

COMMONWEALTH OF PENNSYLVANIA
VS.
VANCE LARRY VERNON

Application to Dismiss - Habeas Corpus

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PA.,
CRIMINAL DIVISION. NO. 2003-587.

Order of Court entered denying the Application to Dismiss - Habeas Corpus filed on behalf of the Defendant, Vance Larry Vernon.

ADA -for Commonwealth
Gary Neil Asteak, Esq.- for Defendant

Order of Court entered April 16, 2003 by Stephen G. Baratta, Judge

DESCRIPTION OF DECISION

The Court denied the Defendant's Application to Dismiss - Habeas Corpus as a prima facie case for Firearms not to be carried without a license had been made out. The Court did not find Defendant's argument convincing when he argued that the Commonwealth failed to prove that a 9mm ruger was a "firearm" under the statute. The testimony in this matter was sufficient to establish a prima facie case under the crime charged. Accordingly, Defendant's application was properly denied.

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

COMMONWEALTH OF PENNSYLVANIA) NO. 2003-587

VS.)

VANCE LARRY VERNON,)

Defendant.)

ORDER OF COURT

AND NOW, this day of April, 2003, the Application to Dismiss - Habeas Corpus filed on behalf of the Defendant, Vance Larry Vernon, is hereby **DENIED**.

STATEMENT OF REASONS

Presently before the Court is the Application to Dismiss - Habeas Corpus of the Defendant. Specifically, Defendant contends that the charge of firearms not to be carried without a license must be dismissed because the Commonwealth did not establish that the subject weapon was a firearm. Additionally, Defendant contends that the charge must be dismissed because the Commonwealth failed to prove that the Defendant was in possession of a firearm.

On December 25, 2002, the Defendant was arrested by the Easton Police Department and a Criminal Complaint was filed charging him with the crime of Firearms not to be Carried Without a License under 18 Pa.C.S.A. §6106(a)(1) of the Crimes Code. On February 12, 2003, a Preliminary Hearing was held before District Justice Leo. The charge was bound over to the Court of Common Pleas. On March 17, 2003, Defendant filed the instant application. In an issue framing conference before this Court, on March 21, 2003, the parties submitted the matter on the existing transcript. No additional testimony was taken at that time.

Based upon the transcript from the Preliminary Hearing, the factual predicate giving rise to the instant application arose on Christmas Day in 2002. Two witnesses, Sergeant Michael Vangelo and Officer Daniel Reagen, testified at the Preliminary Hearing on behalf of the Commonwealth.

The Officers testified that, in the early morning hours of December 25, 2002, they were dispatched to the 500 Block in the City of Easton in response to a report of a shot fired. When the officers arrived at the scene, they encountered three men, including the Defendant, in the location of 506 Charles Street. The officers questioned the three men regarding the shot fired. The men stated that they believed someone had set off fireworks, but they were unsure as to who was setting them off. The three men were told that they were free to leave the area. As the three men approached their car, Sergeant Vangelo requested that they stay briefly to provide the police

with their identification information in case the police needed to contact them later. The three men were then engaged in a second interaction with the police at their Mitsubishi Galant,.

While Sgt Vangelo was writing down the three men's information, Officer Reagan observed in plain view a black-colored handgun lying on the back seat of the Mitsubishi. At this point, all three individuals were placed in handcuffs. Sgt. Vangelo requested the keys to the locked automobile. The Defendant had the keys to the car in his pants pocket. The Defendant informed the police that the car belonged to his girlfriend. Sgt. Vangelo then retrieved the fully-loaded weapon. Each of the three men, including the Defendant, denied ownership of the 9mm Ruger. The Defendant did not possess a valid firearms permit on December 25, 2002. The Defendant was then brought to the police station and charged with the instant crime. This Order addresses the Defendant's Application to Dismiss - Habeas Corpus.

I. Legal Standard

At a preliminary hearing, the Commonwealth bears the burden of establishing at least a prima facie case that a crime has been committed and that the accused is probably the one who committed it. Commonwealth v. McBride, 595 A.2d 589 (Pa. 1991); Commonwealth v. Grisavage, 517 A.2d 1256 (Pa. 1986). The evidence must be such that probable cause would warrant submitting the case to the jury if presented at trial. Commonwealth v. Gettemy, 591 A.2d 320 (Pa. Super. 1991), appeal denied, 602 A.2d 856 (Pa. 1992). Evidence of guilt beyond a reasonable doubt is not required. Commonwealth v. Snyder, 483 A.2d 933 (Pa. Super. 1984).

