

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

**COMMONWEALTH**

**v.**

**MARTIN BONNER ,  
Defendant**

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**No. CR 883-2014**

**CRIMINAL**

**ORDER**

AND NOW, this 7<sup>th</sup> day of **August**, 2014, upon defendant's motion for habeas corpus/motion to dismiss the charges of burglary, defendant's motion is GRANTED.

***Procedural History***

On May 12, 2014, Williamsport Bureau Police Officer Jason Dockey filed a criminal complaint against defendant charging him with burglary<sup>1</sup> and other charges arising from an incident on the same date involving a residence at 2013 Glynn Avenue, Williamsport. A preliminary hearing was held on May 27, 2014 before Magisterial District Judge James G. Carn. The burglary and other charges were held for Court. On July 1, 2014, defendant filed a motion to dismiss/habeas corpus petition averring that the evidence presented at the preliminary hearing was not sufficient to support a prima facie finding that defendant intended to commit a crime inside the residence at 2013 Glynn Avenue at the time he entered. This matter came before the Undersigned during motions Court at which time counsel stipulated to a decision without further scheduling and use of the transcript of the preliminary hearing for the court's decision in this matter. The transcript was attached to defendant's petition.

***Evidence Presented at Preliminary Hearing***

At the preliminary hearing, the Commonwealth presented three witnesses. The first witness, Jamie Golden, lived next door to 2013 Glynn Avenue. Ms. Golden heard 3 bangs and

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<sup>1</sup> 18 Pa.C.S. § 3502 (a)(2)

glass shatter. Ms. Golden saw someone with a gray hoodie enter the back door of 2013 Glynn Avenue and someone of the same description pass by her. Ms. Golden contacted the police and described what she saw and heard and gave a description to the police. Next, Ms. Bobbi Jo Wettlaufer testified that she received a call from the police informing her that someone broke into her home. Ms. Wettlaufer advised the police that defendant did not have permission to be in her home on May 12, 2014.

The last witness for the Commonwealth was Officer Jason Dockey. Officer Dockey is a police officer with the Williamsport Bureau of Police and had been employed there for about 14 ½ years. Officer Dockey testified that 2013 Glynn Avenue suffered a shattered kitchen door which entered the kitchen. There was a rock located on the counter top of the kitchen. Tins on the kitchen counter had been disturbed, lids were found off. Over defense counsel's objection, Officer Dockey testified that the owner of the residence, Mr. Reed, knew defendant from work and had received a text from him that same day. When Reed texted that he was at work, defendant texted to Mr. Reed that he was "just checking up." Mr. Reed told Officer Dockey that nothing was taken from the residence at 2013 Glynn Avenue. Officer Dockey confirmed that valuable items, such as a laptop and TV had **not** been taken or disturbed. Again, nothing was taken from the residence.

### **Legal Standards**

"The purpose of a preliminary hearing is to avoid the incarceration or trial of a defendant unless there is sufficient evidence to establish a crime was committed and the probability the defendant could be connected with the crime." Commonwealth v. Landis, 48 3d 432, 444 (Pa. Super. 2012)(citations omitted) When determining whether a petition for habeas corpus for insufficiency of the evidence presented at a preliminary hearing, Commonwealth v. Landis, 48

3d 432, 444 (Pa. Super. 2012), the Superior Court has outlined the burden required by the Commonwealth and the matters for the Court's evaluation as follows.

[T]he Commonwealth must show sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury. When deciding whether a prima facie case was established, we must view the evidence in the light most favorable to the Commonwealth, and we are to consider all reasonable inferences based on that evidence which could support a guilty verdict. The standard clearly does not require that the Commonwealth prove the accused's guilt beyond a reasonable doubt at this stage. *Commonwealth v. Winger*, 2008 PA Super 211, 957 A.2d 325, 328 (Pa. Super. 2008) (quotations and citations omitted) (bold in original). Rather, the prima facie case merely requires evidence of the existence of each element of the crime charged. See *Commonwealth v. Patrick*, 2007 PA Super 289, 933 A.2d 1043 (Pa. Super. 2007) (en banc). The weight and credibility of the evidence is not a factor at this stage. See *id.* *Commonwealth v. Landis*, 48 3d 432, 444 (Pa. Super. 2012).

18 Pa.C.S. § 3502 (a)(2) provides as follows.

Burglary.

(a) Offense defined. --A person commits the offense of burglary if, **with the intent to commit a crime** therein, the person:

(2) enters a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense no person is present[.] (emphasis added)

### *Discussion*

In the present case, the Court concludes that the evidence at the preliminary hearing was insufficient to sustain the elements of burglary pursuant to 18 Pa.C.S. § 3502 (a)(2). There was no evidence that the defendant intended to commit a crime inside 2013 Glynn Avenue. Although there was sufficient prima facie evidence that the defendant broke into the residence, there was no evidence that any crime was committed or intended to be committed in the residence. The Commonwealth argued that the breaking of glass in order to gain entry is sufficient evidence of intent. This Court does not agree. While the breaking of glass to gain entry is sufficient prima facie evidence of intent to commit criminal trespass-break into structure under 18 Pa. C.S. §

3503 (a)(1)(ii)<sup>2</sup>, the breaking of glass does not provide evidence of intent to commit a crime after entry into the residence. This is especially true since there was no evidence that the defendant committed any crime inside the residence and the defendant vacated the residence on his own. No item was taken and valuable items such as a TV and laptop were left undisturbed. Accordingly, the Court enters the following Order.

**ORDER**

AND NOW, this 7<sup>th</sup> day of **August, 2014**, for the reasons stated above, defendant's Petition for Writ of Habeas Corpus/Dismissal is hereby GRANTED and the charge of burglary is hereby DISMISSED.

BY THE COURT,

**August 7, 2014**

Date

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Richard A. Gray, J.

cc: DA (NI)  
PD (NS)  
Lycoming County Prison  
LCP (Intake)  
Sheriff

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<sup>2</sup> 18 Pa.C.S. § 3503 provides as follows:

§ 3503. Criminal trespass.

(a) Buildings and occupied structures.

(1) A person commits an offense if, knowing that he is not licensed or privileged to do so, he:

\* \* \*

(ii) breaks into any building or occupied structure or separately secured or occupied portion thereof.

\* \* \*

(3) As used in this subsection:

"Breaks into." --To gain entry by force, breaking, intimidation, unauthorized opening of locks, or through an opening not designed for human access.