

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-1168-2021**  
 v. :  
 :  
 **JOSHUA SABINS,** : **OMNIBUS MOTION**  
 **Defendant** :

**OPINION AND ORDER**

Joshua Sabins (Defendant) was charged with Burglary<sup>1</sup>, Criminal Trespass<sup>2</sup>, Strangulation<sup>3</sup>, Terroristic Threats<sup>4</sup>, Simple Assault<sup>5</sup>, Criminal Mischief<sup>6</sup>, and Harassment<sup>7</sup>. These charges arise from an alleged incident between Defendant and his ex-girlfriend on August 14, 2021. Defendant filed this Omnibus Pretrial Motion on October 27, 2021. The Court held a hearing on the motion on December 2, 2021. In his Omnibus motion, Defendant argues that the Commonwealth provided insufficient evidence at the preliminary hearing on Count 1: Burglary, and therefore, this charge against Defendant should be dismissed. Defendant also reserves the right to file additional pretrial motions upon the receipt of additional discovery.

**Preliminary Hearing**

The Commonwealth submitted a transcript of the preliminary hearing, marked as Commonwealth's Exhibit 1. At the preliminary hearing held on September 8, 2021, the alleged victim, Amber Eckroth (Eckroth) testified on behalf of the Commonwealth. Eckroth testified that on August 14, 2021, she contacted the police due to an encounter with her ex-boyfriend,

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<sup>1</sup> 18 Pa.C.S. § 3502(a)(1)(i).

<sup>2</sup> 18 Pa.C.S. § 3503(a)(1).

<sup>3</sup> 18 Pa.C.S. § 2718(a)(1).

<sup>4</sup> 18 Pa.C.S. § 2706(a)(1).

<sup>5</sup> 18 Pa.C.S. § 2701(a).

<sup>6</sup> 18 Pa.C.S. § 3304(a)(5).

<sup>7</sup> 18 Pa.C.S. § 2709(a)(1).

the Defendant. N.T. 9/8/2021, at 2-3. Eckroth stated that she and Defendant were in an on-again-off-again relationship for approximately a year, but on August 14th, she and Defendant were no longer together. Id. at 3. At approximately 1:30 a.m., Eckroth sent Defendant a text message inviting him over to her home. Id. at 4. Defendant responded that he was at a bar in South Williamsport, so Eckroth went to his location, picked him up, and returned back to her house on Mill Lane in Williamsport. Id. at 2, 4. They had a drink together and conversed, then decided to get ready for bed. Id. at 4.

Eckroth testified that while she was preparing to go to sleep, Defendant disappeared and she found him in the spare bedroom vomiting in a drawer. Id. Eckroth directed him to go to the downstairs bathroom while she cleaned up the spare bedroom. Id. Shortly afterwards, Eckroth and Defendant had an argument after Eckroth told Defendant she thought he should go home because he was still vomiting. Id. at 5. Eckroth asked Defendant for his phone to contact his sister to pick him up and in the process of attempting to contact someone for Defendant, Eckroth noticed that Defendant had been in contact with another ex-girlfriend the night before. Id. Eckroth ordered Defendant to leave but Defendant refused. Id. Eventually, Defendant agreed to leave if he could locate his wallet, so Eckroth volunteered to help him look for it. Id. at 6. Eckroth searched her bedroom but was unsuccessful in locating Defendant's wallet. Id. While exiting her bedroom, Eckroth was holding her cell phone in her hand, and Defendant approached her and inquired who she had been talking to. Id. Eckroth showed Defendant her phone and stated she had not talked to anyone and refused to hand her phone over to Defendant. Id.

Eckroth further testified that Defendant "grabbed me by my throat and he started squeezing and it was uncomfortable to breathe to the point where it was getting kind of hard to

breath....” Id. Eckroth struck Defendant in the face in the hopes he would release his grip on her throat, which he did temporarily and then “grabbed my throat again and continued squeezing....” Id. Eckroth also stated that Defendant then “slammed” her onto the floor on her back. Id. Defendant walked down the stairs while Eckroth remained on the floor. Id. After a minute or two, Eckroth stated that she went downstairs and told Defendant that his wallet might be in her car. Id. Eckroth found Defendant’s wallet on the passenger side of her vehicle and returned it to Defendant. Id. at 7. Defendant was following her back to the front door but Eckroth closed the door behind her and locked it because “he told me once he found his wallet he would leave. So there was no reason for him to be there anymore.” Id. Eckroth said that she was afraid of Defendant after this interaction. Id.

Defendant began banging on the door in such a way that it “sounded like he was about to break it down.” Id. Eckroth testified that she took her dog and went upstairs to the spare bedroom to hide, but realized that the door did not fully close so it could not be locked. Id. at 7-8. Eckroth believed Defendant was about to break in, so she called 911 and then Defendant broke in to her apartment while she was still on the phone. Id. at 8. Eckroth stated that “the entire side of the frame was broken off, the lock was broken to the point I could not lock my door. The whole hinge came out.” Id. Eckroth noted that the entire doorframe needed to be replaced. Id. Eckroth indicated she was on the phone with 911 when Defendant was coming up the steps. Id. at 9. Eckroth could see Defendant coming up the stairs through the crack in the spare bedroom door because it did not fully close. Id. at 12. Eckroth testified that she made eye contact with Defendant and then he turned around and left the house. Id. at 13.

