

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1925-2012  
vs. :  
:   
PATRICK G. WILLITS, :   
Defendant : Preliminary Hearing

**OPINION AND ORDER**

Defendant is charged with numerous offenses arising out of incidents that allegedly occurred on March 29, 2012 and March 31, 2012. The charges include Burglary, Aggravated Assault, Criminal Attempt to commit Robbery, Access Device Fraud, Simple Assault, Theft, Receiving Stolen Property and False Reports.

A preliminary hearing was held before the Court sitting as a Magisterial District Judge on January 30, 2013. The evidence presented at this hearing established the following:

The victim had been keeping his credit/debit card in the glove box of his car with pin number on a piece of paper wrapped around it. Defendant saw the victim with the card and where he kept it in his vehicle.

On March 29, 2012, Defendant used the victim's card to purchase gas at Sheetz without the victim's consent. The victim's card also had been used to withdraw approximately \$1400 in cash from the victim's account.

The victim realized that someone had been in his vehicle because the overhead light bulb had been removed and left on the floor. Therefore, on March 31, 2012, the victim moved the card from his vehicle to the bedroom of his residence.

At approximately 9:00 and 10:00 p.m. on March 31, 2012, the victim received two phone calls that he did not answer. Around 11:00 p.m. someone broke into the victim's residence by prying open the side door. The victim awoke when he heard a noise in his bedroom. He saw a shadowy area at the end of the bed that he initially thought was a pile of clothes. When he turned on the television, however, he realized someone was kneeling at the foot of his bed. The individual stood up and struck the victim in the back of the head and the side of the face with a claw hammer. The blow to the face caused a large gash along the victim's jawline, which bled profusely. See Commonwealth's Exhibits 1 through 7 (photographs of the victim's injuries and blood on his clothing). The victim wrestled the claw hammer away from the individual, who then fled from the residence. Shortly thereafter, the victim heard Defendant's car drive away, which the victim recognized from its loud exhaust.

Between 11 and 11:30 p.m. Defendant showed up at the mini-mart in Jersey Shore. He told an employee that he had been pistol-whipped by his ex-girlfriend's new boyfriend and asked her to check his head. Defendant also showed her a gray hooded sweatshirt with dried blood on the back on shoulder. Defendant saw police officers at the mini-mart, but he did not report the alleged pistol-whipping to them at that time.

Defendant's girlfriend was unable to reach him for about an hour that night, which was unusual. Defendant also told his girlfriend the pistol whipping story. She saw blood on his sweatshirt, but did not see any injuries to his head to support his claim that he was pistol-whipped.

At approximately 3:00 a.m. on April 1, 2012, the police were dispatched to Jersey Shore hospital to speak to an alleged assault victim. The alleged victim was Defendant, who claimed he had been pistol-whipped between 11:00 and 11:30 p.m. near the ball fields. He went to the mini-mart to clear his head and buy lottery tickets. He saw the police there, but allegedly did not feel comfortable talking to them with a certain officer present. He went home, but started to feel sick so his girlfriend talked him into going to the ER. He also told the police they would find a casing from the gun used to pistol whip him near the dumpsters by the ball fields. See Commonwealth Exhibit 8.

Defendant's story did not make sense. The mini-mart employee, the girlfriend and the police did not see any visible marks from Defendant allegedly being hit in the head with a gun. The police also went to the ball fields to look for the round or casing from the gun, but did not locate anything.

Defendant's girlfriend indicated that Defendant told her that his uncle gave him his card to get gas at Sheetz. She also stated that Defendant had about \$1400 in cash on April 2 for a deposit on a trailer.

The Commonwealth's burden was to establish a prima facie case on each of the charges filed against Defendant. To establish a prima facie case, the Commonwealth must present sufficient evidence that the crimes had been committed and that the accused is the one who probably committed them. Commonwealth v. Mullen, 460 Pa. 336, 333 A.2d 755, 757 (1975). The evidence must demonstrate the existence of each of the material elements of the crimes charged and legally competent evidence to demonstrate the existence of the facts

which connect the accused to the crime. Commonwealth v. Wodjak, 502 Pa. 359, 466 A.2d 991, 996-97 (1983). The absence of any element of the crimes charged is fatal. Commonwealth v. Austin, 394 Pa. Super. 146, 575 A.2d 141, 143 (1990).

