

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** : **No. 99-11,634**  
: **CRIMINAL DIVISION**  
**vs.** : **Demurrer**  
**ANWAR AMOS,** :  
**Defendant** :

**ORDER**

AND NOW, this 17th day of February 2000, the Court GRANTS the defendant's demurrer to Count II, defiant trespass, as a misdemeanor of the third degree.

The Court does not believe that the evidence is sufficient to prove the applicability of defiant trespass as a misdemeanor of the third degree. The evidence shows that the defendant was given actual communication by letter in June 1999 from the management of Timberland Apartments that he should not enter Timberland property. See Commonwealth's Exhibit 1. However, while the evidence shows the defendant was on Timberland property on October 4, 1999 in violation of the June 1999 letter, the evidence does not show that on October 4 1999, the defendant defied a request or order "personally communicated to him" to leave the premises.

The Court notes for defiant trespass to become a misdemeanor of the third degree, as opposed to a summary offense, there must not only be an actual communication to the actor that he can not come to the property, but in addition thereto, there must be proof that the actor defied an order to leave personally communicated to him by the owner of the premises. See 18 Pa.C.S.A. §3503(b)(2). This additional conduct of coming to a property after actual communication that one is not licensed or

privileged to return to the property and then defying an order to leave personally communicated to the actor, is what raises the offense from a summary to a misdemeanor. Defiant Trespass. The evidence in this case does not establish this additional conduct needed for the misdemeanor grading of defiant trespass.

While the Commonwealth is correct in arguing that this additional conduct is listed in §3503(b)(2), is information that changes the grading of the offense from a summary to a misdemeanor, the Court does not believe that means the Court must defer ruling on this issue until the time of sentencing. If there is not sufficient evidence at trial that the conduct in question can result in a misdemeanor conviction, there is no basis for the Court to submit it to the jury. An analogous situation is presented in the disorderly conduct statute, 18 Pa.C.S.A. §5503(b), where the grading of the offense can be misdemeanor or summary, depending upon whether certain aggravating circumstances, such as persistence in disorderly conduct after reasonable warning to desist, are present. For the misdemeanor version of the offense to go to the jury, it is only logical that the Commonwealth would have to present evidence which would allow the factual finding that a misdemeanor occurred.

Accordingly, the Court believes that it cannot submit misdemeanor Defiant Trespass to the jury because it does not believe the requirement of §3503(b)(2) is met in this case.

However, the Court finds that defiant trespass, as a summary offense, is still existent in this case, because it is a lesser included offense of misdemeanor defiant trespass charge. Thus, the Court retains jurisdiction over the summary offense

defiant trespass.

It should be noted that the Commonwealth previously dismissed Count IV, defiant trespass, so only Counts 1 and 2, simple assault and retaliation against a witness or victim, are submitted to the jury.

By The Court,

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Kenneth D. Brown, J.

cc: Michael Dinges, Esq., (ADA)  
Nicole Spring, Esq., (APD)  
Work File