

<p style="text-align: center;">IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA</p> <p>COMMONWEALTH</p> <p style="text-align: center;">vs.</p> <p>TIRELL WILLIAMS, Defendant</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>No. CR-2010-2012</p> <p>Decision regarding Defendant's Omnibus Motion and his Motion For Reduction of Bail</p>
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OPINION AND ORDER

This matter came before the court on Defendant's omnibus pre-trial motion which seeks a writ of habeas corpus for the charges of robbery (F1), robbery (F2) and theft, as well as his motion for reduction of bail. The relevant facts follow.

On January 6, 2012, Michael Stewart went to Amy Baird's residence after he met her at a bar. Mr. Stewart let Ms. Baird use his cell phone to order some marijuana from her dealer. He also provided Baird with funds so she could purchase the drugs. An individual came to the residence, dropped off drugs and left. Sometime thereafter, Ms. Baird realized that the individual gave her cocaine and not marijuana. Ms. Baird used Mr. Stewart's cell phone to call the individual back. After Ms. Baird finished using his cell phone, Mr. Stewart put the phone and his wallet back into his pants pockets.

When the individual returned, there were three other individuals with him, including Defendant. Mr. Stewart was in the kitchen when Defendant and the others came into the kitchen and surrounded him. Mr. Stewart was facing Defendant and talking to him. When Mr. Stewart turned his back to Defendant to respond to one of the other individuals, Defendant punched Mr. Stewart in the back of the head. The other individuals also began hitting Mr. Stewart. Someone broke a bottle over Mr. Stewart's head, and he fell to the floor.

While he was on the floor, all four individuals were kicking and striking him, and someone reached into his pockets and took his wallet and cell phone. Someone also said, “Stand him up so I can shoot him.” Although Mr. Stewart did not see any weapon, he was afraid he was going to be shot. There was hot oil on the stove from a failed attempt to make chicken wings. One of the individuals poured the hot oil on Mr. Stewart, and he started screaming. The individuals ran out of the house. Mr. Stewart poured cold water on himself to alleviate the pain caused by the hot oil that was poured on him, and later he went to the hospital to seek medical treatment. Mr. Stewart indicated that he was bruised, sore, and had a headache for days as a result of the incident.

Defendant was interviewed by the police. He admitted that he threw the first punch and his three associates joined in the fray. He conceded that he was involved in the assault and got some kicks in as well, but he denied taking any of Mr. Stewart’s property.

Defendant was arrested and charged with the following offenses: robbery by threatening or intentionally putting another in fear of immediate serious bodily injury, a felony of the first degree; conspiracy to commit robbery, a felony of the first degree; robbery by inflicting, threatening to inflict or intentionally putting another in fear of immediate bodily injury, a felony of the second degree; theft by unlawful taking, a misdemeanor of the first degree; and simple assault, a misdemeanor of the second degree.

Defendant contends the Commonwealth failed to present a prima facie case on the robbery and theft charges.¹ Defendant’s argument centers on the fact that there is no

¹ At the conclusion of the hearing, defense counsel conceded there was sufficient evidence to bind Defendant over on a conspiracy to commit assault.

evidence that he was the individual who actually took the items from Mr. Stewart's pockets.

A criminal defendant may challenge the sufficiency of the evidence presented at a preliminary hearing by filing a petition for writ of habeas corpus. Commonwealth v. Landis, 48 A.3d 432, 444 (Pa. Super. 2012), citing Commonwealth v. McBride, 528 Pa. 153, 595 A.2d 589 (1991)

The Commonwealth must "show sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go the jury." Commonwealth v. Winger, 957 A.2d 325, 328 (Pa. Super. 2008).

When reviewing a petition for habeas corpus, the court must view the evidence and all reasonable inferences to be drawn from the evidence in a light most favorable to the Commonwealth. Commonwealth v. Santos, 583 Pa. 96, 101, 876 A.2d 360, 363 (2005). A prima facie case requires evidence of each element of the offense charged; not evidence beyond a reasonable doubt. See Commonwealth v. Patrick, 933 A.2d 1043, 1045 (Pa. Super. 2007)(en banc).

