

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-199-2018
v.	:	
	:	
SCOTT ANTHONY FAXON	:	OMNIBUS PRETRIAL
Defendant	:	MOTION
	:	

OPINION AND ORDER

Scott Faxon (Defendant) filed a timely Omnibus Pretrial Motion to Dismiss Information for Lack of Jurisdiction and Petition for a Writ of Habeas Corpus on April 6, 2018. A hearing on the Motion took place on August 30, 2018. Defendant, in addition to jurisdiction, challenges the Commonwealth's evidence on one count of Hindering Apprehension or Prosecution¹ and one count of Obstructing Administration of Law or Other Law Enforcement.² At the Omnibus hearing, the Commonwealth and Defendant agreed to rely upon the preliminary hearing transcript and their briefs. For the following reasons, Defendant's Motion is dismissed.

Preliminary Hearing Testimony

Testimony of Deputy Christopher Warden

Deputy Christopher Warden testified on behalf of the Commonwealth. He testified that pursuant to his duties with the Lycoming County Sheriff's Office he was tasked with executing a warrant on a fugitive, Clester Leroy Signor, Jr., who had absconded on the parole portion of his sentence. P.H. 2/1/2018, at 1. During his investigation, he discovered Mr. Signor's most recent driver's license issued in mid-2016 had his address listed as 15 Annette Drive, Enola, PA. *Id.* at 2. Further investigation showed that address belonged to Defendant and his wife. *Id.* Based on this information Deputy Warden attempted to visit Defendant at the 15 Annette Dr.

¹ 18 Pa. C.S. § 5105(a)(5).

² 18 Pa. C.S. § 5101. At the hearing on August 30, 2018, the Commonwealth stated it will not pursue count two, a separate subsection of 18 Pa. C.S. § 5105, in the information.

address on October 24, 2017, but he was not home. *Id.* at 3. Deputy Warden left his card with Defendant's wife and asked her to have Defendant call him. *Id.* Deputy Warden then located Defendant's cellphone number through investigative means and contacted him on the evening of October 25, 2017. *Id.* A man answered, identified himself as Defendant, and after Deputy Warden identified himself as a deputy of the Lycoming County Sheriff's Department stated "sorry my wife gave me your card and I attempted to call you yesterday but was unable to get through to you." *Id.* at 4. The man, when asked about Mr. Signor, stated his last contact with him had been about three (3) or four (4) months prior at the 15 Annette Dr. address when Mr. Signor assisted him with yardwork. *Id.* The man stated that he was not in contact with Mr. Signor, he did not have a number to reach him at, and he believed Mr. Signor was living at 103 North 13th St., Harrisburg, PA. *Id.* Deputy Warden informed him that he would be criminally charged if it was determined that he was lying. *Id.* at 5.

Following this conversation, Deputy Warden "want[ing] to give him the benefit of the doubt" first investigated the address in Harrisburg, which he was unable to tie to Mr. Signor, since 2015/early 2016 more than a year prior to the telephone conversation. *Id.* at 10-12. In December, Deputy Warden was able to obtain work records indicating Mr. Signor's residence was 37955 Roosevelt Avenue, Selbyville, DE, which is an address he has discovered prior to the telephone call. *Id.* at 5-6. This is also an address that is owned by the Defendant. *Id.* at 5. Mr. Signor was subsequently arrested from that residence on December 7, 2017 and picked up by Deputy Warden on December 10, 2018. *Id.* at 6. Prior to the preliminary hearing, Deputy Warden had no contact with Defendant other than viewing his PennDot photos and the on alleged phone call between the two on October 25, 2017. *Id.* at 7.

Discussion

Jurisdiction under Pennsylvania criminal law is established through 18 Pa. C.S. § 102

which states:

- (a) General rule.--Except as otherwise provided in this section, a person may be convicted under the law of this Commonwealth of an offense committed by his own conduct or the conduct of another for which he is legally accountable if either:
- (1) the conduct which is an element of the offense or the result which is such an element occurs within this Commonwealth;
 - (2) conduct occurring outside this Commonwealth is sufficient under the law of this Commonwealth to constitute an attempt to commit an offense within this Commonwealth;
 - (3) conduct occurring outside this Commonwealth is sufficient under the law of this Commonwealth to constitute a conspiracy to commit an offense within this Commonwealth and an overt act in furtherance of such conspiracy occurs within this Commonwealth;
 - (4) conduct occurring within this Commonwealth establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this Commonwealth;
 - (5) the offense consists of the omission to perform a legal duty imposed by the law of this Commonwealth with respect to domicile, residence or a relationship to a person, thing or transaction in this Commonwealth; or
 - (6) the offense is based on a statute of this Commonwealth which expressly prohibits conduct outside this Commonwealth when the conduct bears a reasonable relation to a legitimate interest of this Commonwealth and the actor knows or should know that his conduct is likely to affect that interest.