## **Discussion**

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. Id. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003).

Defendant challenges the sufficiency of the evidence on Count 1: Burglary. An individual “commits the offense of burglary if, with the intent to commit a crime therein, the person enters a building or occupied structure...that is adapted for overnight accommodations

in which at the time of the offense any person is present and the person commits, attempts or threatens to commit a bodily injury crime therein.” 18 Pa.C.S. § 3502(a)(1)(i). Defendant argues that the Commonwealth failed to establish their burden on this count even in the light most favorable to the Commonwealth. Defendant asserts that the Commonwealth did not establish that Defendant entered the home with the intent to commit a crime. Specifically, Defendant is of the position that criminal mischief or criminal trespass is not enough to prove that Defendant had the intent to commit a crime after entering Eckroth’s residence. Defendant further contends that the Commonwealth did not present evidence that Defendant intended or did in fact commit an injury. Defendant never made audible threats and was only banging on the door. Defendant also argues that he had been inside the home with permission just before this incident. Defendant states that he never broke anything inside the home except for the door and left as soon as he saw Eckroth.

The Commonwealth’s position is that they are not required to prove a specific crime occurred after Defendant broke in or what might have happened. The Commonwealth argues that, though Defendant was lawfully inside the residence earlier in the evening, Eckroth told Defendant to leave multiple times. Instead of doing so, Defendant assaulted her twice by grabbing her throat and then broke down the front door after it had been locked. The Commonwealth argues that once they showed that Defendant forcefully entered the residence, the totality of the circumstances demonstrate general intent. The Commonwealth cited to three (3) cases at the hearing on this motion in support of their argument that a *prima facie* case has been established for this count. In Commonwealth v. Alston, the Pennsylvania Supreme Court determined that the Commonwealth “is not required to allege or prove what particular crime” a defendant “intended to commit after his forcible entry into the private residence.”

Commonwealth v. Alston, 651 A.2d 1092, 1095 (Pa. 1994). “A conclusion to the contrary would place the police and citizens of this Commonwealth in the dangerous position of having to permit a burglar to take a substantial step towards the commission of a particular crime, potentially risking violence, in order to secure a conviction for burglary.” Id. The Commonwealth also cites to Commonwealth v. Wagner to assert that it is enough to show burglary if a person is forced into hiding in their own home. Commonwealth v. Wagner, 566 A.2d 1194 (1989).

However, upon the Court’s review of this case, the defendant’s conviction of burglary was reversed for failure to articulate evidence to support an intention to commit a crime while inside the home even though the homeowner locked herself in her bedroom after hearing a window break. Id. at 1195-96. Lastly, the Commonwealth cites to Commonwealth v. Porter which held the Commonwealth proved a specific intent to commit a crime after evidence was presented that the defendant called and texted the victim an overwhelming number of times, climbed the fire escape to the victim’s third floor apartment, broke a window to gain entry, and ultimately assaulted the victim. Commonwealth v. Porter, 248 A.3d 476, 9 (Pa. Super. 2021) appeal denied, 253 A.3d 209 (Pa. 2021).

Viewing the evidence in the light most favorable to the Commonwealth, this Court finds that the totality of the circumstances supports a *prima facie* showing of the burglary charge against Defendant. “The intent to commit a crime after entry may be inferred from the circumstances surrounding the incident.” Commonwealth v. Alston, 651 A.2d 1092, 1094 (Pa. 1994); *See also* Commonwealth v. Hardick, 380 A.2d 1235 (Pa. 1977). “This intent may be inferred from actions as well as words.” Id. The facts of the case *sub judice* demonstrate that Defendant and Eckroth had a tumultuous romantic relationship prior to this incident. After their

argument, Eckroth directed Defendant to leave her home multiple times. In response, Defendant clutched Eckroth's throat and began to choke her, making it difficult for her to breathe. Defendant choked Eckroth a second time and threw her to the ground. Eckroth eventually locked Defendant out of the apartment, which was a clear indication, in addition to her commands for him to leave, that Defendant's permission to be inside her home had expired. Defendant shattered Eckroth's door and entered the apartment without her consent. Eckroth testified that she was able to see him on her stairway and they made eye contact. Defendant heard Eckroth on the phone with emergency services and left the residence. It is reasonable to infer that Defendant intended to commit additional violent acts against Eckroth and the Commonwealth is not required to prove the specific crime that Defendant may or may not have had the intent to commit. Therefore, the Defendant's argument on this issue fails and his motion to dismiss Count 1 is denied.

### **Conclusion**

The Court finds that the Commonwealth presented adequate evidence at the preliminary hearing to establish a *prima facie* case for Count 1: Burglary, against Defendant. Therefore, Defendant's Motion to Dismiss is denied.

**ORDER**

**AND NOW**, this 18th day of February, 2022, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Habeas Corpus in his Omnibus Pretrial Motion is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (TB)  
Matthew Diemer, Esq.  
Law Clerk (JMH)