

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**KNOWLEDGE FRIERSON,
Defendant**

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CR-1063-2016

OMNIBUS PRETRIAL

OPINION AND ORDER

Defense Counsel filed an Omnibus Pretrial Motion on October 14, 2016, and argument was heard on January 13, 2017.

Factual Background

Knowledge Frierson (Defendant) is charged by criminal information filed June 24, 2016, with Criminal Homicide¹; two counts of Criminal Attempt², a felony of the first degree; two counts of Aggravated Assault³, Persons not to Possess Firearms⁴, graded as a felony; Persons not to Possess Firearms⁵, graded as a misdemeanor; Firearms not to be Carried without a License⁶, a third degree felony; Receiving Stolen Property⁷, a second degree felony; Possessing Instruments of a Crime⁸, a first degree misdemeanor; Tampering with a Physical Evidence⁹, a second degree misdemeanor; two counts of Robbery¹⁰, a felony in the first degree. The charges arise from a

¹ 18 Pa.C.S. § 2501(a).

² 18 Pa.C.S. § 901(a).

³ 18 Pa.C.S. § 2702(a)(1) and (a)(4).

⁴ 18 Pa.C.S. § 6105(a)(1).

⁵ 18 Pa.C.S. § 6105(c)(1).

⁶ 18 Pa.C.S. § 6106.

⁷ 18 Pa.C.S. § 3925(a).

⁸ 18 Pa.C.S. § 907(b).

⁹ 18 Pa.C.S. § 4910(1).

¹⁰ 18 Pa.C.S. § 3701(a)(1)(i) and (ii).

shooting that occurred on October 13, 2015, in the 400 block of Brandon Avenue in Williamsport, PA.

Testimony of Keith Freeman Jr.

Keith Freeman, Jr. (Freeman) testified that on October 13, 2015, he was living at 421 Brandon Avenue in Williamsport, PA, with his girlfriend and four children ranging in age from thirteen to one year old. N.T., 6/10/2016, at 4, 29. Freeman testified that he had been living in the duplex home for five (5) months on the date in question. Id. at 23.

At 9 PM on October 13, 2015, Freeman was home with the children while his girlfriend was at work. Id. Freeman's son told him that someone was at the door. Freeman went to the door but did not open it. He could see one individual on the porch. Id. at 5. Freeman was unable to identify the person on the porch. Id. at 6. The person on the porch asked for a person whose name Freeman testified he did not recognize. Id. Freeman testified that he told the person at the door that he had the wrong house and that the person walked away. Id. Freeman testified that he watch the person leave and go down the steps from the front porch from a window other than that at the front door. Id. at 28.

Freeman testified that he was apprehensive about the person because "he wasn't looking straight at me. He had his head up and his hand in his hoodie". Id. at 7. He was "looking up like at a ceiling...he wasn't looking directly at me." Id at 28. Additionally, it was suspicious because unknown people do not typically visit Freeman's home. Id. Freeman testified that the person walked towards Cherry Street (to the west). Id. at 8.

After the caller left, Freeman called his Aunt (Carolyn Barr) and asked her to pick up his girlfriend when she completed work at 9:30 PM. Id. He also called his girlfriend and indicated that his aunt would be picking her up from work because there had been suspicious activity at their home. Id. at 9, 30.

Freeman testified that the person came to his door again and after the second visit, Freeman went upstairs to get his gun. Id. at 10-11. Freeman testified that he made the call to his aunt and girlfriend between the first and second visit. Id. at 11. Freeman testified that he was in the living room when he heard a knock at the door. Id. at 12. He then went upstairs to get his gun and then he went to the door. Id. He testified that he had the gun on "his hip" and the person at the door would not be able to see it. Id. at 33. He said the person asked for somebody, that he told him "you got the wrong house" and that the person said "I got the right house" and then he just walked off. Id. at 12. Freeman was concerned that the person might have a gun because he had a hand in his hoodie. Id. at 13. Freeman testified that the person left via the westerly direction after his second visit to the door. Id. at 13.

After the person left the second time, Freeman testified that his aunt and his girlfriend were pulling up to the house and that the individual was halfway down the block when he opened up the door to his aunt and girlfriend. Id. at 14. Freeman testified that he spoke with his aunt and girlfriend for 10 minutes in the house. Id. at 15. Freeman testified that he called his friend Tyson Bowling (Bowling) to come to the house. Id. at 15. Bowling came to the house before the aunt had left and Bowling had a gun with him. Id. at 16, 36. Bowling and Freeman both walked the aunt out of the home. Id. Freeman did not draw his gun while walking his aunt out and could not

recall whether Bowling drew his gun. Id. at 36-37. Freeman was to his aunt's left when he walked her down the steps and Bowling remained on the porch. Id.

