

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1134-2021
v.	:	
	:	
ANDREW GANHAO,	:	OMNIBUS MOTION
Defendant	:	

OPINION AND ORDER

Andrew Ganhao (Defendant) was charged with Theft by Unlawful Taking¹, Receiving Stolen Property², and Access Device Fraud³. These charges arise from an incident that allegedly occurred on March 1, 2020. Defendant filed this Omnibus Pretrial Motion on October 19, 2021. This Court held a hearing on the motion on December 21, 2021. In his Omnibus motion, Defendant argues that the Commonwealth provided insufficient evidence at the preliminary hearing for Counts 1 through 3 and therefore, those charges against Defendant should be dismissed. Secondly, Defendant submits a motion for additional discovery.⁴ Lastly, Defendant reserves the right to file additional pretrial motions following the receipt of further discovery.

Preliminary Hearing

The Commonwealth submitted a transcript of the preliminary hearing, marked as Commonwealth's Exhibit 1. At the preliminary hearing held on August 31, 2021, the alleged victim, Brittany Halderman (Halderman), testified on behalf of the Commonwealth. Halderman testified that she was introduced to Defendant on Tinder, the online dating app. N.T. 8/31/2021,

¹ 18 Pa.C.S. § 3921(a).

² 18 Pa.C.S. § 3925(a).

³ 18 Pa.C.S. § 4106(a)(1)(ii).

⁴ The request for additional discovery was addressed at the time of the hearing. The Commonwealth provided some discovery and agreed to supply Defendant with the purported victim's bank statements, screenshots from the cashapp, and any evidence given to the Commonwealth from the Federal Bureau of Investigation.

at 3. She had been familiar with him for approximately two (2) days. Id. Halderman met Defendant in person for the first time on March 1, 2020. Id. They decided to meet at Defendant's apartment at 653 Third Avenue in the city of Williamsport. Id. at 3-4. Halderman drove herself in her vehicle and arrived at Defendant's apartment at approximately 10 p.m. Id. at 4, 5. They planned to relax together and watch a movie. Id. at 4. Halderman testified, "[w]hen I got there he was very welcoming. We sat down on the couch and I had brought Corona and it was all sealed and we opened one of those and I drank less than half of that." Id. Halderman stated she also smoked some marijuana provided to her by Defendant and had a shot of Fireball in addition to the portion of the beer. Id. at 8. Halderman stated that she blacked out and did not remember anything from approximately 10:15 p.m. until the cops arrived to the apartment. Id. at 4.

After regaining consciousness, Halderman observed Defendant sitting next to her, but she panicked and took her phone with her and left to go to the bathroom. Id. She said that she "was very scared and I called the police and then I called my mom." Id. at 4-5. Once the police arrived, Halderman was still in the bathroom while police spoke to Defendant. Id. at 5. She stated that she knew that Defendant was "busy dumping stuff out in the kitchen and running water." Id. Halderman was unsure what law enforcement said to Defendant, but the police eventually took her to Williamsport Hospital. Id. She arrived at the hospital at approximately 11:30 p.m. and left the hospital the next day around 6 a.m. Id. When Halderman arrived at Defendant's apartment, her car contained Halderman's Xbox, the Xbox controllers, a video game, two (2) buck knives, and her wallet containing credit cards and her ID. Id. at 6. She left these items in her locked car when she went into Defendant's apartment. Id.

While at the hospital, Halderman's vehicle was left outside Defendant's home. Id. Halderman testified, "I was very out of it so the police had me take my keys and make sure it was locked and then they took me to the hospital." Id. Halderman's parents recovered her car while she was getting treatment at the hospital. Id. After her release, Halderman inspected her car and testified that, "my glove compartment area was all pulled apart and my wallet was left opened and none of my cards were in it." Id. The Xbox used to be in a bag on the back seat and that was also missing. Id. Following this incident, Halderman received an email from Capital One notifying her that there was suspicious activity on her credit card. Id. at 7. When she called them to follow up, they informed her that there were approximately 3,000 dollars of attempted charges on her account. Id. These charges were connected with a Hulu account, a FanDuel account, and the unauthorized user also attempted to send money. Id. These charges started at approximately 2 a.m. Id. at 8. Halderman further testified that she did not give Defendant permission to enter her vehicle at any time. Id. She also did not give Defendant permission to take anything from her car or consent to use her credit card. Id.

Agent Brittany Alexander (Alexander) of the Williamsport Bureau of Police also testified on behalf of the Commonwealth. Alexander was involved in an investigation into the incident that occurred on March 1, 2020. Id. at 14. Alexander was in contact with Halderman who brought to Alexander's attention that multiple fraudulent charges were made on her credit card. Id. Alexander contacted Capital One and obtained an itemized transaction history, "which showed all these transactions had been attempted between like the hours of...1 a.m. and 3 a.m. roughly." Id. Alexander was working jointly with Agent Corter (Corter) at the Federal Bureau of Investigation and obtained subpoenas for Hulu in relation to the fraudulent transaction number on Halderman's credit card. Id. The email used on the Hulu account was

