

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**RYHEEM MUMIN,
Defendant**

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**No. 2072-2009
CRIMINAL**

OPINION AND ORDER

The Defendant filed a Petition for Writ of Habeas Corpus on February 8, 2010. A hearing on this Motion was held March 18, 2010.

Background

A Preliminary Hearing was held before Magisterial District Judge James Sortman on December 23, 2009. The Defendant, Ryheem Mumin, is charged with Burglary, Theft by Unlawful Taking, Receiving Stolen Property of Firearms, Criminal Mischief, Persons Not to Possess, and other related charges. The details of this case reveal that Randy Fisher (Fisher) is a resident of Dunkard Church Road, Lycoming County. On October 22, 2009, someone broke into Fisher's residence through the back door of his home. Fisher called the police after he discovered the break-in and the police arrived within minutes. Fisher stated that the burglars pried open his back door and that the resulting damage will cost approximately \$600.00 to repair. Gold jewelry, watches and a safe containing cash, \$10,000.00 worth of silver, other silver and credit cards were taken from Fisher's home. At the Preliminary Hearing, Fisher stated that the missing safe was stored in an oak cabinet and that the cabinet was broken apart and the safe was removed. Fisher claimed that four pistols were also taken from his home. Harvey Edwards

(Edwards) also testified at the Preliminary Hearing. Edwards stated that on October 22, 2009, he went to the house located on Dunkard Church Road, with Mumin. Edwards stated that the door to the residence was open when he went into the house and that he does not know how the door was opened. Edwards said he helped Mumin carry a safe out of the house, but did not see anything else taken. Edwards stated that he did not have permission to be inside the house. The police searched Edwards' house and found a safe, coins, watches and jewelry. Corporal Morris M. Sponhouse, II (Sponhouse) also testified at the Preliminary Hearing. Sponhouse testified that on October 26, 2009, he conducted a follow up investigation on the burglary of Fisher's house. The follow up investigation took place at a pawn shop named Cillo's. When Sponhouse went into the pawn shop, Mumin was there trying to pawn coins that were stolen from Fisher's house. Sponhouse knew the coins were stolen from Fisher's house because Fisher described the coins to the police in detail, stating that the coins were silver dollars and that they had certain dates on them. The dates on the coins in Mumin's possession matched the description of the coins taken from Fisher's house.

Discussion

Ryheem Mumin (Mumin) filed a Petition for a Writ of Habeas Corpus in which he alleges that the Commonwealth failed to establish a *prima facie* case against him for the crimes of Theft by Unlawful Taking, Receiving Stolen Property of Firearms, Criminal Mischief and Persons Not to Possess.

It is well settled in this Commonwealth that "a petition for writ of habeas corpus is the proper vehicle for challenging a pre-trial finding that the Commonwealth presented sufficient evidence to establish a *prima facie* case." Commonwealth v. Carbo, 822 A.2d 60, 67 (Pa. Super

2003) (citing Commonwealth v. Kohlie, 811 A.2d at 1013 (Pa. Super. 2002); see Commonwealth v. Hetherington, 311 A.2d 209 (1975); Commonwealth v. Fountain, 811 A.2d 24, 25 n.1 (Pa. Super. 2002); Commonwealth v. Saunders, 691 A.2d 946, 948 (Pa. Super. 1997), *appeal denied*, 705 A.2d 1307 (1997)). “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.” Commonwealth v. Wojdak, 466 A.2d 991, 997 (1983) (See Commonwealth v. Prado, 393 A.2d 8 (1978); Commonwealth ex rel. Scolio v. Hess, 27 A.2d 705 (Pa. Super. 1942)). Courts define probable cause as "a reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in the same situation in believing that the party is guilty of the offense." Kelley v. General Teamsters, Local Union 249, 544 A.2d 940, 942 (1987) (citing Miller v. Pennsylvania R.R. Co., 89 A.2d 809, 811 (1952)).

