CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST PROPERTY - TRESPASS TO REALTY.

Person who goes upon grounds of multiunit housing facility after receiving notice from facility's manager that he is forbidden to do so may be charged with criminal trespass. Conviction for trespassing would be determined by evidence presented at trial.

The Honorable Raymond C. Robertson

Commonwealth's Attorney for the City of Staunton

June 28, 1996

You ask whether a person who goes upon the grounds of a housing complex after having received notice from the manager of the complex that he is forbidden to do so may be charged with criminal trespass under § 18.2119 of the *Code of Virginia*, if he claims that a tenant of one of the housing units invited him onto the premises.

Section 18.2119 prohibits a person unlawfully going upon the property of another after having been notified by the person "lawfully in charge" of the property that he is forbidden to do so.[1] A violation of § 18.2119 constitutes a Class 1 misdemeanor.

In the case of *Reed v. Commonwealth*, the Court of Appeals of Virginia held that "[a] good faith belief that one has a right to be on the premises negates [the] criminal intent" necessary for a violation of § 18.2119.[2] As the court explained, the issue is not whether the person actually has a legal right to be on the premises but, rather, whether the person has a "good faith belief" that he has such right:

[A] bona fide claim of right is a sincere, although perhaps mistaken, good faith belief that one has some legal right to be on the property. The claim need not be one of title or ownership, but it must rise to the level of authorization.[3]

In *Reed*, the court held that the appellant lacked criminal intent, because undisputed evidence showed that he in good faith believed that he had the right to be on the property under the terms of an agreement.[4] Likewise, in *Jones v. Commonwealth*,[5] the Court of Appeals of Virginia held that a no trespassing sign in the parking lot of an apartment complex was not sufficient to negate a good faith belief that a person had the right to be on the property if invited there by a tenant.

In my view, neither *Reed* nor *Jones* stands for the proposition that criminal intent can never be proven when a person goes upon the premises of a multiunit facility after having been notified that he is forbidden to do so, simply because the person has claimed or may claim that he is an invitee or a guest of one of the tenants of the facility. Whether the trespasser is an invitee, and whether, despite the receipt of notice forbidding his entry onto the property, he nevertheless had the "good faith belief" that he had the right to be on the premises are factual issues to be determined from the evidence presented at trial.[6] Accordingly, it is my opinion that a person who goes upon the grounds of a multiunit housing facility after having been notified that he is forbidden to do so may be *charged* with criminal trespass under § 18.2119.[7] I express no opinion on whether any particular facts would support a conviction under the statute.

[1]Section 18.2119 provides: "If any person without authority of law goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by such persons or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or portion or area thereof at a place or places where it or they may be reasonably seen, he shall be guilty of a Class 1 misdemeanor." The section also encompasses court orders prohibiting entry onto property.

[2]6 Va. App. 65, 71, 366 S.E.2d 274, 278 (1988).

[3]*Id*. The court noted in *Reed* that the most recent decision dealing with the issue of what constitutes such a good faith belief was the 1900 decision in *Wise v. Commonwealth*, 98 Va. 837, 36 S.E. 479. *Id*.

[4]6 Va. App. at 72, 366 S.E.2d at 27879.

[5]18 Va. App. 229, 443 S.E.2d 189 (1994).

[6]*Jones v. Commonwealth* does not establish a rule that there is never probable cause to arrest for criminal trespass under § 18.2119 a person on the grounds of an apartment complex who may be the guest of a resident. While the court concluded in *Jones* that the police officer lacked probable cause to arrest a person on the premises of an apartment complex in disregard of a "No Trespassing" sign when the person may have been a resident or a guest of a resident, the court pointed out that the arresting officer had no reason to believe that the appellant specifically had been forbidden, orally or in writing,

to go upon the premises of the apartment complex. 18 Va. App. at 23233, 443 S.E.2d at 191; *see also* 1994 Op. Va. Att'y Gen. 56, 57 (notification to hotel guest to vacate usually will extinguish any good faith belief in right to be there).

[7]I assume for purposes of this opinion that the person who provided the notice is "lawfully in charge" of the premises.