

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

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| <b>COMMONWEALTH OF PENNSYLVANIA</b> | : |                          |
|                                     | : |                          |
|                                     | : | <b>CR-1464-2022</b>      |
| <b>vs.</b>                          | : |                          |
|                                     | : | <b>CRIMINAL DIVISION</b> |
| <b>RAYMOND HERNANDEZ,</b>           | : |                          |
| <b>Defendant</b>                    | : |                          |

**OPINION**

This matter is before the Court on Defendant’s Omnibus Pretrial Motion filed December 27, 2022. For the reasons set forth below, the Motion is Granted in part and Denied in part.

**I. Factual and Procedural Background**

Raymond Hernandez (“Defendant”) was originally charged with two counts of Theft by Unlawful Taking; two counts of Receiving Stolen Property; and two counts of Conspiracy to Commit Theft by Unlawful Taking stemming from an incident on November 4, 2022, where used cooking oil was allegedly stolen from two businesses on Lycoming Creek Road. A preliminary hearing was held on November 9, 2022, and all charges were bound for trial. On December 27, 2022, the Defendant timely filed his Omnibus Pretrial Motion, which contained a Motion for Habeas Corpus.

An argument was held on April 21, 2023, at which time Jessica Feese, Esquire, appeared on behalf of the Commonwealth and Defendant was represented by Eric Williams, Esquire. The Commonwealth introduced the transcript from the preliminary hearing as Exhibit 1 and a surveillance video from The Crippled Bear Inn as Exhibit 2 and indicated its intent to rely on those for purposes of the Motion for Habeas Corpus. Counsel for the

Defendant did not object. Also on April 21, 2023, the Commonwealth and Counsel for the Defendant stipulated to the Commonwealth's proposed Amended Information. An Amended Information was filed on May 9, 2023, to reflect the following charges:

Count 1 – Criminal Attempt Theft by Unlawful Taking (Pudgies Pizza)<sup>1</sup>

Count 3 – Criminal Conspiracy Theft by Unlawful Taking (Pudgies Pizza)<sup>2</sup>

Count 4 – Theft by Unlawful Taking (Crippled Bear Inn)<sup>3</sup>

Count 5 – Receiving Stolen Property (Crippled Bear Inn)<sup>4</sup>

Count 6 – Criminal Conspiracy Theft by Unlawful Taking (Crippled Bear Inn)<sup>5</sup>

## **II. Petition for Writ of Habeas Corpus**

Although some of the charges were amended after the Defendant's Omnibus Motion was filed, the Defendant's argument on April 21, 2023, was consistent with the Petition for Writ of Habeas Corpus in that he alleges that the Commonwealth failed to establish a *prima facie* case for each of the counts contained in the Amended Information. Where a defendant seeks to challenge the sufficiency of the evidence presented by the Commonwealth, he may do so by the filing of a writ of *habeas corpus*. *Commonwealth v. Landis*, 48 A.3d 432, 444 (Pa. Super. 2012) (en banc). At a *habeas corpus* hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a *prima facie* against the defendant. *See Commonwealth v. Hilliard*, 172 A.3d 3, 10 (Pa. Super. 2017)

The definition of *prima facie* is not precise or without difficulty. On the one hand, it

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1 18 Pa.C.S. §901(a).

2 18 Pa.C.S. §903(a)(1).

3 18 Pa.C.S. 3921(a).

4 18 Pa.C.S. §3925(a).

5 18 Pa.C.S. §903(a)(1).

has been described as evidence, read in a 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), *abrogated on other grounds by Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 n.5 (Pa. Super 2016).

On the other hand, it has been defined as evidence, which if accepted as true, would warrant submission of the case to a jury. *Packard, id.*; *Commonwealth v. Karetny*, 880 A.2d 505, 514 (Pa. 2005); *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2001).

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 has committed the offense. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2011). The evidence must be read in a light most favorable to the Commonwealth and inferences reasonably drawn from the evidence of record which would support a verdict of guilty, must be given effect. *Id.*

#### **1. Pudgie's Pizza (Counts 1 and 3)**

Defendant alleges that the Commonwealth has failed to establish a *prima facie* case of Criminal Attempt or Criminal Conspiracy to commit Theft by Unlawful Taking as it relates to the incident at Pudgies Pizza. In order for the Commonwealth to establish a *prima facie* case of Criminal Attempt Theft by Unlawful Taking, the Commonwealth must establish that the Defendant took a substantial step towards the commission of that crime. “A person commits attempt when, with an intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime.” 18 Pa.C.S.

§910(a). Under Count 1, the Defendant is alleged to have attempted to commit Theft by Unlawful Taking, which is defined as “he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof.” 18 Pa.C.S. §3921.

