

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

CAMBRIDGE DISTRICT COURT

DOCKET NO. 0952CR001267

0952CR001268

COMMONWEALTH)
)
v.)
)
JOSEPH A. CADILLIC)
and ELISSA C. CADILLIC)

DEFENDANTS MOTION TO DISMISS

Now comes the Defendants in the above-entitled matter and moves this Honorable Court, to dismiss the complaint on the grounds that the government cannot establish essential elements of the charged offenses. *See Commonwealth v. DiBennadetto*, 436 Mass. 310, 313-14 (2002); *Bradford v. Knights*, 427 Mass. 748, 753 (1998). *See also Commonwealth v. McCarthy*, 385 Mass. 160, 163 (1982). In support of this motion, counsel for the Defendant states the following:

1. There is no merit to the charge that the Defendants were trespassing. In order ~~of~~ for the government to convict the defendant of criminal trespass under G.L. c. 266, § 120, it must prove beyond a reasonable doubt, first, that, the defendant entered or remained on Harvard property "without right," and, second, that he was forbidden to enter or remain there by the person in lawful control of the premises. *Commonwealth v. Richardson*, 313 Mass. 632, 736 (1943). In the present case, the government cannot establish that the Defendants entered the Kirkland House property "without right" in contravention of the statute. To the contrary, the Defendants were granted access to the building and were on the property with permission.

7/28/09 Motion to Dismiss is Allowed
Roanne Sragow J

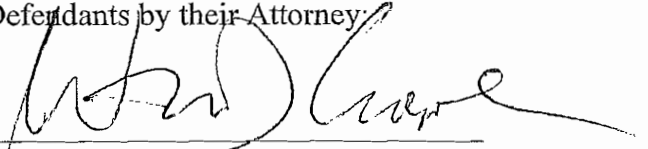
2. The government also cannot establish the charge of Misdemeanor Breaking and Entering, under c. 266, § 16A. Pursuant to the statute, the Commonwealth must prove that there was (1) a breaking; (2) an entering; and (3) that the defendants intended to commit a misdemeanor within the property. *See Commonwealth v. Willard*, 53 Mass.App.Ct. 650, 653 (2002); *Commonwealth v. Lewis*, 346 Mass. 373, 377 n.1 (1963). In the case at hand, there was no “breaking” because the Defendants were lawful invitees. Furthermore, there is no evidence that the Defendants possessed any intent to commit any misdemeanor at the time they entered the property. *See, e.g., Commonwealth v. Wygrzowski*, 362 Mass. 790, 792 (1973); *Commonwealth v. Hill*, 57 Mass.App.Ct. 240 (2003)

3. In the case at hand, the government alleges that on the afternoon of May 30, 2005, a student named Kathleen Breeden met the Defendants and that Mr. Cadillac properly identified himself as a private investigator, and explained that he was investigating the shooting that had taken place in the building earlier in the month. According to the government’s case, the student then voluntarily escorted the couple into the building, used her own electronic passkey to enter the doors, and pointed out the area where certain events had taken place earlier in the month. As a matter of law, there is no merit to the charges against the Defendants.

4. In further support hereof is the Memorandum of Law in Support of the Defendant’s Motion to Dismiss and the Defendant’s Affidavit in Support of Defendant’s Motion to Dismiss, both of which are attached hereto.

WHEREFORE, the Defendant moves this Honorable Court to dismiss the
complaint.

Respectfully submitted,
Defendants by their Attorney

A handwritten signature in black ink, appearing to read "William D. Crowe", written over a horizontal line.

William D. Crowe BBO No. 106960

Adam A. Rowe – BBO No. 634885

CROWE & DUNN

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Dated: June 18, 2009