

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 00-11,137

VS :

STEPHEN SCOTT SHERWOOD :

OPINION AND ORDER

Before the Court is the Defendant's Petition for Habeas Corpus. The Defendant has been charged with corruption of minors, criminal trespass and driving under suspension. A preliminary hearing was held July 6, 2000 before District Magistrate Roger McRae, after which all charges were bound over for trial. The Defendant filed a Habeas Motion on September 11, 2000, alleging that the Commonwealth did not present sufficient testimony to establish the charge of criminal trespass. At the time set for the hearing on Defendant's Habeas Motion on November 27, 2000, the parties agreed to submit the motion based on the transcript of the preliminary hearing. After a review of the transcript, the Court finds the following facts with regard to the charge of criminal trespass.

Tabitha Garnhart testified that she is seventeen years old, and that the Defendant is her mother's boyfriend. She testified that on May 30, 2000, the Defendant called her home between 11:00 and 11:30 p.m. to speak with her mother. Tabitha testified that her mother was in bed, so he talked to her instead. Tabitha testified that eventually, the Defendant "convinced [her] that he could pick [her] up from school and [they] would have sex." (N.T. 7/6/00, p. 4) She testified that the Defendant picked her up from school the next day at 1:30, and took her to her father's house on South Third Street in Hughesville.

She testified that she knew her father was out of state, so he would not be there. (ibid.) Although her father had told her that she was not permitted to go to the house, and had taken away her house key, she had made a spare key so that she could have access to the house. (Id., p. 5) She testified that she knew that she was not permitted to be at his residence, and she told the Defendant that she was not permitted to be at the residence, but they entered the residence anyway. They had sex in her bedroom in the residence. (ibid.)

The issue before the Court is whether the Commonwealth established a prima facie case of criminal trespass. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). Under 18 Pa.C.S.A. § 3503(a)(1)(i) “a person is guilty of criminal trespass if he, knowing that he is not licensed or privileged to do so enters, gains entry by subterfuge or surreptitiously remains in any building or occupied structure or separately secured portion thereof;”

In the instant case, the Court would find that the Commonwealth established a prima facie case of the charge of criminal trespass. The Commonwealth provided testimony that the victim told the Defendant that she was not privileged to enter the home, but the two of them entered the home anyway. Although the Defendant argued that the elements have not been established since the victim used a key to gain entry to the residence, the Court rejects this argument. The elements of this section of the statute are satisfied by a showing that the entry was made, knowing they were not privileged to do so. It is not necessary that the entry be made by force or by breaking.

ORDER

AND NOW, this _____day of December, 2000, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA
William Miele, Esquire, PD
DA
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire