

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CR-233-2021**
v. :
:
:
SHARIF JONES : **HABEAS**
Defendant :

OPINION AND ORDER

Sharif Jones (Defendant) filed an Omnibus Pretrial Motion petitioning for a Writ of Habeas Corpus on March 12, 2021. A hearing on the motion took place on May 11, 2021. Defendant challenges the Commonwealth's evidence on one count¹ of Theft by Receiving Stolen Property². For the following reasons, the Motion is granted.

Preliminary Hearing Testimony

Testimony of Affiant, Trooper Webb

Trooper Logan T. Webb (Webb), of the Pennsylvania State Police (PSP) testified on behalf of the Commonwealth. N.T. 2/11/21, at 1. He related that on February 3rd of 2021 he was investigating fraudulent purchases on an unnamed victim's credit card. Id. at 2. The trooper testified that this individual was seeing approximately \$1,700 in fraudulent purchases to his debit card. Id. Through that investigation, the trooper obtained purchases and website names from the credit card company to determine where the items purchased were being shipped. Id. As part of that investigation, he contacted one of the websites, specifically Zoomies.com, and he was able to obtain tracking information through UPS. Id. As a result, Webb determined the items were being delivered to 718 Elmira Street, Apartment 2, City of Williamsport, Lycoming County. Id. In fact, based upon that tracking information the trooper discovered that the items were out for delivery that same day. Id. He was able to reach out to UPS to contact the driver

¹ Counts Two and Three were withdrawn before the hearing began.

² 18 Pa C.S. § 3925(a).

that had the packages on his truck. Id. at 3. Troop F's vice narcotics unit began to work with the investigating trooper to set up a controlled delivery of the packages to the apartment. Id. The packages were delivered to 718 Elmira Street and once they were there, PSP maintained surveillance. Id. Approximately 20 minutes later or at about 1:15 PM the Defendant was seen pulling up to the residence. Id. The defendant was observed getting out of his car, walking up to the residence, picking up the three (3) packages, and bringing them inside the apartment. Id. Webb testified that the Defendant was in the residence for approximately five (5) minutes before leaving without the packages. Id. Based upon the information gathered, a search warrant was requested and troopers entered the property to locate the packages. Id. at 4. Once they entered, the packages were found. Id. Although more investigative work was performed by the PSP in this case, that activity and the items found are not part of this Habeas motion.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove Defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. Id. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). *Prima facie* in the criminal realm is the measure of evidence, which if accepted as true, would warrant the conclusion that the crime charged was committed.

While the weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense, the absence of evidence as to the existence of a material element is fatal. *Commonwealth v. Ripley*, 833 A.2d 155, 159-60 (Pa. Super. 2003). In Pennsylvania, a defendant is guilty of theft by receiving stolen property if he “intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner. 18 Pa. C.S.A. § 3925(a). “[K]nowledge that the property was stolen or a belief that it probably was (‘guilty knowledge’) is an essential element of the crime of receiving stolen property. *Id.* Many appellate decisions have discussed that circumstances attending a defendant's possession of stolen goods are highly relevant in determining whether such defendant had “guilty knowledge.” *See Commonwealth v. Williams*, 362 A.2d 244 (Pa. 1976); *Commonwealth v. Henderson*, 304 A.2d 154 (Pa. 1973); *Commonwealth v. Phillips*, 392 A.2d 708 (Pa. Super. 1978); *Commonwealth v. Bailey*, 378 A.2d 998 (Pa. Super. 1977); *Commonwealth v. Litman*, 419 A.2d 121, 123 (Pa. Super. 1980). “[C]riminal intent or guilty knowledge may be inferred where facts and evidence are such as to show that element of the crime.” *Commonwealth v. Stevenson*, 363 A.2d 1144, 1145 (Pa. Super. 1976).

Circumstantial evidence of guilty knowledge may include, *inter alia*, the place or manner of possession, alterations to the property indicative of theft, the defendant's conduct or statements at the time of arrest (including attempts to flee apprehension), a false explanation for the possession, the location of the theft in comparison to where the defendant gained possession, the value of the property compared to the price paid for it, or any other evidence connecting the defendant to the crime.

Commonwealth v. Robinson, 128 A.3d 261, 268 (Pa. Super. 2015).

Here, the Commonwealth has merely shown that Defendant was in possession of the items by the fact that he carried them inside a residence. There is no evidence that it was his residence, that he had ordered the packages through the website, or even that he knew that they were procured through unauthorized purchases on another's account. From the facts presented, the Defendant took the packages in without looking at them and were presumably found unopened by PSP in the apartment. Furthermore, there was no testimony to establish the Defendant even knew what was inside of the packages. "The mere possession of stolen property is insufficient to prove guilty knowledge, and the Commonwealth must introduce other evidence, which can be either circumstantial or direct, that demonstrates that the defendant knew or had reason to believe that the property was stolen." *Commonwealth v. Matthews*, 632 A.2d 570, 571 (Pa. Super. 1993). Since mere possession without more evidence is not sufficient to establish the charge of receiving stolen property, the Commonwealth's *prima facie* burden has not been met.

Conclusion

Therefore, this Court finds the Commonwealth presented insufficient evidence at the preliminary hearing to establish a *prima facie* case. Therefore, the Omnibus Pretrial Motion is granted.

ORDER

AND NOW, this 25th day of May, 2021, based upon the foregoing Opinion, Defendant's Motion for Habeas Corpus is hereby **GRANTED** and the charge of Theft by Receiving Stolen Property in Count 1 is hereby **DISMISSED**.

BY THE COURT,

Nancy L. Butts, P.J.

cc: DA
Robert Hoffa, Esq.