

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-1196-2014**
 v. :
 :
 CODY ALLEN BENYO, : **CRIMINAL DIVISION**
 Defendant :

OPINION AND ORDER

On July 30, 2014, the Defendant filed a Petition for Writ of Habeas Corpus. A hearing on the motion was held on August 21, 2014.

I. Background

During the preliminary hearing, Curtis Lee Schreck (Schreck) testified to the following:

On June 26, 2014, Schreck had a Springfield XD .40 pistol (pistol). He had taken the pistol from his stepmother's vehicle without her permission.

At approximately 5:30 P.M. on June 26, 2014, Schreck talked with the Defendant by the checkout area in the Dollar General store in Muncy, Pennsylvania. Schreck and the Defendant did not arrange to meet each other at the store. Schreck had seen the Defendant three or four times before, but the Defendant was not his friend. Schreck told the Defendant that he found a pistol and wanted to trade it for cash and drugs. The Defendant said that he would contact Zach Reaser (Reaser) and they would let the Defendant know whether they wanted to trade.

Later, Schreck and his girlfriend, Moria Moore (Moore), went to Lions Park in Muncy. At the park, Schreck and Moore met the Defendant, Reaser, and another individual. The group walked into the woods. Schreck then gave to Reaser the pistol from his stepmother's vehicle. Schreck asked for a hundred bucks and some spice, which is synthetic marijuana. Reaser handed the pistol to the Defendant. The Defendant looked at the pistol and then handed it back to Reaser. After the Defendant handed the pistol back to Reaser, Schreck told them that it was stolen. The Defendant and Reaser got into a vehicle and left the park.

During the preliminary hearing, Moria Moore testified to the following:

Moore was with Schreck for the entire day of June 26, 2014. She saw Schreck with a gun. Schreck told Moore that he wanted her to walk with him to Lions Park to trade the gun. Schreck and Moore walked to the park, where they met the Defendant, Reaser, and another individual. Schreck handed the gun to Reaser. Reaser checked the gun and then unloaded it. The Defendant said the gun was nice. Schreck told Reaser that the gun was stolen. The Defendant told Schreck to deny taking the gun.

The Defendant was charged with Receiving Stolen Property¹ (Count 1), Conspiracy to Commit Theft of a Firearm² (Count 2), and Conspiracy to Commit Theft from a Motor Vehicle³ (Count 3).

During the hearing on the motion, the Commonwealth withdrew Count 2 and Count 3. The Defendant argues that the Commonwealth did not present sufficient evidence to establish a prima facie case of Count 1, Receiving Stolen Property. The Defendant argues that the Commonwealth has not established a prima facie case because when the Defendant held the pistol, he did not know it was stolen.

II. Discussion

“A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense. Notably, the Commonwealth does not have to prove the defendant’s guilt beyond a reasonable doubt. Further, the evidence must be considered in the light most favorable to the Commonwealth so that inferences that would support a guilty verdict are given effect.” Commonwealth v. Santos, 876 A.2d 360, 363 (Pa. 2005).

For the offense of Receiving Stolen Property, “the Commonwealth [is] required to prove . . . that the [property] had been stolen, that [the defendant] had been in possession of [the property], and that [the defendant] had known or had reason to know it was stolen.” In Interest of Scott, 566 A.2d 266, 267 (Pa. Super. 1989).

¹ 18 Pa.C.S. § 3925(a).

² 18 Pa. C.S. §§ 903(a)(1), 3921(a).

³ 18 Pa. C.S. §§ 903(a)(1), 3934(a).

Here, the Commonwealth presented sufficient evidence that the pistol was stolen. Schreck testified that he took the pistol from his stepmother's vehicle. Schreck also testified that he told the Defendant and Reaser that the pistol was stolen.

The Commonwealth has presented evidence that the Defendant possessed the pistol. Schreck testified that Reaser handed the pistol to the Defendant. After the Defendant looked at the pistol, he handed it back to Reaser.

The Defendant argues that the Commonwealth has not presented sufficient evidence that the Defendant possessed the pistol because it has not shown that the Defendant intended to exercise control over the pistol. The Court finds that the Commonwealth has presented sufficient evidence that Reaser intended to exercise control over the pistol. At the store, the Defendant told Schreck that he would contact Reaser and they would let Schreck know whether they wanted the pistol. Later, Reaser and the Defendant met Schreck at Lions Park. Meeting Schreck at the park is evidence that Reaser wanted to trade for the pistol. At the park, Schreck handed the pistol to Reaser. Moore testified that Reaser checked the gun and unloaded it. The above circumstances show that Reaser intended to trade for the pistol and, therefore, exercise control over the pistol.

“A person is an accomplice of another person in the commission of the offense if . . . with the intent of promoting or facilitating the commission of the offense he . . . aids or agrees or attempts to aid such other person in planning or committing it . . .” Commonwealth v. Watts, 501 A.2d 1152, 1153 (Pa. Super. 1985).

The Commonwealth presented sufficient evidence that the Defendant aided Reaser in the trading for the pistol. Schreck testified that the Defendant told him that he would contact Reaser and they would let Schreck know whether they wanted the pistol. Schreck and Moore testified that the Defendant was at the park with Reaser. Moore testified that the Defendant said the gun

was nice. These circumstances show that the Defendant aided Reaser in trading for the pistol. Because the Commonwealth has presented sufficient evidence that the Defendant aided Reaser in trading for the pistol, it has presented sufficient evidence of the possession element.

Finally, the Commonwealth presented sufficient evidence that the Defendant had reason to know the pistol was stolen. The Supreme Court of Pennsylvania discussed the knowledge element of Receiving Stolen Property in Commonwealth v. Henderson.⁴

The crime of receiving stolen goods requires proof that the [defendant] knew that the property possessed was stolen. Such knowledge on the part of the [defendant] is an essential element of the crime

The element of [the defendant's] guilty knowledge may be established by direct evidence of knowledge or by circumstantial evidence from which it can be inferred that [the defendant] had *reasonable cause to know* that the property was stolen. If from the circumstantial evidence, it can be inferred that the [defendant] had reasonable cause to know, a final inference can reasonably be made that he in fact *knew* that the property was stolen. It is difficult to enumerate every circumstance that would warrant a conclusion that the [defendant] had reason to know the property was stolen. Some of the significant circumstances can be the [defendant's] conduct; the [defendant's] relationship to the victim; the elapsed time between the [defendant's] possession and the theft; the situs of the theft and the situs of the possession; the kind of property; the quantity of the property; and the identifying characteristics of the property.

Any or all of the above circumstances, and others not enumerated, taken sometimes alone and sometimes in relation to each other, may give rise to the final necessary inference that the [defendant] knew that the property possessed was stolen property.

304 A.2d at 156.

Here, the circumstances give rise to an inference that the Defendant knew the pistol was stolen. Schreck told the Defendant that he found a pistol.⁵ The Defendant did not know Schreck well. *See Commonwealth v. Parsons*, 335 A.2d 800, 803 (Pa. Super. 1983) (finding evidence sufficient for receiving stolen property and noting that defendant purchased the stolen property from a man he did not know well). Schreck was willing to sell the pistol for only \$100 and

⁴ 304 A.2d 154 (Pa. 1973).

⁵ A firearm is not something frequently found.

drugs. Schreck, Reaser, and the Defendant walked into the woods of the park before the pistol was revealed.

III. Conclusion

Because the Commonwealth presented sufficient evidence of the elements of Receiving Stolen Property, it has established a prima facie case of Count 1.

ORDER

AND NOW, this _____ day of October, 2014, based upon 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