A person is guilty of Theft by Unlawful Taking under 18 Pa. C. S. 3921(a) if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof. A person is guilty of Receiving Stolen Property under 18 Pa. C. S. 3925 (a) 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(b) defines “receiving” as acquiring possession, control or title, or lending on the security of the property. A person is guilty of Criminal Mischief under 18 Pa. C. S. 3304(a)(5) if he intentionally damages real or personal property of another. Persons Not to Possess under 18 Pa. C. S. 6105 states that (1) A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct meets the

criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

As to the crimes of Theft by Unlawful Taking and Receiving Stolen Property, Edwards, a co-defendant in the burglary of the Fisher residence, testified that he and Mumin went into Fisher's house and removed a safe. Edwards testified that he did not have permission to be in the house. Furthermore, Sponhouse testified that on October 26, 2009, four days after the burglary of the Fisher residence, he witnessed Mumin at a pawn shop trying to sell the exact coins taken from Fisher's home. Therefore, a prima facie case exists as to both Theft by Unlawful Taking and Receiving Stolen Property.

Although Mumin does not allege in his Writ of Habeas Corpus that the Commonwealth failed to present a prima facie case against him for the crime of Burglary, the Court notes that a prima facie case exists as to this charge as well. A person is guilty of Burglary under 18 Pa. C. S. 3502(A) if that person enters a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. The testimony of Edwards shows that he and Mumin entered the Fisher home with the intent to steal from Fisher. Mumin entered the Fisher home with the intent to commit the crime of Theft by Unlawful Taking. Therefore, a prima facie case exists as to the charge of Burglary as well.

As to the crime of Criminal Mischief, Fisher and Sponhouse testified that a cabinet in the Fisher house was broken apart. Fisher explained that the cabinet was used to store a safe and that the cabinet was broken apart and the safe was removed. Furthermore, Fisher testified that the burglars pried open his back door, and that the resulting damage will cost approximately \$600.00 to repair. Therefore, a prima facie case also exists as to the crime of Criminal Mischief,

as there is probable cause to believe that Mumin intentionally damaged the back door of Fisher's home in order to gain entry and intentionally damaged Fisher's cabinet in order to remove the safe.

As to the crime of Persons not to Possess, Fisher testified that four firearms were taken from his house on October 22, 2009. Mumin is a convicted felon and cannot possess a firearm. The facts of this case are similar to those in Commonwealth v. Williams, 911 A.2d 548 (Pa. Super. 2006). In Williams, two defendants were charged with, among other crimes, Robbery and Persons Not to Possess. Id. at 449. One of the co-defendants confessed to the robbery, but denied using any guns during the robbery. Id. at 550. However, the victim of the robbery claimed that two guns were stolen from his truck. Id. The victim also claimed that, after he discovered his guns were missing, he was approached by two males wearing masks that were holding his stolen guns. Id. The two men demanded that the victim give them money. Id. The Williams Court, viewing the evidence in a light most favorable to the Commonwealth, found that the Commonwealth provided probable cause as to the crime of Persons not to Possess. Id. at 552. The Williams Court concluded

if (a) Deon Williams admitted he was involved in the robbery, and (b) Burns stated that during the robbery *both* men were in possession of a gun when they demanded that Gould and him get down on the ground and surrender money, then (c) it follows as a natural and probable inference that Deon Williams was in possession of a gun when he allegedly robbed Burns and Gould.

Id. at 553.

Although the firearms have not been recovered in this case, there is reasonable suspicion, supported by the circumstances of this case, to believe that Mumin took the firearms. Edwards, the co-defendant, admitted that he and Mumin stole the safe from the Fisher's house. Sponhouse witnessed Mumin trying to sell the coins that were stolen from the Fisher's house. Fisher claims

that, in addition to the safe, four pistols were also stolen from his house. Since a prima facie case exists as to Mumin's involvement in the burglary of Fisher's home, "it follows as a natural and probable inference" that Mumin was also in possession of a gun, as Fisher claims that four pistols were taken from his home during the burglary. Williams at 553. Therefore, a prima facie case exists as to the crime of Persons Not to Possess.

ORDER

AND NOW, this 13th day of April, 2010 based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, P.J.

cc. DA
Jeana Longo, Esq.
Amanda Browning, Esq. (Law Clerk)
Gary L. Weber (LLA)