Freeman testified that his aunt screamed his name and that the person that had been at the door was now coming towards him from Elmira Street (from the East) with a gun drawn. Id. at 17, 38. Freeman testified that the person had a gun out, and that they started "tussling", and that the person's gun grazed Freeman's head and shot up. Id. at 18, 38-39. Freeman drew his gun when got up from the ground after the tussle. Id. at 39. Both Freeman and the person were firing their weapons after they got up after the tussle. Id. Freeman identified Defendant at the preliminary hearing as the person who came to his door twice and engaged in a gun fight with him. Id. at 19. Freeman testified that he was moving back and shooting and walking backwards in an easterly direction towards Elmira. Id. at 20. Freeman discarded his gun while he was running. Id. at 40.

Freeman testified that he believed that the Defendant was at his house to "rob me for money." Id. at 22. Freeman testified that he gets money from "poker games and a little bit of marijuana." Id.

Testimony of Agent Peacock

Peacock is an agent with the Williamsport Bureau of Police. Id. at 42. He was called to 421 Brandon Avenue the evening of the shooting. Id. By the time he arrived all of the shooting victims had been transported to Williamsport Regional Medical Center (WRMC). Id. at 43. Defendant was being treated at WRMC for a gunshot wound to his pelvis. Id. Defendant has been located between two houses just west of 421 High Street. Id. During crime scene processing, Peacock observed a blood trail

on a small alley that runs to the west of 429 Brandon Avenue. The blood trail went back to the alley and then circled back in between two houses where Defendant was located. Id. at 48. A handgun was also recovered from the west side of the alley. Id. at 44. The alley runs from south to north from Brandon Avenue to Park Court. Id. at 47. A stainless steel 357 revolver was found alongside a fence just to the west of the unnamed alley by Lieutenant Duck and Officer Ananea. Id. at 44, 47. It contained six empty fired cartridges. Id.

An arrest warrant was issued for Defendant and on May 16, 2016, Peacock and another agent (Kontz) arrested Defendant at a halfway house in Harrisburg and took him into custody. Id. at 45. Peacock identified Defendant at the preliminary hearing. Id. Peacock testified that Defendant was advised of his rights at the Williamsport Police Headquarters and that Defendant waived his rights. Id. Defendant was interviewed and the interview was videotaped.¹¹ Peacock testified that Defendant admitted that he had gone to the property on two different occasions on the evening in the question and described the incident as a “robbery gone bad for his reason for being there.” Id. at 45.

Peacock testified that a trace of the serial number of the gun revealed that it belonged to an individual, Barry Eck. Id. at 46. When contacted by the police, Eck said that he did not realize that he did not have the gun in his possession but did report that one time “he had come home and found his apartment unsecured or his key missing at some point earlier.” Id. From this statement, Peacock determined that the recovered gun “had been stolen in a burglary that had been undiscovered”.

¹¹ A transcript of the videotaped interview was created for the Court to aid its decision.

Peacock also determined that Defendant had a conviction that would bar him from possessing a firearm i.e. aggravated assault. Id. A person convicted of aggravated assault cannot obtain a license to carry a firearm. Id.

Peacock was unable to locate Bowling. Id. at 51.

Freeman's aunt died from a gunshot wound to the torso. Id.

Discussion

I. HABEAS CORPUS

In its Habeas petition, Defense Counsel challenges Count 1, the Criminal Homicide charge; Count 8, the Receiving Stolen Property charge; Count 10, the Tampering with Physical Evidence charge; and Counts 11 and 12, the Robbery charges. At the argument, the Commonwealth conceded to Defense Counsel that Count 6 should be dismissed as Defendant was not wanted for a crime at the time of the alleged incident.

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove the defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. COMMONWEALTH V. KARETNY, 880 A.2D 505, 583 PA. 514, 529 (PA. 2005). *Prima facie* case in the criminal realm is the

measure of evidence, which if accepted as true, would warrant the conclusion that the crime charged was committed.

The Commonwealth must present evidence of each element of each crime charged in order to show a *prima facie* case at the preliminary hearing. The evidentiary sufficiency, or lack thereof, of the Commonwealth's *prima facie* case for a charged crime is a question of law as to which an appellate court's review is plenary. KARETNY AT 513. The *prima facie* standard requires that the Commonwealth's evidence must establish that the crime has been committed and to satisfy this requirement the evidence must show that the existence of each of the material elements of the charge is present. COMMONWEALTH V. WODJAK, 446 A.2D 991, 996 (PA. 1983). While the weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense, the absence of evidence as to the existence of a material element is fatal. ID. AT 997.

To find that the Commonwealth presented *prima facie* evidence that the Defendant committed Criminal Homicide it must have shown evidence of each element below, To Wit:

- 1) That the Defendant
- 2) Intentionally, knowingly, recklessly or negligently
- 3) Caused the death
- 4) Of another human being.

The Court finds that the Commonwealth did present evidence of each element of Criminal Homicide. Both witnesses identified the Defendant at the preliminary hearing. Testimony indicated that the Defendant wielded a handgun and engaged in a gunfight. Testimony indicated that the Defendant initiated the altercation on the night

in question and that the altercation was a “robbery gone bad”. The altercation escalated to a gunfight resulting in the death of Carolyn Barr.

