

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PA**

**vs.**

**RODNEY JORDAN,**  
**Defendant**

**:**

**: No. CR-1592-2012**

**:**

**:**

**: Petition for Habeas Corpus**

**OPINION AND ORDER**

Defendant is charged by Information filed on October 4, 2012 with various criminal offenses including Firearms not to be Carried Without a License, a felony of the third degree, and Possession of a Firearm by a Minor, a misdemeanor of the second degree. IN a petition for a habeas corpus filed on October 25, 2012, Defendant argues that the evidence against him on said charges is insufficient as a matter of law.

Argument on Defendant's Petition was held before the Court on December 26, 2012. Defendant argues that there is insufficient evidence to establish that the item allegedly possessed by the Defendant was a firearm and accordingly Counts 2 and 3 of the Information must be dismissed.

In deciding Defendant's Petition, the parties stipulated that the Court could consider the transcript of the preliminary hearing that was held before Magisterial District Judge James Carn on September 18, 2012.

At said preliminary hearing, the victim testified that at approximately 11:15 in the evening on August 29, 2012, he was confronted by Defendant who he knew from the neighborhood. The victim noted that he heard a yell, recognized Defendant and then rode his bike over to Defendant. Once there, Defendant "pulled a gun out." (Transcript, p. 5). Defendant pulled the gun "front-ways" from his waist. (Transcript, p. 5). At the time the gun was pulled out, Defendant told the victim to empty his pockets. (Transcript, p. 6).

The victim indicated that Defendant put the gun in the victim's face and described the gun as a revolver with a chrome barrel. (Transcript, pp. 6, 9) The victim knew the difference between a semi and a revolver. (Transcript, pp. 6, 9, 10).

Defendant argues that there was no evidence presented as to the operability or capability of expelling a projectile with respect to the alleged revolver. Both 18 Pa. C.S.A. § 6106, Firearms Not To Be Carried Without a License, and 18 Pa. C.S.A. § 6110.1, Possession of Firearms by a Minor, include as an element of the offense, that the item carried or possessed be a firearm. The definition of a firearm includes any pistol or revolver with a barrel length less than fifteen (15) inches. 18 Pa.C.S.A. §6102. To be a firearm, the object must also be operable, that is, capable of firing a projectile. Commonwealth v. Layton, 452 Pa. 495, 307 A.2d 843 (Pa. 1973); Commonwealth v. Gainer, 7 A.3d 291 (Pa. Super. 2010).

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 to 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 “merely” 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).

Contrary to Defendant’s argument, the Court concludes that the evidence is sufficient to establish, prima facie, the possession of a firearm by Defendant. There need not be direct proof of operability. Layton, 307 A.2d at 844. Indeed, an inference of operability may be based on circumstantial evidence. Id. (“A reasonable fact finder may, of course, infer operability from an object which looks like, feels like, sounds like or is like, a firearm.”); see also Commonwealth v. Holguin, 254 Pa. Super. 295, 385 A.2d 1346, 1350-1351 (1978); Commonwealth v. Yaple, 238 Pa. Super. 336, 357 A.2d 617, 618-619 (1976); Pa. SSJI §15.6106.

Under the circumstances as testified to by the alleged victim, it can reasonably be inferred that the gun was operable. First, the victim described the item as a gun. He noted that it was held to his face and, upon asking for more details, he described it as a revolver with a chrome barrel. Additionally, the conduct and statements of Defendant are consistent with an inference that the gun was operable. He was seen concealing it in his waistband, pulling it out, putting it in the victim’s face and directing the victim to empty his pockets.

Accordingly, the Court will deny Defendant’s Petition for Habeas Corpus.

**ORDER**

**AND NOW**, this \_\_\_\_ day of January 2013, following a review of the Preliminary Hearing Transcript and argument of the parties, the Court **DENIES** Defendant's Petition for Habeas Corpus.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)  
Nicole Spring, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File