The Court finds that the Commonwealth has presented a prima facie case with respect to Count 1, Burglary (Felony 1); Count 2, Aggravated Assault (Felony 2); Count 4, Access Device Fraud (Felony 3); Count 5, Simple Assault (Misdemeanor 2); Count 6, Theft by Unlawful Taking or Disposition (Misdemeanor 1); Count 7, Receiving Stolen Property (Misdemeanor 1); and Count 8, False Reports to Law Enforcements Agencies (Misdemeanor 2).

With respect to Count 3, Criminal Attempt to Commit Robbery (Felony 2), it is a much closer question. The two elements of the offense of Attempt are that the actor intends to commit an offense, and that the actor takes substantial steps toward completion of the offense. Commonwealth v. Henley, 504 Pa. 408, 474 A.2d 1115, 1118 (1984). A person is guilty of robbery if, in the course of committing a theft, he, among other things, inflicts bodily injury upon another, threatens another with bodily injury or intentionally puts him in fear of immediate bodily injury. 18 Pa. C.S.A. § 3701 (a) (1)(iv). An act is deemed “in the course of committing a theft” if it occurred in an attempt to commit a theft or in flight after the attempt or commission. 18 Pa. C.S.A. § 3701 (a) (2).

Accordingly, in order to establish a prima facie case with respect to the Attempted Robbery Count, the Commonwealth would need to prove that Defendant intended to inflict bodily injury, threatened bodily injury or intentionally put the victim in fear of

immediate bodily injury while in the course of committing a theft, and that he took a substantial step toward completion of the offense.

The disputed element as argued at the preliminary hearing following the testimony is whether Defendant was in the course of committing a theft.

When deciding whether a prima facie case was established, the court must view the evidence in the light most favorable to the Commonwealth and consider all reasonable inferences based on that evidence which could support a guilty verdict. Commonwealth v. Landis, 48 A.3d 432, 444 (Pa. Super. 2012), citing Commonwealth v. Winger, 957 A.2d 325, 328 (Pa. Super. 2008). The court also is mindful of the fact that 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 §7.02.

Clearly, the evidence is sufficient to establish a prima facie case that Defendant took the card from the victim's vehicle and used it to buy gas at Sheetz and withdraw approximately \$1400 in cash.

A jury could reasonably conclude that Defendant was the individual who broke into the victim's residence, based on the following facts: the victim recognized the sound of Defendant's vehicle after the perpetrator fled from his residence; shortly after the incident Defendant's sweatshirt had blood on it; and Defendant did not have any injuries consistent with the blood on his sweatshirt or his pistol-whipping story.

A jury could also reasonably infer that Defendant broke into the victim's

residence to commit a theft. In the days before the victim's residence was broken into, Defendant took the victim's card and pin number from the victim's vehicle and used them to purchase gas and obtain a large sum of cash. Although this evidence cannot be used to show action in conformity therewith, it can be used to determine Defendant's intent. Pa.R.Cr.P. 404(b). Since Defendant stole from the victim two days before the break in, the jury could reasonably infer that Defendant intended to steal from the victim when he broke into the victim's residence. There also was a reason for Defendant to break in that wasn't previously present, i.e., the victim removed the card and pin number from his car to the bedroom of his residence. While there was no direct evidence that Defendant knew the victim moved these items to his bedroom, it is not unusual for people to keep valuables such as their wallet, cash, keys, and/or debit or credit cards on the dresser or nightstand in their bedroom. A jury could also conclude that Defendant's statements regarding the alleged pistol-whipping incident were false and therefore showed consciousness of guilt. Thus, when the evidence as a whole is considered in the light most favorable to the Commonwealth, the Court concludes that the evidence is sufficient to establish a prima facie case that Defendant attempted to rob the victim because there is a reasonable inference that he intended to commit theft inside the residence and he took substantial steps to doing so when he pried open the door of the victim's residence, snuck into his bedroom, and then attacked the victim with a claw hammer.

**ORDER**

**AND NOW**, this 9<sup>th</sup> day of February 2013, following a hearing and argument on whether the Commonwealth has proven a prima facie case against Defendant, the Court finds that the Commonwealth has proven a prima facie case with respect to all the counts of the Information

This matter has previously been scheduled and remains scheduled for a Pretrial on **March 12, 2013 at 1:30 p.m. in Courtroom No. 1** of the Lycoming County Courthouse. The Court notes that Defendant previously waived arraignment on December 10, 2012.

By The Court,

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Marc F. Lovecchio, Judge

cc: Eileen Dgien, Deputy Court Administrator  
Eric Linhardt, Esquire (DA)  
PD (RC)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file