

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**CURTIS HOWARD,
Defendant**

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**No. 137-2011
CRIMINAL**

OPINION AND ORDER

The Defendant filed a Petition for Writ of Habeas Corpus on March 23, 2011. Upon stipulation of the parties, the Commonwealth agreed to rely on the transcripts from the Preliminary Hearing held before Magisterial District Judge Allen Page on January 28, 2011, for the majority of its prima facie case, but to supplement the record with testimony during a hearing. The Commonwealth also stipulated to the fact that the grading of the Receiving Stolen Property charge was a felony of the third degree rather than a felony of the second degree. A hearing on the Writ of Habeas Corpus was held on April 12, 2011.

Background

During the Preliminary Hearing, Anthony W. Harding (Harding), an employee for R. J. Ertel, testified that on January 19, 2011, he discovered that copper pipe had been taken from his employer. Harding relayed that upon opening one of his employer's trailers, which was located on Court Street in Williamsport, PA, he discovered that the lock to the trailer had been cut and that a lot of material was missing from inside of the trailer. The value of the pipe that was missing was \$2,109.83. The pipe that was missing was described by Harding to be 10 feet of 3 inch diameter copper, 10 feet of 2-1/2 inch diameter copper, 60 feet of 2 inch diameter copper, 40 feet of 1-1/2 inch diameter copper, 120 feet of 1-1/4 inch diameter copper, 20 feet of 1 inch

diameter copper, and 100 feet of ½ inch diameter copper. The condition of the missing copper was all new material. Harding notified the police that the copper pipe was missing. Harding was subsequently called to an area in the rear of the 600 block of Second Street in Williamsport by the Williamsport Bureau of Police to identify piping. The police called Harding to this area as a large amount of copper piping was discovered lying behind a building. Harding could tell that the piping he was called to identify came from his employer's trailer as he observed 2 10 foot pieces; the 3 inch piece, and 2-1/2 inch piece. The rest of the piping discovered was new material and was close to the quantities taken from R. J. Ertel. However, they were unable to recover all of the missing pipe.

Officer Marvin Miller (Miller) of the Williamsport Bureau of Police also testified at the Preliminary Hearing. Miller testified that on January 19, 2011, he took a report for a theft of copper pipe from Harding. Miller told Harding to alert area businesses to the theft so they could be on notice of any new copper coming in. Staiman's Recycling Corporation then contacted Miller as a gentleman had dropped off 46 pounds of brand new copper at their business. One of the managers at Staiman's provided Miller with a copy of the full ID of the individual who had brought in the copper, and a copy of the sale's slip from the transaction with the individual. The individual noted on the photocopied receipt is Curtis Howard (Defendant). Miller identified the Defendant at the Preliminary Hearing as the individual depicted in the copy of the photo ID he received from Staiman's. Following his receipt of the full ID of the Defendant, Miller showed a copy of the ID to members of the Penn College Police Department, who then made contact with the Defendant on Park Street in Williamsport. Miller then made contact with the Defendant. After running a search of the Defendant, it was discovered that the Defendant had a warrant out of Brooklyn, NY, for a state parole violation. The Defendant was then taken into custody and

patted down. During the pat down, Miller found on the Defendant's person the ID of which Miller had received a copy from Staiman's, as well as a copy of the sale's slip Miller had received from Staiman's.

Miller was called to an area in the rear of the 600 block of Second Street in Williamsport where a large amount of copper was discovered lying behind a building. The discovered copper matched the description of the copper stolen from R. J. Ertel's. Miller took pictures of the copper and of the boot prints left at the scene. A DNA sample was also taken from some urine that was left behind where the boot prints were left. The copper Miller observed appeared to be brand new copper that had been bent and cut, making it unusable.

At the time of the hearing on the Petition for Habeas Corpus, the Commonwealth presented the additional testimony of two weighmasters for Staiman's Recycling Corporation. Aloha Tubbs testified that on January 19, 2011, she came into contact with the Defendant when he brought her his slip to be paid for bringing in material to Staiman's. Charles Swinehart (Swinehart) testified that on January 19, 2011, the Defendant brought in copper to Staiman's to be weighed. Swinehart weighed in 30-50 pounds of copper for the Defendant. Swinehart also testified that he was alerted on January 19, 2011 to look out for 2 inch copper pipes, as copper pipes were reported as stolen that morning. The Defendant brought in 2 inch copper pipes to Staiman's to be weighed in, which Swinehart believed matched the description of the pipe reported as stolen.

Discussion

The Defendant filed a Petition for Habeas Corpus to dismiss the charge of Receiving Stolen Property filed against the Defendant. The Defendant contends that since the

Commonwealth failed to show that the Defendant knew or should have known that the copper was stolen, the charge should be dismissed.

“A prima facie case consists of evidence produced by the Commonwealth which sufficiently establishes that a crime has been committed and that the accused is probably the perpetrator of that crime.” Commonwealth v. McConnell, Pa. Dist. & Cnty. LEXIS 252 (Pa. Dist. & Cnty. 2009) (See Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991). “Every element of the crime charged must be supported by the evidence; however the Commonwealth need not establish guilt beyond a reasonable doubt.” McConnell at 9. (See Commonwealth v. Lopez, 654 A.2d 1150, 1153 (Pa. Super. 1995). “The Commonwealth establishes a prima facie case as long as the evidence presented establishes sufficient probable cause to warrant the belief that the accused committed the offense.” McConnell at 9. (See Lopez at 1153.)

A person commits the offense of Receiving Stolen Property 18 Pa.C.S. §3925(a) if that person 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. In support of his argument that the Commonwealth failed to present evidence that the Defendant knew or should have known that the copper was stolen, the Defendant asserts the fact that he provided his proper ID at Staiman’s and that he did not flee from the police. The Defendant believes that his lack of covert actions lends to the theory that he didn’t know or should not have known that the copper was stolen. However, the Court finds that the remainder of the facts presented in this case show otherwise. The Commonwealth established that copper pipe valuing \$2,109.83 was stolen from a trailer belonging to the business of R. J. Ertel. The trailer where the pipe was stolen was broken into when someone cut the lock to the trailer. Local businesses were alerted to the theft and were

asked to be on the lookout for any new copper coming into their businesses. When Staiman's Recycling Corporation received copper fitting the description of the copper reported as stolen, they notified the police. The ID of the person who brought the copper to Staiman's belonged to the Defendant. When the police came into contact with the Defendant, they found on his person the ID matching the photocopied ID provided to them by Staiman's, as well as a sale's receipt from Staiman's. Furthermore, at the time of the hearing on the Writ of Habeas Corpus, employees of Staiman's identified the Defendant as the person who brought copper into Staiman's and who received payment in exchange for the copper. The Court finds that this evidence establishes that copper was stolen from R. J. Ertel, and that the Defendant was probably the person who stole and disposed of the copper. Although the Commonwealth has not shown a connection between the Defendant and the large amount of copper found discarded near Second Street, the Court finds that a connection was shown between the Defendant and the copper deposited at Staiman's. As the copper deposited at Staiman's matched the description of the copper stolen from R. J. Ertel, the Court finds that the Commonwealth has presented at least prima facie evidence that the Defendant committed the offense of Receiving Stolen Property.

ORDER

AND NOW, this ____ day of April, 2011 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, President Judge

cc. Aaron Biichle, Esq.
Jeana Longo, Esq.