

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1317-2016
 :
 TYDRIC RICHARDSON, : Omnibus Pretrial Motion
 Defendant :
 :

OPINION AND ORDER

By Information filed on August 10, 2016, Defendant was charged with one count of receiving stolen property, one count of possession of a small amount of marijuana for personal use and one count of possession of drug paraphernalia. On September 7, 2016, Defendant filed an omnibus pretrial motion which contained a petition for writ of habeas corpus with respect to the receiving stolen property count, a motion to disclose JNET information, a motion to disclose Rule 404 (b) evidence and a motion to reserve right.

A hearing and argument on Defendant's omnibus pretrial motion was held before the court on November 28, 2016. At the hearing, the Commonwealth introduced a transcript of the preliminary hearing held on July 20, 2016 before MDJ Christian Frey. The Commonwealth also presented the testimony of Officer Eric Derr of the Williamsport Bureau of Police as well as Officer Jason Dockey, also of the Williamsport Bureau of Police.

On June 3, 2016, a purple Honda Accord with Maryland plates being driven by Defendant was pulled over by Officer Dockey because the two rear taillights were not functional. Upon stopping the vehicle, Officer Dockey made contact with the driver, Defendant. There were two other occupants in the vehicle. Parrise Valentine, a male, was seated in the left rear passenger seat. A female, Jasmine Alston was seated in the front

passenger seat.

Officer Derr was the “back-up officer.” He approached Defendant. He noticed that Defendant was acting nervous. Officer Derr was concerned given the Defendant’s nervousness and the way that Defendant kept looking around that Defendant might be looking for a flight path.

The officers engaged the occupants of the vehicle in “small talk.” Defendant denied that there was anything illegal in the vehicle with respect to controlled substances.

Mr. Valentine, however, admitted that he “smoked weed” and Ms. Alston indicated that there were “blunts in a small portable ashtray.” She handed them to Officer Derr.

The officers removed all of the occupants from the vehicle at that time and detained them. They also searched the interior of the car and the trunk. Located along the driver’s seat on the right side was “a full blunt” which was described as marijuana wrapped in a cigar.

Officer Derr searched the trunk. The trunk was full of clothing, athletic bags, shoes and similar items. Officer Derr looked inside a 12” by 12” small drawstring athletic bag or backpack. It was full of men’s clothing including two pairs of denim shorts with 32” waistbands.

The officer subsequently confirmed that both Defendant and Mr. Valentine wore 32” pants. In other words, they each had a 32” waist.

Officer Derr also found a Smith & Wesson handgun in the drawstring athletic

bag. The handgun was run through NCIC and discovered to be stolen from the Trop Gun Shop in Elizabethtown, PA on May 29, 2016. The stolen gun had not yet been recovered.

Previously, Defendant had spoken with Detective Embers from the Northwest Regional Lancaster County Police Department. Defendant had been questioned regarding the gun shop theft.

Defendant admitted that he was aware that Mr. Valentine had “hit” the gun shop and stole several guns. Defendant actually observed five of the guns that were claimed to have been stolen. Some of the guns were Glocks and there were two others. Mr. Valentine offered to give one of the guns to Defendant but Defendant refused.

There was no evidence that the gun found in the bag in the trunk was a gun that Defendant saw previously among the guns that Mr. Valentine stated were stolen from the gun store “across the bridge.”

Further, Defendant was not charged in connection with the burglary of the gun store. There were no guns found in the vehicle other than the Smith and Wesson. Found in the vehicle, however, in the trunk area, was a pair of size 9 ½ Jordan sneakers. These sneakers were determined to be connected with the gun store burglary. The sneakers were not connected to Defendant. Defendant’s foot size was a 13.

DNA evidence was taken from the gun and an analysis is being performed. At this time, there is no DNA that connects Defendant to the gun.

Defendant denied possessing the gun as did the other occupants. Defendant was never asked if the clothes were his but Defendant did state that when he came to

Williamsport, he was not intending on staying overnight and that all he brought was his phone charger.

In order for a person to be convicted of receiving stolen property, the person must intentionally receive, retain or dispose of the moveable property of another knowing that it has been stolen, or believing that it has probably been stolen. 18 Pa. C.S.A. § 3925 (a). The elements of the crime are as follows: (1) intentionally acquiring possession of the moveable property of another; (2) with knowledge or belief that it was probably stolen; and (3) the intent to deprive permanently. *Commonwealth v. Robinson*, 128 A.3d 261, 265 (Pa. Super. 2015).

Officer Dockey was specifically asked by the court what evidence he had that Defendant had knowledge or belief that the gun was probably stolen. Prior to answering the question, he hesitated for a significant period of time. He eventually testified that Defendant was the driver of a vehicle in which a stolen firearm was located in a bag in the trunk of that vehicle and that in the bag were among other things, two pairs of shorts with a waistband the same size as Defendant. He also testified that Mr. Valentine stole guns and showed some of the stolen guns to Defendant although Officer Dockey could not confirm that any of the guns that were shown to Defendant included the one found in the trunk.