Commonwealth relies upon *Commonwealth v. Vergilio*, a case that decided the bounds of jurisdiction for the crime of terroristic threats made over the telephone. 103 A.3d 831, 832 (Pa. Super. 2014). The case involved a telephone call from a defendant in New Jersey to a victim in Pennsylvania. *Id.* The court found because the crime had an element of “communication,” the place where the communication is received has jurisdiction. *Id.* at 838. Within the court’s decision, it also identifies two previous decisions that have justified jurisdiction based on a solicitation being received within Pennsylvania and where the intent of the actor was to produce the detrimental effect within the jurisdiction. *Id.* at 834-35; *Commonwealth v. Bigham*,

307 A.2d 255, 258 (Pa. 1973) (actor “intended to produce and produc[ed] detrimental effects within it, justif[ies] a state in punishing the cause of the harm”); *Commonwealth v. John*, 854 A.2d 591, 595 (Pa. Super. 2004) (jurisdiction is established where the solicitation is recieved).

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).

Analysis

Defendant contends no evidence was presented to show that he was in Pennsylvania at the time of the alleged phone call that occurred between himself and Deputy Warden. To refute

Vergilio, Defendant argues that no facts were presented by the Commonwealth to show Defendant “knew the receiver of the information was located within the Commonwealth.” Defendant’s Brief in Support of Omnibus Pretrial Motion 09/14/18, at 4-5. The Court agrees with the Commonwealth’s position, and Defendant does refute, that “‘provided’ is necessarily *provided* to someone,” in the same sense as in *Vergilio* a communication must be communicated to someone. Commonwealth’s Letter Brief 08/30/18, at 2. Additionally, the Court does not agree with Defendant’s interpretation of *Vergilio*. The keystone of the holding in *Vergilio* did not revolve around the defendant’s knowledge of victim’s location, but rather that the communication “must be received by another person.” 103 A.3d at 838. The fact that Deputy Warden was located in Pennsylvania when the false information was “provided” to him is enough to establish jurisdiction. Regardless of this conclusion, Defendant’s contention is incorrect. Defendant should have been aware that he was speaking to an individual in Pennsylvania. In the phone conversation, Defendant was made aware of the fact he was speaking to a deputy of the Lycoming County Sheriff’s Office and with someone that met with his wife in Pennsylvania the day before. P.H. 2/1/2018, at 4.

Defendant argues there was insufficient evidence to hold that he Hindered Apprehension or Prosecution of Mr. Signor or that he Obstructed the Administration of Law. Defendant argues the Commonwealth has not established Hindering Apprehension or Prosecution because either a failure to identify the person who made the statements or evidence fails to establish the statements were “false.” Defendant’s Brief in Support of Pretrial Omnibus Motion 09/14/18, at 8. The Court does not agree with Defendant’s contentions. First, there is sufficient evidence to satisfy a prima facie standard that Defendant was the caller who spoke with Deputy Warden on October 25, 2017. Deputy Warden got the telephone number to call

who he believed to be Defendant through investigative records, once he called, the person identified himself and stated his wife gave him Deputy Warden's card and he tried to call, but was unsuccessful. *Id.* at 3-4. In addition, the man calls Defendant's wife his wife and corroborated Defendant's wife story that Mr. Signor had done yardwork at their residence. *Id.* at 4. When viewing reasonable inferences in favor of the Commonwealth this is enough evidence to establish that the caller was in fact Defendant. The Court also finds there was enough evidence provided to demonstrate a *prima facie* case that Defendant knew the information to be false. The address on Mr. Signor's license was an address Defendant owned, the address he gave Deputy Warden had no ties to Defendant in over a year, and the residence Mr. Signor was staying when he was arrested in Selbyville, DE, was owned by Defendant.

He also contends that the Commonwealth has failed to fulfill their responsibility to show that Defendant "intentionally obstruct[ed], impair[ed] or pervert[ed] the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act." 18 Pa. C.S. § 5101. Defendant relies on *Commonwealth v. Shelly* in making his argument. The court in *Shelly* found that providing an officer with a false name was not a separate "unlawful act." *Commonwealth v. Shelly*, 703 A.2d 499, 504 (Pa. Super. 1997). More specifically the Court determined:

The Crimes Code provides various specific situations when falsity is punishable, but each contains an element not present here. In a statute containing many specific sections dealing with falsity to police, we cannot presume the legislature's failure to include this most common scenario to be the result of a desire to penalize it in the "catchall" of section 5101; the more reasonable conclusion is the legislature meant to *exclude* such a scenario.

Id.

Defendant's argument is again misplaced. The separate "unlawful act" here is not providing a false name to a police officer,³ but a violation of 18 Pa. C.S. § 5105. *Shelly* specifically lists 18 Pa. C.S. § 5105 as violation that would satisfy an "unlawful act" under 18 Pa. C.S. § 5101. *Id.* at fn. 6.

Conclusion

Therefore, this Court finds the Commonwealth has jurisdiction to pursue this criminal action and presented enough evidence at the preliminary hearing to establish a *prima facie* case of both Hindering Apprehension or Prosecution and Obstructing the Administration of the Law. The Omnibus Pretrial Motion is therefore denied.

ORDER

AND NOW, this 4th day of October, 2018, based upon the foregoing Opinion, Defendant's Omnibus Pretrial Motion is hereby **DENIED**.

BY THE COURT,

Nancy L. Butts, P.J.

cc: DA
Peter Campana, Esq.

³ Although *Shelly* found that providing a false name to police officers was not a separate "unlawful act," this Court believes that ruling would most likely no longer be applicable since providing false identification to law enforcement officers was codified in 2000 after *Shelly* was decided. *See* H.B. 599, Act 2000-133 (codifying 18 Pa. C.S. § 4914 False Identification to Law Enforcement Officers).