

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	<b>CRIMINAL DIVISION</b>
	:	<b>NO. CR-1506-2023</b>
<b>v.</b>	:	
	:	
<b>DONNELL S. THOMPSON,</b>	:	<b>Motion to Dismiss</b>
<b>Defendant</b>	:	

**OPINION**

This matter was before the Court on August 5, 2025, on the Defendant’s Motion Dismiss<sup>1</sup> filed on December 17, 2024, by and through Defendant’s counsel at the time, Peter Lovecchio<sup>2</sup>, Esquire. At the hearing on the Motion to Dismiss, Andrea Pulizzi, Esquire, appeared on behalf of the Defendant, and Assistant District Attorney Jessica Feese appeared on behalf of the Commonwealth.

Defendant is charged in the above-captioned Information with the following counts:

- (1) Criminal Attempt—Burglary, Overnight Accommodations-Person Present, a felony one;
- (2) Terroristic Threats with Intent to Terrorize Another, a misdemeanor one; (3) Harassment—Court of Conduct with no Legitimate Purpose, a summary; and (4) Criminal Trespass—Enter Structure, a felony three.

Defendant’s Motion to Dismiss seeks to have dismissed from the Information Count 4, Criminal Trespass—Enter Structure, a felony three, on the basis that the Commonwealth failed to establish a *prima facie* case to charge Defendant thereof. At the hearing on the Motion, the Commonwealth submitted as Exhibit No. 1 the preliminary hearing transcript,

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<sup>1</sup> An Amended Motion to Dismiss was filed on the same date, amending to add paragraph 4 to state that the Commonwealth does not oppose the late filing of the Motion to Dismiss. In all other respects, the original Motion to Dismiss remained unchanged.

<sup>2</sup> Attorney P. Lovecchio was court-appointed to represent the Defendant on October 28, 2024. On April 12, 2025, Attorney P. Lovecchio was notified that the Defendant wanted him to withdraw from his representation in this matter, and also cited was an irretrievably broken attorney-client relationship. Attorney P. Lovecchio filed a Motion for Leave to Withdraw as Counsel on April 14, 2025. A hearing occurred on April 21, 2025, and Attorney P. Lovecchio’s request was granted.

11/07/2023, without objection from the Defendant, the exhibit was admitted to the record. Defendant asserts that the Commonwealth failed to prove the material element that Defendant entered or gained entrance by subterfuge into the residence of the alleged victim.

***Background***

Defendant faces the above-named charges in this matter for incidents that occurred on or around October 21, 2023. At the preliminary hearing, the Commonwealth presented Serae Hiller, the alleged victim in this matter. Ms. Hiller testified at the preliminary hearing that she is familiar with Defendant because they are ex-romantic partners. (Preliminary Hearing Transcript, 11/07/2023, 3:1). Regarding the charge of Criminal Trespass—Enter Structure, Ms. Hiller testified that at or after 11:00 p.m. on October 21, 2023, (tr. 6:25), she was in the upstairs portion of her residence when her daughter who was home at the time reported she heard someone trying to open the door. (Tr.6:15-21). Ms. Hiller stated that she checked her front security camera and saw that it was the Defendant. (Tr.6:22). Ms. Hiller recounted that when she viewed the video she saw Defendant coming to her front door and opening the screen door. (Tr.7:12). Ms. Hiller then stated that she saw Defendant leaving approximately five to six minutes later. (Tr.7:17-18). Ms. Hiller testified that it appeared he entered the residence because of the next video clip being him leaving several minutes after seeing him at the door. (Tr.7:17-19). Ms. Hiller testified that Defendant was not invited into her home on the evening of October 21, 2023. (Tr.7:21-23).

On cross-examination, Ms. Hiller testified that she gave Defendant a key to her apartment (tr.11:17-19), for the purpose of placing delivered packages inside her home times she was out of town. (Tr.12:3-4). Ms. Hiller further testified that, within the last year (tr.12:13-15), she communicated to Defendant, several times over a period of months (tr. 12:6-8), he was no longer welcome in the home. (Tr.12:7-7). Also, on cross-examination,

Ms. Hiller testified that if Defendant did not enter her home that evening, then he was standing in the doorway which he would have had to have opened because she did not see him on the camera for several minutes until she saw him leaving. (Tr. 16:1-10).

***Argument, Analysis, and Conclusion***

Defendant argues that the charge cannot proceed to trial because the Commonwealth failed to establish a *prima facie* case that the Defendant “entered or gained entrance by subterfuge.” The Commonwealth argued that the testimony presented established that the circumstances of that evening provide a *prima facie* case, and the question of whether the Defendant engaged in conduct constituting criminal trespass should be for a jury to consider.

It is well settled that the preliminary hearing is not a trial and the Commonwealth need not establish Defendant’s guilt beyond a reasonable doubt at that stage. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). Rather, the Commonwealth bears the burden of establishing a *prima facie* case “that a crime has been committed and that the accused is probably the one who committed it.” *Id.*; Pa.R.Crim.P. 141(d). “To demonstrate that a *prima facie* case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant’s complicity therein,” *id.*, and may do so by utilizing evidence presented at the preliminary hearing as well as submitting additional proof. *Id.* Weight and credibility of the evidence are not factors for the Court to consider. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); *see also Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003) (holding that “[t]he evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury”). “Inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light

most favorable to the Commonwealth's case.” *Commonwealth v. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990).

Under 18 Pa.C.S. Section 3503(a)(1)(i), “a person commits an offense if, knowing that he is not licensed or privileged to do so, he [] enters, gains entry by subterfuge or surreptitiously remains in any building or occupied structure or separately secure or occupied portion thereof....”

Here, the Commonwealth presented sufficient evidence to establish a *prima facie* case for criminal trespass, as graded as a felony of the third degree, under Section 3503(a)(1)(i). The evidence presented established that the Defendant was previously told he was no longer welcome on the premises, the door to the residence was locked, and the security camera showed the Defendant approach the door and disappear from view for several minutes before leaving the property. The alleged victim testified that the only way the Defendant could have disappeared from view of the camera was either by entering the residence or standing in the doorway to the residence—which would require the door to be opened. In viewing the evidence in a light most favorable to the Commonwealth, the Court concludes that sufficient evidence was presented, that if believed, would establish all of the elements of the criminal trespass charge. Whether or not there is proof beyond a reasonable doubt is a question left for a jury at trial.

**Accordingly, this 9th day of February, 2026**, the Defendant’s request to have Count 4, Criminal Trespass—enter structure, dismissed from the Information is **DENIED**.

By the Court,

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Ryan M. Tira, Judge

RMT/asw

CC: DA; CA;  
Andrea Pulizzi, Esq.  
Gary Weber, Esq.—Lycoming Reporter