

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CR-1237-2018**
v. :
: :
LAMONT CRADLE : **HABEAS**
Defendant :

OPINION AND ORDER

Lamont Cradle (Defendant) filed a Petition for Writ of Habeas Corpus on September 24, 2018. A hearing on the motion was scheduled to take place on October 26, 2018. Instead both Defendant and Commonwealth reached an agreement to rely upon the testimony provided at the preliminary hearing and were given the opportunity to provide memoranda of law by November 2, 2018. Defendant challenges the sufficiency of the Commonwealth's evidence on one count of Possession of Contraband, a Controlled Substance¹ and one count of Tampering with Physical Evidence.² For the following reasons, the Petition is denied.

Preliminary Hearing Testimony

Correctional Officer Justin Prilliszh (Prilliszh) of the Lycoming County Prison and Officer Teddy Trafford (Trafford) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. The testimony established the following. Trafford testified that on the day of July 22, 2018, he conducted a stop of a vehicle, in which Defendant was the passenger. P.H., 8/9/18, at 11. Trafford ran the names of the occupants of the vehicle and discovered Defendant had an active warrant for a PFA violation. *Id.* Trafford then arrested Defendant, had him fingerprinted and arraigned, and transported him to Lycoming County Prison. *Id.* At the prison, Trafford stood outside the bathroom as Prilliszh conducted a strip search of Defendant. *Id.* at 11-12. Prilliszh took off Defendant's cuffs and searched his shoes and shirt. *Id.* at 4. Defendant

¹ 18 Pa. C.S. § 5123.

² 18 Pa. C.S. § 4910(1).

then “said he was sick” and started “reaching around his private areas,” which was an uncommon reaction to a search. *Id.* at 3-4. He then “hunched over kind of like he was going to throw up in the shower area that we have in intake in the bathroom and then went over to the toilet, put his hand on the flush button.” *Id.* at 4. Prilliszh witnessed Defendant drop “blue packets with a black band around” them into the toilet and then flush it. *Id.* Upon seeing this, Prilliszh reached into the toilet in an attempt to grab the blue packets, but was unable to do so successfully. *Id.* at 5. Prilliszh described the packets as blue plastic and one inch by one inch in size that were held together with one black rubber band. *Id.* at 5-6. After hearing commotion and the flushing, Trafford entered the bathroom and Prilliszh informed him Defendant was “flushing drugs.” *Id.* at 12. By time Trafford intervened there was nothing in the toilet, but Prilliszh described what had occurred and what he had observed. *Id.* at 12-13. Based on Trafford’s training and experience the packaging and actions of Defendant led him to believe the packets contained suspected heroin. *Id.* at 13.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove 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). *Prima facie* in the criminal realm is the measure of evidence, which if accepted as true, would warrant the conclusion that the crime charged was committed.

While 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 charged has committed the offense, the absence of evidence as to the existence of a material element is fatal. *Commonwealth v. Ripley*, 833 A.2d 155, 159-60 (Pa. Super. 2003). 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). The Commonwealth has charged Defendant with one count of Possession of Contraband a Controlled Substance. The Commonwealth is required to prove that Defendant had in his possession a controlled substance, while committed to the custody of the Lycoming County Prison. 18 Pa. C.S. § 5123. The Commonwealth has also charged Defendant with one count of Tampering with Physical Evidence. To establish a *prima facie* case the Commonwealth must show Defendant "alter[ed], destroy[ed], conceal[ed] or remove[d] any record, document or thing with intent to impair its verity or availability in such proceeding or investigation." 18 Pa. C.S. § 4910(1).

Defendant's sole argument is that the Commonwealth has not established a *prima facie* case at the preliminary hearing because the contents of the blue packets cannot be obtained and so there can be no showing they contained a controlled substance. The contents of the blue packets are not required to establish the charge of 18 Pa. C.S. § 4910(1). The Pennsylvania Superior Court has previously found the contents of packets are irrelevant. *See Commonwealth v. Morales*, 669 A.2d 1003, 1007 (Pa. Super. 1996) (When Defendant is charged under 18 Pa. C.S. § 4910(1), "[t]he content of the packet is irrelevant to the question of whether Appellant

knew that the police were investigating criminal activity and, in an effort to impair their ability to seize the packet, placed it in his mouth and swallowed it.”). As for the charge of Contraband, the testimony provided showed Defendant possessed multiple blue plastic packets that were bound together by a black rubber band. P.H., 8/9/18, at 3, 5-6. Prillish at the moment, in his experience, believed Defendant was “flushing drugs.” *Id.* at 12. Additionally, although he did not personally see the packets, from Prillish’s description Trafford could surmise through his training and experience that the packaging was consistent with that of suspected heroin. *Id.* at 13. Because “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,” Defendant’s actions to dispose of the packets under the guise of being sick and the packaging being consistent with that of suspected heroin creates a reasonable inference that Defendant was disposing of heroin, at least to the extent to satisfy a *prima facie* standard of probable cause.

Conclusion

Therefore, this Court finds the Commonwealth had presented enough evidence at the preliminary hearing to establish a *prima facie* case, therefore Defendant’s Petition for Writ of Habeas Corpus is denied.

ORDER

AND NOW, this 9th day of November, 2018, based upon the foregoing Opinion, Defendant's Petition for Writ of Habeas Corpus is hereby **DENIED**.

BY THE COURT,

Nancy L. Butts, P.J.

cc: DA (JR)
Matthew Welickovitch, Esq.