The Defendant is charged under Count 3 with Criminal Conspiracy to commit Theft by Unlawful Taking. A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime. 18 Pa.C.S. §903. In order to sustain Count 3, the Commonwealth would have to establish a *prima facie* case that the Defendant conspired with Mr. Sanchez to unlawfully take, or exercise unlawful control over, the cooking oil behind Pudgie’s Pizza with the intent to deprive the business thereof.

The criminal complaint alleges on November 4, 2022, police were dispatched to the Pudgie’s Pizza on Lycoming Creek Road for a report of two males in a black van stealing cooking oil from the rear of the restaurant parking lot. The van was stopped and the Defendant was identified by his New York State Driver’s License. The affiant observed dirty, oily rubber gloves on both the Defendant and Luis Sanchez’s hands. Employees from Pudgie’s Pizza reported observing the males at the rear of the closed business and one of the males approached the employee and indicated they were there to pick up the cooking oil. The affiant indicated the utility van smelled strongly of cooking oil and an oily substance was observed coming from the cargo area of the van. The criminal complaint further

indicated that the Defendant and Mr. Sanchez did not have permission to take the cooking oil and the amount stolen was estimated to be approximately 100 gallons, with a loss of \$500.00.

At the preliminary hearing on November 9, 2022, Roma Robbins, son of the owner of Pudgie's Pizza and also an employee of the business, testified that another employee called him at approximately 6:35 a.m. on November 4, 2022, to let him know "there were 2 people outside trying to pick up the oil." (Transcript of Preliminary Hearing, 11/9/22, pg. 9). Mr. Robbins testified that the used frying oil is normally stored right behind the building but because of the paving they were doing it was moved near the dumpster and farther away from the building. (Id.). Mr. Robbins testified that the oil is normally picked up by a company, but he does not handle that, and on cross-examination he testified that on the day in question he did not see anyone take any oil and he was unsure of how much, if any, oil was out for pick up on November 4, 2022. (Id. at 12). When Mr. Robbins went to speak to the men behind the building, they were seated in their van and, from what he could understand of his interaction with them, they told him they were there to pick up the oil. (Id. at 13, 16). Mr. Robbins testified that he did not obtain the license plate number of the van, and only part of the van was visible on surveillance cameras for the business. (Id. at 13).

Officer Brian Yoas of the Old Lycoming Township Police Department (now Lycoming Regional Police Department), testified at the preliminary hearing that he was dispatched to Pudgie's Pizza, and the Defendant and Mr. Sanchez were detained and the van confiscated and towed to Action Towing where a search warrant was executed. (Id. at 18). Officer Yoas testified that they stopped the van due to reasonable suspicion that a crime had

been committed, and they had received many prior incident reports but it involved multiple different vans and they had never been able to make contact with suspected individuals, nor did he have knowledge of descriptions of suspects from the prior incidents. (Id. at 22, 23).

There was no testimony presented at the preliminary hearing by anyone claiming to see the Defendant taking any substantial steps to unlawfully take oil from the business. There was no surveillance video presented which would corroborate the Commonwealth's claims that the Defendant attempted to unlawfully take the oil or that he conspired with Mr. Sanchez to commit a crime. To the contrary, the testimony of Mr. Robbins from Pudgie's Pizza indicated that when he interacted with the Defendant and Mr. Sanchez, they either asked his permission to take the oil or stated that they were there to pick up the oil. He further testified that he was unable to determine what amount of oil was being stored for pickup and what amount, if any, oil was actually missing. Even when considering the totality of the circumstances and viewing the evidence in the light most favorable to the Commonwealth as is required, this Court finds that the Commonwealth failed to establish a *prima facie* case that the Defendant, with an intent to commit Theft by Unlawful Taking, took a substantial step toward the commission of that crime at Pudgie's Pizza. Similarly, even when viewing the evidence in the light most favorable to the Commonwealth, the Court finds that the Commonwealth failed to establish a *prima facie* case that there was any agreement between the Defendant and Mr. Sanchez to engage in conduct that would constitute attempted Theft by Unlawful Taking as it relates to the oil from Pudgie's Pizza.

## **2. Crippled Bear Inn (Counts 4, 5, 6)**

Under Count 4, the Defendant is charged with Theft by Unlawful Taking pursuant to 18 Pa.C.S. §3921(a), for the theft of cooking oil from the Crippled Bear Inn on or about November 4, 2022. As noted above, a person is guilty of theft if he “unlawfully takes, or exercises unlawful control over, the movable property of another with the intent to deprive him thereof.” Under Count 5, the Defendant is charged with Receiving Stolen Property. Pursuant to 18 Pa.C.S. §3925(a), a person is guilty of theft 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. Under Count 6, the Defendant is charged with Criminal Conspiracy to commit Theft by Unlawful Taking. As noted above, ‘a person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.” 18 Pa.C.S. §903.

