

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

**COMMONWEALTH**

**v.**

**MARCO GARRISON,  
Defendant**

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**No. 1956-2008  
CRIMINAL**

**OPINION AND ORDER**

Defendant filed a Petition for Writ of Habeas Corpus on December 30, 2008. A hearing on the Motion was scheduled for February 6, 2009; however, prior to the hearing the parties agreed to submit the motion on the transcript of the Preliminary Hearing.

***Background***

The following is a summary of the facts presented at the Preliminary hearing. On November 3, 2008 around 5:15 a.m., Nathan Cogley (Cogley) and Jaime Dapp (Dapp) were asleep in their bedroom when Dapp's daughter came into the room, got into bed with them and reported that somebody was in her bedroom. Cogley really believed the person was probably his son or Dapp's son, but offered to go check on it. However, in the meantime, Cogley and Dapp heard someone snoring. As Cogley started to sit up out of bed to go see who was in the house, the light came on and a man, later identified as Marco Garrison (Defendant) was standing in the room. Cogley immediately held the girls back and started yelling, "You're not supposed to be here. Why are you here . . . ." N.T. 11/21/08, p. 5. Cogley related the Defendant made an expression that he did not know where he was at and this in turn caused Cogley not to feel threatened. However, Dapp testified that she screamed as she was terrified because there is a man she's never seen before, standing in her bedroom, and whom had been in her daughter's

bedroom. Dapp also explained that the Defendant said he was in the “wrong house.” Id Then Cogley got up, walked the Defendant downstairs, and gave him his stuff which was lying on the floor.

Cogley and Dapp both related they did not know the Defendant prior to this incident and had not given him permission to come into the house. Cogley also explained that the Defendant came into the house through the front door which was closed but unlocked.

Stephanie Riggle (Riggle) testified that on November 3, 2008, around 5:00 or 6:00 a.m., the Defendant came over to her house approximately four or five times, knocked on the door, and would hang around. She explained that her mom witnessed the Defendant throwing rocks at the window and Riggle knew it was the Defendant because one of the times she looked out the window and saw him leaving. The last time the Defendant came over, Riggle’s ex-boyfriend asked who was there and the Defendant who was trying to take the screen off at the time and actually ripped the screen, identified himself. Riggle’s ex-boyfriend also told the Defendant that Riggle did not want to speak to him, at which time the Defendant left. Riggle then went upstairs and called the police.

Riggle testified a mutual friend brought the Defendant to her house about two and a half months ago. She explained that the Defendant stayed the night and then left the next day. Riggle related she never saw him again until this incident. She explained that she did not invite the Defendant over and was concerned for her safety.

### ***Discussion***

In Defendant’s Motion for Issuance of Writ of Habeas Corpus he asks the Court to dismiss the Criminal Trespass and Stalking charges against him. Defendant alleges the

Commonwealth failed to present a prima facie case by not establishing that: (1) the Defendant entered the house knowing that he was not privileged to enter; and (2) that no repeated act was done by the Defendant which would put Riggle in reasonable fear of bodily injury or substantial distress.

The burden the Commonwealth bears at the Preliminary Hearing is they must establish a prima facie case; the Commonwealth must present 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).

### ***Motion to Dismiss the Criminal Trespass Charge***

Defendant asserts that it was established at the Preliminary Hearing that he did not knowingly enter Cogley and Dapp's home. Defendant alleges further that he was not in the home by subterfuge and did not remain in the home surreptitiously.

A person is guilty of Criminal Trespass and violates 18 Pa. C.S. § 3503(a)(1), "if, knowing that he is not licensed or privileged to do so, he: (i) enters . . . or surreptitiously remains in any building or occupied structure or separately secured or occupied portion thereof . . ." See Commonwealth v. Namack, 663 A.2d 191, 194 (Pa. Super. Ct. 1995) (holding that the crime of criminal trespass includes the element of intent).

The Court finds the testimony presented in this case is sufficient to satisfy the “knowing” requirement for Criminal Trespass. The testimony in the instant case reveals that Cogley and Dapp did not know the Defendant and never gave him permission to enter. The Defendant entered the house by walking through the front door, whereupon he laid some things on the floor in the downstairs before going upstairs to Dapp’s daughter’s room, where he fell asleep, and then upon waking he entered Cogley and Dapp’s room. After Cogley yelled at the Defendant, he responded that he was in the “wrong house.” However, one can assume that if the Defendant had realized he was in the wrong house, that upon waking he would have immediately left the house rather than entering another room in the house. Therefore, the Court finds the Commonwealth presented a prima facie case as to the Criminal Trespass charge.

***Motion to Dismiss the Stalking Charge***

Defendant asserts that his conduct does not support the allegation that he intended to put Riggle in reasonable fear of bodily injury to cause her substantial emotional distress.

A person commits the offense of Stalking and violates 18 Pa.C.S. § 2709.1(a),

when the person either:

(1) engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; . . .

Course of conduct is defined as “[a] pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct.” Commonwealth v.

D'Collanfield, 805 A.2d 1244, 1248 (Pa. Super. Ct. 2002) (quoting 18 Pa. C.S.A. § 5504).

The Court finds the Commonwealth presented sufficient evidence for a prima facie case of Stalking. The testimony of Riggle was that the Defendant came to her house four of five times in the early morning hours of November 3, 2008 without her permission. The Defendant's repeated actions although short in time are sufficient to show a course of conduct. The Defendant's actions also show an intent to put Riggle in fear of bodily injury or substantial emotional distress. Riggle testified the Defendant had thrown rocks at her window and on the last occasion was actually trying to remove the screen from one of the windows and in fact had ripped the screen. Riggle also explained she was concerned for her safety as the Defendant was there several times and she had not invited him over. Therefore, the Habeas Motion shall be denied.

**ORDER**

AND NOW, this \_\_\_\_ day of February 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

cc. DA (PP)  
PD (JL)  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber (LLA)