

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

|                                     |   |                        |
|-------------------------------------|---|------------------------|
| <b>COMMONWEALTH OF PENNSYLVANIA</b> | : |                        |
|                                     | : | <b>CR-2099-2015</b>    |
| v.                                  | : |                        |
|                                     | : |                        |
| <b>BRADFORD CLEMENT,</b>            | : | <b>PRETRIAL MOTION</b> |
| <b>Defendant</b>                    | : |                        |

**OPINION AND ORDER**

On January 29, 2016, the Defendant filed an Omnibus Pretrial Motion. A hearing on the Omnibus Pretrial Motion was scheduled for April 11, 2016, but continued at request of Defense Counsel as Defendant was incarcerated at Monroe County Prison and due to be released on April 21, 2016. On May 12, 2016, this court heard argument and testimony on Defendant's Omnibus Pretrial Motion.

**Background**

The Defendant was arrested on December 5, 2015, and charged with one count of Causing or Rising a Catastrophe, a felony of the second degree; and one count of Criminal Mischief, a felony of the third degree. A preliminary hearing was held on December 10, 2015, at which point Defendant was held over for trial on both counts.

The criminal charges stem from damage occurring at the Holiday Inn Express, Williamsport on December 5, 2015. The Defendant is charged in count one with Risking or Causing a Catastrophe.<sup>1</sup> To find the defendant guilty of this offense, the factfinder must find that the following elements have been proven beyond a reasonable doubt: First, that the defendant caused a catastrophe. A defendant causes a catastrophe by performing some inherently

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<sup>1</sup> 18 Pa CS § 3302.

dangerous act or improperly handling some inherently dangerous material and thereby creates a situation capable of causing widespread injury or damage, regardless of whether such injury or damage actually occurs. In this case, the Commonwealth has charged that the Defendant caused a catastrophe by flood. To find that the Defendant guilty of causing a catastrophe, a felony of the second degree, the Commonwealth must prove beyond a reasonable doubt that the Defendant, in causing the catastrophe, acted recklessly. A person acts recklessly with respect to causing a catastrophe when he or she consciously disregards a substantial and unjustifiable risk that a catastrophe will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and intent of the Defendant's conduct and the circumstances known to him or her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the Defendant's situation.

The Defendant is charged in count two with Criminal Mischief<sup>2</sup>, a felony of the third degree. To find the Defendant guilty of this offense, the following elements must be proven beyond a reasonable doubt: First, that the defendant: damaged the tangible property, in this case the water pipe, of the Holiday Inn Express, intentionally or recklessly. A person acts intentionally when it is his or her conscious object or purpose to engage in a particular type of conduct or to cause a particular result. A person acts recklessly when he or she consciously disregards a substantial and unjustifiable risk that his or her conduct will cause a particular result. The risk must be of such a nature and degree that, considering the nature and intent of the defendant's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the Defendant's situation. Second, if, and only if, the Commonwealth has proven beyond a

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<sup>2</sup> 18 Pa CS § 3304.

reasonable doubt that the defendant damaged tangible property, the factfinder then determines whether the Defendant intentionally or recklessly caused a pecuniary loss in excess of \$5,000.00 or that he interrupted a public service. If the factfinder, finds the second element to be true, the crime is graded as a felony three.

### ***1. Habeas Corpus***

Defendant submits in Paragraph 11 of his Omnibus Pretrial Motion that “The Commonwealth is unable to establish all the elements necessary for the charges to proceed to trial.” The Commonwealth submitted as its Exhibit 1: Preliminary Hearing Transcript, Magisterial District Judge Page, 12/10/15. Defendant’s Counsel stated to the Court that if it reads the preliminary hearing transcript it will see that the Commonwealth will be unable to establish that Defendant acted recklessly. Defendant did not appear at his Preliminary Hearing but his Counsel was present and cross examined both of the Commonwealth’s witnesses.

Testifying for the Commonwealth were the affiant in the Criminal Complaint, Officer Eric Bradley Derr (Derr), of the Williamsport Borough of Police; and Heidi Engle (Engle), General Manager of the Holiday Inn, Downtown Williamsport. Derr testified that he was dispatched to the scene at 2:47 PM and at that time the water had already been shut off by the fire department. Engle testified that the master alarm went off at 2:45 PM, indicating a sprinkler flow on the third floor. Hotel staff were unable to shut off the flow of water.