A pretrial habeas corpus motion is the proper means for testing whether the Commonwealth has sufficient evidence to establish a prima facie case. *Commonwealth v. Dantzer*, 135 A.3d 1109, 1112 (Pa. Super. 2016) (citing *Commonwealth v. Carroll*, 936 A.2d 1148, 1152 (Pa. Super. 2007)). “To demonstrate that a prima facie case exists, the

Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant's complicity therein." *Id.*

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. The Commonwealth need not prove the defendant's guilt beyond a reasonable doubt. Rather, 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. Fountain, 811 A.2d 24, 25-26 (Pa. Super. 2002)(citations omitted).

"In determining the presence or absence of a prima facie case, inferences reasonably drawn from the evidence of record that would support a verdict of guilty are to be given effect, but suspicion and conjecture are not evidence and are unacceptable as such."

Commonwealth v. Hendricks, 927 A.2d 289, 291 (Pa. Super. 2007) (citations omitted).

The first element of receiving stolen property is intentionally acquiring possession of the movable property of another.

A person acts intentionally with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

18 Pa.C.S.A. §302(b)(1). The firearm was not found on Defendant's person. Therefore, the Commonwealth must prove that Defendant constructively possessed the firearm.

Constructive possession is the power to control the contraband and the intent

to exercise that control. *Commonwealth v. Johnson*, 26 A.3d 1078, 1093 (Pa. 2011).

Constructive possession may be inferred from the totality of the circumstances. *Id.* at 1094.

The court questions whether the Commonwealth has established a prima facie case of possession under the facts and circumstances of this case. There is very little in this case to show that Defendant was aware that there was a firearm in the trunk or that he intended to exercise control over it. In fact, the totality of the circumstances seem to suggest that the firearm belonged to Mr. Valentine, as he is the individual who was charged with stealing the firearm in question, he was in the vehicle, he also has a 32" waist and his shoe size is consistent with the men's sneakers found in the trunk where Defendant's shoe size clearly was not.

Even if there is prima facie evidence that Defendant constructively possessed the firearm jointly with Mr. Valentiene, however, the court cannot find prima facie evidence that Defendant knew or believed that the gun in the vehicle he was driving was probably stolen.

The Commonwealth argues that the following evidence is sufficient to prove for prima facie purposes that Defendant knew or believed that the handgun was probably stolen:

(1) when the vehicle was stopped, Defendant was nervous and looking around possibly for a flight path; (2) Defendant was in the same vehicle as Mr. Valentine; (3) six days earlier, Mr. Valentine stole some weapons from a gun store and showed to Defendant at least five guns; (4) that following his arraignment, when members of the press were present,

defendant yelled “400” and “WAM” as well as “my boys” (the officers testified that these references were to a local gang which is known to carry weapons); (5) the gun was located in a bag that had men’s clothing including a pair of shorts that were the same waist size as Defendant.

On the other hand, Defendant argues rather persuasively, that: there is no evidence that any of the guns Mr. Valentine showed Defendant following the theft were the same gun that was found in the back of the car; the vehicle was not Defendant’s vehicle; the men’s shorts were the same size as Mr. Valentine; Mr. Valentine was implicated in the theft from the gun store and Defendant had no involvement whatsoever; the gun was not in Defendant’s close proximity; the shoes found in the trunk were the same size as Mr. Valentine; there was no indicia from the trunk tying Defendant to any of the items except for two pairs of shorts that were the waist size of both Defendant and Mr Valentine; and Defendant’s nervousness can easily be explained by the presence of the marijuana. Defendant also argues that his “throwing” a gang sign or language cannot possibly be construed as evidence that he knew the gun was stolen especially since the gun was most likely stolen by Mr. Valentine.

All three occupants had equal access to the trunk. The evidence of defendant’s knowledge is non-existent. Accordingly, the Court will grant Defendant’s petition for writ of habeas corpus and dismiss Count 1.

ORDER

AND NOW, this 14th day of December 2016, following a hearing and argument:

1. The court **GRANTS** Defendant's petition for habeas corpus with respect to Count 1. Count 1 is **DISMISSED**. This ruling is without prejudice to the Commonwealth re-filing this charge if additional evidence, such as DNA evidence, is discovered to link Defendant to this firearm.
2. The court **GRANTS** Defendant's motion for JNET information. The Commonwealth shall provide to Defendant all criminal history information of all Commonwealth witnesses. This JNET and/or criminal history information shall be provided within thirty (30) days of today's date.
3. With respect to Defendant's motion for disclosure of Rule 404(b) evidence, the Commonwealth contended that it has no 404 (b) evidence. Nonetheless, any such evidence shall be provided to the Defendant within thirty (30) days of today's date unless the grounds for disclosing such are not discovered until afterwards. Under said circumstances, the Rule 404 (b) evidence must be provided within thirty (30) days of the date the Commonwealth is provided with such evidence.
4. The court **GRANTS** Defendant's motion to reserve right. Defendant has thirty (30) days from the date that any and all other discovery has been provided to him to

file any and all additional or supplemental omnibus pretrial motions.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Trisha Hoover Jasper, Esquire
Work File
Gary Weber, Esquire (Lycoming Reporter)