

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-105-2008
vs. :
 : CRIMINAL DIVISION
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 :
 :
 : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's judgment of sentence dated February 13, 2009. The relevant facts follow.

On October 11, 2007, the employees of Rainbow Carpet parked their vans and locked them up for the night. When they returned the next morning, one of the vans had a smashed window and the tools that had been inside the back of the van were gone. The stolen tools included a Craftsman tool box containing approximately \$1600 worth of tools used to install vinyl flooring; a Black & Decker circular saw; a Dewalt cordless tool set consisting of a screw gun, a reciprocating saw, a circular saw and a flashlight; a Wagner heat gun; a Crane undercut saw; a Bausch portable sander; and Dewalt jigsaw.

Nancy Heilman and her husband have several rental properties in Williamsport. On October 25, 2007, Mrs. Heilman receives a phone call from one of her tenants, Barry Brown. Mr. Brown told Mrs. Heilman he had some tools he wanted to sell and asked her if she wanted to take a look at them. Mrs. Heilman had some friends at Rainbow Carpet and knew some of their tools had been stolen.

She met Mr. Brown, who showed her two or three saws in the trunk of his car. She told Mr. Brown she was interested in one of the saws, so he let her take it to show her husband. Mrs. Heilman took the saw and showed it to her friends at Rainbow Carpet. They identified it as the Dewalt jigsaw taken from their van by an envelope marked Rainbow Carpet in the case. They then contacted the police.

The police made arrangements to make a controlled exchange of the money for the saw. Miles Houseknecht, a county detective in Clinton County and a retired State Trooper, worked for the realty company that managed the Heilman's rental properties. The police photocopied money and provided it to Mr. Houseknecht to deliver to Barry Brown while the police conducted surveillance of the exchange. After Mr. Houseknecht handed Barry Brown the money, he raised his hand to signal the police. The police then took Mr. Brown into custody.

When the police interviewed Mr. Brown, they asked him about the tools he had shown to Nancy Heilman. He explained that he was sitting outside between 12:30 a.m. and 1:00 a.m. when a six foot tall, bald man named Norm pulled up in a late model blue Mercury Cougar and asked if he wanted to buy some tools. Mr. Brown was behind on his rent. He was on unemployment and needed to make some extra money so he wouldn't be out on the street with his grandson, who was living with him. He told Norm to get the tools so he could take a look at them. Norm drove around the corner out of Mr. Brown's sight and returned about ten minutes later with the tools. Mr. Brown bought five or six tools for \$100. He told the police the other tools he bought from Norm were at his girlfriend's residence.

The police got a search warrant for the girlfriend's residence. In addition to the Dewalt jigsaw brought to them, the police recovered the Craftsman tool box of vinyl

installation tools, the Wagner heat gun, and the Crane undercut saw.

Officer Tim Miller knew that other Williamsport police officers were familiar with a blue Mercury Cougar in the 800 block of Hepburn Street and an individual named Norman, who lived in that area. Officer Miller confirmed through the database that Defendant Norman Jennings resided at 827 Hepburn Street, Apartment 2. Officer Miller obtained a photo array with Defendant's photograph in it and showed it to Barry Brown. Without hesitation, Mr. Brown circled Defendant's photograph as the person named Norm from whom he bought the tools.

Officer Miller obtained a search warrant for Defendant's residence. When the search warrant was executed, the apartment was in complete disarray as if it had been ransacked or someone left in a hurry. The only tool related item the police found in the search was a Milwaukee saws-all blade. Defendant was not home. The police tried to locate him for weeks. They put his name into NCIC. Eventually, Defendant was picked up in Philadelphia and brought back to Williamsport.

Defendant was arrested and charged with theft and receiving stolen property.

At his non-jury trial held on October 27, 2008, Defendant's neighbor, Doris Roman, testified she saw Defendant about a half an hour before the police arrived to serve the search warrant. She had a conversation with Defendant about Barry Brown having just gotten busted by the police. She also testified that she told the police Defendant had been bragging about stealing equipment and saying he would not get caught because he wore gloves.

The Court found Defendant guilty of receiving stolen property, a misdemeanor of the first degree. After the Court announced its verdict, scheduled

Defendant's sentencing for December 8, 2008 and raised Defendant's bail to \$20,000 good bail, Defendant fled from the courtroom. A bench warrant was issued for Defendant's arrest. He did not appear for sentencing on December 8, but turned himself in on the bench warrant in early January 2009.