“jimbuckets276@gmail.com.” Id. Alexander made a preservation request and then requested a search warrant on that email account. Id. She testified that the owner of that email account was Defendant and that it was confirmed by “address, name, date of birth, phone number” and additional identifiers. Id. at 14-15. Alexander was also able to see Defendant’s Google search history on the night in question. Id. at 15. Alexander stated that the “Google search history he had searched a Paroxetine pill, which the victim, Brittany Halderman, takes. He searched side effects of that pill. He searched the...zip code for Troy/Mansfield, Pennsylvania, which would have been needed to utilize the victim’s credit card...How to reset an Xbox 360, factory reset, the item that was stolen out of Brittany Halderman’s vehicle...” Id. at 15. Alexander further testified that the internet search also included a new Hulu service. Id. Alexander received a screenshot of Defendant’s Cash App from Defendant himself and one of the people included in the screenshot was Paula Young, who was one of the people listed in the fraudulent transactions on Halderman’s credit card. Id. at 17. Alexander noted that the charges were not actually processed because Capital One’s fraud department caught them beforehand and did not allow them to be processed. Id. at 16.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a 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). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003).

Defendant challenges the sufficiency of the evidence on Counts 1 through 3 listed against him. In Count 1, Defendant is charged with Theft by Unlawful Taking. “A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof.” 18 Pa.C.S. § 3921(a). Defendant’s position is that the Commonwealth failed to establish any evidence that Defendant exercised control over Halderman’s wallet, credit cards, or her Xbox. Defendant is also charged with Receiving Stolen Property. An individual commits this offense when 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. § 3925(a). Defendant argues that the Commonwealth did not

produce any evidence to establish that Defendant received, retained or disposed of moveable property of another believing that it was stolen. Defendant also contends that there is no evidence demonstrating that Defendant possessed or received property belonging to Halderman. Lastly, Defendant is charged with Access Device Fraud which occurs when someone “uses an access device to obtain or in an attempt to obtain property or services with knowledge that the access device was issued to another person who has not authorized its use.” 18 Pa.C.S. § 4106(a)(1)(ii). Defendant asserts that the Commonwealth failed to provide evidence that Defendant used Halderman’s credit card without her knowledge or consent.

The Commonwealth relies on the preliminary hearing transcript and argues that the testimony provided was enough to establish a *prima facie* case on all the contested charges. The Commonwealth also asserts that the testimony showed Defendant had at least constructive possession of Halderman’s credit card, Xbox, and wallet. Constructive possession is the “power to control the contraband and the intent to exercise that control.” Commonwealth v. Valette, 613 A.2d 548, 550 (Pa. 1992); *see also* Commonwealth v. Gutierrez, 969 A.2d 584, 590 (Pa. Super. 2009). As with any other element of a crime, constructive possession may be proven by circumstantial evidence. Commonwealth v. Macolino, 469 A.2d 132, 134-35 (Pa. 1983). The requisite knowledge and intent necessary for constructive possession may be inferred from a totality of the circumstances. Commonwealth v. Parker, 847 A.2d 745, 750 (Pa. Super. 2004).

The Commonwealth argues that the testimony and evidence at the preliminary hearing establish circumstantial evidence of Defendant’s exercise of control and possession of Halderman’s items. Specifically, the testimony demonstrated that Halderman went to Defendant’s house, subsequently blacked out for an unknown reason, and discovered her items were missing from her car after being released from the hospital and that someone had

attempted to use her credit card without her consent. Alexander connected Defendant to the relevant email from the Hulu account on the fraudulent charges. This email was also associated with web searches on how to factory reset an Xbox 360 and the zip code for Halderman's home.

Viewing the evidence in the light most favorable to the Commonwealth, the Court holds that the Commonwealth established a *prima facie* burden on all three (3) counts. Halderman inexplicably blacked out after drinking minimal alcohol and smoking some marijuana at Defendant's home. Between 10 p.m. and 11:30 p.m., Halderman was struggling to remain conscious and testimony only showed that she brought her phone into the bathroom with her. Her keys were unaccounted for approximately an hour and a half in Defendant's home. Defendant had the power to exercise control over the keys to Halderman's vehicle and the internet searches linked to the email connected to Defendant establish Defendant's intent to exercise that control over the keys. Halderman specifically testified that she did not give Defendant permission to enter her vehicle, use her credit card, or remove anything from her car. The remaining evidence discussed, though circumstantial, satisfies the Commonwealth's significantly lower burden at this stage of the proceedings. Therefore, this Court finds that the Commonwealth presented sufficient evidence to satisfy their *prima facie* burden on Counts 1 through 3. As a result, Defendant's argument is unsuccessful, and the charges shall not be dismissed.

Conclusion

The Court finds that the Commonwealth presented sufficient evidence at the preliminary hearing to establish a *prima facie* case for Counts 1 through 3 listed against Defendant. Therefore, Defendant's Motion to Dismiss is denied.

ORDER

AND NOW, this 28th day of February, 2022, based upon the foregoing Opinion, it is
ORDERED AND DIRECTED that Defendant's Motion for Habeas Corpus is hereby
DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: DA (KG)
Robert Hoffa, Esq.
Law Clerk (JMH)