

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**CHARLES JOHNSON JR,
Defendant**

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CR-1070-2016

HABEAS

OPINION AND ORDER

Defense Counsel filed a Petition for Writ of Habeas Corpus *Nunc Pro Tunc* on April 10, 2017. Argument was held on May 5, 2017, on whether the Court should grant consideration of the habeas motion.

Background

Charles Johnson, Jr. (Defendant) is charged with Persons not to Possess, Use Manufacture, Control, Sell or Transfer Firearms.¹ The charges stem from a phone call made by Defendant's girlfriend (Dana Pryor) informing the Williamsport Bureau of Police that her boyfriend, who is a felon, possessed a firearm. Dana Pryor testified at Defendant's preliminary hearing on 6/6/2016, and the charge was held for court.

On July 6, 2016, Defendant was released from detention on bail. He is currently on intensive supervised bail.

On September 9, 2016, Dana Pryor signed an affidavit in the presence of the Public Defender, who at that time represented Defendant, stating that

any and all statements made at the preliminary hearing, to any police officer or detectives, or any representatives of the Lycoming County District Attorney's office regarding the ownership, possession, or control of the firearm by [Defendant] were not true and correct.

¹ 18 Pa.C.S. § 6105(a)(1).

Due to the recantation of the Commonwealth's witness, Defense Counsel requests the Court "grant the Defendant's Petition for Writ of Habeas Corpus" or any other relief allowable by law.

Discussion

Defense Counsel cites Title 42 Section 6503 (right to apply for writ) as a basis for the motion:

An application for habeas corpus to inquire into the cause of detention may be brought by or on behalf of any person restrained of his liberty within this Commonwealth under any pretense whatsoever.

42 Pa.C.S. § 6503 (right to apply for writ).

In a pre-trial setting, a writ of habeas corpus is the means for an accused in custody to test the validity of a magistrate's determination that a *prima facie* case has been established. Commonwealth v. Kowalek, 647 A.2d 948 (Pa. Super. 1994). Defendant is not in official detention so the traditional writ of habeas corpus does not apply to his situation. Official detention "means arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but the phrase does not include supervision of probation or parole, or constraint incidental to release on bail. Commonwealth v. Stafford, 29 A.3d 800, 803 (Pa. Super. 2011).

Defense Counsel also cites Pa.R.Crim.P. 578 and argues that the instant petition is a pretrial motion for relief to quash or dismiss an information. Defense Counsel requests the relief *nunc pro tunc* as the time for filing pretrial motions in this matter has passed (Defendant was arraigned on June 27, 2016).

Even if the petition were more appropriately, styled a “Motion to Dismiss an Information”, as the Defendant is not in custody, no relief is appropriate. Defense Counsel’s argument is two-pronged 1) the Commonwealth’s witness is incredible and 2) there is no independent evidence that a firearm was in Defendant’s possession. Credibility is not an issue at the preliminary hearing:

it is well-settled that the preliminary hearing serves a limited function. The purpose of a preliminary hearing is to avoid the incarceration or trial of a defendant unless there is sufficient evidence to establish a crime was committed and the probability the defendant could be connected with the crime. Since the Commonwealth merely bears the burden of establishing a *prima facie* case against the defendant, credibility is not an issue at preliminary hearing. See Barber v. Page, 390 U.S. 719, 725, 88 S.Ct. 1318,(1968) (removing credibility as an issue at a preliminary hearing and limiting defense actions to negating the existence of a *prima facie* case conforms to the fact that a preliminary hearing is a much less searching exploration into the merits of the case); Tyler 402 Pa.Super. at 433, 587 A.2d at 328 (credibility is not an issue at a preliminary hearing); Liciaga v. Court of Common Pleas of Lehigh County, 566 A.2d 246, 248 (1989) (magistrate is precluded from considering the credibility of a witness who is called upon to testify during the preliminary hearing).

Commonwealth v. Fox, 422 Pa. Super. 224, 234, 619 A.2d 327, 332 (1993).

Moreover, independent evidence of the crime is not required at the preliminary hearing. The Commonwealth’s witnesses statements alone were sufficient to establish that Defendant committed the crime charged. Hearsay alone is sufficient to establish a *prima facie* case. Commonwealth v. Ricker, 120 A.3d 349 (Pa. Super 2015) (petition for allowance of appeal granted). Credibility and evidence are trial issues and thus the above captioned matter appropriately remains on the pretrial list.

ORDER

AND NOW, this 9th day of May, 2017, Defense Counsel's Petition for a Writ of Habeas Corpus is DENIED.

BY THE COURT,

Nancy L. Butts, P.J.

cc: Nicole Ippolito, Esq. ADA
Lori Rexroth, Esq.
Gary Weber, Esq. Lycoming Law Reporter
Eileen Dgien, DCA