

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Criminal Division – Misdemeanor Branch

UNITED STATES

*

v.

*

2021 CMD 000187

EARL A. GLOSSER

*

Judge Neal Kravitz

Trial Resumed: October 5, 2022

**DEFENDANT’S MEMORANDUM REGARDING
THE ELEMENTS OF THE OFFENSE**

On Tuesday, October 11, after the close of evidence and closing arguments, this Court requested further briefing on an issue relating to the elements of the offense of unlawful entry.

Defendant Earl A. Glosser’s memorandum and position are as follows:

1. The relevant portion of element two of the offense of unlawful entry, “[name of defendant] was directed to leave ***the property*** by [name of complainant],” does not appear to be well defined in the case law. However, with regard to being directed to leave property, the Court of Appeals specifically noted in O’Brien that “[t]he officer explained to appellant O’Brien that he was free to continue distribution on a public sidewalk a few feet away.” *O’Brien v. US*, 444 A.2d 946, 947 (1982). The regulation at issue prohibited leafleting within 15 feet of escalators. *Id.* At 949.

2. In a more recent case, noting that “Generally, sidewalks are for the use of everyone alike,” the Court of Appeals held that it was the government’s burden” to prove that Mr. Wicks in fact committed a crime” by walking on a sidewalk on the side of the Nationals stadium after being barred from the grounds. *Wicks v. US*, 226 A.3d 743 (2020). The Court of Appeals also applied its holding in *Carrell v. US* to the *mens rea* requirement of unlawful entry: That “courts should ‘generally infer that the government must prove at least that a defendant knows the facts that make his conduct fit the definition of the offense.’” *Id.* At 749. The Court of Appeals left open whether a negligence standard, should have known, survives its holding in *Carrell*. But regardless, the Court of Appeals said that the evidence against Mr. Wicks was insufficient because even under the lower burden, there was insufficient evidence that the Nationals held themselves out as the owners of the sidewalk. *Id.* at 750.

3. Defendant has found no case precisely defining “property” or what must constitute notice of the “property.”

Respectfully Submitted,

/s/ Joseph W. Fay

Joseph W. Fay

D.C. Bar No.: 1002993

JOSEPH W. FAY ESQ., PLLC

6205 Executive Blvd.

Rockville, MD 20852

202-618-6549

202-557-1306

Joseph.W.Fay@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2022, a copy of the foregoing was served upon the United States Attorney via the case file express file and serve function.

/s/ Joseph W. Fay

Joseph W. Fay