

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 01-10,168

VS :

MAURICE RICHARDS :

OPINION AND ORDER

Before the Court is the Defendant's Petition for Writ of Habeas Corpus.

Defendant has been charged with theft by unlawful taking and receiving stolen property as a result of an incident that occurred on August 5, 2000. After a review of the transcript of the preliminary hearing, the Court finds the following facts. Robin Cunningham testified that she allowed the Defendant to stay in her home for approximately a week in August, 2000, when she learned that he had been forced to leave the rescue workers. Also living in her home were her two nieces. She testified that on August 5, 2000, she returned from the grocery store at approximately 9:30 a.m., and placed her handbag on the bed in her bedroom. Her wallet, inside the bag, had a total of \$700.00 cash, identification, social security card, and birth certificate. (N.T. 1/12/01, p. 4)

Ms. Cunningham testified that between 10:00 a.m. and 12:00 a.m. the Defendant went to the store with her nieces. (Id., p. 9) They were gone for approximately one-half hour. While they were away from the residence, Ms. Cunningham went to her purse to retrieve her wallet, and discovered that it was missing. (Id., p. 10) Ms. Cunningham testified that she believed that the Defendant had been in her bedroom that day, and she believed that he had taken the wallet. Ms. Cunningham testified that she did not actually see the Defendant enter her bedroom because she was in the bathroom at the time. (Id., p. 13) When she confronted the Defendant about taking the wallet, he

denied the accusation. (Id., p. 4) Approximately one week later, the wallet was returned to Ms. Cunningham's mailbox. She testified that the cash had been removed from the wallet, but her identification cards remained in the wallet. (Ibid.)

A preliminary hearing was held January 12, 2001, after which District Justice Page bound over the charges. The Defendant now argues that the Commonwealth did not present a prima facie case of the charges. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). 18 Pa.C.S.A. § 3921(a) provides that a person is guilty of theft by unlawful taking or disposition if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof. Under 18 Pa.C.S.A. § 3925(a), a person 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.

In the instant case, although there was sufficient evidence to establish that a theft was committed, the Court finds that the Commonwealth did not present sufficient evidence to establish that the Defendant was the perpetrator. The only evidence produced by the Commonwealth was that the Defendant, along with two additional persons, may have had access to the bedroom where the wallet was located. The Court finds that this evidence, without more, is insufficient to establish the probability that the Defendant was connected with the theft. See [Commonwealth v. Keblitis](#), 500 Pa. 321, 456 A.2d 149 (1983); [Commonwealth v. Thomas](#), 450 Pa. 125, 299 A.2d 226 (1973), (A

showing of mere presence at the scene of a crime is insufficient to support a conviction; evidence indicating participation in the crime is required.)

ORDER

AND NOW, this 24th day of April 2001, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is GRANTED. The charges of theft by unlawful taking, and theft by receiving stolen property are dismissed.

By The Court,

Nancy L. Butts, Judge

cc: CA

Edward J. Rymsza, Esquire
Roan Confer, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire