

**People v Gonyou**

2021 NY Slip Op 33695(U)

September 27, 2021

County Court, Wayne County

Docket Number: 70229-21/001

Judge: Daniel G. Barrett

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This opinion is uncorrected and not selected for official publication.

At a Term of the County Court held in and for the County of Wayne at the Hall of Justice in the Town of Lyons, New York on the 27<sup>th</sup> day of September, 2021.

PRESENT: Honorable Daniel G. Barrett  
County Court Judge

STATE OF NEW YORK COUNTY OF WAYNE  
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

DECISION ON  
MOTION TO DISMISS  
Index No. 70229-21/001

BRYAN A. GONYOU,

Defendant

Appearances - People - ADA Christine Callanan, Esq.  
Defendant - APD Stephanie M. Tischler, Esq.

Defendant by his counsel filed a Notice of Motion for Dismissal. The People provided a Response to the same. Oral argument was had before the Court on September 2, 2021. Specifically the Motion to Dismiss alleges legal insufficiency of the evidence before the Grand Jury to support the sole charge of the Indictment, Burglary in the Second Degree in violation of Section 140.25(2) of the Penal Law, alleging that the Defendant on or about November 19, 2020, knowingly entered unlawfully in a building that being a dwelling, with the intent to commit a crime therein.

The Court did examine the Grand Jury Minutes, the only witness was the owner of the dwelling, Amanda Allen. Essentially she testifies that she and the Defendant were in a short term personal relationship. That they broke up and that on the day in question the Defendant was coming back to get the rest of his things. He came in the morning, picked up some items and gave the key back to her. However, he later showed up at the house

again banging on the door, etc.. She opened the door and the Defendant pushed through. The Defendant did not have her permission to enter her home. She testifies in summary that after the Defendant was in her home he was screaming about a welder. She testifies she didn't know anything about it and the Defendant went through the whole house just screaming the whole time just being aggravated. She further testified that she screamed at him to get out and that he became threatening towards her. After they argued he kicked a hole in a cabinet and then he left.

The defense argues that there is not sufficient evidence to sustain the element of the crime of Burglary, that is that at the time the Defendant entered unlawfully into the dwelling, that he intended to commit the crime of Criminal Mischief. Defense argues that when the Defendant entered the home he was trying to find missing property, which was verified by the victim's testimony that the Defendant searched extensively for a welder but was unable to find it. Only after being unable to find it and only after arguing with the victim the Defendant kicked a hole in the cabinet, apparently out of frustration.

Defense argues in the case of People v Gaines, 74 N.Y. 2d 358, that in order to be guilty of burglary for unlawful entry, defendant must have had the intent to commit a crime at the time of entry. Defense argues that there was zero evidence presented to show that it was the Defendant's intent to damage property upon entering the home and since the element was not proven by sufficient evidence before the Grand Jury that the Court must dismiss the charge of Burglary in the Second Degree.

Jury instructions provide that in order to prove from all the evidence beyond a reasonable doubt the crime of Burglary in the Second Degree the People must show unlawful entry into the dwelling, that the defendant did so knowingly and the defendant did so with intent to commit a crime inside the building.

There is a plethora of case law regarding this issue, the leading case being People v Gaines, 74 N.Y. 2d 358. That case provided the act constituting the criminal trespass must be accompanied by a contemporaneous intent to commit a crime.

When the statutory acts of entry are established, it also must be established that they were accomplished with the intent to commit a second crime, only then is the crime of Burglary complete, the 1 Callaghan's, Criminal Law in New York 21:03, 21:04.

A defendant who simply trespasses with no intent to commit a crime inside a building does not possess the more culpable mental state that justifies a punishment as a burglar, People v Gaines, supra. Case law has provided that simply entering a dwelling or remaining unlawfully does not amount to the imposition of liability by merely showing that at some point after unlawful entry the defendant committed a crime while on the premises. It is further held in People v Graves, 76 N.Y. 2d 16, the court pointedly emphasized that the two component parts of the crime, unlawful entry or remaining and then contemporaneously formed intent to commit a crime in the building unlawfully entered into are discrete elements to be described as such by the court's charge to the jury and to be proven by the People at trial.

Neither the Defendant's act of criminal mischief nor the events which preceded it, including the victim's demand the Defendant leave the premises immediately prior to the criminal mischief, constitute evidence sufficient to support the inference that the Defendant arrived at the victim's doorstep with intent to commit criminal mischief.

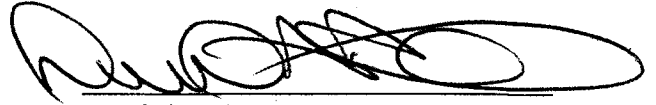
In essence the proof before the Grand Jury supports Criminal Trespass and Criminal Mischief and not a Burglary.

Therefore the Court dismisses the Indictment against the Defendant due to legal insufficiency of evidence before the Grand Jury. This dismissal is with prejudice.

However the Court will allow the District Attorney's Office to present any lesser included offense(s) to the same or different Grand Jury within sixty (60) days of the date of this Decision.

This constitutes the Decision of the Court.

Dated: September 27, 2021  
Lyons, New York

A handwritten signature in black ink, appearing to read 'Daniel G. Barrett', written over a horizontal line.

Daniel G. Barrett  
County Court Judge