

SUPERIOR COURT OF PENNSYLVANIA

Commonwealth v. Cannon

297 Pa. Superior Ct. 106 (1982) (Superior Court of Pennsylvania 1982) · Decided March 19, 1982

SUMMARY

The Pennsylvania Superior Court held that the evidence was sufficient to sustain Frederick Cannon’s conviction for attempted burglary but insufficient to sustain his conviction for criminal trespass of a building or occupied structure. The court affirmed the attempted-burglary sentence, vacated the criminal-trespass sentence, and discharged Cannon as to that offense.

CASE DETAILS

|                       |                                                                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Superior Court of Pennsylvania                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Spaeth, Judge; Cercone, President Judge; Cavanaugh, Judge                                                                                                                                                                         |
| JURISDICTION          | Pennsylvania                                                                                                                                                                                                                      |
| DECIDED               | March 19, 1982                                                                                                                                                                                                                    |
| DISPOSITION           | other                                                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | Appeal from judgments of sentence for attempted burglary and criminal trespass following a nonjury trial.                                                                                                                         |
| STANDARD OF REVIEW    | The court accepted as true all evidence upon which the trier of fact could properly have based the verdict and considered whether that evidence, together with all reasonable inferences, proved guilt beyond a reasonable doubt. |
| PRECEDENTIAL VALUE    | Published Pennsylvania Superior Court opinion; precedential at the time of issuance.                                                                                                                                              |
| PARTIES               | Frederick Cannon v. Commonwealth of Pennsylvania                                                                                                                                                                                  |

TOPICS

- criminal procedure
- evidence
- statutory interpretation

PRACTICE AREAS

- criminal law
- criminal procedure
- evidence

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove that Cannon intended to enter the Jaffe residence and commit a crime, supporting his conviction for attempted burglary.
2. Whether breaking into a fenced backyard constituted breaking into a building, occupied structure, or separately secured or occupied portion thereof under Pennsylvania's criminal-trespass statute.
3. Whether the evidence was sufficient to support the conviction for criminal trespass of a building or occupied structure.

## HOLDINGS

1. The evidence was sufficient to permit the factfinder to infer that Cannon intended to enter the Jaffe house and commit theft after entering, and therefore supported the attempted-burglary conviction.
2. A fenced backyard is not a building, occupied structure, or separately secured or occupied portion thereof within the meaning of 18 Pa.C.S. § 3503(a); therefore, breaking into the backyard did not establish criminal trespass of a building or occupied structure.

## KEY QUOTATIONS

*“In deciding the sufficiency of evidence, we must first accept as true all the evidence upon which the trier of fact could properly have based the verdict, and then ask whether that evidence, with all reasonable inferences from it, was sufficient to prove guilt beyond a reasonable doubt.”* (297 Pa. Superior Ct. at 109)

*“A yard is not a “building.””* (297 Pa. Superior Ct. at 115)

*“When one statute specifically proscribes certain conduct, then another general statute carrying a more severe punishment will be held inapplicable, for we assume that the legislature intended the specific statute to control.”* (297 Pa. Superior Ct. at 116)

## FACTUAL BACKGROUND

At approximately 3:55 a.m., Minnie Jaffe heard noises near the alley behind her Philadelphia home and then heard the locked door in the backyard fence open. Police responding almost immediately saw Cannon emerging from the rear-yard door and arrested him. The lock had been knocked off its hinges and wood splinters were present, but no tool was found. Cannon denied entering the yard and claimed he had been walking home intoxicated on Smedley Street.

## PROCEDURAL HISTORY

Cannon was convicted and sentenced for attempted burglary and criminal trespass. On appeal, he challenged the sufficiency of the evidence supporting both convictions. The Superior Court affirmed the attempted-burglary judgment, vacated the criminal-trespass judgment, and discharged Cannon as to that offense. The Pennsylvania Supreme Court denied allowance of appeal on June 30, 1982.

## DISPOSITION

other

## REMAND INSTRUCTIONS

No remand was ordered. The attempted-burglary sentence was affirmed; the criminal-trespass sentence was vacated, and Cannon was discharged as to that offense. The court also stated that no resentencing remand was necessary because the sentences were concurrent and the same sentence would apparently be reimposed.

## CASES CITED

- Commonwealth v. Fortune, 456 Pa. 365, 318 A.2d 327 (1974)
- Commonwealth v. Petrisko, 442 Pa. 575, 275 A.2d 46 (1971)
- Commonwealth v. Wilson, 225 Pa. Superior Ct. 513, 312 A.2d 430 (1973)
- Commonwealth v. Morgan, 265 Pa. Superior Ct. 225, 401 A.2d 1182 (1979)
- Commonwealth v. Jacobs, 247 Pa. Superior Ct. 373, 372 A.2d 873 (1977)
- Commonwealth v. Madison, 263 Pa. Superior Ct. 206, 397 A.2d 818 (1979)
- Commonwealth v. Brown, 226 Pa. Superior Ct. 172, 313 A.2d 290 (1973)
- Commonwealth v. Eberts, 282 Pa. Superior Ct. 354, 422 A.2d 1154 (1980)
- Commonwealth v. Guenzer, 255 Pa. Superior Ct. 587, 389 A.2d 133 (1978)