The criminal complaint alleges that on November 4, 2022, at approximately 6:21 a.m. surveillance video from the Crippled Bear Inn shows a black Ford utility van with two males stealing cooking oil from a tank located at the rear of the closed business. The Defendant and Mr. Sanchez were stopped shortly thereafter in the aforementioned van. Heather Kratzer, owner of the Crippled Bear Inn, testified at the preliminary hearing on

November 9, 2022. She testified “[t]here is a large dumpster and next to our – our regular dumpster is in our parking lot, and when we change our fryers out we dump the oil in there and then there’s a company from New York that comes, picks it up, and pays us for it.” (Id. at 3). Ms. Kratzer further testified that she was due for a pick-up on November 4, 2022, but received a call from the company that picks up the oil advising her to check her security camera from that morning. (Id. at 3, 5). Ms. Kratzer testified that, upon reviewing her surveillance video, “[i]t was a different van than previously. The blue van pulled up, stopped, it appears one gentleman got out of the van, but it’s on the other side of the surveillance camera so I can’t confirm, it appears when you look at it, and it’s still dark out at 6:30 in the morning. They pro – the one driver proceeds a little bit, they back their van into where the dumpster is that contains the oil, and they shut their headlights off, the driver gets out, stretches, they go out, they suck the oil, and they leave.” (Id. at 4). When Ms. Kratzer went to check the oil tank, it was empty, and she estimated that it had previously contained approximately 120 gallons of oil. (Id. at 5). At the time of the hearing on the Defendant’s Omnibus Motion, the Commonwealth provided the Court a disc which contained the video surveillance from the Crippled Bear Inn on November 4, 2022, which was marked as Commonwealth’s Exhibit 2.

On cross-examination, Ms. Kratzer indicted that she was unable to obtain a license plate number for the van, and indicated that there were two people present but she could only describe one gentleman as wearing a red sweatshirt and having dark hair due. (Id. at 6). Officer Yoas testified that when he made contact with the van, the passenger was wearing a “red sweatshirt and had a reflective vest and rubber gloves that were dirty, had oil substance



on them.” (Id. at 24). Sergeant Christopher Kriner testified at the preliminary hearing that he assisted with a search warrant on the van that the Defendant and Mr. Sanchez were operating when they were arrested. In the back of the van were two large plastic containers which contained cooking oil. (Id. at 26). Sgt. Kriner further testified that each container had over 75 gallons of oil in it. (Id.). As noted above, Ms. Kratzer testified that the Crippled Bear Inn was due for an oil collection that day and estimated that there was approximately 120 gallons in the container, and when she checked the container after reviewing the surveillance video from the business on the morning of November 4, 2022, the container was empty.

Unlike the evidence presented with regard to Pudgie’s Pizza, the evidence presented with regard to the Crippled Bear Inn, read in a light most favorable to the Commonwealth, sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime. *Com. v. Packard, supra*. Although the Court is determining neither the weight nor the credibility of the evidence at this time, inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect and the Court finds that the Commonwealth has met its *prima facie* burden that the Defendant and Mr. Sanchez conspired to commit Theft by Unlawful Taking, that the Defendant unlawfully took cooking oil from the Crippled Bear Inn with the intent to deprive the business thereof, and that the Defendant intentionally retained the cooking oil from the Crippled Bear Inn knowing it was stolen.

### **III. Conclusion**

Given the lower burden at this stage of the proceedings, when viewing the evidence

presented in the light most favorable to the Commonwealth, the Commonwealth has established their *prima facie* burden on Counts 4, 5, and 6 against Defendant, but has failed to meet its *prima facie* burden on Counts 1 and 3.

Accordingly, the Court will enter the following Order.

**ORDER**

**AND NOW**, this 20<sup>th</sup> day of **July, 2023**, upon consideration of Defendant's Omnibus Pre-Trial Motions, the argument of counsel on April 21, 2023, and for the reasons set forth above, the Petition for Writ of Habeas Corpus is **DENIED** with regard to Counts 4, 5, and 6. The Petition for Writ of Habeas Corpus is **GRANTED** with respect to Counts 1 and 3 and said Counts are **DISMISSED**.

By the Court,

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Ryan M. Tira, Judge

RMT/jel

CC: DA Jessica Feese, Esq.  
Eric Williams, Esq.  
Gary Weber, Esquire  
Jennifer Linn, Esquire