

before. Id. at 10. Ms. Laurenson testified that she would talk to Defendant on the phone when Ms. Laurenson's children would be with Defendant and Defendant's boyfriend, Jeremy Ball¹, and when Defendant and Mr. Ball would fight. Id. She also testified following the first call, she turned her home phone off and put her other phone on vibrate. Id. at 7.

Ms. Laurenson testified that the next morning, August 9, 2007, she spoke with Trooper Eisenhower. Id. at 6. She testified that Trooper Eisenhower reviewed her phone and informed her that there were five or six additional telephone calls later that night and into the early morning hours of August 9, 2007. Id. at 8. Ms. Laurenson testified further that no messages were left. Id. at 15. She also testified that all of the calls were restricted, except for one at 3:27 a.m. from a landline number, which Ms. Laurenson stated was Defendant's number. Id. at 15. Ms. Laurenson also testified that previously she communicated with Jeremy Ball through the landline number. Id. at 16.

The Defense argues that the evidence presented does not establish a prima facie case of harassment on Count II of the charges. At the preliminary hearing the Commonwealth must establish a prima facie case, which requires sufficient evidence that a crime has been committed and that the accused is the one who probably committed it. Commonwealth v. Mullen, 333 A.2d 755, 757 (Pa. 1975). See also Commonwealth v. Prado, 393 A.2d 8 (Pa. 1978). The evidence must demonstrate the existence of each of the material elements of the crimes charged and legally competent evidence to demonstrate the existence of the facts which connect the accused to the crime. See Commonwealth v. Wodjak, 466 A.2d 991, 996-97 (Pa. 1983). Absence of any element of the crimes charged is fatal and the charges should be dismissed. See Commonwealth v. Austin, 575 A.2d 141, 143 (Pa. Super. 1990). A person commits the crime of harassment and

¹ Ms. Laurenson testified that Jeremy Ball is her ex-husband.

violates 18 Pa. C.S.A. § 2709(a)(6), “when with intent to harass, annoy or alarm another, the person: communicates repeatedly at extremely inconvenient hours[.]”

The Court finds that the Commonwealth did not establish that the Defendant “communicat[ed] repeatedly at extremely inconvenient hours.” 18 Pa. C.S.A. § 2709(a)(6). Ms. Laurenson testified that on August 8, 2007, she received a call around 10:00 p.m. from a restricted number and identified the caller as the Defendant. N.T. 11/29/07, p. 3-6. Ms. Laurenson testified further that she received five or six more phone calls that night and into the early morning hours of August 9, 2007. *Id.* at 8. Mrs. Laurenson testified that she did not answer the calls, that no messages were left, and that all except one of the calls came from a restricted number. *Id.* at 15. Ms. Laurenson testified that the one call which did not come from a restricted number came from a landline number, which she recognized as the Defendant’s number. *Id.* Although, Ms. Laurenson testified that she had also communicated with Jeremy Ball at that address. *Id.* at 16. The Court finds that the Commonwealth failed to provide evidence establishing who made the restricted calls. Ms. Laurenson’s testimony only provides that she received subsequent calls; she was unable to state who the calls came from as the number was restricted and no messages were left. Therefore, the Court finds that the Commonwealth has failed to establish a prima facie case for the second count of the charges, harassment at inconvenient hours.

ORDER

AND NOW, this ____day of January 2008, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Motion to Dismiss/Petition for Habeas Corpus is GRANTED and Count II, charging the Defendant with harassment at inconvenient hours, under 18 Pa. C.S.A. § 2709(a)(6), in the above captioned matter is DISMISSED.

By The Court,

Nancy L. Butts, Judge

xc: Robin C. Buzas, Esq.
DA
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary Weber, Esq. (LLA)