

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

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL DIVISION
	:	NO. CR-1505-2023
v.	:	
	:	
DONNELL S. THOMPSON,	:	Motion to Dismiss
Defendant	:	

OPINION

This matter was before the Court on August 5, 2025, on the Defendant’s Motion Dismiss¹ filed on December 17, 2024, by and through Defendant’s counsel at the time, Peter Lovecchio², 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) Simple Assault, misdemeanor one; (2) Harassment—Subject Other to Physical Contact, summary; (3) Criminal Trespass—Enter Structure, felony three; (4) Strangulation—Applying pressure to the Throat or Neck, felony two; and (5) Strangulation—Blocking the Nose and Mouth of the Person, felony two.

Defendant’s Motion to Dismiss seeks to have dismissed from the Information Count 3, Criminal Trespass—Enter Structure, a felony three, on the basis that the Commonwealth failed to establish a *prima facie* case to charge the Defendant thereof. At the hearing on the Motion, the Commonwealth submitted as Exhibit No. 1 the preliminary hearing transcript,

¹ 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.

² 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 alleged victim's residence.

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. Ms. Hiller testified that on October 21, 2023, around 2:30 to 3:00 a.m., (Preliminary Hearing Transcript, 11/07/2023, 6:11-12), she was in her home in Loyalsock, Lycoming County, Pennsylvania, when she heard a noise downstairs. (Tr. 3:20-21). When Ms. Hiller went to the downstairs portion of the home to investigate the noise she noticed her backdoor was unlocked, which was unusual because she does not keep the backdoor unlocked. (Tr. 3:22-24). Ms. Hiller remained in the downstairs portion of her home, (tr. 3:24-25), when Defendant opened her door with a key and entered her home. (Tr. 4:1-4). Ms. Hiller testified that Defendant was not supposed to be in possession of a key to her home. (Tr. 4:1-2). Ms. Hiller further stated that she approached the door to push it shut and prevent Defendant from entering. (Tr. 4:12-13). Ms. Hiller testified that Defendant grabbed her by her hair and pulled her to the ground. (Tr. 4:13-14). Ms. Hiller testified the struggle continued, and Defendant had wrapped his arms around her throat, and he also dragged her to the couch by her hair. (Tr. 4:14-15). Ms. Hiller testified that she was on the floor when Defendant had his hands around her throat to the point that she could not breath and she was lightheaded. (Tr. 4:17-25). At the couch, Ms. Hiller testified that Defendant shoved her face into the couch cushions for approximately twenty to thirty seconds. (Tr. 5:11-13). Ms. Hiller testified that she sustained a red mark and pain on the side

of her face that lasted several days, redness around her throat, and redness of her ear. (Tr. 5:19-24 and 6:1-2).

Ms. Hiller further stated that Defendant was not invited to her residence, he was not a resident of the address himself, and the pair did not have an arrangement where he could come and go as he pleased. (Tr. 6:3-9).

On cross-examination, Ms. Hiller testified that she and Defendant were romantically involved on and off over the course of seven and a half to eight years. (Tr. 11:9-10). For approximately seven years, Ms. Hiller resided in the same apartment. (Tr. 11:11-13). Ms. Hiller testified that Defendant did have access to her residence during the seven-year relationship, and he was given a key about one year prior to this incident. (Tr. 11:14-22). Ms. Hiller also stated that Defendant returned the key because her son had lost his key several months prior to the incident. (Tr. 11:23-25). Defendant had a key for the purpose of putting packages inside of Ms. Hiller's home when she was away on trips. (Tr. 12:2-4). Ms. Hiller communicated to Defendant that he was not permitted in the residence several times over the course of several months leading up to the incident on October 21, 2023. (Tr. 12:5-9).

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." Defendant argued that the pair had a seven-year relationship, and the Defendant was given a key. Moreover, Defendant argued that Ms. Hiller did not indicate to Defendant he was not welcome at the residence because he had permission to check on the home and deliver packages into the home with no evidence to contradict that Defendant did not have permission to be in the residence. 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, Defendant's argument fails because there is sufficient evidence to establish, at this stage, that the Defendant was not welcome in the residence, despite having a key.

Notwithstanding, the testimony further provides that Defendant's access was limited to invite or permission to check on the home or deliver packages to the inside of the home. The testimony provides support for the material element Defendant argues is missing. Defendant entered the residence in the early morning hours, and that the alleged victim attempted to use her body to prevent him from entering, but he entered anyway. 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 3, Criminal Trespass—enter structure, dismissed from the Information is **DENIED**.

By the Court,

Ryan M. Tira, Judge

RMT/asw

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