

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :

:

v. :

No. CR-1102-2019

:

RYAN WALLACE ATWATER, :

Defendant :

Robert S. Frycklund, Esquire  
Assistant District Attorney

Counsel for the Commonwealth

Eric Wiltrout, Esquire  
Assistant Public Defender

Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - December 7, 2020

Ryan Wallace Atwater (hereinafter "the Defendant") is charged with Receiving Stolen Property (18 Pa. C.S.A. § 3925(a)), Driving an Unregistered Vehicle (75 Pa. C.S.A. § 1301(a)), and Displaying Plate Card in Improper Vehicle (75 Pa. C.S.A. § 1372(3)). On May 7, 2020, Defendant's counsel filed a "Motion for Writ of Habeas Corpus" challenging the charge of "Receiving Stolen Property" by alleging that the Commonwealth could not establish a prima facie case that the Defendant was in possession of the stolen items. Based upon the evidence presented at a hearing before the undersigned and for the reasons which follow, we will deny the Defendant's motion.

FS-45-2020

### FACTUAL AND PROCEDURAL BACKGROUND

On August 26, 2019, Mark Grim arrived at his construction jobsite located at 405 Unionville Road, Penn Forest Township, Carbon County, when he noticed that his trailer, which contained his personal tools, was missing. After his superiors at the job site informed him that his trailer had not been moved, Mr. Grim contacted the police. Trooper Bradley Emrick (hereinafter "Trooper Emrick") of the Pennsylvania State Police- Lehighton Barracks, responded to the scene. Trooper Emrick documented Mr. Grim's complaint concerning his stolen trailer in an incident report, which contained a detailed list of all of the items that were missing. While at the jobsite, Trooper Emrick learned that there were surveillance cameras located near the scene. The video footage from the cameras depicted a gray GMC Envoy with a unique paint scheme and stickers driving away with the trailer (Criminal Complaint).

On August 30, 2019, Mr. Grim's trailer was found on Short Road, Penn Forest Township, Carbon County. The trailer had been crashed into a yard and had sustained spray paint damage. Mr. Grim informed the police that various tools that he had been keeping in the trailer were missing.

After "asking around," Mr. Grim believed that he might find some of his tools at 13 Bowman's Road in Penn Forest Township. Mr. Grim drove by the residence at that address on September 11,

2019 and noticed his air compressor located outside of the residence. Mr. Grim contacted the state police and Trooper Emrick responded. The owner of the residence, Martin Drunker, who was unknown to Mr. Grim, was interviewed by state troopers. Mr. Drunker stated that his nephew, the Defendant, who had resided with him for a short time, had brought home several items that bore the name "M.D. Grim." Mr. Grim later explained that he carves his initials into most of his tools. Along with the items found outside, Mr. Drunker agreed to open his garage and several of the documented missing items were found inside. The items that belonged to Mr. Grim were documented on the list and then returned to him.

On September 12, 2019, police were contacted by Jeremy Gerhart of 17 Helmer Lane in Penn Forest Township, Carbon County. Mr. Gerhart had been a neighbor of Mr. Drunker. Mr. Gerhart had been allowing the Defendant to store his personal items in his garage. On September 12, 2019, Mr. Gerhart noticed that his garage had become overcrowded. He further observed a scooter in the garage that he believed to be the property of another neighbor. Therefore, Mr. Gerhart decided to contact the police due to his suspicion that stolen items were being stored on his property.

Upon responding, Trooper Scott Wysocky and Trooper Jordyn Homyak met with Mr. Gerhart, who informed them that the Defendant was on his way to the residence. Mr. Gerhart showed the troopers

various items that were later discovered to have been stolen from Mr. Grim and others. Some of the items were labeled "M.D. Grim," similar to the items found at Mr. Drunker's residence.

The Defendant arrived in a gray GMC Envoy that matched the vehicle depicted on the surveillance video from Mr. Grim's worksite. The Defendant was towing a utility trailer with improper registration. The Defendant initially stated that he was at the residence to retrieve items that belonged to him. However, the key to a stolen ATV that was located in Mr. Gerhart's garage, was found in the Defendant's pocket. The Defendant was then taken into custody. All of the stolen items were documented and returned to their owners.

After the Defendant was arrested, Trooper Nicholas De La Iglesia (hereinafter "Trooper De La Iglesia") of the Pennsylvania State Police- Lehighton Barracks became the lead investigator on this case. Trooper De La Iglesia spoke with the Defendant twice. The Defendant initially denied any knowledge of the stolen items. However, in a later interview, while in the presence of counsel, the Defendant stated that Mr. Gerhart had stolen the items. The Defendant further explained to Trooper De La Iglesia that more stolen items could be found at Luzerne County Auto Place.

