but other clients that I do. And putting me on probation will really -- I will be dismissed in my position as a caregiver. And far as the probation, that limits my ability to get my license, which I'm going for in two more weeks, even though it's not their fault, but which I'm going in two weeks to be certified. And I believe that this is like really hurting me more than helping me. And with that fine issue, I don't have that type of money 'cause I been out of work for three weeks now, since I broke my ankle.
>
> THE COURT: Okay. Well I'm not going to fine you, but I'm going to put you on probation. So as to the non-comp bond, you do have to pay the cost of prosecution. I'm not going to recommend the fine. As to the non-comp bond, you'll be incarcerated for a period of 30 days. That's all suspended for 360 days at supervision Level 1. That's a non-reporting probation, but you have to go sign up for it. So you won't have to meet with a Probation Officer every month, but you'll be on probation for 360 days. I'm also going to issue a No-Contact Order with Bethel Villa. . . . As to the charge of criminal trespass 3rd, it's going to be a $50.00 fine, but I'm going to suspend it. [62]

The Court's sentence was not arbitrary or the product of a closed mind. The Court had an open mind for receiving all information related to the question of mitigation.[63] This Court finds that there has been no abuse of discretion by the Court of Common Pleas in sentencing Appellant.

Accordingly, Appellant's convictions for Breach of Release and Criminal Trespass Third Degree in the New Castle County Court of Common Pleas are **AFFIRMED**.

IT IS SO ORDERED.

Judge Diane Clarke Streett

[62] Tr. at 170-73.

[63] *See White*, 2002 WL 31873703, at *1.

Original to Prothonotary

cc: Rebecca Song, Esquire, Deputy Attorney General
Lauren Purnell, *Pro Se* Appellant
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