

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 04-10917
:
vs. : CRIMINAL
:
STACY GREGG HUGHES, : Omnibus Pretrial Motion
Defendant :

ORDER

AND NOW, this ___ day of December 2004, THE Court DENIES the Writ of Habeas Corpus contained in his Omnibus Pretrial Motion. The defense challenged the sufficiency of the evidence to establish the elements of maliciousness and loitering or prowling for the violation of 18 Pa.C.S. §5506.

The Court has no problem finding sufficient evidence for the element of maliciousness. For purposes of Section 5506, the term malicious means “an intent to do a wrongful act or having as its purpose injury to the privacy, person or property of another.” Commonwealth v. Belz, 295 Pa. Super. 183, 186, 441 A.2d 410, 411 (1982). Brenda Crisp saw the defendant, her former boyfriend, peering into her kitchen window. When Ms. Crisp saw the defendant, she screamed. The kitchen window looks out onto the concrete patio and backyard of the residence Ms. Crisp was residing in with her new boyfriend, Michael Merloe. From this evidence, one can reasonably infer that at a minimum the defendant’s act of peering into the window was to invade Ms. Crisp’s privacy.

Although the issue of loitering and prowling is a closer question, the Court finds the evidence is sufficient for a prima facie case. Section 5506 of the Crimes Code is intended to punish both those who at night are bent on peeping into the private affairs of citizens in their dwellings and those persons who are found at or near dwellings without

lawful purpose or reason and whose presence can only be explained in some preparation for or attempt at illegality or crime. Commonwealth v. Belz, 295 Pa. Super. 183, 186, 441 A.2d 410, 411 (1982); Commonwealth v. Williams, 185 Pa. Super. 312, 315, 137 A.2d 903, 905 (1958); Commonwealth v. DeWan, 181 Pa. Super. 203, 208, 124 A.2d 139, 141 (1956).

According to Ms. Crisp's testimony, the defendant was standing on her back patio peering into her kitchen window. When she saw him, she screamed and he ran away. The patio and the window were at the rear of the residence. Ms. Crisp had never invited the defendant to the residence or told him where she lived. In fact, Ms. Crisp testified that after meeting the defendant at a public place a few days earlier, she took an alternate route home, because she was afraid he would follow her. Given the location of the kitchen window in the rear of the residence, the fact Ms. Crisp never told the defendant where she lived and the defendant's flight, the Court does not believe it would be unreasonable to infer that the defendant arrived at Ms. Crisp's back patio by moving about furtively or stealthily.

The Court also denies the Writ of Habeas Corpus on the summary offenses of criminal trespass and disorderly conduct.¹

With respect to the defendant's Petition for Site Visit, which is also contained in the Omnibus Pretrial Motion, the Commonwealth agreed to review the request with Ms. Crisp and Mr. Merloe to see if they would be agreeable to defense counsel's request. Defense counsel agreed that he would perform the site visit without the defendant being present, but counsel asked that the visit be held at night so the lighting conditions would be similar. If the parties cannot reach an agreement on the site visit, the Commonwealth shall

¹ The Court would encourage the parties to explore the possibilities of resolving this case through a plea to a summary criminal trespass charge.

notify the Court in writing of its opposition and the reasons therefor within 10 days, so the Court can rule on this issue.²

By The Court,

Kenneth D. Brown, P.J.

cc: Eric Linhardt, Esquire
District Attorney
Work file
Gary Weber, Esquire (Lycoming Reporter)

² At the hearing, Robert Ferrell, the Commonwealth's attorney, thought an agreement could be reached and did not offer any reasons for opposition, but this was not his case so he hadn't spoken to the victim about Mr. Linhardt's request.