

IN THE JUSTICE OF THE PEACE COURT
OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY
COURT NO. 16

WHATCOAT VILLAGE
APARTMENTS,

Plaintiff Below-Appellant,

v.

CHANNEL DAVIS,

Defendant Below-Appellee.¹

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Case No. JP16-13-001612

Submitted: June 6, 2013

Decided: July 15, 2013

Before **MURRAY, FOOR** and **COX**, Justices of the Peace.

ORDER

On May 8, 2013, judgment was entered after non-jury trial in this summary possession action against the plaintiff-landlord for failing to prove its case by a preponderance of the evidence. The plaintiff appealed to a three-judge panel of this Court pursuant to 25 *Del. C.* § 5715(a). Such appeals are *de novo*.² The appeal request was approved as to timeliness and form, and the case went to trial on June 6, 2013. This is the decision of the three-judge panel after non-jury trial.

Facts

Late on the evening of October 6, 2012, Patrolmen James Wood and Matthew Krough of the Dover Police Department, along with other Dover Police Department officers, responded to a complaint of disorderly individuals at Building 930 of Whatcoat Village Apartments, a federally-subsidized housing community located in Dover, Delaware. Patrolmen Wood and Krough testified that a black male, later positively identified as Lekaro Rembert, fled from the scene up a stairwell, down a hall, opened the door to Apartment No. 24, went inside, and locked the door behind him.

¹ William W. Pepper, Sr., Esq. appeared on behalf of the Appellant; Ms. Davis appeared *pro se*.

² A trial *de novo* is a new trial, "on the entire case—that is, on both questions of fact and issues of law—conducted as if there had been no trial in the first instance." Black's Law Dictionary (9th ed. 2009, accessed 06272013).

The officers testified they kicked in the door in a matter of a few seconds and entered the apartment. Once inside the apartment, the officers observed “three or four” people, one of them a female standing in the apartment hallway, “act(ing) like she didn’t know why we were there.” Both officers testified the female and other persons did not appear to be alarmed at Mr. Rembert’s abrupt entry and presence—they did not advise the officers an intruder was inside the apartment; they did not attempt to exit the apartment; and they did not appear to be protective of their own safety. The officers testified they did not see anyone asleep. They testified they asked the people where the chased person (Mr. Rembert) went, and that the people simply “looked at them (the police).” Patrolman Krough testified that the female stated, “It’s my sister’s....the person that ran inside is ‘her’ boyfriend.” The officers understood her to be explaining that the person was her sister’s boyfriend.³

The officers testified that Lekaro Rembert then ran into the livingroom area, exiting from a bedroom. Police detained him. Mr. Rembert initially identified himself as “Shawn Price” and stated he was visiting his girlfriend. The police found a rolled marijuana cigarette on the side of the bed in the bedroom Mr. Rembert had exited.⁴ Officer Wood testified that Mr. Rembert admitted the marijuana cigarette belonged to him. The officers brought criminal charges against Mr. Rembert stemming from the incidents of the evening, including Possession of Marijuana, Loitering, and Disorderly Conduct.

Jamey Davis testified she was at Apartment 24 on the evening of the incident, babysitting her four-year-old nephew with her boyfriend Zack, and that they were all sleeping when she heard a knock on the door. She testified that police entered the apartment and arrested Lekaro Rembert. She stated she does not know Mr. Rembert and that he was not a guest in the apartment.

Kara Velez, site manager for Whatcoat Village Apartments, testified she learned of the police response and alleged criminal activity at Building 930 in November 2012 through monthly reports provided by Dover Police Department. As a result, she issued a notice to Channel Davis, the named tenant of Apartment 24 of Whatcoat Village Apartments under a lease with Whatcoat Community Development, Inc.⁵ The notice, dated November 13, 2012, was delivered to Ms. Davis by certified mail, return receipt (signed by Channel Davis on November 14, 2012) and by personal service at Apartment 24.⁶ Ms. Davis did not deny she received the notice and did not raise any objections to the notice or its contents and did not raise service issues.

³ This female later identified herself as Jamey Davis, Channel Davis’ sister, when she testified at this trial for the defendant.

⁴ The material within the cigarette later tested positive for marijuana, according to Officer Krough’s testimony.

⁵ The lease was executed February 17, 2009 for a period of one year, continuing for successive one-month terms upon expiration of the initial term, until and unless terminated. The lease was admitted as evidence without objection as Plaintiff’s Exhibit No. 1.

⁶ The notice was admitted without objection as Plaintiff’s Exhibit No. 2. The certified mail proof and receipt were admitted together without objection as Plaintiff’s Exhibit No. 3.