

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **No. 97-12,022**
:
:
vs. : **CRIMINAL DIVISION**
:
:
JEFFREY BECK, :
Defendant : **1925(a) Opinion**

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Judgment of Sentence dated January 14, 1999 and docketed January 20, 1999.

The relevant facts are as follows: On or about November 14, 1997 at approximately 11:00 p.m., Ms Margaret Jagella of Lycoming County Children and Youth Services received a phone call regarding a ten month old child. The caller, the child's babysitter, informed Ms. Jagella that she no longer wished to care for the child and she could not locate the child's mother. Ms. Jagella called the judge who was on call duty, the Honorable Clinton W. Smith, and explained the situation to him. Judge Smith authorized Children and Youth to take the child into custody. Children and Youth took custody of the child at approximately 11:45 p.m. and placed the child with Ms. Margaret Step for the weekend.

The next morning at about 9:30 a.m. the child's mother, Rebecca Snyder, called Children and Youth asking where her son was and demanding that he be returned to her. Ms. Jagella explained the events of the previous night to her. She informed her that a judge authorized her taking emergency custody of the child and she placed him in a home in Newberry. Ms. Snyder, who had been in foster care herself for a period of time, asked Ms.

Jagella if her son had been taken to Margaret Step's home.¹ When Ms. Jagella replied in the affirmative, Ms. Snyder hung up. Because Ms. Snyder was being belligerent on the phone and she immediately hung up when she found out the child was at Ms. Step's residence, Ms. Jagella called Ms. Step and the Williamsport Police to alert them.

A few minutes after speaking with Ms. Jagella, Ms. Step heard a knock on the door. When she answered it, she saw Rebecca Snyder, another girl, and the defendant standing on her porch. Ms. Snyder angrily said, "Margaret, give me my son. I want my son." Ms. Step told her she couldn't come in and asked her to leave. When Ms. Step attempted to close the door, the defendant forced his way into the house, pushed Ms. Step aside, took the child, grabbed his coat, and left. Ms. Step called the police. Shortly thereafter, the defendant was arrested and charged with conspiracy, burglary, criminal trespass, interference with the custody of a child and concealment of the whereabouts of a child.

On or about November 13, 1998, a jury trial was held. The jury found the defendant guilty of burglary, criminal trespass, and interference with the custody of a child. The defendant was acquitted of concealing the whereabouts of a child and the conspiracy charge was dismissed.

On January 14, 1999, the Court sentenced the defendant to incarceration at a state correctional institution for an indeterminate period, the minimum of which shall be 18 months and the maximum of which shall be three years. The defendant filed a timely appeal.

The first issue the defendant raises in his statement of matters complained of on appeal is the evidence was insufficient to establish his guilt beyond a reasonable doubt. This

¹Ms. Snyder had been placed in Ms. Step's home a couple of years earlier.

Court cannot agree. The defendant was convicted of burglary, criminal trespass, and interference with the custody of a child. When deciding a sufficiency claim, the Court must view the evidence in the light most favorable to the verdict winner, the Commonwealth. In order to obtain a conviction for burglary, the Commonwealth must prove that the defendant (1) entered a building or occupied structure; (2) without license or privilege to do so; and (3) with an intent to commit a crime therein. 18 Pa.C.S.A. § 3502; Commonwealth v. Rucci, 543 Pa. 261, 275, 670 A.2d 1129, 1136 (1996); Commonwealth v. Alston, 539 Pa. 202, 206-07, 651 A.2d 1092, 1094 (1994). The evidence presented at trial established each of these elements. The defendant entered Ms. Steppe's residence after she told him he was not allowed to be there and after she began to close the door. The specific intent to commit a crime may be found in a defendant's words, conduct or from all the attendant circumstances. Commonwealth v. Eck, 439 Pa.Super. 530, 540, 654 A.2d 1104, 1108 (1995); Alston, *supra*. Although the defendant claimed he did not intend to commit a crime when he entered the building but only intended to see if the child was okay, his actions and the circumstances surrounding them proved otherwise. Specifically, immediately prior to his entry, Ms. Snyder was demanding the return of her son. When Ms. Steppe told he that she was not allowed to be on the premises and began to close the door, the defendant forced his way into the residence, pushed Ms. Steppe aside, grabbed the child and left. He did not first examine the child to see if he was okay or act in any other way that would be consistent with his purported intentions. Credibility is within the sole province of the finder of fact. Obviously, the jury discredited the defendant's statements regarding his intent and found that he intended to commit the crime of interference with the custody of a child based on his conduct and the attendant circumstances. Therefore, the evidence was sufficient to sustain the defendant's burglary conviction.

Under the facts and circumstances of this case, the criminal trespass charge was a lesser included offense of the burglary. Therefore, since the evidence was sufficient to sustain the defendant's burglary conviction, it also was sufficient to sustain the conviction for criminal trespass.²

An individual commits the crime of interfering with the custody of a child if he knowingly or recklessly takes a child under eighteen years of age from the custody of its parent, guardian, or other lawful custodian, when he has no privilege to do so. 18 Pa.C.S.A. § 2904; Commonwealth v. McClintock, 433 Pa.Super. 83, 89, 639 A.2d 1222, 1225 (1994). Here, Children and Youth Services obtained an emergency custody order for the Snyder child and placed him with Ms. Steppe. Knowing these facts, the defendant nonetheless proceeded to Ms. Steppe's residence and took the child from her lawful custody. This evidence is sufficient to satisfy the elements of interference with the custody of a child.

