

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 03-10,491
	:
	:
vs.	: CRIMINAL DIVISION
	: Petition for Writ of Habeas Corpus
JOHN P. WHEELER,	:
Defendant	:

OPINION AND ORDER

Defendant has been charged with burglary, criminal trespass and criminal mischief in connection with an incident on or about March 17, 2003, in which he allegedly entered the residence of his sister-in-law through the bathroom window. After a preliminary hearing on March 25, 2003, all charges were held for court. In his Petition for Writ of Habeas Corpus, filed April 1, 2003, Defendant contends the evidence presented at the preliminary hearing was insufficient to establish a prima facie case of burglary. At the hearing on the petition, counsel stipulated to use of the transcript of the preliminary hearing for the court’s decision in this matter.

Defendant specifically contends the evidence failed to show that Defendant entered the residence with the intent to commit a crime therein. Burglary is defined by the Crimes Code as follows:

Section 3502. Burglary

- (a) Offense defined. – A person is guilty of burglary if he enters a building or occupied structure, . . . , with intent to commit a crime therein,

18 Pa.C.S. Section 3502. After a review of the transcript of the preliminary hearing, the Court agrees with Defendant.

At the preliminary hearing, the Commonwealth presented the testimony of Defendant’s sister-

in-law, who was in the residence at the time Defendant allegedly entered through the bathroom window. She testified that she was in an upstairs bedroom when she heard a noise from down the hallway, that she went down the hall and found Defendant standing just inside the bathroom window like he had just come through the window. She asked him what he was doing and he indicated to her that he needed a place to stay. She told him he could not stay there and that he would have to wait until her boyfriend (whose residence it was) got home and then they would talk to him; she told him to go down to the Fifth Avenue Bar and they would meet him there once her boyfriend arrived home. According to the witness's testimony, Defendant indicated his wife (her sister) had called the police and that he couldn't go out because the police were after him. The witness testified that she nevertheless talked Defendant into leaving and that she thought he was intoxicated. Further testimony indicated that nothing was found missing from the home. The Court finds nothing in the evidence presented by the Commonwealth to show any intent to commit a crime after entering the residence.

As insufficient evidence of one of the elements of burglary was presented, the charge will be dismissed.

ORDER

AND NOW, this 30th day of April, 2003, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus is hereby granted and the charge of burglary is hereby dismissed.

By the Court,

Dudley N. Anderson, Judge

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