

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

**COMMONWEALTH**

**v.**

**ANTWONE CORMIER,  
Defendant**

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**No. 113-2010  
CRIMINAL**

**OPINION AND ORDER**

Defendant filed a Petition for Writ of Habeas Corpus on February 8, 2010. Defendant filed an Amended Petition for Habeas Corpus on February 22, 2010. A hearing on both Motions was held on March 18, 2010. The Defendant also filed a Motion for Change of Venue which was dismissed but would be revisited if the circumstances warranted.

***Background***

On November 5, 2009 a jury trial was held before the Honorable Dudley N. Anderson on the case of Commonwealth v. Cormier, Case No. 722-2009. Antwone Cormier (Cormier) was called as a witness on his own behalf and was thereafter sworn and affirmed. Cormier testified that in July of 2008, he lived on Memorial Ave, Williamsport, Lycoming County. When questioned by defense counsel if he was working for his girlfriend's father in July of 2008, Cormier answered, "Well, if I recall, that may have been a weekday. So it might be that I was working." When questioned by Defense Counsel if he was working on July 24, 2008, Cormier testified, "More than likely I was. It was summertime. So more than likely, I was working." When questioned by his Defense Counsel if he was working on July 28, 2008, Cormier testified "I recall, yes."

The Preliminary Hearing for this case was held on January 8, 2010 before Magisterial District Judge Allen Page. Detective Alberto Diaz (Diaz) testified at the preliminary hearing by reading from the transcript of the proceedings held November 5, 2009. In his testimony, Diaz recited the Cormier's statements from the November 5, 2009 Jury Trial regarding whether or not Cormier worked on the dates of July 24, 2008 and July 28, 2008. Clyde Allen (Allen) also testified at the Preliminary Hearing. Allen testified that he knows Cormier as Cormier is romantically attached to Allen's daughter. Allen testified that Cormier never worked for him and was never on his payroll. Trooper Brett Herbst (Herbst) also testified at the Preliminary Hearing. Herbst testified that on July 24, 2008, he watched Cormier meet a confidential informant in a controlled purchase of heroin. Herbst testified that on July 28, 2008, he did not personally witness Cormier meet with the confidential informant, but that the confidential informant notified him that he met with Cormier. Herbst testified further that he has recorded calls to Cormier's cell phone on July 28, 2008 and the confidential informant stating that he spoke with Cormier.

### ***Discussion***

Cormier filed a Petition for Habeas Corpus in which he alleges the Commonwealth failed to establish a prima facie case that he committed Perjury. Specifically, Cormier contends that his testimony on November 5, 2009 was not material to the outcome of his trial and that the Commonwealth failed to meet the requirements of 18 Pa.C.S. § 4902 (F), as the Commonwealth only called one witness to testify regarding Cormier's alleged false statement under oath.

It is well settled in this Commonwealth that "a petition for writ of habeas corpus is the proper vehicle for challenging a pre-trial finding that the Commonwealth presented sufficient

evidence to establish a *prima facie* case." Commonwealth v. Carbo, 822 A.2d 60, 67 (Pa. Super 2003) (citing Commonwealth v. Kohlie, 811 A.2d at 1013 (Pa. Super. 2002); see Commonwealth v. Hetherington, 311 A.2d 209 (1975); Commonwealth v. Fountain, 811 A.2d 24, 25 n.1 (Pa. Super. 2002); Commonwealth v. Saunders, 691 A.2d 946, 948 (Pa. Super. 1997), *appeal denied*, 705 A.2d 1307 (1997)). "While the weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense, the absence of evidence as to the existence of a material element is fatal." Commonwealth v. Wojdak, 466 A.2d 991, 997 (1983) (See Commonwealth v. Prado, 393 A.2d 8 (1978); Commonwealth ex rel. Scolio v. Hess, 27 A.2d 705 (Pa. Super. 1942)). Courts define probable cause as "a reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in the same situation in believing that the party is guilty of the offense." Kelley v. General Teamsters, Local Union 249, 544 A.2d 940, 942 (1987) (citing Miller v. Pennsylvania R.R. Co., 89 A.2d 809, 811 (1952)).

The Pennsylvania Consolidated Statutes defines the offense of Perjury:

(a) OFFENSE DEFINED. --A person is guilty of perjury, a felony of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(b) MATERIALITY. --Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law...

(f) CORROBORATION. --In any prosecution under this section, except under subsection (e) of this section, falsity of a statement may not be established by the uncorroborated testimony of a single witness.

18 Pa.C.S. § 4902.

Cormier's statements that the Commonwealth allege amount to Perjury are set forth in a transcript excerpt from the Jury Trial held on November 5, 2009.

LONGO: Were you working for your girlfriend's father at that time?

CORMIER: Well, if I recall, that may have been a weekday. So it might be that I was working.

LONGO: Do you know if you were working on July 24, 2008?

