

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1244-2014
:
vs. :
:
:
BETHANY SHIRK, :
Defendant :

OPINION AND ORDER

This matter came before the court on Defendant’s omnibus pretrial motion, which seeks habeas corpus relief. The relevant facts follow.

Rachel Lehman received an armoire of her grandmother’s jewelry from her aunt. The armoire was filled with necklaces, rings, bracelets, earrings and pins. She kept the armoire in her room. She showed the jewelry to Defendant and told her the jewelry was her gram’s and very valuable. She did not give Defendant or anybody else permission to take any of the jewelry. When she came home from her dad’s one weekend a month or two later, some of the drawers of the armoire were open and numerous pieces of jewelry, including a bracelet and several rings were missing.

Defendant was the girlfriend of Ms. Lehman’s brother Cody. Ms. Lehman showed her the jewelry right after Defendant started living with her brother in the hut behind her house. Defendant was not still living in the hut with Cody when Ms. Lehman realized that the jewelry was missing.

One day Christina Barr was at the Rails To Trails with Defendant, Ms. Lehman’s brother Marshall and his fiancé. Defendant had a lot of rings on her fingers and she gave two of them to Ms. Barr – one for Ms. Barr and one for her daughter. Defendant

claimed that the rings were her grandmother's. A day or two later Ms. Barr got a phone call from Marshall's mom, who told Marshall that some of his grandmother's rings were missing from his sister's jewelry box and she suspected Bethany because she was at the house last. When Ms. Barr found out, she described the rings she got from Bethany over the phone and later showed the rings to Marshall's mom and Ms. Lehman, who identified one of the rings as one of the grandmother's rings taken from the armoire and the other ring was Marshall's aunt's ring. Ms. Barr returned the rings to the Lehmans. Ms. Barr also testified that she had observed Defendant wearing a butterfly shaped mood ring during a period of time when Defendant and Cody had broken up and before they got back together.

The Lehmans reported about \$6,000 worth of jewelry as stolen, which consisted of a diamond tennis bracelet and six rings, including a mood ring with a butterfly shape. Captain Jeirles of the Tiadaghton Valley Regional Police Department interviewed Defendant. She denied taking the jewelry but admitted that: she had been inside the Lehman residence, Rachel Lehman had shown her various items of jewelry and that her fingerprints could be inside Rachel Lehman's bedroom because she helped clean in the past.

Defendant was charged with theft by unlawful taking and receiving stolen property. She filed an omnibus pretrial motion in which she asserted that the evidence was insufficient to show that she took the property or even possessed the other six items.

The proper means to attack the sufficiency of the Commonwealth's evidence pretrial is through the filing of a petition for writ of *habeas corpus*. Commonwealth v. Marti, 779 A.2d 1177, 1179 n.1 (Pa. Super. 2001). At a *habeas corpus* hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a prima facie case against the

defendant. See Commonwealth v. Williams, 911 A.2d 548, 550 (Pa. Super. 2006).

“A prima facie case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime.” Commonwealth v. Packard, 767 A.2d 1068, 1070 (Pa. Super. 2001). The prima facie standard “does not require that the Commonwealth prove the elements of the crime beyond a reasonable doubt nor that evidence is available that would prove each element at trial beyond a reasonable doubt.” Commonwealth v. Austin, 394 Pa. Super. 146, 575 A.2d 141, 143 (1990).

A defendant is guilty of theft by unlawful taking or disposition if she unlawfully takes, or exercises unlawful control over, movable property of another with the intent to deprive her thereof. 18 Pa.C.S. §3921(a); Commonwealth v. Young, 35 A.3d 54, 62 (Pa. Super. 2011), appeal denied, 48 A.3d 1249 (Pa. 2012).

A defendant is guilty of receiving stolen property if she “intentionally receives, retains, or disposes of movable property of another knowing it has been stolen or believing it has probably been stolen, unless the property is received, retained or disposed with the intent to restore it to the owner.” 18 Pa.C.S. §3925; see also Young, supra.

When the evidence presented at the preliminary hearing is considered as a whole and all the reasonable inferences that can be drawn therefrom are viewed in the light most favorable to the Commonwealth, the evidence is sufficient to establish a prima facie case that the crimes of theft by unlawful taking and receiving stolen property occurred and that Defendant was probably the one who committed those crimes.

The victim showed Defendant her jewelry and told Defendant how valuable it

was to her. Although Defendant denied committing these crimes, Defendant had access to the victim's home and admitted to police that her fingerprints might be found inside the victim's bedroom. Defendant gave one of the victim's rings to another person, which shows that she intended to permanently deprive the victim of the jewelry. The other person also observed Defendant in possession of another ring that the victim reported stolen. Since all the jewelry was kept in the same place and discovered missing at the same time, a jury could infer that Defendant stole all the jewelry and not just the items that Ms. Barr observed in Defendant's possession. From this evidence a jury could conclude that Defendant committed the crimes of theft by unlawful taking and receiving stolen property.

Defendant's reliance on McFarland¹ is misplaced. The issue in McFarland was the sufficiency of the evidence to prove the crimes beyond a reasonable doubt, not the lower prima facie standard required at the preliminary hearing stage. Furthermore, there was no evidence in McFarland that the appellant had any opportunity to steal the items or any relationship to the victims. Here, although the victim did not know the exact date that the items were stolen, the evidence shows that the victim showed Defendant the property and told her how valuable it was. Defendant also had access to the victim's residence and admitted that her fingerprints might be found in the victim's room.

Accordingly, the following order is entered:

¹Commonwealth v. McFarland, 308 A.2d 592 (Pa. 1973).

ORDER

AND NOW, this ____ day of January 2015, the court DENIES Defendant's omnibus pretrial motion which seeks habeas corpus relief.

By The Court,

Marc F. Lovecchio, Judge

cc: Anthony Ciuca, Esquire (ADA)
Joshua Bower, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file