

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA : NO. 02-11,837  
:   
:   
vs. : CRIMINAL DIVISION  
: Petition for Writ of Habeas Corpus  
SHAWN SAMPSELL, :   
Defendant :

OPINION AND ORDER

Defendant has been charged with six counts of theft by unlawful taking and six counts of receiving stolen property as a result of six pieces of equipment having been reported stolen by Your Building Center. In his Petition for Writ of Habeas Corpus, Defendant contends the evidence presented at the preliminary hearing was insufficient to establish the charges with respect to three of the six pieces of equipment. At argument on the Petition, held December 10, 2002, counsel agreed the Court should base its decision on the transcript of the preliminary hearing.

At the preliminary hearing, the Commonwealth presented the testimony of the manager of Your Building Center, Jack Andrews. Mr. Andrews testified that the manager of the rental division of the Building Center had informed him of a missing pressure washer, which led to taking an inventory of all of the equipment owned by the Rental Center, which inventory indicated several items of rental equipment were missing, specifically two nail guns, two pressure washers, a twin tank air compressor and a generator. The Commonwealth also presented the testimony of a contractor who deals with Your Building Center, indicating he had seen two new pieces of equipment, specifically a pressure washer and an air compressor, in Defendant’s garage, as well as the testimony of another gentleman who indicated he had purchased several pieces of equipment directly from Defendant, namely three nail guns and a reciprocating saw. Mr. Andrews’ testimony established that Defendant had been employed by

Your Building Center in the rental division.

In his Petition for Writ of Habeas Corpus, Defendant contends the evidence was insufficient to establish the charges with respect to the air compressor, the pressure washer and the reciprocating saw. With respect to the air compressor and pressure washer, Defendant contends there was no testimony to establish that the items the contractor observed in Defendant's garage were owned by Your Building Center. With respect to the reciprocating saw, Defendant contends the evidence fails to show that the saw returned to Your Building Center by the witness had belonged to Your Building Center and further, there was no evidence that Your Building Center actually verified that the reciprocating saw was missing. With respect to these contentions, while Defendant may be correct there is no direct proof of ownership, the Court believes nevertheless a prima facie case was presented. The Commonwealth's evidence showed that certain items were observed missing by the manager of Your Building Center, certain items were seen in Defendant's garage by a disinterested party, those items fitting the general description of some of the missing items, certain items were actually returned to Your Building Center by another disinterested party who said he bought them from Defendant, which items held serial numbers which matched the serial numbers of certain missing items, (two of the nail guns), and with respect to the reciprocating saw, paperwork showed that it had been ordered through the retail center and that it had come in but there was no paperwork to show it was picked up by anyone but it was nevertheless missing. The item ordered and the item returned by the witness were the same make and model number. While Defendant may be able to introduce other evidence to raise a reasonable doubt at trial, the evidence presented at the preliminary hearing was sufficient to support the charges.

ORDER

AND NOW, this 22<sup>nd</sup> day of January, 2003, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA  
PD  
Gary Weber,  
Hon. Dudley N. Anderson