

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-11,390

VS :

LISA POWELL :

OPINION AND ORDER

Before the Court is Defendant's Petition for Habeas Corpus. The Defendant was charged with arson (two counts), risking catastrophe, recklessly endangering another person, and criminal mischief as a result of an incident that occurred on July 4, 2000. A Preliminary Hearing was held on October 26, 2000 before District Magistrate C. Roger McRae after which, all charges were bound over. After the Defendant's arraignment, the District Attorney agreed to pursue only the criminal mischief charge.¹ Defendant now argues that the Commonwealth failed to establish a prima facie case of the charge of criminal mischief. The parties agreed to submit the motion on the transcript of the preliminary hearing. After a review of the transcript preliminary hearing, the Court finds the following facts relevant to the motion.

Debra Kane testified that she was a resident of the state correctional institute at Muncy on July 4, 2000. On that date, a fire broke out in one of the restrooms inside the institute. Ms. Kane testified that she could see the entrance to the restroom from where she stood inside her cell. She testified that she saw a person whom she did not know exit the restroom. She testified that the Defendant entered the restroom after the

¹ As there is an indication that the Commonwealth will not be pursuing the remaining charges, the Court will not be specifically addressing them in the remainder of the Opinion. The Court would note, however, for the reasons that follow in the body of the opinion, that had the Commonwealth pursued the charges, they would have been dismissed for the same reason set forth below.

unknown individual exited. (N.T. 10/26/00, p. 12) Ms. Kane testified that she believed the Defendant was in the restroom for approximately five minutes. She stated that she judged the passage of time on the fact that she believed that the Defendant had dry hair when she went into the restroom, and wet hair when she came out of the restroom. (Id., p. 14) Ms. Kane testified that the Defendant exited the restroom, and proceeded to report to the corrections officer that there was a fire in the restroom. The corrections officer requested that Ms. Kane go into the restroom to investigate the situation. When she entered the bathroom, she saw flames coming from the trashcan. (Id., p. 6) Several of the women assisted to put out fire.

Rose Strausser, the Corrections Officer on duty at the facility testified that she was not aware whether or not the Defendant had been in the restroom prior to the time that she reported the fire. (Id., p. 27) Ms. Strausser testified that the inmates are permitted to empty their ashtrays in the restroom trash can. (Id., p. 62)

Frank Welsh, the Safety Manager at the institute, testified that he investigated the scene. (Id., p. 42) Before entering the building, he saw a smoldering trash can that had been removed from the restroom by security. Welsh examined the contents of the trash. He found nothing in the trash indicating what the cause of the fire may have been. Welsh testified that he spoke with the Defendant in the process of his investigations of the fire. He testified that the Defendant stated emphatically that she never actually entered the restroom. She stated that she saw the fire immediately when she pulled back the curtain at the door. (Id., p. 45)

Trooper David Dixon, of the Fire Marshal Division of the Pennsylvania State Police testified that he began an investigation on the day following the incident. (Id., p.

49) His investigation led him to conclude that the fire originated in the trash can. His investigation also led him to conclude that the fire could not have been started accidentally. (Id., p. 50) He believed that the fire was likely started “intentionally through the introduction of a foreign heat source, most probably an open flame.” (Id., pp. 50-51) He testified that his belief that the Defendant was the perpetrator was based primarily on the Defendant’s statement that she did not smell the smoke until she pulled the curtain, and when she pulled back the curtain, the smoke “took her breath away.” (Id., p. 59) He testified that he believed that if there had been sufficient smoke to take her breath away upon pulling the curtain back, she would have smelled the smoke prior to pulling back the curtain.

The issue before the Court is whether the Commonwealth established a prima facie case of criminal mischief. 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. § 3304(a)(1) provides that a person is guilty of criminal mischief if she damages tangible property of another intentionally, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means listed in section 3302(a) of this title (relating to causing or risking catastrophe).

In the instant case, although there was sufficient evidence to establish that property was damaged in the employment of fire, the Court finds that the Commonwealth did not present sufficient evidence to establish that the Defendant was the perpetrator. The only evidence produced by the Commonwealth was that the

Defendant, along with a number of other persons, had access to, and may have used the restroom on the date of this incident. The Court finds that this evidence, without more, is insufficient to establish the probability that the Defendant was connected with the igniting of the fire and resulting damage. See [Commonwealth v. Trafford](#), 312 Pa.Super. 578, 459 A.2d 373 (1983) (evidence that the Defendant was at or near the scene of arson insufficient to establish guilt); [Commonwealth v. Thomas](#), 450 Pa. 125, 299 A.2d 226 (1973), (A showing of mere presence at the scene of a crime is insufficient to support a conviction; evidence indicating participation in the crime is required.)

ORDER

AND NOW, this ____ day of June 2001, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is GRANTED. The charge of criminal mischief is DISMISSED.

By The Court,

Nancy L. Butts, Judge

cc: CA

George Lepley, Esquire
Robert Ferrell, III, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk