

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : CR-1048-2024
 :
 vs. :
 :
 YADEEM THOMAS, :
 :
 Defendant. : Motion to Dismiss

OPINION AND ORDER

This matter came before the Court on January 24, 2025, for an evidentiary hearing on the Defendant’s Motion to Dismiss, filed August 26, 2024. The gravamen of that Motion is Defendant’s contention that the charges against the Defendant should not have been bound for Court after the preliminary hearing conducted on July 25, 2024 (hereinafter the “Preliminary Hearing”), based upon the fact that the Commonwealth did not introduce the testimony of the confidential informant, but rather presented its case at the Preliminary Hearing substantially through hearsay testimony.

At the hearing on the Motion, the Commonwealth presented the testimony of the confidential informant, Nicole Linville (hereinafter “Linville”), and the testimony of Detective Tyson Havens (hereinafter “Havens”). Further, the Commonwealth introduced the transcript of the Preliminary Hearing and seven (7) photographs of the Defendant.

Our Superior Court, in *Commonwealth v. Dantzler*, opined the following regarding pre-trial *habeas corpus* motions and the sufficiency of evidence to establish a *prima facie* case:

We review a decision to grant a pre-trial petition for a writ of *habeas corpus* by examining the evidence and reasonable inferences derived therefrom in a light most favorable to the Commonwealth. *Commonwealth v. James*, 863 A.2d 1179, 1182 (Pa.Super.2004) (en banc). In *Commonwealth v. Karetny*, 583 Pa. 514, 880 A.2d 505 (2005), our Supreme Court found that this Court erred in applying an abuse of discretion standard in considering a pre-trial *habeas* matter to determine whether the Commonwealth had provided *prima facie* evidence. The *Karetny* Court opined, “the Commonwealth's *prima facie* case for a charged crime is a question of law as to which an appellate court's review is plenary.” *Id.* at 513, 880 A.2d 505; *see also Commonwealth v. Huggins*, 575 Pa. 395, 836 A.2d 862, 865

(2003) (“The question of the evidentiary sufficiency of the Commonwealth's *prima facie* case is one of law [.]”). The High Court in *Karetny* continued, “[i]ndeed, the trial court is afforded no discretion in ascertaining whether, as a matter of law and in light of the facts presented to it, the Commonwealth has carried its pre-trial, *prima facie* burden to make out the elements of a charged crime.” *Karetny*, supra at 513, 880 A.2d 505. Hence, we are not bound by the legal determinations of the trial court. To the extent prior cases from this Court have set forth that we evaluate the decision to grant a pre-trial *habeas corpus* motion under an abuse of discretion standard, our Supreme Court has rejected that view. *See id.*

A pre-trial *habeas corpus* motion is the proper means for testing whether the Commonwealth has sufficient evidence to establish a *prima facie* case. *Carroll*, supra at 1152. “To demonstrate that a *prima facie* case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant's complicity therein.” *Id.* To “meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and also may submit additional proof.” *Id.*

Commonwealth v. Dantzler, 135 A.3d 1109, 1111-12 (Pa. Super. Ct. 2016) (*en banc*) (footnote omitted) (emphasis added); *see, e.g., Commonwealth v. White*, 2024 WL 2991903, at *2 (Pa. Super. Ct. 2024) (“We review a decision to grant a pre-trial petition for a writ of *habeas corpus* by examining the evidence and reasonable inferences derived therefrom in a light most favorable to the Commonwealth.”) (citing *Commonwealth v. Dantzler*, 135 A.3d 1109, 1111 (Pa. Super. Ct. 2016)).

Rule 542 of the Pennsylvania Rules of Criminal Procedure provides, in part, as follows:

(D) At the preliminary hearing, the issuing authority shall determine from the evidence presented whether there is a *prima facie* case that (1) an offense has been committed and (2) the defendant has committed it.

(E) Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established. Hearsay evidence shall be sufficient to establish any element of an offense, including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property.

Pa. R. Crim. P. 542.

In interpreting the above-cited rule, our Supreme Court opined, in 2024, the following:

To summarize the state of the law regarding the use of hearsay at preliminary hearings, Rule 542(E) “is intended to allow some use of” otherwise inadmissible hearsay by the Commonwealth to establish a *prima facie* case that an offense has been committed. *McClelland*, 233 A.3d at 735. But “[t]he plain language of the rule does not state a *prima facie* case may be established solely on the basis of hearsay[,]” and to do so would violate due process in any event. *Id.* Finally, we now hold, based on the plain language of Rule 542, that inadmissible **hearsay alone may not be used to prove a *prima facie* case as to the defendant's identity**. This means the Commonwealth at a preliminary hearing is required to produce some non-hearsay or admissible hearsay evidence to sustain its *prima facie* burden as to the defendant's identity. *See Verbonitz*, 581 A.2d at 174 (“In order to satisfy [its] burden of establishing a *prima facie* case, the Commonwealth must produce ... legally competent evidence to demonstrate the existence of facts which connect the accused to the crime charged.”).