CORMIER: More than likely I was. It was summertime. So, more than likely, I was working.

LONGO: All right. All right. Were you working on July 28?

CORMIER: I recall it, yes.

The Court notes that Cormier's statements are not definitive in nature. However, the notes following 18 Pa. C. S. § 4902 state "The Code does not specify how definite a statement must be since it would be almost impossible to do so. The degree of specificity required in any given case would depend upon the circumstances of that case." Furthermore, the court in Commonwealth v. Morgan, 102 A.2d 194, 195 (Pa. Super. 1954) recognized that false statements can be general and not particular in nature. "Where an alleged false statement is general and not particular and the existence of a particular fact makes it false, a perjury indictment should allege such particular fact." Id. (See 70 C.J.S., Perjury, Sec. 46.) Cormier's statements were more general in nature than specific. Allen's testimony that Cormier **never** worked for him makes Cormier's statements false. Cormier was aware, by way of the affidavit of probable cause, of that fact that Allen said Cormier was never employed with him. Therefore, the Court finds that even though Cormier's statements are not definitive, due to the circumstances of this case, Cormier's testimony meets the standard of a "statement" for purposes of 18 Pa. C. S. § 4902.

Cormier alleges that his testimony on November 5, 2009 was not material to the outcome of his trial; therefore, his statements do not meet the elements of Perjury as defined by 18 Pa.C.S. § 4902. A false statement, made under oath, is material "if it could have affected the course or outcome of the proceeding". 18 Pa. C. S. A. 4902(b). "Materiality is to be determined as of the time that the false statement was made." Commonwealth v. Lafferty, 419 A.2d 518 (Pa. Super. 1980) (see U. S. v. Stone, 429 F.2d 138 (2d Cir. 1970); U. S. v. Larocca, 245 F.2d 196 (3rd Cir. 1957); 70 C.J.S. Perjury § 11, pp. 466-467.) "Furthermore, the test of the materiality of a false statement is whether it **can** influence a fact-finder, not whether it **does**. The fact that the false testimony was unnecessary to accomplish the end in view will not render it immaterial." Lafferty at 522. (see 70 C.J.S. Perjury § 11, pp. 466-467). Cormier argues that his testimony was not material to the outcome of the case because he did not testify in his second trial in which he was acquitted of the drug offenses. At the time Cormier testified on November 5, 2009, he was accused of taking part in a drug transaction on July 24 and 28 2008. Given the context in which Cormier gave the testimony, it appears that the statements regarding his work schedule in July of 2008 supported the defense conjecture that, because Cormier was working, he could not have been a part of a drug transaction on July 24 and 28 2008. This being so, the Court believes that the false statements made by Cormier were material to the outcome of the case at the time said statements were made.

Cormier also alleges that the Commonwealth failed to meet the requirements of 18 Pa. C. S. § 4902 (F), as the Commonwealth only called one witness to testify regarding Cormier's alleged false statement under oath. The court in Commonwealth v. Broughton, 390 A.2d 1282, 1284 (Pa. Super. 1978) interpreted 18 Pa. C. S. § 4902 (F) to mean "...a

witness may testify as to his direct observation, or he may provide circumstantial evidence; but in either case, he must be corroborated by the testimony of another witness, whose testimony may provide either direct or circumstantial evidence.” The Broughton Court explained the difference between “direct” and “circumstantial” evidence by stating

The basic distinction between direct and circumstantial evidence is that in the former instance the witnesses testify directly of their own knowledge as to the main facts to be proved, while in the latter case proof is given of facts and circumstances from which the jury may infer other connected facts which reasonably follow, according to the common experience of mankind.

Id. (see 29 Am.Jur.2d, Evidence § 264 at 312).

The Broughton Court explained the importance of examining evidence as a whole and not each piece of evidence in a vacuum

...it is a mistake to examine each piece of evidence on its own, and then to argue that individually each piece does not amount to much. It is the very nature of circumstantial evidence that while no one piece of evidence may amount to much, when added together the pieces may represent very compelling proof, strong enough to preclude reasonable doubt...

Id. at 1289.

In this case, Allen’s testimony was direct evidence. Allen testified to the fact that Cormier never worked for him. Herbst’s testimony, however, was circumstantial. Herbst testified as to his knowledge that Cormier was involved in drug transactions on the days that Cormier stated he was working. Herbst’s testimony allows one to infer that Cormier was not in fact working on July 24 or 28, 2008, as he was involved in a drug transaction. The Court believes that when the testimony of Allen and Herbst are considered together, it is clear the Commonwealth did not violate 18 Pa. C. S. § 4902 (F).

**ORDER**

AND NOW, this 12<sup>th</sup> day of April, 2010 based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, P.J.

cc. Paul Petcavage, Esq.  
Jeana Longo, Esq.  
Amanda Browning, Esq. (Law Clerk)  
Gary L. Weber (LLA)