

“to go ask the guy across the hall to plead the fifth”. Id. Hannah testified that he did not do what Defendant asked and “just spoke to [the guy] about the outside”. Id. at 4.

Testimony of Detective David Burns

Burns, a County detective from the Lycoming County District Attorney’s office, testified that on the date in question he was outside Courtroom #3 escorting a witness for a different trial that was taking place in the courthouse. Though he was not assigned to the Coleman trial specifically, he knew about the proceedings and he could identify Defendant as Coleman’s longtime partner. Id. at 9.

Burns testified that he saw and heard Defendant “talking across the hallway to the witnesses that were sitting there for [the] trial that was going on in courtroom 3....telling the witnesses “just say it was nothing but a bar fight, that’s all it was a bar fight. Just take the fifth, take the fifth.” And she kept badgering the individuals that were sitting there, the witnesses for the trial that was going on in courtroom 3.” Id. at 10.

Discussion

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). *Prima facie* in the criminal realm is the measure of evidence, which if accepted as true, would warrant the conclusion that the crime charged was committed.

The evidentiary sufficiency, or lack thereof, of the Commonwealth's *prima facie* case for a charged crime is a question of law as to which an appellate court's review is plenary. Karetny at 513. The *prima facie* standard requires that the Commonwealth's evidence must establish that the crime has been committed and to satisfy this requirement the evidence must show that the existence of each of the material elements of the charge is present. Commonwealth v. Wodjak, 446 A.2d 991, 996 (Pa. 1983). 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. Id. at 997. Moreover, "inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case." Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003) (quoting Commonwealth v. Owen, 580 A.2d 412, 414 (Pa. Super. 1990).)

The standard of proof at a preliminary hearing is that a crime has been committed and that the accused is probably the one who committed it, and there is no requirement that the Commonwealth establish the accused's guilt beyond a reasonable doubt at this stage. Commonwealth v. Rogers, 610 A.2d 970, 972 (Pa. Super. 1992)

A person commits the offense of intimidation of witnesses or victims if with the intent to or with the knowledge that [her] conduct will obstruct impede, impair, prevent of interfere with the administration of criminal justice [s]he intimidates or attempts to intimidate any witness or victim to:

- 1) Refrain from informing or reporting to any law enforcement officer, prosecuting official or judge concerning any information, document or thing relating to the commission of a crime
- 2) Give any false or misleading information or testimony relating to the commission of any crime to any law enforcement officer, prosecuting official or judge
- 3) Withholding any testimony, information, document or thing relating to the commission of a crime from any law enforcement officer, prosecuting official or judge
- 4) Give any false or misleading information or testimony or refrain from giving any testimony, information, document or thing, relating to the commission of a crime, to an attorney representing a criminal defendant.
- 5) Elude, evade or ignore any request to appear or legal process summoning him to appear to testify or supply evidence.
- 6) Absent himself from any proceeding or investigation to which he has been legally summoned.

18 Pa. C.S. § 4952 (intimidation of witnesses or victims).

Defense Counsel objects to the sufficiency of the Commonwealth's case in that it argues the Commonwealth has presented no testimony from the allegedly intimidated witnesses. Moreover, even if the statements Defendant is alleged to have made were indeed made, the Commonwealth has presented no evidence of the *mens rea* required to find Defendant guilty under Section 4952 of the Crimes Code (crimes against public administration). To Wit: with the intent to, or with the knowledge that her conduct would interfere with the administration of criminal justice.

Whether the Defendant's intent was to intimidate the witnesses is a factual determination that will be made by the trier of fact. For the purpose of a *prima facie*

showing, the Commonwealth has met its burden. The evidence presented at the preliminary hearing establishes that there was an effort upon the part of Defendant to encourage witnesses to give false and or misleading testimony in the criminal trial of Gary Coleman. Therefore, the charges were properly held for court.

ORDER

AND NOW, this 2nd day of August, 2017, based upon the foregoing Opinion, Defendants' Habeas Motion is hereby DENIED.

BY THE COURT,

Nancy L. Butts, P.J.

cc: Ryan C. Gardner, Esq. Defense Counsel
DA (SW, NI)
Gary Weber, Esq.