The second issue the defendant raises on appeal is the Court erred in finding the Temporary Emergency Custody Order was valid. Essentially, the defense argued that since the order stated it was to be signed by the judge within twelve hours and it was not signed until the next business day (Monday, November 17, 1997), the order was never valid. N.T., November 13, 1998, at pp. 87-88. This Court disagreed with the defense. First, the incident occurred prior to the expiration of the twelve hours. The Court found that the validity of the verbal order was similar to a temporary injunction in that it may expire after a certain period of time if further action is not taken, but that the initial order would still be valid. N.T., at p. 93. Second, although the

²The elements for criminal trespass are (1) enter or break into a building or occupied structure; and (2) without license or privilege to do so. 18 Pa.C.S.A. § 3503; Commonwealth v. Thomas, 522 Pa. 256, 276, 561 A.2d 699, 709 (1989).

order was not signed until Monday, November 17, 1997, the Honorable Clinton W. Smith did, in fact, authorize Children and Youth Services to take custody of the child late at night on Friday, November 14, 1997. Finally, the defense acknowledged there is nothing in the Child Protective Services Law³ or the Juvenile Act⁴ that requires the order to be signed within twelve hours. N.T., at p. 92.

The defendant's third assertion on appeal is the Court erred in finding that the Emergency Custody Order was issued by a Court of competent jurisdiction over the defendant. In support of his argument, the defendant relied on 23 Pa.C.S.A. §6315 and Commonwealth v. Stewart, 374 Pa. Super. 479, 543 A.2d 572 (1988).

Pursuant to §6315, a parent or guardian is entitled to written notice within twenty-four hours when an individual or entity takes emergency custody of a child due to suspected abuse. Here, the defendant is not a parent or legal guardian of the child; he is merely the boyfriend of the child's natural mother. Therefore, he is not entitled to written notice under that section. Furthermore, at the time the defendant interfered with the custody of the child less than twelve hours had elapsed. Thus, the defendant did not need to have written notice at the time the child was taken because, even if he were entitled to such notice, the requisite time frame for giving notice had not yet elapsed. Finally, there is some question whether §6315 even applies in this case since Children and Youth Services apparently did not take custody of the child for suspected abuse as that term is defined in 23 Pa.C.S.A. §6303, but rather due to a lack of

³23 Pa.C.S.A. § 6301 et seq.

⁴42 Pa.C.S.A. § 6301 et seq.

supervision.⁵ Thus, the Court believes the child was taken pursuant to the provisions of Juvenile Act governing dependency proceedings rather than the Child Protective Services Law. The Court notes that the Juvenile Act does not require written notice to the parents or legal guardians of the child. Rather, Children and Youth Services is simply required to notify the parents of the whereabouts of the child and give them reasonable notice, either written or oral, of the time, place, and purpose of the informal (72-hour) hearing. 42 Pa.C.S.A. §§6326, 6332.

The Court also found the Stewart case distinguishable from the case at bar. In Stewart, the child's parents were separated and the natural mother filed a Petition for Primary Custody. The natural mother informed the natural father of the date of the hearing by telephone call; however, the father was never properly served with Petition. When the father failed to appear for the hearing, the Court awarded custody to the mother. The mother did not obtain physical custody of the child, though, because the father left the Commonwealth with the child. For four years the father and the child lived in various locations under assumed names until the father was arrested in Texas. Following his return to Pennsylvania, the father was charged with interference with the custody of a child. The father was found guilty in a jury trial. On appeal, the Pennsylvania Superior Court reversed the father's conviction finding that the trial court never properly obtained jurisdiction over the father.

Stewart is distinguishable from this case in that the individual who took the child was the child's parent. Absent a court order to the contrary, natural parents have the right to custody of a child over all others. Also, parents and guardians have a defense to a charge of

⁵The child's babysitter called Children and Youth Services because she could not contact the child's natural mother. The babysitter informed the caseworker that she was going to leave him unattended if Children and Youth Services did not come and take custody of him.

interference with the custody of a child unless they are acting contrary to an order entered by a court of competent jurisdiction. 18 Pa.C.S.A. §2904(b)(3). Here, the defendant is not the parent or guardian of the child; he is simply the boyfriend of the child's mother. The child has a natural father. He and the child's mother are the only individuals who had a legal duty to support and care for the child, and therefore, they are the only individuals entitled to receive notice from Children and Youth Services under the facts and circumstances of this case.

The defendant's final assertion is the Court erred in finding that the defendant was not a parent or the equivalent of a parent. The defendant is not the natural father or adoptive father of the child nor was he married to the child's mother. Therefore, he is not a parent or step-parent of the child. As stated previously, he is simply the boyfriend of the child's mother. As such, he has no independent rights or responsibilities with respect to the child and cannot be considered a parent or the equivalent thereof.

In conclusion, the Court finds the evidence was sufficient to sustain the defendant's convictions, the temporary order was validly issued by a court of competent jurisdiction and the defendant was not entitled to the defense set forth in 18 Pa.C.S.A. §2904(b)(3).

DATE: 10/4/99

By The Court,

Kenneth D. Brown, J.