

Dent and Gardner observed a Toyota Tundra drive up and park, shortly followed by another sedan who pulled up directly next to the officers. Id. Gardner recognized the driver of the second vehicle as Defendant. Id. at 2. Gardner and Dent watched Defendant exit his vehicle and walk over to the Toyota's passenger side. Id. Defendant leaned into the passenger window and the Toyota driver leaned over towards Defendant. Id. Gardner testified that the interaction lasted "mere seconds." Id. Defendant started to walk back to his own vehicle when it appeared he noticed the undercover officers and quickly sped off away from the scene. Id. Gardner then stated that he and Dent followed the Toyota and contacted city patrol for someone to conduct a vehicle stop on the Toyota. Id. Officer Dockey performed the vehicle stop and made contact with the driver, identified by name, whom Gardner testified is a "known narcotics user." Id. Eventually, the driver provided Gardner with approximately .33 grams of crack cocaine which he retrieved from a hat he was wearing on his head. Id. The driver further informed police he had just purchased the crack cocaine at Oliver Street and Memorial Avenue from someone he only knew as "Banks." Id. Gardner noted that it was common knowledge amongst the Williamsport Police that Defendant went by the name "Banks." Id. The driver also allowed Gardner to photograph his call log and a contact in his phone listed as "Banks." Id.

Gardner testified that there were multiple factors that lead him and Dent to believe they had witnessed a hand-to-hand drug transaction that day. Id. In particular, Gardner said that the area in which Defendant met up with the driver is a high crime area, specifically high in narcotics. Id. Gardner stated he personally has made numerous arrests in that area for drug sales. Id. Additionally, based on Gardner's training and experience, the short duration of an interaction usually indicates drug trafficking. Id. Gardner stated that in this instance, no formalities were exchanged between the parties, their meeting lasted only a few seconds, and

both left the scene quickly. Id. Gardner conceded that he did not personally observe Defendant give something to the driver of the Toyota, but believed the hand-to-hand transaction had occurred based on the totality of the circumstances. Id. at 6.

Discussion

Motion to Dismiss

This Court will first address the Commonwealth's Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus. The Commonwealth cites to Pennsylvania Rule of Criminal Procedure 579 which states

Except as otherwise provided in these rules, the omnibus pretrial motion for relief shall be filed and served within 30 days after arraignment, unless opportunity therefor did not exist, or the defendant or defense attorney, or the attorney for the Commonwealth, was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown.

Pa.R.Crim.P. 579(A). The Commonwealth asserts that Defendant was arrested and preliminarily arraigned on September 14, 2020. Michael Morrone, Esquire represented Defendant at the preliminary hearing on September 29, 2020. Defendant waived formal arraignment on October 19, 2020 at which time he was represented by the Lycoming County Public Defender's Office. The Commonwealth argues that between the preliminary hearing and Defendant's formal arraignment, thirteen (13) business days lapsed without the filing of an omnibus motion. On June 21, 2021, Attorney Morrone reentered his appearance on behalf of Defendant. The Commonwealth avers that from the formal arraignment until Attorney Morrone reentered appearance, more than two hundred (200) days passed in which no omnibus motion was filed. The Commonwealth also argues that an additional thirty (30) days passed after Attorney Morrone reentered his appearance on June 21st before filing the motion in front of the

Court on July 28, 2021. The Commonwealth contends that Defendant's immediate motion is significantly untimely and Defense Counsel has not articulated reasoning to justify the late filing of the motion. For these reasons, this Court agrees with the Commonwealth on this issue. Defendant's formal arraignment occurred approximately eight (8) months prior to the filing of Defendant's motion. Even if current counsel were to rely on his reentry into Defendant's case on June 21, 2021, counsel was present at the preliminary hearing and was therefore familiar with the issues Defendant would raise in a motion of this type. Furthermore, as the Commonwealth demonstrated, an additional thirty (30) days passed from the time of counsel's reentry to the filing of the motion before the Court. Therefore, the Court finds that the Defendant's omnibus motion is untimely without cause or justification and the motion shall be dismissed.

Habeas Corpus Motion

However, despite Defendant's untimely motion, the Court finds *prima facie* has been established. At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a 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). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v.

Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). 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).

This Court believes the Commonwealth established their burden at the preliminary hearing for the following reasons. Gardner testified to his eyewitness account as to what he observed on the day in question. He was able to identify Defendant and articulated multiple factors to indicate why he believed the interaction was a drug deal, such as the briefness and location of the interaction, the behavior of each party involved, and the swiftness of their exit from the scene. Gardner substantiated his account of the incident with information conveyed to him by the driver of the Toyota vehicle observed at the transaction, who admitted to buying crack cocaine from a man named “Banks”, whom law enforcement knew to be Defendant. The evidence presented at the preliminary hearing may not be enough for a jury to convict on these counts, but that is not the question presented to the Court at this time.

Conclusion

The Court finds that the Defendant's Motion for Writ of Habeas Corpus is untimely and shall be dismissed. However, upon review of the merits, the Commonwealth has met its *prima facie* burden and had the Court considered it, Defendant's motion would have been denied.

ORDER

AND NOW, this 1st day of December, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that the Commonwealth's Motion to Dismiss is hereby **GRANTED** and the Defendant's Motion for Habeas Corpus is **DISMISSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (TB)
Michael Morrone, Esq.
Law Clerk (JMH)