

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1656-2014
 :
 JEFFREY S. LEWIS, : Opinion and Order re:
 Defendant : Defendant's Omnibus Pretrial Motion

OPINION AND ORDER

Before the Court is Defendant's omnibus pretrial motion filed on December 3, 2014. It includes a motion to dismiss and a motion to suppress.

By Information filed on October 31, 2014, Defendant is charged with one count of persons not to possess firearms, one count of firearms not to be carried without a license and one count of receiving stolen property.

With respect to the motion to dismiss, Defendant submits that the Commonwealth is unable to establish the corpus delicti of the charges and as a result, all of them should be dismissed. Defendant claims that without his statement, there is no evidence that he committed any crime.

The corpus delicti rule is essentially a rule of evidence that precludes a confession from being utilized unless and until the corpus delicti of the crime has first been established by independent proof. *Commonwealth v. Rhoads*, 225 Pa. Super. 208, 310 A.2d 406, 409 (1973).

The grounds on which the rule rests are the hasty and unguarded character which is often attached to confessions and the consequent danger of conviction where no crime has in fact occurred. *Commonwealth v. Turza*, 340 Pa. 128, 133-134, 16 A.2d 401, 404 (1940).

There are two elements to a corpus delicti: the occurrence of an injury or a loss; and somebody's criminality as the source of the injury or loss. *Id.* at 213; *Commonwealth v. May*, 451 Pa. 31, 301 A.2d 368 (1973). The corpus delicti may be proved by circumstantial evidence, but that evidence must be "sufficient to convince the jury beyond a reasonable doubt that the crime charged was committed by someone." *Commonwealth v. Lettrich*, 346 Pa. 497, 31 A.2d 155 (1943).

Rhoads, 310 A.2d at 409.

However, and very importantly, "before introducing an extra-judicial omission or confession, the Commonwealth is not required to prove the existence of a crime beyond a reasonable doubt. Rather, it is enough for the Commonwealth to prove beyond a reasonable doubt that the injury or loss is consistent with the crime having been committed." *Commonwealth v. Persichini*, 444 Pa. Super. 110, 663 A.2d 699 (1995)(citations omitted).

In connection with the charges filed against the Defendant, Count 1, persons not to possess firearms requires proof that the actor has been convicted of a disqualifying offense and that the actor possessed a firearm. 18 Pa.C.S.A. § 6105(a)(1). With respect to Count 2, firearms not to be carried without a license, the Commonwealth would need to prove that the actor carried a firearm in a vehicle without a valid and lawfully issued license. 18 Pa.C.S.A. § 6106(a)(1). With respect to Count 3, receiving stolen property, the Commonwealth would need to prove that the actor unlawfully and intentionally received, retained or disposed of movable property of another knowing it had been stolen or believing that it had probably been stolen with no intent to restore the same to the owner. 18 Pa.C.S. § 3925(a).

In order for a defendant's statement to be admitted, the Commonwealth must

prove the corpus delicti by a preponderance of the evidence. *Commonwealth v. Bullock*, 868 A.2d 516, 527 (Pa. Super. 2005), *aff'd*, 913 A.2d 207 (Pa. 2006), *cert. denied*, 550 U.S. 941 (2007).

Contrary to what Defendant claims, the Commonwealth has established the corpus delicti of the respective crimes by independent proof meeting the requisite standard.

The Commonwealth introduced the transcript of the preliminary hearing before MDJ Carn on October 14, 2014. At the hearing in this matter on January 2, 2015, the Commonwealth also presented the testimony of Agent Trent Peacock from the Williamsport Bureau of Police.

Agent Peacock was working on September 4, 2014 and he was called to respond to a reported carjacking and a shooting. Dallas Dunston reported that earlier that day when he got out of his car at the Dunkin Donuts parking lot, Defendant, among others, took off in his car. Officers eventually located and stopped the car. It was being driven by Defendant. Mr. Dunston subsequently signed a consent to search the car and in the glove box, the officers found a pistol. Mr. Dunston related that while he, Defendant and others were driving around previously, the pistol was passed back and forth between Defendant and another individual. As well, an independent check of the serial number of the gun revealed that it was stolen from 1238 Ann Street in the city of Williamsport in January of 2014. Finally, law enforcement confirmed that Defendant had pled guilty to “a felony 1 robbery in 2007” and thus was precluded from possessing a firearm.

These facts establish by independent proof the corpus delicti of Counts 1 and

2. They clearly establish that Defendant was in possession of the gun either directly by handling it or constructively by it being in his vehicle. They establish that he was convicted of a disqualifying offense. They also establish that the firearm was being carried in a vehicle and that there was no person who either directly or constructively possessed it who was licensed to do so. Accordingly, Defendant's motion to dismiss with respect to Counts 1 and 2 shall be DENIED.