A writ of habeas corpus is the proper means to test a pretrial finding that the Commonwealth has sufficient evidence to establish a prima facie case. Commonwealth v. Scott, 578 A.2d 933 (Pa. Super. 1990), appeal denied, 598 A.2d 283 (Pa. 1991). In ruling on Defendant's Petition for Habeas Corpus relief, we must accept the Commonwealth's evidence as

true and give the Commonwealth all reasonable inferences arising therefrom. Commonwealth v. Wojcak, 466 A.2d 991(Pa. 1983). The Commonwealth may rely solely upon circumstantial evidence to sustain its proof. Commonwealth v. Grisavage, 517 A.2d 1256 (Pa. 1986). Furthermore, at this stage of the proceedings, conflicting testimony and questions of credibility must be resolved in favor of the Commonwealth. Liciaga v. Court of Common Pleas of Lehigh County, 566 A.2d 246 (Pa. 1989). With this standard in mind, we will now review the evidence submitted at the preliminary hearing and test the existence of a prima facie case.

II. Discussion

The offense of Firearms not to be Carried without a License states as follows:

(1) Except as provided in paragraph (2), any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.

Id. at 18 Pa.C.S.A. § 6106(a)(1). Hence, in order to establish a prima facie case, as needed at this stage of the proceedings, the Commonwealth must establish, by probable cause, a violation of the aforementioned section of the crimes code and that the Defendant was the likely the person who committed it. See Commonwealth v. Sebek, 716 A2d. 12266 (Pa. Super 1998). Based upon this premise, we now look to Defendant's arguments.

Defendant's initial argument is that the Commonwealth has not proven that the Nine Milimeter (9mm.) Handgun constitutes a firearm under the definition of "firearm" found at 18 Pa.C.S.A. § 6102. For this contention, we look to Commonwealth v. Ray, 751 A.2d 233 (Pa. Super. 2000), *app. den'd* 760 A.2d 853 (Pa. 2000).

The defendant in Ray was convicted in the Court of Common Pleas of Allegheny County of third degree murder and violation of the Uniform Firearms Act. The Superior Court held that

a finding that the gun used to shoot the victim met the requisite barrel length to constitute a firearm at the time of the shooting based upon sufficient evidence. Id. at 751 A.2d 233, 236 (Pa. Super. 2000). In the Ray case, the defendant argued that the Commonwealth had failed to prove that the gun used met the definition of a “firearm” under 18 Pa.C.S.A. § 6102. Id. at 235. The Superior Court found expert testimony “that the bullet recovered from the victim was a nine millimeter cartridge bullet and the markings on the bullet were ‘consistent with a nine millimeter Ruger automatic load pistol’ which ‘generally has a barrel length of four to four and one-half inches[.]’” to be sufficient to support conviction. Id. at 751 A.2d 233, 236.

We find Defendant’s argument unpersuasive. Here, the police officer testified that a small black-colored handgun or nine millimeter Ruger was seized from the automobile controlled by the Defendant. For purposes of establishing a prima facie case, this testimony is sufficient. Accordingly, the Application to Dismiss based upon Defendant’s first argument is hereby **DENIED**.

The second argument proffered by the Defendant is that the Commonwealth has failed to prove that the Defendant was in possession of the firearm. However, as stated above, at this initial stage, the Commonwealth need only show a prima facie case. Meaning, the Commonwealth need only show that the crime has been committed and that the Defendant is the one who is the likely perpetrator.

The record established that the gun found in the automobile was not registered to the Defendant. In addition, the automobile in question did not belong to the Defendant. However, the owner of the automobile was not present at the scene. The Defendant was the only person in possession of the keys to the locked vehicle.

In order to prevail at trial, the Commonwealth must prove a theory of “constructive

possession.”

Our Supreme Court has defined constructive possession as follows:

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.” Commonwealth v. Davis, 444 Pa. 11, 115, 280 A.2d 119, 121 (1971). We subsequently defined “conscious dominion” as the “the power to exercise that control.” Commonwealth v. Macolino, 503 Pa. 201, 206, 469 A.2d 132, 134 (1983) To aid application, we have held that *constructive possession may be established by the totality of the circumstances*. Commonwealth v. Fortune, 456 Pa. 365, 318 A.2d 327 (1974).

See Commonwealth v. Aviles, 615 A.2d 398, 401-02 (Pa. Super. 1992).

We find that the Commonwealth has established a prima facie case of constructive possession against this Defendant. The evidence has established that the Defendant appears to have been in possession and control of the keys to a locked automobile, which contained a handgun lying in plain view. It is now a matter for the jury to determine whether or not the Commonwealth can prove constructive possession beyond a reasonable doubt.

Accordingly, Defendant’s second argument is also **DENIED**.

III. Conclusion

For the forgoing reasons the Application to Dismiss - Habeas Corpus filed on behalf of Defendant, Vance Larry Vernon, is hereby **DENIED** on all grounds.

BY THE COURT:

STEPHEN G. BARATTA, J.