

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1597 – 2017
:
vs. : CRIMINAL DIVISION
:
BRUCE L. JACKSON, JR., :
Defendant :

OPINION AND ORDER

Before the Court is Defendant’s Omnibus Pre-trial Motion, filed December 15, 2017. Argument on the motion was heard March 19, 2018.

By Information filed October 13, 2017, Defendant has been charged with two counts of delivery of a controlled substance (heroin), two counts of possession with intent to deliver a controlled substance (heroin), two counts of possession of a controlled substance (heroin), two counts of criminal use of a communications facility and one count of possession of drug paraphernalia, in connection with two controlled buys which occurred on April 26 and May 4, 2017. For both transactions, the detective used the services of the same confidential informant.

In his motion, Defendant seeks a writ of habeas corpus, asserting the evidence presented at the preliminary hearing was insufficient to establish the identity of the person from whom the informant purchased the alleged controlled substances.¹

¹ Defendant also seeks pre-trial discovery. That issue was addressed by separate Order dated March 19, 2018.

In addition to opposing the petition for writ of habeas corpus on its merits, the Commonwealth objects to the motion's timeliness. This issue will be addressed first.

Timeliness of Pre-Trial Motion

Following the preliminary hearing on September 26, 2017, and the binding over of all charges, Defendant waived formal arraignment on October 16, 2017.

Pursuant to Pa.R.Crim.P. 579(A),

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). Defendant's motion was filed December 15, 2017, which was 60 days after arraignment. The Commonwealth thus seeks dismissal of the motion on the basis of timeliness.

A review of the record reveals, however, that Defendant was previously represented by the public defender's office but current counsel, Peter Campana, Esquire, was permitted to enter his appearance upon the granting of a joint motion to that effect by Order dated November 15, 2017. That Order also provides that "Mr. Campana shall have thirty (30) days to file any omnibus pretrial motion." It therefore appears that "the time for filing has been extended by the court for cause shown" and the motion, having been filed within that thirty-day period, is timely.

Writ of Habeas Corpus

At the preliminary hearing the Commonwealth must establish a prima facie case, which requires sufficient evidence that a crime has been committed and that the accused is the one who probably committed it. Commonwealth v. Mullen, 333 A.2d 755 (Pa. 1975). *See also* Commonwealth v. Prado, 393 A.2d 8 (Pa. 1978). The evidence must demonstrate the existence of each of the material elements of the crimes charged and there must be legally competent evidence to demonstrate the existence of the facts which connect the accused to the crime. *See* Commonwealth v. Wodjak, 466 A.2d 991 (Pa. 1983). Absence of any element of the crimes charged is fatal and the charges should be dismissed. *See* Commonwealth v. Austin, 575 A.2d 141 (Pa. Super. 1990).

In the instant case, Defendant argues that the Commonwealth has failed to establish that Defendant is the person who committed the crimes charged because the Commonwealth “relied totally on hearsay”. This argument is without merit for two reasons: first, evidence other than hearsay was introduced to prove Defendant’s identity and, second, Rule of Criminal Procedure 542(E) does allow hearsay evidence alone to establish a prima facie case.

At the preliminary hearing, Detective James Capello, a detective with the narcotics unit in the District Attorney’s office, testified that on both April 26, 2017 and May 4, 2017 he met with a confidential informant who told him he could buy heroin from a certain individual, later identified as Defendant. According to the Detective Capello’s testimony, on April 26, 2017 the informant contacted someone by cell phone in the detective’s presence and arranged for the purchase, the detective searched the informant and his vehicle and found no contraband, he provided the informant with pre-recorded money, he and the

informant traveled in the informant's vehicle to the pre-arranged meeting place, the Defendant arrived at the meeting place and handed the drugs to the informant and took the money from him while the informant was sitting in the vehicle (the detective was sitting in the passenger seat of the vehicle and observed the transaction), and the Defendant then left. Detective Capello testified that the informant told him Defendant's name and he looked him up on JNET; from the photograph on JNET and his own personal observations, the Detective was able to identify Defendant as the person who had supplied the drugs to the informant.

With respect to the transaction on May 4, 2017, Detective Capello testified that again the informant placed a call to the same number in his presence and made arrangements to buy heroin, the detective again searched the informant and his vehicle and found no contraband, he again provided the informant with pre-recorded money, and he and the informant again traveled in the informant's vehicle to the pre-arranged meeting place. The Detective testified that this time the Defendant arrived and went into a house and the informant went into the house after him, and that both the informant and the Defendant came out of the house together, after which the informant got back into the vehicle and handed the drugs to the Detective. According to Detective Capello, the informant said that the Defendant had set the drugs on the floor and after the informant picked the drugs up and laid down the money, the Defendant picked up the money.

The Court agrees with Defendant that the informant's statement to Detective Capello, that the Defendant is the person who supplied the drugs inside the house, is hearsay. It is not the only evidence of Defendant's identity, however. The Detective's observation of the cell phone call to the same number at which Defendant had been contacted a few days before, and his observation of

the Defendant arriving at the agreed-upon place shortly after the arrangements had been made and then leaving with the informant shortly after the informant entered the house in order to purchase drugs, is sufficient circumstantial evidence to establish Defendant's identity, even had the Detective not testified to the informant's statement to him that Defendant is the person who sold him the drugs inside the house. Thus, in establishing a prima facie case that Defendant is the person who committed the crimes charged, the Commonwealth did not rely on hearsay alone.

In any event, Rule 542 of the Rules of Criminal Procedure provides as follows:

(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(E). The Superior Court has interpreted this rule to allow "hearsay evidence *alone* to establish a prima facie case", reasoning that "[i]f hearsay evidence is sufficient to establish one or more elements of the crime, it follows that, under the rule, it is sufficient to meet all of the elements. Com. v. Ricker, 120 A.3d 349, 357 (Pa. Super. 2015)(emphasis added), *appeal dismissed as improvidently granted*, 170 A.3d 494 (Pa. 2017). Therefore, even if Defendant were correct in his assertion that the Commonwealth "relied totally on hearsay" in establishing Defendant's identity, such would not entitle him to relief.

ORDER

AND NOW, this day of April 2018, for the foregoing reasons,
Defendant's Petition for Writ of Habeas Corpus is DENIED.

BY THE COURT,

Nancy L. Butts, President Judge

cc: DA
Peter Campana, Esq.
Gary Weber, Esq.