The Crimes Code defines the robbery offense charged in this case as follows: "A person is guilty of robbery if, in the course of committing a theft, he: ... (ii) threatens another with or intentionally puts him in fear of immediate serious bodily injury; [or]... (iv) inflicts bodily injury upon another or threatens another with or intentionally puts him in fear of immediate bodily injury...." 18 Pa.C.S. §3701(a)(1)(ii) and (iv). "An act shall be deemed 'in the course of committing a theft' if it occurs in an attempt to commit a theft or in flight after the attempt or commission." 18 Pa.C.S. §3701(a)(2). As charged in this case, a "person

is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof.” 18 Pa.C.S. §3921(a).

Although Mr. Stewart could not state that Defendant was the individual who reached into his pockets and took his wallet and cell phone, the court finds the evidence is sufficient to establish that Defendant was either an accomplice or co-conspirator of the individual who committed the theft when the evidence and all reasonable inferences are viewed in the light most favorable to the Commonwealth.

”[A] conspiracy exists when two or more people agree to commit a crime, or a series of crimes, and one commits an act to further the goal of that agreement.” Pa.SSJI (Crim.) 8.306(a). A conspiracy is almost always proven through circumstantial evidence. Commonwealth v. Lambert, 795 A.2d 1010, 1016 (Pa. Super. 2002), citing Commonwealth v. Swerdlow, 431 Pa. Super. 453 636 A.2d 1173, 1176 (1994). A conspirator is equally liable for the acts committed by a co-conspirator to further the goals of the conspiracy. Commonwealth v. Roux, 465 Pa. 482, 490, 350 A.2d 867, 871 (1976); Lambert, supra at 1016-1017.

To be an accomplice, the defendant does not have to agree to commit a crime with someone else; the person is an accomplice if he, on his own, acts to help the other person to commit a crime. Pa.SSJI (Crim.) 8.306(a). A defendant is an accomplice of another if he had the intent of promoting or facilitating the commission of the crime and he aids or attempts to aid the other person in committing it. 18 Pa.C.S. §306(c)(1)(ii). Like conspiracy, intent is typically proven by circumstantial evidence since there is rarely direct evidence of one’s subjective state of mind. Commonwealth v. Utter, 279 Pa. Super. 557, 421

A.2d 339, 341 (1980); Pa.SSJI (Crim.) 7.02B.

Viewing the evidence and all the attendant circumstances of the incident in the light most favorable to the Commonwealth, one could infer that the four individuals intended or agreed to rob Mr. Stewart, that Defendant was the “ringleader” or instigator, and that each individual aided in the endeavor by participating in the assault.

The individuals were present at the residence because a drug transaction, which was initiated through the use of Mr. Stewart’s cell phone, went awry. The individuals entered the residence and surrounded Mr. Stewart. Defendant was the first person to speak to Mr. Stewart. Another individual then distracted Mr. Stewart so that Defendant could punch him in the back of the head. This blow initiated the ensuing altercation. Nothing was taken from Ms. Baird’s residence; the only items taken were Mr. Stewart’s cell phone and his wallet. The assault of Mr. Stewart at the time the theft occurred, including but not limited to the blows inflicted by Defendant, made it possible for one of the individuals to reach into Mr. Stewart’s pockets and take the items from Mr. Stewart, because he was too busy trying to protect himself from the kicks and punches striking his head and torso from all directions while he was lying on the floor in the corner of the kitchen next to the stove. Furthermore, during this assault someone said to the others, “Stand him up, so I can shot him.” This statement also supports the conclusion that the individuals were acting in concert.

If Mr. Stewart had been jumped by four individuals while he was walking down the street and his wallet and cell phone were taken, one would naturally infer that the actors were accomplices or co-conspirators who intended to rob Mr. Stewart. The result should not be any different simply because Mr. Stewart was jumped and robbed while he was

inside a residence.

Defendant also seeks a reduction of bail. Defendant previously sought a bail modification which was denied by the court due the nature of the charges, Defendant's partial admission, his significant prior criminal history, his limited contacts in this area, and the fact that he may be facing a significant period of state incarceration. See Order dated December 17, 2012. The court indicated that it would consider modification if the Commonwealth reduced the charges or permitted Defendant to plead to misdemeanor charges or if the some of the charges were dismissed or if evidence was suppressed. None of the circumstances under which the court would consider modification have occurred. While a guilty verdict on all of the charges in this case is not a certainty, there is a reasonable likelihood that Defendant will be convicted if the evidence is believed by the jury.

Accordingly, the foregoing Order is entered:

ORDER

AND NOW, this ____ day of February 2013, the court DENIES Defendant's omnibus pre-trial motion which sought relief in the nature of a writ of habeas corpus and his motion for reduction of bail.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Nicole Ippolito, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file