A search of the Defendant's vehicle and utility trailer was conducted on the night of his arrest pursuant to a warrant issued by Magisterial District Judge Joseph D. Homanko, Sr. From the

search, officers recovered three tools which Mr. Grim claimed were his. After documenting the search inventory, Mr. Grim's property was returned to him and all of the legally owned remaining items were returned to the Defendant.

### DISCUSSION

The Defendant is charged with one (1) count of Receiving Stolen Property (18 Pa. C.S.A. § 3925(a)). In the instant matter, the Defendant challenges whether the record supports a finding that he was in possession of the stolen items to the extent that a prima facie case of Receiving Stolen Property has been made.

"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 committed the offense." Commonwealth v. Karetny, 880 A.2d 505, 514 (Pa. 2005) (citing Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991)). "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." Karetny, 880 A.2d at 514 (citing Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003)).

The crime of Receiving Stolen Property is defined by Pennsylvania law as when one "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). "In order to convict a defendant for receiving stolen property, the Commonwealth must prove: '(1) the property was stolen; (2) the defendant was in possession of the property; and (3) the defendant knew or had reason to believe the property was stolen.'" Commonwealth v. Parker, 847 A.2d 745, 751 (Pa. Super. 2004) (citing Commonwealth v. Foreman, 797 A.2d 1005, 1011 (Pa. Super. 2002)).

In establishing possession of the stolen property, when the Defendant is not in actual possession of the items at the time of apprehension, the Commonwealth can nonetheless prove constructive possession. "Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not. We have defined constructive possession as conscious dominion. We subsequently defined conscious dominion as the power to control the contraband and the intent to exercise that control. To aid application, we have held that constructive possession may be established by the totality of the circumstances." Commonwealth v. Hopkins, 67 A.3d 817, 820 (Pa. Super. 2013) (citing Commonwealth v. Brown, 48 A.3d 426, 430 (Pa. Super. 2012)).

In Commonwealth v. Grekis, the Superior Court of Pennsylvania held that the defendant was in constructive possession of stolen cigarettes where a co-conspirator regularly stored and sold the cigarettes at the defendant's place of business. Commonwealth v. Grekis, 601 A.2d 1275, 1281 (Pa. Super. 1992). The Superior Court noted that "there is no requirement that appellant actually physically have handled the stolen goods in order to have possessed them for purposes of this offense. Moreover, appellant's dominion and control over the goods may be exercised through another, e.g., in this case[, ] through his admitted 'employees[.]'" Id. at 1282.

Here, the Defendant had access to both Mr. Drunker and Mr. Gerhart's garage while he was residing with Mr. Drunker. Additionally, the Defendant came to one of the sites where stolen property was found in the vehicle that was observed through surveillance video at Mr. Grim's worksite. Upon executing a search warrant for that vehicle, officers recovered additional stolen property. Lastly, though the Defendant denied stealing any property, he was able to inform officers as to the location of stolen items that they hadn't yet recovered.

It is apparent from the totality of the circumstances in this case that the Commonwealth has demonstrated a prima facie case of the Defendant's control over the stolen property at issue. Further, the Defendant's arrest occurred when he arrived at Mr. Gerhart's residence hauling a trailer. Clearly, there is probable

cause to warrant the belief that the Defendant intended to exercise control over the stolen property. We find, therefore, that the Commonwealth has met its burden of proving a prima facie case against the Defendant on the charge of Receiving Stolen Property, including the element of possession of the stolen property.

#### CONCLUSION

For the reasons set forth hereinabove, the Defendant's "Motion for Writ of Habeas Corpus" will be denied and we will enter the following



IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

:

v. : No. CR-1102-2019

:

RYAN WALLACE ATWATER, :

:

Defendant :

Robert S. Frycklund, Esquire  
Assistant District Attorney

Counsel for the Commonwealth

Eric Wiltrout, Esquire  
Assistant Public Defender

Counsel for the Defendant

ORDER OF COURT

AND NOW, to wit, this 7<sup>th</sup> day of December, 2020, upon consideration of Defendant's "Motion for Writ of Habeas Corpus" and following an evidentiary hearing thereon, it is hereby

ORDERED and DECREED that the aforesaid "Motion for Writ of Habeas Corpus" is DENIED.

IT IS FURTHER ORDERED AND DECREED that the parties shall appear for a pre-trial conference January 8, 2021 at 3:15 p.m. in the office of the District Attorney on the second floor of the Carbon County Courthouse at Jim Thorpe, Pennsylvania.

BY THE COURT:

  
Steven R. Serfass, J.