The Court held a sentencing hearing on February 13, 2009. The offense gravity score (OGS) for receiving stolen property was a three and Defendant's prior record score (PRS) was a five, resulting in a standard minimum guideline range of six to sixteen months. In addition to Defendant's lengthy criminal record for trespasses, thefts and a robbery, the Court noted information from the pre-sentence investigation (PSI) about Defendant's background. Defendant was 48 years old. He was born and raised in Philadelphia. Defendant reported that he got involved with gang activity at age 10 and drugs and alcohol at age 16. He had very little work history and informed the author of the PSI that he suffers from bipolar disorder.

The defense requested a county sentence. The Commonwealth asked for a sentence in the aggravated range and noted the following: while Defendant was on bail he was caught breaking into a vehicle in Philadelphia; he bench warranted twice; he fled the courtroom after the verdict; he has not accepted responsibility for his actions; and his entire criminal record except one conviction was theft related.

The Court sentenced Defendant to incarceration in a state correctional institution for sixteen months to five years.

Defendant filed a post sentence motion claiming the evidence was insufficient, the verdict was against the weight of the evidence, and the sentence was excessive, which the Court summarily denied.

Defendant filed a timely notice of appeal.

Defendant first avers that the evidence was insufficient to prove he committed the offense of theft by receiving stolen property beyond a reasonable doubt. The Court cannot agree.

In reviewing the sufficiency of the evidence, the Court considers whether the evidence and all reasonable inferences that may be drawn from that evidence, viewed in the light most favorable to the Commonwealth as the verdict winner, would permit the fact-finder to have found every element of the crime beyond a reasonable doubt.

Commonwealth v. Murphy, 577 Pa. 275, 284, 844 A.2d 1228, 1233 (Pa. 2004);

Commonwealth v. Ockenhouse, 562 Pa. 481, 490, 756 A.2d 1130, 1135 (Pa. 2000);

Commonwealth v. May, 540 Pa. 237, 246-247, 656 A.2d 1335, 1340 (Pa. 1995).

Circumstantial evidence can be as reliable and persuasive as eyewitness testimony and may be of sufficient quantity and quality to establish guilt beyond a reasonable doubt.

Commonwealth v. Tedford, 523 Pa. 305, 322, 567 A.2d 610, 618 (Pa. 1989)(citations omitted).

The Crimes Code defines receiving stolen property as follows: “A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.” 18 Pa.C.S. §3925.

The Court found the Commonwealth proved beyond a reasonable doubt that Defendant disposed of Rainbow Carpet’s tools either knowing they were stolen or believing that they probably had been stolen. The Court found Barry Brown’s and Doris Roman’s

testimony credible. Defendant was selling tools from his vehicle for significantly less than they were worth. He sold several tools to Barry Brown. The tools sold to Barry Brown had been stolen from Rainbow Carpet.

Doris Roman spoke to Defendant about a half an hour before the police arrived to serve the search warrant and they talked about Barry Brown getting picked up by the police. Ms. Roman also told the police Defendant had been bragging about stealing equipment and he would not get caught. When the police arrived, Defendant was gone and his apartment looked like he had left in a hurry. The police tried to locate Defendant for weeks, but were unsuccessful. Ultimately, Defendant was picked up in Philadelphia. Defendant's statements to Ms. Roman and his flight when he realized the police had Barry Brown in custody corroborated Barry Brown's testimony and showed he knew or believed the items he sold to Barry Brown were stolen and evidenced his consciousness of guilt.

Defendant also claims the Court's sentence was excessive. Again, the Court cannot agree. Defendant had a significant history of criminal trespasses and thefts. Defendant was 48 years old. He had been placed on Accelerated Rehabilitative Disposition (ARD) twice in Philadelphia and had served several county prison sentences, but still continued to commit property crimes. He did not appear to have been rehabilitated at all, and the Court did not believe his chances of being rehabilitated were promising. The Court found Defendant would be a distinct threat to the community if he was on the street, as he would likely continue to commit thefts in the future. Defendant also bench warranted twice. Based on these circumstances the Court imposed a sentence at the top of the standard range and ordered it to be served in a state correctional institution.

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

cc: District Attorney
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)