

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

**COMMONWEALTH OF PENNSYLVANIA** : **CR-1053-2018**  
v. :  
:   
**CORY WILLIAMS** : **HABEAS**  
**Defendant** :

**OPINION AND ORDER**

Cory Williams (Defendant) filed a Petition for Writ of Habeas Corpus on September 13, 2018. A hearing on the motion took place on October 22, 2018. Defendant challenges the sufficiency of the Commonwealth’s evidence on two counts of Criminal Use of a Communication Facility.<sup>1</sup> For the following reasons, the Petition is denied.

**Preliminary Hearing Testimony**

**Testimony of Affiant, Trooper Edward Dammer**

Trooper Edward Dammer of the Pennsylvania State Police testified on behalf of the Commonwealth. He testified at both the Preliminary Hearing on July 5, 2018 and at the hearing on October 22, 2018 (solely to clarify gaps in the Preliminary Hearing transcript). Trooper Dammer testified that on the day of May 7, 2018, he was with a confidential informant (CI), in a vehicle, when the CI provided and called a number to buy three bundles of heroin. P.H., 7/5/18, at 2-3. Trooper Dammer was present for the telephone conversation and it was conducted on speaker phone. At the individual’s instruction, Trooper Dammer and the CI drove to Elizabeth St., near Brandon Park in Williamsport, PA 17701. *Id.* at 2. About fifteen to twenty minutes later Defendant was seen walking up the street and the CI informed Trooper Dammer that this was the man that he had purchased heroin from “a lot” in the past. *Id.* at 4, 8. Defendant then walked up to the vehicle and got into the back seat behind the CI. *Id.* at 4. 10. Trooper Dammer engaged in light conversation with Defendant and believed his voice to be the

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<sup>1</sup> 18 Pa. C.S. § 7512(a).

same voice heard on the phone. *Id.* at 10. Defendant then handed the CI the suspected heroin in blue glassine baggies, got out of the vehicle, and left. *Id.* at 4-5. Trooper Dammer and the CI then set up another heroin buy on May 18, 2018. *Id.* at 5. Like the first buy, both Trooper Dammer and the CI were present when they contacted the same number and asked to purchase heroin. *Id.* at 5. The call was again conducted on speaker phone and Trooper Dammer recognized the voice as the same one from the prior buy. On that date, the individual instructed the CI to meet him in the K-Mart plaza, before re-instructing him later to go to the Rite-Aid parking lot. *Id.* at 5. Due to Defendant being irritated by Trooper Dammer's presence at the last buy, the CI conducted the buy by himself under heavy police surveillance. Trooper Dammer searched CI and vehicle for contraband, after none was found he was given prerecorded currency and instructed where to meet Trooper Dammer after the buy. *Id.* at 7. At this time from a distance with binoculars, Trooper Dammer witnessed Defendant walk across the K-Mart parking lot to the Rite-Aid, get into the CI's vehicle, and then head to Sheetz before Defendant got out of the vehicle and left. *Id.* at 5-7. The CI immediately met Trooper Dammer at the predetermined location, where the CI told Trooper Dammer that Defendant had him to drive him to Sheetz and they made the drug transaction on route there. *Id.* at 12-13. Defendant and the CI were the only two observed in the vehicle the entire time. *Id.* at 13. The CI gave Trooper Dammer forty blue glassine baggies containing suspected heroin, which the CI stated he had received from the same individual as the last buy. *Id.* at 13-14. Defendant was subsequently arrested based on this information and these observations.

### **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). The Commonwealth has charged Defendant with two counts of Criminal Use of a Communication Facility. The Commonwealth is required to prove that Defendant used "a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under this title or . . . The Controlled Substance, Drug, Device and Cosmetic Act. Every instance where the communication facility is utilized constitutes a separate offense under this section." 18 Pa. C.S. § 7512(a).

Defendant's sole argument is that the Commonwealth has not established a *prima facie* case at a preliminary hearing because the identity of Defendant as the person on the telephone

has not been established. Trooper Dammer testified that he was present for both phone calls and heard the voice on speakerphone. After the first controlled buy was set up by phone, Trooper Dammer had occasion to speak with Defendant, who the CI informed him was the man he had bought heroin from in the past. Trooper Dammer testified that Defendant sounded like the same person on the phone earlier. Additionally, the person on the phone was the individual that chose the location for the meet. When they set up the second buy, Trooper Dammer stated the same voice answered and the CI was given a location to meet. This time Defendant was again seen meeting the CI at the specified location. Although no investigation was done into the phone's registration or records, "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." *Huggins*, 836 A.2d at 866. Besides the fact Trooper Dammer testified that when speaking to Defendant he believed it to be the same person that answered the phone, reasonable inferences can be drawn between an individual on the phone giving the CI a location to meet to buy heroin and then Defendant showing up to that location and giving the CI heroin. The Commonwealth need not prove beyond a reasonable doubt Defendant was the caller, but only need to establish a showing of probable cause. The Commonwealth has met their burden.

### **Conclusion**

Therefore, this Court finds the Commonwealth had presented enough at the preliminary hearing to establish a *prima facie* case. Reasonable inferences, in conjunction with Trooper Dammer's observations are enough to establish probable cause, and therefore Defendant's Petition for Writ of Habeas Corpus is denied.

**ORDER**

**AND NOW**, this 5<sup>th</sup> day of November, 2018, based upon the foregoing Opinion, Defendant's Petition for Writ of Habeas Corpus is hereby **DENIED**.

BY THE COURT,

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Nancy L. Butts, P.J.

cc: DA  
Matthew Welickovitch, Esq.