

**IN THE COURT OF COMMON PLEAS FOR
LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH	:	
	:	
v.	:	No: 02-11,936
	:	
SHUAIB A.R. ALI,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is Defendant’s Omnibus Pre-Trial Motion, requesting that this Court dismiss all counts contained in the Criminal Information filed against him and suppress the physical evidence seized by the police at the time of the Defendant’s arrest.

Defendant is charged under the above-captioned information with Receiving Stolen Property, Firearms Not to be Carried Without a License, and Resisting Arrest. The Commonwealth alleges that a firearm found on the Defendant’s person at the time of his arrest was stolen. The Commonwealth offers the testimony of Police Officer William Rogers of the Williamsport Bureau of Police. Officer Rogers testified that there had been no report filed that the firearm had been stolen. However, when the police contacted the registered owner’s widow to inquire about the firearm which was found in the possession of the Defendant, the widow indicated the firearm must be missing from her deceased husband’s belongings. The widow told the officer of an unreported robbery which occurred shortly after the registered owner’s death. She told the officer that that the firearm must have been taken at that time. This information was elicited by defense counsel

during cross examination of the prosecuting officer and without any objection. N.T. 11/15/02 pp. 16 – 17. Therefore, while this information might have appropriately been objected to on the basis of hearsay if the Commonwealth had attempted to offer it, the defendant has waived any objection to consideration of this evidence because he himself elicited it. Considering all of the evidence presented, the charge of Receiving Stolen Property was properly held for court by the District Magistrate in light of all of the evidence that was before him.

The Court finds that the charge of Firearms Not to Be Carried Without a License was also properly held for court by the District Magistrate. The Commonwealth presented evidence, without objection, that the Defendant possessed a firearm at a time when he was only eighteen years of age, well below the age when an individual is eligible for a permit to carry a firearm in the Commonwealth of Pennsylvania, and that therefore he could not possibly have had a license in this Commonwealth. 18 Pa.C.S.A. Section 6109. The Court finds this is sufficient circumstantial evidence to support a prima facie showing of evidence on the charge of Firearms Not to Be Carried Without a License.

In addition, the Court also finds the Commonwealth presented sufficient evidence to establish a prima facie showing that the Defendant committed the crime of Resisting Arrest. The Commonwealth contended that the Defendant resisted the efforts of members of the Williamsport Bureau of Police to detain him so that they could conduct an investigation concerning his involvement in a shooting that had just occurred. Officer Rogers testified that he observed the Defendant push another police officer twice in an effort to get past the officer. Id., at p. 6. Additionally, he

was required to come to the assistance of the other officer so that the Defendant could be subdued and placed into handcuffs. Id., at 6. Such conduct has been held sufficient to sustain the Commonwealth's burden as to this charge. See eg. Commonwealth v. Miller, 327 Pa. Super. 154, 475 A.2d 145 (Pa.Super. 1984). (Appellant's flailing of his arms and attempting to push through the police officer created a substantial risk for the police officer and required substantial force to subdue him, justifying his conviction for resisting arrest.) Consequently, this Court finds that there is sufficient evidence presented to hold the Defendant for court on the charge of Resisting Arrest.

ORDER

Accordingly, for the reasons stated above, it is ORDERED and DIRECTED that Defendant's Motion for Habeas Corpus Review, contained in his Omnibus Pre-Trial Motion, is DISMISSED. The Court Scheduling Technician is directed to schedule a hearing so that all other issues raised in Defendant's Omnibus Pre-Trial Motion may be heard.

By the Court,

_____, J.

xc: Emmanuel Izuogu, Esquire
Henry Mitchell, Esquire
Hon. Nancy L. Butts
Court Administrator
Diane L. Turner, Esquire
Gary Weber