Commonwealth v. Harris, 315 A.3d 26, 37 (Pa. 2024) (emphasis added); *see Commonwealth v. Allis*, 2024 WL 2991851, at *4-5 (Pa. Super. Ct. 2024) (unpublished memorandum) (concluding that “[t]he Commonwealth is permitted to rely on the out-of-court statements of a [confidential informant] as related to a law enforcement officer[,]” and that “[t]he trial court erred in determining that the Commonwealth did not present a *prima facie* case merely because it relied on hearsay testimony of Detective Lamanna...”); *cf. Commonwealth v. Sutton*, 313 A.3d 1071, 1077 (Pa. Super. Ct. 2024), *appeal granted*, 2024 WL 4832282 (Pa. 2024) (opining that reliance on a confidential informant’s hearsay statements did not render deficient the *prima facie* showing of defendant’s identity at a preliminary hearing).

In *Allis*, the Commonwealth charged the defendant—among other things—with counts of possession of a controlled substance, possession of a controlled substance with intent to deliver, and possession of drug paraphernalia pertaining to separate incidents where the defendant “[a]llegedly sold methamphetamine to a confidential informant...” *Allis*, 2024 WL 2991851, at *1. At the preliminary hearing, a Bradford County detective—who had training in drug investigations—testified that the detective used a confidential informant to conduct a controlled buy of drugs from the defendant. *Id.* According to the detective, the confidential informant was provided with pre-recorded currency and was searched prior (and after) the controlled buy. *Id.* The confidential informant did not testify at the preliminary hearing, and the

charges were bound over at the end of the hearing. *Id.* at 2. The defendant then filed a petition for writ of *habeas corpus*, “[a]sserting that the Commonwealth had failed to establish a *prima facie* case...when it relied solely on the hearsay testimony of [the detective][,]” and the trial court granted the defendant’s *habeas* petition. *Id.* Reversing the trial court’s decision, the Superior Court opined, in part, as follows:

[T]he trial court erred in determining that the Commonwealth did not present a *prima facie* [sic] case merely because it relied on hearsay testimony of Detective Lamanna regarding Appellee's involvement in the delivery of methamphetamine. The Commonwealth produced other, non-hearsay evidence at the preliminary hearing, including Detective Lamanna's testimony that he searched the CI before and after each of the three controlled buys and found that the CI had obtained methamphetamine on each occasion....

....

Therefore, viewing the evidence in the light most favorable to the Commonwealth, *see Dantzler*, 135 A.3d at 1111, we conclude that the evidence was sufficient to establish a *prima facie* case that Appellee committed the charged offenses. *See Sutton*, 2024 WL 1163627, at *6-7; *Commonwealth v. Strobe*, No. 249 MDA 2023, 2024 WL 1715348, at *3 (Pa. Super., filed April 22, 2024) (holding, under *Sutton*, that trial court erred when ruling that Commonwealth had failed to establish a *prima facie* case that Strobe committed controlled substance offenses where Commonwealth relied on detective's hearsay testimony repeating CI's statement that Strobe sold drugs to CI in addition to non-hearsay evidence establishing Strobe's identity as the wrongdoer and Commonwealth represented that CI would testify at trial) (non-precedential decision cited for its persuasive value, *see* Pa.R.A.P. 126(b)).

Id. at 5 (footnotes omitted).

Here, Havens testified at the Preliminary Hearing that he worked with a confidential informant to conduct multiple controlled buys of crack cocaine from the Defendant in August and September of 2022. Havens testified that the confidential informant was strip searched before the buys, and that the confidential informant arranged the buys through telephone calls. Havens testified that he provided the confidential informant with pre-recorded money and an electronic surveillance device. Havens testified that the buys took place at 565 Memorial

Avenue, Williamsport, Pennsylvania, the residence of one Regina Brown. Havens testified to buys on August 10, 2022, and August 31, 2022, and September 15, 2022, and September 27, 2022, each of which was conducted in a substantially similar manner. Havens did not identify the confidential informant, but testified that the informant would be available to testify at trial. With regard to the details of the transactions inside 565 Memorial Avenue, the Commonwealth relied upon information from the confidential informant, presented as hearsay testimony at the Preliminary Hearing. The fact that the Commonwealth relied upon some hearsay was the issue presented by the Defendant's Motion to Dismiss, filed August 26, 2024.

At the hearing conducted on January 24, 2025, Linville testified that she made several buys of controlled substances from the Defendant during August and September of 2022. Havens testified that he worked with Linville in connection with multiple buys of crack cocaine during August and September of 2022. Havens testified that each controlled buy resulted in Linville purchasing controlled substances, and that each controlled buy was recorded on video. Havens identified Commonwealth Exhibits 2, 3, 4, 5, 6, 7, and 8 as photographs of the Defendant, which Havens captured from videos, which were taken in connection with the controlled buys of controlled substances by Linville from the Defendant, in August and September of 2022.

ORDER

AND NOW, this 28th day of January, 2025, for the reasons more fully set forth above, Defendant's Omnibus Pretrial Motion is denied.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator
Lycoming County District Attorney's Office (JF)
Andrea Pulizzi, Esquire