

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 00-11,806

VS :

REGINALD JOHNSON :

OPINION AND ORDER

Before the Court is the Defendant's Petition for Habeas Corpus. The Defendant has been charged with criminal trespass and disorderly conduct. A preliminary hearing was held November 3, 2000 before District Magistrate Allen Page, after which the Commonwealth withdrew the charge of disorderly conduct, and the charge of criminal trespass was bound over for trial. The Defendant filed a Habeas Motion on December 5, 2000, alleging that the Commonwealth did not present sufficient testimony to establish the charge of criminal trespass. 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.

William C. Reighard, Jr. testified that he owns a rental at 225 East Church Street. He testified that on June 3, 2000, he drove by the apartment, which was not rented at the time, and noticed that someone was on the premises. When he got out of his vehicle, and walked up to the house for a closer look, he saw the Defendant walking around inside the apartment. Mr. Reighard testified that he yelled out to the Defendant that he had caught him, and he ran to another apartment to call the police. (N.T. 11/3/00. p. 4) Mr. Reighard testified that the Defendant had been a tenant in that apartment, but he had been evicted approximately the end of April, or early May, 2000. (Id., p. 5) The constable had physically removed the Defendant from the premises in

the presence of Mr. Reighard. (Id., p. 10) The windows of the apartment were then posted with no trespassing signs. Mr. Reighard testified that the door was locked. Mr. Reighard had not returned to the apartment since the eviction.

Mr. Reighard testified that on the date that he saw the Defendant at the apartment, there were no signs of forced entry. He believed that the Defendant had probably used a key to enter the apartment. (Id., p. 7) Mr. Reighard testified that the Defendant had returned one key to the apartment to the constable during the eviction process. Mr. Reighard did not know if the Defendant had other keys to the residence.

Larry Rockwell, a mail carrier for that neighborhood, testified that he was delivering in the area at the time Mr. Reighard came on June 3, 2000. Mr. Rockwell saw the Defendant approach the apartment and enter through the rear of the apartment. (Id., p. 17) He testified that he was familiar with the Defendant since he saw him routinely on his mail route. Mr. Rockwell testified that he heard Mr. Reighard yelling, then moments later he saw the Defendant running from the apartment. (Id., p. 18)

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). 18 Pa.C.S.A. § 3503(a)(1) provides:

- (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; or
- (ii) breaks into any building or occupied structure or separately secured or occupied portion thereof.

(2) An offense under paragraph (1)(i) is a felony of the third degree, and an offense under subparagraph (1)(ii) is a felony of the second degree.

In the instant case, the Court would find, and the Defense is not disputing, that the Commonwealth established a prima facie case of the charge of criminal trespass under section 3503(a)(1)(i). The Commonwealth provided testimony from Mr. Reighard and Mr. Rockwell that the Defendant entered and was inside the apartment at 225 East Church Street. Additionally, the Commonwealth provided evidence that the Defendant knew that he was not licensed or privileged to enter the premises. Mr. Reighard testified that he formally evicted the Defendant from the apartment, and was present when the constable physically removed the Defendant from the premises. No Trespassing signs had been posted on the premises.

The Defendant alleges, however, that the charge of 3503(a)(1)(ii) has not been established, since it is not known how the Defendant entered the apartment. This section of the statute requires proof that the Defendant “broke into” the apartment. Under section 3503 (a)(3) “Breaks into” is defined as “to gain entry by force, breaking, intimidation, unauthorized opening of locks, or through an opening not designed for human access.” Instantly, the Court finds that the Commonwealth established a prima facie case that the Defendant broke into the apartment. Although Mr. Reighard testified that there were no broken windows or doors, there was testimony that there was no one in the apartment, and the doors had been locked. Therefore, the Defendant must have gained access to the apartment by some means other than through an open front door or an invitation. The Defendant’s motion to dismiss the charge on this basis is therefore denied.

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
E.J. Rymza, Esquire,
DA
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire