

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

MATTHEW C. KAYHANFAR,
Defendant

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CR: 1293-2012
CRIMINAL DIVISION

OPINION AND ORDER

The Defendant filed an Omnibus Pretrial Motion on September 5, 2012. A hearing on the Motion was held October 23, 2012. Transcripts of the Preliminary Hearing held on July 27, 2012 before Magisterial District Judge Jon Kemp were submitted to the Court for use in deciding this Motion.

Background

On April 5, 2012, the Defendant was charged with thirteen counts of various theft related offenses. The Defendant was charged with three (3) counts of Theft by Unlawful Taking,¹ each a felony of the second degree; three (3) counts of Receiving Stolen Property,² each a felony of the second degree; one (1) count of Person Not to Possess,³ a felony of the second degree; one (1) count of Theft by Unlawful Taking,⁴ a felony of the third degree; one (1) count of Receiving Stolen Property,⁵ a felony of the third degree; two (2) counts of Burglary,⁶ each a felony of the first degree; and two (2) counts of Criminal Trespass,⁷ each a felony of the second degree. The charges arise from four (4) separate events.

¹ 18 Pa.C.S. § 3921(a).

² 18 Pa.C.S. § 3925(a).

³ 18 Pa.C.S.A. § 6105(A)(1).

⁴ 18 Pa.C.S. § 3921(a).

⁵ 18 Pa.C.S. § 3925(a).

⁶ 18 Pa.C.S. § 3502(a).

⁷ 18 Pa.C.S. § 3503(a)(1)(ii)

Pennsylvania State Trooper Matthew J. Sweet (Sweet) testified regarding the four (4) thefts that were reported to police. The first victim was David Pfleegor (Pfleegor), the owner of Keystone Filler Corporation. Pfleegor reported that a Mossburg 12 gauge shotgun was taken from the premises of the corporation between November 5, 2007 and November 26, 2007. Pfleegor was unaware of the exact date that the gun was taken. The second theft occurred at a residence on 2470 Blair Street. Pfleegor was again the victim and reported that a Springfield XC 45 caliber handgun had been taken from his personal residence between December 21, 2007 and January 16, 2008. The third theft took place at 742 Millwood Lane. The victim was David Pfleegor Sr. (Pfleegor Sr.), father of Pfleegor, and two (2) plasma big screen televisions were taken from his residence between March 20, 2008 and March 22, 2008. Finally, the fourth theft occurred again at Keystone Filler Corporation and a second Mossburg 12 gauge shotgun was taken between April 15, 2008 and June 3, 2008. Additionally, Sweet testified that the Springfield XC 45 caliber handgun (from the second theft) and one of the Mossburg shotguns were recovered by the Newark, New Jersey Police and returned to the Pennsylvania State Police.

At the Preliminary hearing, Amber Wood (Wood) also testified on behalf of the Commonwealth. Wood stated that she started dating Matthew Kayhanfar (Defendant) in 2006 and that the relationship ended in 2008 when he was arrested. Wood stated that the Defendant and Pfleegor were best friends and that they went to Pfleegor's residence on many occasions. Wood stated that they would go to the residence when they were not given permission, such as when Pfleegor was on vacation. Wood also stated that the Defendant would go to Keystone Filler at night. She recounted a time when she parked her vehicle so that she could not see the building and the Defendant went into the business. The Defendant then returned and placed

“stuff” in the trunk of the car. She was unaware of the nature of the “stuff.” The Defendant later told Wood that the objects taken from Keystone Filler were guns.

Additionally, Wood stated that she was aware that the Defendant took TVs from Pfleegor Sr. Wood stated that the Defendant left his own house to take the TVs and that she was at his mother’s residence when he came back with them. The TVs were large flat screens that had silver around them. The Defendant also stated to Wood that he had taken the TVs from Pfleegor Sr’s house.

Finally, Wood stated that she and the Defendant went to Newark, New Jersey to obtain heroin. During the trip, she witnesses the Defendant trade the two (2) stolen TVs for the drugs. In addition, Wood was present when other items inside a case were traded to obtain more drugs. Wood testified Defendant told her that the case held guns taken from Pfleegor’s house.

Motion to Dismiss

The Defendant alleges that at the preliminary hearing the “Commonwealth offered the testimony of only one (1) witness who offered sufficient detail to support the Commonwealth’s charges against him and that this witness testified without the benefit of sufficient first hand knowledge.” Defendant’s Omnibus Pretrial Motion at ¶ 22. It is argued that the testimony of Sweet “failed to set forth sufficient legally competent evidence to establish a *prima facie* case” Id. at ¶ 18. The Defendant does not argue that the Commonwealth supplied insufficient evidence to establish a *prima facie* case, but only that the evidence submitted was improper and therefore negates the level of proof established.

The principal function of a preliminary hearing is to protect an individual’s right against an unlawful arrest and detention. Commonwealth v. Mullen, 333 A.2d 755 (Pa. 1975). A preliminary hearing is not a trial and the Commonwealth only bears the burden of establishing at

least a *prima facie* case that a crime has been committed. Commonwealth v. Prado, 393 A.2d 8 (1979).