The Court also disagrees with Defendant's position with respect to the crime of receiving stolen property. The police had evidence independent of Defendant's statements to show the occurrence of an injury or loss and **somebody's** criminality as the source of that injury or loss. The police searched the vehicle and found the firearm in the glove box. The police checked the serial number on the firearm and discovered that the owner had reported it stolen in January 2014. Dunston told the police that the firearm was in Defendant's possession earlier. Clearly, someone unlawfully received, retained or disposed of the firearm for it to have been found by the police in the glove box of the vehicle that Defendant was driving. Moreover, from the facts and circumstances of this case, one could also reasonably infer knowledge that the firearm probably had been stolen. Defendant had a prior robbery conviction that precluded him from possessing or using a firearm and no one in the vehicle had a license to carry a firearm. Obviously, the occupants of the vehicle neither purchased the firearm from the owner or a gun dealer nor lawfully transferred ownership of the firearm through a licensed gun dealer.

In the alternative, the Commonwealth argues that the "closely related crime

exception” with respect to the corpus delicti rule would allow the Defendant’s statements with respect to Count 3 to be admitted. The court agrees.

An exception to the corpus delicti rule known as the closely related crime exception was specifically approved of by this Court in *McMullen*, at 372, 681 A.2d at 723. This exception comes into play where an accused is charged with more than one crime, and the accused makes a statement related to all the crimes charged, but the prosecution is only able to establish the corpus delicti of one of the crimes charged. Under those circumstances where the relationship between the crimes is sufficiently close so that the introduction of the statement will not violate the purpose underlying the corpus delicti rule, the statement of the accused will be admissible as to all the crimes charged. *Id.*

Commonwealth v. Bardo, 551 Pa. 140, 147; 709 A.2d 871, 874 (1998), quoting *Commonwealth v. Verticelli*, 706 A.2d 820 (Pa. 1998). Here, the relationship between the crimes is sufficiently close so that the introduction of the statement will not violate the purpose underlying the corpus delicti rule. The stolen property is the same firearm that is the subject of Counts 1 and 2.

The Court will now address Defendant’s motion to suppress. Defendant contends that during the course of the investigation, Defendant executed a waiver of his rights and agreed to speak with law enforcement. Defendant contends that the waiver was not executed knowingly, intelligently or voluntarily and that accordingly, his statement must be suppressed.

At the hearing in this matter, Agent Peacock testified that Defendant was read a Williamsport Bureau of Police Miranda Waiver Form. Once it was read to Defendant, he initialed and signed it. It was admitted as Commonwealth’s Exhibit 2.

A copy of the videotaped interview was also provided to the Court to review.

It was marked as Commonwealth's Exhibit 3.

In order for a waiver of Miranda rights to be valid, it must be made knowingly, voluntarily and intelligently. *Commonwealth v. Scarborough*, 491 Pa. 300, 421 A.2d 147, 153 (1980). The Commonwealth must show by a preponderance of the evidence that a voluntary, knowing and intelligent waiver of a constitutional right was made. *Id.* There are two requirements to determine if a Miranda waiver is valid. First, the waiver of one's Miranda rights must have been voluntarily, in that "it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the Waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it." *Colorado v. Spring*, 479 U.S. 564, 573 (1987). In determining the validity of a waiver under Miranda and the voluntariness of a confession, the Court looks to the "totality of the circumstances surrounding the interrogation." *Commonwealth v. Carter*, 546 A.2d 1173, 1177 (Pa. Super. 1988).

The Commonwealth has clearly shown that Defendant made a voluntary, knowing and intelligent waiver of his constitutional right to remain silent. While Defendant appeared to be somewhat cold and somewhat tired, there was nothing about his physical or psychological state that demonstrated that his waiver was not voluntary, knowing or intelligent. The police did nothing to drain his powers of discretion. There was nothing improper about the method of the interrogation; it was simply a dialogue. The conditions of the detention were free of any coercion, and there was nothing about the attitude of Agent Peacock toward Defendant that would have demonstrated coercion. The duration of the

questioning was relatively short and the method was free of any taint.

When Defendant was first sitting in the room, Agent Peacock came in and the questioning shortly began. Agent Peacock read to him the entire Miranda waiver form and followed up with oral questions regarding Defendant's agreement to speak with him. Not only did Defendant sign the document but he also orally indicated that he understood his rights and agreed to waive them. There was nothing at all during the entire interview to indicate that Defendant was not voluntarily speaking with Agent Peacock or that he did not voluntarily, intentionally or knowingly waive his Miranda rights. There was nothing at all with respect to Defendant's posture, tone or content of his answers that indicated that he was not doing what he intended or wanted to do.

Accordingly, Defendant's motion to suppress will be DENIED.

ORDER

AND NOW, this ____ day of February 2015, following a hearing and argument, Defendant's motion to dismiss is **DENIED**. Defendant's motion to suppress is also **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Robert A. Hoffa, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file