To find that the Commonwealth presented *prima facie* evidence that the Defendant Received Stolen Property as charged in Count 8, it must have shown some evidence of each element below

- 1) That Defendant intentionally received, retained, or disposed of movable property of another
- 2) Knowing that it has been stolen, or believing that it had been stolen, unless the property is received, retained, or disposed with intent to restore it to its owner.

Peacock testified that the owner of the gun assumed his gun was stolen after being approached by police regarding his being the license holder of a firearm in connected to this crime. Eck indicated to Peacock that the gun had not been given to anybody. N.T., 6/10/2016, at 46. “He had come home and found his apartment unsecured or his key missing at some point earlier. Didn’t realize anything was stolen but upon this realized the gun had been stolen.” Id. at 46. It was established at the preliminary hearing that the Defendant could not lawfully possess a firearm given his prior conviction for aggravated assault. There was no lawful way for Defendant to possess a firearm and the Commonwealth presented evidence at the preliminary hearing that the firearm was stolen. Freeman testified to Defendant’s use of a firearm in a gunfight establishing his possession of the weapon. As such a *prima facie* case for Receiving Stolen Property was established.

The elements of Tampering or Fabricating Physical Evidence as charged in Count 10 are

- 1) The Defendant believing that an official proceeding or investigation is pending or about to be instituted

- 2) Alters, destroys, conceals, removes any record, document, or thing with intent to impair its verity or availability in such proceeding or investigation or
- 3) Makes presents or uses any record, document or thing knowing it to be false with intent to mislead a public servant who is or may be engaged in such a proceeding or investigation.

Defendant was not entitled to possess a firearm. Circumstantial evidence showed that the Defendant possessed this firearm and engaged in an illegal gun fight, resulting in the death of Barr and a gunshot wound to Defendant. Peacock testified that during the crime scene investigation a gun was recovered along the blood trail that was found between the site of the altercation and where Defendant was found. It is logical to infer that the Defendant discarded the gun after being shot as the evidence showed that Freeman retreated in an opposite direction and the gun was recovered along the blood trail to Defendant. One can infer that the discarding was intentional because the Defendant must have known that a criminal investigation would follow such illegal activity. In fact, Defendant himself was calling for "help" due to his injuries and discarding the gun could have been a way to dissociate evidence of his involvement in the crime.

The elements of Robbery as defined in Title 18 Section 3701 (robbery) are

- 1) A person is guilty of robbery if in the course of committing a theft he
 - a. Inflicts serious bodily injury on another (as charged in Count 11).
 - b. Threatens another with or intentionally puts him in fear of immediate serious bodily injury (Count 12).

Defendant stated to Peacock that the incident was a robbery gone bad. The testimony of Freeman if believed shows that Freeman was in fear of immediate and serious bodily injury. Freeman testified he believed that the Defendant had a gun.

Freeman testified that he got his own gun in response. In response to his feeling threatened, he arranged for his aunt to pick his girlfriend up from work so he could respond to the threat at home. He called Tyson Bowling to assist him in addressing this threat.

The testimony did not establish definitively that the gun that Defendant possessed was the firearm that discharged the bullet that ended Barr's life. On review of the preliminary hearing transcript, the Court finds that there was some evidence of this material element however, i.e. that the Defendant inflicted the serious bodily injury on Barr and as such it is appropriate for the criminal charge to proceed to trial.

II. MOTION TO SUPPRESS

After hearings on January 13, 2017, and March, 23, 2017, the suppression hearing is continued to April 17, 2017.

III. MOTION FOR ADDITIONAL DISCOVERY

See Order below.

IV. MOTION TO RESERVE RIGHT TO FILE ADDITIONAL PRETRIAL MOTIONS

See Order below.

ORDER

AND NOW, this 31st day of March, 2017, based upon the foregoing Opinion,

1. Count 6, Person Not to Possess Firearms, by motion of Defense Counsel and with concurrence by the Commonwealth, is hereby DISMISSED.
2. In all other respects, the Habeas Petition is DENIED.
3. The Suppression hearing is continued to **April 17, 2017**, at **11 am** in **Courtroom #1**. One hour has been allocated on the court calendar.
4. The Motion for Additional Discovery is GRANTED. At the **March 23, 2017**, hearing the Commonwealth agreed to produce an unredacted copy of the discovery to Defense Counsel within twenty-four (24) hours.
5. The Motion to Reserve the Right to File Additional Pretrial Motions is hereby GRANTED.
6. A hearing on any motions to be litigated is scheduled for **July 20, 2017**, at **9 am** in **Courtroom 1**. Three hours have been allocated on the court calendar for testimony and argument.

BY THE COURT,

Nancy L. Butts, P.J.

cc: Robert Hoffa, Defense Counsel
DA (KO, MK)
Gary Weber, Lycoming Law Reporter