

**IN THE COURT OF COMMON PLEAS FOR  
LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

<b>COMMONWEALTH</b>	:	
	:	
<b>v.</b>	:	<b>No.: 03-10,802</b>
	:	
<b>RAYMOND R. RASCHKE,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before the Court is Defendant's Petition for Habeas Corpus, which was scheduled for hearing on July 3, 2003. At the time of the hearing, Defendant's counsel and the District Attorney's Office agreed that the case should be submitted on the transcript of the preliminary hearing, which was held on May 23, 2003 before District Justice Allen P. Page. The single issue raised by Defendant in his Petition for Habeas Corpus is that the Commonwealth failed to present a prima facie case because the victim of the alleged assault did not testify. Petition for Habeas Corpus, filed June 11, 2003.

The Court begins by noting that the United States Supreme Court has not specifically held that "the full panoply of constitutional safeguards (ie., confrontation, cross-examination, and compulsory process) must attend a preliminary hearing, (but) it has inferred as much in Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975). In Pugh, the Supreme Court held that the right to counsel, confrontation, cross-examination and compulsory process are not essential for a pre-trial detention hearing held

pursuant to the Fourth Amendment because such a hearing is not adversarial in nature. Id. The Court stated, however, that when a pretrial hearing takes the form of a preliminary hearing and thus, adversary procedures are used, "[t]he importance of the issue to both the State and the accused justifies the presentation of witnesses and full exploration of their testimony on cross-examination". Id.

The Pennsylvania Constitution provides "that "*in all criminal prosecutions*" (emphasis in the original) the accused has a right to meet the witnesses against him -- "face to face". Pa. Const. Art. 1 § 9. This right necessarily includes the right to confront witnesses and explore fully their testimony through cross-examination. A preliminary hearing is an adversarial proceeding which is a critical stage in a criminal prosecution. It is not a sidebar conference at which offers of proof are made. Thus, the Pennsylvania Constitution mandates a criminal defendant's right to confrontation and cross-examination at the preliminary hearing." Commonwealth ex. rel. Buchanan v. Verbonitz, 525 Pa. 413, 581 A.2d 172 (1990).

The principal reason for a preliminary hearing is "to protect an individual's right against unlawful arrest and detention". Verbonitz, citing Commonwealth ex. rel. Maisenhelder v. Rundle, 414 Pa. 11, 198 A.2d 565 (1964). The preliminary hearing "seeks to prevent a person from being imprisoned or required to enter bail for a crime which was never committed or for a crime with which there is no evidence of his connection." Id., 525 Pa.

413, 416, 581 A.2d 172, 173, citing Rundle, *supra*. At the preliminary hearing it is the Commonwealth's burden to establish "*at least prima facie* that a crime has been committed and that the accused is the one who committed it". Id., 525 Pa. 413, 416, 581 A.2d 172, 173 - 174, citing Commonwealth v. Mullen, 460 Pa. 336, 333 A.2d 755 (1975) (emphasis added by Verbonitz). In order to satisfy this burden of establishing a prima facie case, the Commonwealth must produce "legally competent evidence", see Commonwealth v. Shain, 493 Pa. 360, 426 A.2d 589 (1981), "which demonstrates the existence of each of the material elements of the crime charged and legally competent evidence to demonstrate the existence of facts which connect the accused to the crime charged." Verbonitz, 525 Pa. 413, 417, 581 A.2d 172, 174. See also Commonwealth v. Wojdak, 502 Pa. 359, 466 A.2d 991 (1983).

It is not necessary at a preliminary hearing for the Commonwealth to establish the guilt of the accused beyond a reasonable doubt. See Commonwealth v. Rick, 244 Pa.Super. 33, 366 A.2d 302 (1976). In order to meet its burden at the preliminary hearing, "the Commonwealth is required to present evidence with regard to each of the material elements of the charge and to establish sufficient probable cause to warrant the belief that the accused committed the offense." Commonwealth v. Jacobs, 433 Pa. Super. 411, 640 A.2d 1326 (1994); Commonwealth v. Wojdak, 502 Pa. 359, 466 A.2d 991 (1983). See also Commonwealth v. McBride, 528 Pa. 153, 595 A.2d 589 (1991). However, this does not mean that the Commonwealth is

required to present at the preliminary hearing every witness to which it has access and every scrap of evidence it possesses. It has been held that even the testimony of an “identifying witness” is not constitutionally mandated at a suppression hearing, where the standard of proof is at least equal to that required in a preliminary hearing. See Commonwealth v. Thompkins, 457 A.2d 925, 311 Pa.Super. 357 (1983). In this case, the Defendant has not made an allegation that the victim is an identifying witness.

The Court further notes that, carried to its logical conclusion, the Defendant’s contention that the charges against him must be dismissed because of the failure of the Commonwealth to present the testimony of the alleged victim is a position which would require dismissal of all cases where the victim was unwilling or unable to testify, including those cases where the victim was murdered, is an infant, or is unavailable as a witness for any other reason. The law of the Commonwealth of Pennsylvania does not require this result.

The Defendant does not assert in his motion that the evidence which was presented to the District Justice, standing alone, fails to amount to a prima facie case for the Commonwealth. The Commonwealth is free to present its case as it sees fit, using that evidence which it deems necessary to meet its burden of proof. The District Justice held that the evidence presented by the Commonwealth satisfied its burden of a prima facie showing that the Defendant is guilty of the crimes with which he has been charged. The Defendant has not asked this Court to review this finding.

**ORDER**

AND NOW, this \_\_\_\_ day of August, 2003, the Rule to Show Cause issued June 18, 2003 is dismissed and the Defendant's Petition for Habeas Corpus is DISMISSED.

By the Court,

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Nancy L. Butts, Judge J.

xc: DA  
James Cleland, Esquire  
Hon. Nancy L. Butts  
Diane L. Turner, Esquire  
Gary Weber, Esquire