A *prima facie* case exists ‘when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury.’

Commonwealth v. Weigle, 997 A.2d 306, 311 (Pa. 2010) (citing Commonwealth v. Karetny, 880 A.2d 505, 513 (Pa. 2005)). The Commonwealth need not establish guilt beyond a reasonable doubt.

The admissibility of hearsay testimony has been traditionally allowed at a preliminary hearing. Commonwealth v. Tyler, 587 A.2d 326, 328 (Pa. Super. 1991); Commonwealth v. Troop, 571 A.2d 1084 (Pa. Super. 1990). In 2011, the Pennsylvania Rules of Evidence was amended to reflect this practice:

(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 requiring proof of the ownership of, non-permitted use of, damage to, or value of property.

Pa.R.Crim.P. 542(E). Within the Comment for this rule it states that the enumeration regarding which elements may be established by hearsay “is not comprehensive, and hearsay is admissible to establish other matters as well.”

Past Pennsylvania cases, however, have established that there is a limit to the amount of hearsay evidence that may be used. “[H]earsay evidence *alone* may not be the basis for establishing a *prima facie* case in a preliminary hearing.” Commonwealth v. Jackson, 849 A.2d 1254, 1257 (Pa. Super. 2004) (citing Commonwealth v. Tyler, 587 A.2d 326, 328 (Pa. Super. 1991)). It has been determined that “hearsay evidence is admissible in a preliminary hearing when there is more than hearsay evidence used to establish the *prima facie* case.” Id.

In Jackson, a real estate broker determined that an individual was inside a residence and called police. Id. at 1255. It was determined that the original locks of the residence had been changed. Id. A police officer knocked on the door and the defendant answered and stated that he was trying to find out who he could see about getting the property. Id. It was determined that the defendant did not have permission to be in the residence and was charged with Criminal Trespass and Criminal Mischief. Id. The Superior Court determined that at the preliminary hearing there “was more than enough non-hearsay evidence to establish a *prima facie* case” just from the testimony of the police officer. Id. at 1257; see also Commonwealth v. O’Shea-Woomer, 2009 Pa. Dist. & Cnty. Dec. LEXIS 48, 7-8 (Pa. County Ct. 2009) (determining that not all hearsay evidence was given at a preliminary hearing dealing with charges that include Criminal Homicide and Delivery of Controlled Substance); Commonwealth v. Nieves, 876 A.2d 423 (Pa. Super. 2005) (finding a *prima facie* case for Possession with Intent to Deliver with the testimony of an officer who saw some of the transaction and relied on hearsay to prove the rest).

Here, there is no disagreement on the fact that the majority of Sweet’s testimony was hearsay.⁸ The issue before the Court is whether there was sufficient non-hearsay evidence presented during the preliminary hearing so as to protect Defendant’s fundamental Due Process rights.

Wood’s testimony establishing the Defendant’s visits to the victims’ houses as well as possession of stolen items was sufficient non-hearsay evidence to establish *prima facie*.⁹ Wood testified about the times she observed the Defendant entering Keystone Filler as well as

⁸ Sweet became involved with the investigation after the previous investigators on the case were promoted. Sweet did not speak directly to the victims.

⁹ The facts set forth in this case are distinguishable from Verbonitz, which the Defendant heavily relied upon. Commonwealth v. Verbonitz, 581 A.2d 172 (Pa. 1990). In that case, the Commonwealth only offered the hearsay evidence of one officer that had no firsthand knowledge of the crime. Here, the Commonwealth offered additional non-hearsay evidence of the Defendant making incriminating statements against himself and of the crimes themselves.

Pfleegor's residence at times when he was not given permission. She also related Defendant admission that he stole the guns and TVs. Wood also had first hand knowledge of Defendant's activities by observing the Defendant in possession of the TVs that he stated that he took from Pfleegor's father. Finally, Wood was present with the Defendant when he traded the TVs and the guns for drugs in Newark, New Jersey.

According to the Rules of Criminal Procedure "[h]earsay evidence shall be sufficient to establish any element of an offense requiring proof of the ownership of, non-permitted use of, damage to, or value of property." Pa.R.Crim.P. 542(E). As the Commonwealth only used Sweet's testimony to establish ownership, non-permitted use, and the value of property through hearsay evidence, the Court finds that hearsay evidence admitted during the preliminary hearing was a permitted use. Therefore, this Court finds that the Commonwealth, with the testimony of Sweet and Wood, did in fact set forth sufficient legally competent evidence to establish a *prima facie* case.

ORDER

AND NOW, this _____ day of December, 2012, based upon the foregoing Opinion, the Court finds that the Commonwealth used legally competent evidence to establish *prima facie*. Therefore, the Defendant's Omnibus Motion is DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA (AC)

Donald Martino, Esquire
Gary Weber