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove the defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. 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. Karetny, 880 A.2d 505, 583 Pa. 514, 529 (Pa. 2005). Additionally, hearsay evidence shall be considered by the issuing authority in determining whether a *prima facie* case has been established. Pa.R.Crim.P. 542(E). *Prima facie* case in the criminal realm is the measure of evidence which if accepted as true, would warrant the conclusion that the crime charged was committed. During the preliminary hearing, Derr testified that when he walked into the hotel he observed “A lot of water. The first floor was being flooded as I walked in, there was water pouring out of the recessed lighting in the drop ceiling tiles, the floor was covered in water and there was hotel staff trying to collect it with buckets and laundry bins.” Preliminary Hearing Transcript, 12/10/15, p.1. Hotel staff escorted the police officer via the stairwell to Defendant’s room and Derr testified

The entire room was soaked and that was obviously where the root of the problem was coming from. There was water pouring from the ceiling and the drop ceiling was torn down in the hallway from the door of the hotel room back to where the bed was. Above that was orange painted or orange dyed PVC pipe that was sheared off, it was attached to the sprinkler head, the sprinkler head would have been down below the drop ceiling but the ceiling was there any further [sic] and, so the sprinkler head was exposed and the and the piece of PVC pipe was broken off. Id. p. 2.

The Commonwealth submitted, as its Exhibit 2 during the pretrial motion hearing, two photographs that show the disengaged orange pipe, the sprinkler head, and the removed drop ceiling tiles exposing said pipe and sprinkler head.

A woman named Olivia Kellogg (Kellogg) was in the room with Defendant. Derr testified that Kellogg told him that Defendant “pulled on the sprinkler head, she made mention that he [Defendant] thought there was a listening device or something attached to the sprinkler

head and he pulled it with intent to pull the listening device.” *Id.* Derr testified that that Defendant told him that he “pulled on the sprinkler head because he thought there was wires running to it and he was curious about what it was”. *Id.* p.7. Given the testimony at the Preliminary Hearing, the Court finds that the Commonwealth presented a *prima facie* case. Defendant particularly takes exception to the element of recklessness in each count. The jury will need to determine whether Defendant by causing a flood at the Holiday Inn, Downtown Williamsport, on December 5, 2015, by pulling on the sprinkler head in his room is a gross deviation from the standard of conduct that reasonable person would observe in the Defendant’s situation.

## ***2. Additional Discovery***

The Defendant requests that the Court order the Commonwealth to provide him with the “name and address of the entity that installed the sprinkler system as well as lists of materials used in the piping” stating that Commonwealth has direct access to the alleged victim, Holiday Inn Express. Given that the civil suit that arose out of this same matter has been settled, it is difficult to understand how the Defendant does not already have this information or access to this information from another source i.e. his own insurance company or the insurance company of the alleged victim; however, to the extent that it could lead to potentially exculpatory evidence, the Commonwealth should provide Defense Counsel with the name and address of the entity that installed the sprinkler system, including the piping that is at issue.

The Defendant also requested employee procedure manuals relevant to the procedure in place for shutting off the sprinkler system. The Commonwealth stated at the May 12th, 2016, hearing that at the time of the incident, no such written procedure was in place but since then such procedure has been added. The Commonwealth agreed to provide Defense with the

addendum to the procedure manual that contains instruction on how to shut off the sprinkler system.

### ***3. Extension of Time to File Additional Motions***

At the time of the filing of the omnibus pretrial motion, January 22, 2016, Defendant requested an additional thirty (30) days from the time additional discovery was completed to file pretrial motions. By an Order dated June 3, 2016, the trial was continued to the September 27, 2016, pre-trial list, for the October trial term. In anticipation of completing this trial in the October trial term, any additional pretrial motions must be filed by **Friday, August 19, 2016**.

### ***4. Disclosure of Expert Witness***

The Commonwealth indicated at the pre-trial motion hearing on May 12, 2016, that it would not be retaining an expert witness in this matter but did agree to provide the name of such expert and his or her report to the Defense if it should retain one.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of July, based upon the foregoing Opinion, the Omnibus Pretrial Motion filed is hereby GRANTED in part and DENIED in part. The Commonwealth is ORDERED and DIRECTED to:

1. Provide the name and address of the entity that installed the sprinkler system, including the piping in Room 338 of the Holiday Inn Express, to Defendant's counsel.
2. Provide Defense Counsel with the after-incident addendum to the employee manual of sprinkler system shut off procedure.
3. Disclose a report containing the requirements as set out in Pa.R.Crim.P. 573 (2)(b), if, and only if, it intends to call an expert witness at trial.

Any further pretrial motions on this matter must be submitted to the Court by **Friday, August, 19, 2016**, in anticipation of this case being heard in the October 2016 trial term.

In all other respects, including the Defendant's Motion for Habeas Corpus is hereby DENIED.

BY THE COURT,

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Nancy L. Butts, President Judge

cc: Martin Wade, ADA  
Robert Hoffa, Esq. Defendant's Counsel  
Eileen Dgien, Deputy Court Administrator