

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-11,849
	:
	:
vs.	: CRIMINAL DIVISION
	:
JEFFREY G. FARNSWORTH,	: Motion to Dismiss
Defendant	:

OPINION AND ORDER

Defendant has been charged with arson and related offenses in connection with a fire in his residence on or about October 28, 2002. In his Motion to Dismiss, filed November 14, 2002, Defendant contends the evidence presented at the preliminary hearing was insufficient to support the charges. At the hearing on the motion, held December 23, 2002, counsel agreed the Court should base its decision on a transcript of the preliminary hearing.

Defendant does not dispute that the evidence presented at the preliminary hearing shows both that there was a fire and that it was incendiary in nature. Defendant argues, however, the evidence was insufficient to establish a prima facie case that he was the responsible party. In support of his contention, Defendant cites Commonwealth v Trafford, 459 A.2d 373 (Pa. Super. 1983) and Commonwealth v Scott, 597 A.2d 1220 (Pa. Super. 1991), for the proposition that presence at the scene of a fire is insufficient to establish guilt. After viewing the evidence presented at the preliminary hearing, the Court does not agree with Defendant that the only evidence presented was that Defendant was present at the scene of the fire.

According to the testimony presented at the preliminary hearing, a neighbor, whose backyard adjoined Defendant’s backyard, glanced out his window when Defendant and his family arrived home in their vehicle in back of their house. The neighbor testified that he did not see any flames or smoke or smell anything at that time. He testified that within two to three minutes he heard yelling and when he looked out to see what was going on he saw flames on the back porch. The testimony presented

by fire personnel indicated the fire originated on the floor of the rear enclosed porch of the residence, that it was an extremely fast spreading and hot fire with no indications that it laid there and smoldered and went undetected for any amount of time, and they found evidence of an accelerant. Officer Peacock testified that in his investigation of the fire he interviewed Defendant who told him he had come home, walked across the back porch at which time he did not smell any smoke or see any flames, that he unlocked the door and went into the kitchen where he discovered thick heavy smoke. Defendant told Officer Peacock that he then left the residence and called 911 on his cell phone. Officer Peacock testified that Defendant did not smell of smoke and there was no soot on him and such was contrary to his experience because, in Officer Peacock's words, "when you run into a house fire it takes very few steps inside a house until you stink all night long and are filthy from the smoke."

In Commonwealth v Hamilton, 488 A.2d 277 (Pa. Super. 1985), the testimony of neighbors indicated the defendant therein had broken a window of an uninhabited house, entered the house and left several times in quick succession and then a fire broke out shortly after he left for the last time. The fire was determined to have been intentionally set and the Court found the conviction therein to have not rested only on evidence of appellant's proximity to the scene of the crime, distinguishing Commonwealth v Trafford, supra. The Court believes the facts of the instant matter also distinguish such from Trafford. The evidence herein is not simply that Defendant was in close proximity to the scene of the crime, as was Mr. Trafford, but, rather, that the fire, an extremely fast spreading and hot fire, broke out immediately after Defendant arrived home and entered the residence. Moreover, Defendant's statements regarding his discovery of the fire were completely inconsistent with the testimony of fire fighters regarding the location of the origin of the fire as well as the likely consequence of entering the residence as Defendant said he did, indicating a possible consciousness of guilt. Considering all of this evidence,¹ the Court finds the Commonwealth has established a prima facie

1 While the Court in Trafford indicated the Commonwealth could not use apparent inconsistencies in Mr. Trafford's version of the events surrounding the fire to make up for deficiencies in its own case, the Court in Commonwealth v Ford, 607 A.2d 764 (Pa. Super. 1992), did consider Mr. Ford's apparent falsification of his whereabouts on the night of the fire in concluding the evidence therein to be sufficient. The Court believes the evidence of falsification in Ford to have been deemed proper because the defendant therein was not "merely at the scene" of the fire. Since in the instant case, the Court believes the evidence also shows more than mere presence at the scene, evidence of his seemingly falsified statements may also be considered.

case and the Motion to Dismiss will therefore be denied.

ORDER

AND NOW, this 29th day of January, 2003, for the foregoing reasons, Defendant's Motion to Dismiss is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Matt Zeigler, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson