

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CR-838-2018**
v. :
:
SALADIN BROWN : **HABEAS**
Defendant :

OPINION AND ORDER

Saladin Brown (Defendant) filed an Omnibus Pretrial Motion petitioning for a Writ of Habeas Corpus on July 17, 2018. A hearing on the motion took place on September 17, 2018. Defendant challenges the Commonwealth’s evidence on one count of Firearms Not to be Carried Without a License.¹ For the following reasons, the Motion is denied.

Preliminary Hearing Testimony

Testimony of Affiant, Officer Joshua Bell

Officer Joshua Bell testified on behalf of the Commonwealth. He testified that on the day of March 28, 2018, he stopped a vehicle on Market St. P.H., 5/29/18, at 2. The operator of that vehicle was Ms. Coke. *Id.* Ms. Coke informed Officer Bell that she had picked up Defendant and drove him to the Uni-Mart. *Id.* During that time, Defendant informed her that he had left his “strap at Chris’ house.” *Id.* Officer Bell through his training and experience had known “strap” to mean firearm and ‘Chris” was identified as Chris White. *Id.* at 3. Ms. Coke informed Officer Bell that Chris White lived on the 1100 block of High St., she indicated the color of the house, and that there was a yellow flag out front. *Id.* At this time Officer Bell located the house and spoke with a Mr. Gardner (believed to be related to Mr. White). *Id.* Officer Bell asked him if he had a firearm within the residence and if he did to give it to him, at which point he shut the door and then returned with a firearm wrapped in a t-shirt. *Id.* Officer Bell then asked to speak to Mr. White. *Id.* Mr. White informed Officer Bell

¹ 18 Pa C.S. § 6106(a)(1).

that in the days prior . . . Mr. Brown had come to the residence and they went into Chris' bedroom and while in Chris' bedroom, Mr. Brown had retrieved a firearm from his pocket and basically asked Mr. White to hold onto the firearm where it was placed and remain there until [Officer Bell] arrived a couple days later.

Id. at 4.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove Defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). 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 likely committed the offense. *Id.* 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. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). *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.

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. Ripley*, 833 A.2d 155, 159-60 (Pa. Super. 2003). 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). In Pennsylvania "any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully

issued license under this chapter commits a felony of the third degree.” 18 Pa. C.S. § 6106(a)(1).

At a preliminary hearing

[h]earsay 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, including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property.

Pa. R. Crim. P. Rule 542(E).

The Pennsylvania Superior Court has found that hearsay evidence alone may establish a *prima facie* case at a preliminary hearing. *Commonwealth v. Ricker*, 120 A.3d 349, 357 (Pa. Super. 2015). This is because “an accused [does] not have a constitutional right to confront witnesses at a . . . preliminary hearing.” *Id.* at 363. In *Ricker*, the Court found that although the Commonwealth only established a *prima facie* case by hearsay testimony this was enough to hold over charges at a preliminary hearing. *Id.* at 357.

Defendant sole argument is that the Commonwealth may not establish a *prima facie* case at a preliminary hearing solely on hearsay evidence. Defendant heavily relies upon Justice Wecht’s dissent in the Pennsylvania Supreme Court’s Dismissal of Appeal as Improvidently Granted in *Ricker*. See Defendant’s Memorandum of Law in Support of Omnibus Pretrial Motion 8/29/18, at 3. In *Ricker* the Pennsylvania Supreme Court original granted appeal, before later dismissing it on September 28, 2017. As the Supreme Court has not revisited the issue, this Court is bound by *Ricker*. See 207 Pa. Code Rule 202 (Reported opinions of the Supreme Court, Superior Court and Commonwealth Court may be cited as binding precedent on Pennsylvania law). Therefore, rule 542(E) “does allow hearsay evidence alone to establish a *prima facie* case.” *Ricker*, 120 A.3d at 357. The Court does not disagree with Defendant that

Commonwealth's entire *prima facie* case was established by hearsay evidence alone, but under *Ricker* that is permissible.

Conclusion

Therefore, this Court finds the Commonwealth presented enough at the preliminary hearing to establish a *prima facie* case. As held under *Ricker*, hearsay evidence alone may establish such, therefore the Omnibus Pretrial Motion is denied.

ORDER

AND NOW, this 19th day of October, 2018, based upon the foregoing Opinion, Defendant's Motion for Habeas Corpus is hereby **DENIED**.

BY THE COURT,

Nancy L. Butts, P.J.

cc: DA
Robert Hoffa, Esq.