

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CR-602-2018**
v. :
:
ABDULLAH FRIEND, : **BAIL MODIFICATION**
Defendant :

OPINION AND ORDER

Abdullah Friend (Defendant) filed a Motion for Modification of Bail on July 11, 2019. A hearing on the Motion took place on August 12, 2019. Following the hearing Defendant requested and was granted the opportunity to brief the issue. Upon review of Defendant's Memorandum of Law in Support of Defendant's Motion to Set Bail, this Court concluded an additional hearing was necessary in conjunction with *Commonwealth v. Heiser* to allow the Commonwealth the opportunity to demonstrate a *prima facie* case of First Degree Murder. At that hearing on November 18, 2019 the Commonwealth provided the transcript from the preliminary hearing and case law to support its position. On reviewing the information this Court finds the Commonwealth has met its burden and Defendant's Motion for Modification of Bail is therefore denied.

Preliminary Hearing Testimony

Agent Jason Bolt (Bolt) of the Williamsport Bureau of Police and Dr. Pat Bruno (Bruno) testified on behalf of the Commonwealth. The testimony established the following. Bolt testified that on April 30, 2017 members of the Williamsport Bureau of Police were dispatched to Defendant's address for reports of an unresponsive nine month old child. P.H. 4/12/18, at 2-3. The child passed away and an autopsy showed the cause of death was head injuries. *Id.* at 3-5. Bruno was offered and admitted as an expert in the field of child abuse, physical abuse, and sexual abuse for the purposes of the preliminary hearing. *Id.* at 8. Bruno reviewed the forensic

pathology report, autopsy report, and discharge summary from Geisinger Hospital prior to the hearing. *Id.* at 9. Based on a review of this information Bruno reached the conclusion that the child suffered “significant head trauma, abusive head trauma.” *Id.* at 10. The type of injuries the child suffered could not have been self-inflicted. *Id.* at 11. Bruno summarized that the injuries that occurred could have only occurred due to significant shaking or a severe blow to the head. *Id.* at 13-15. Bolt upon speaking with Defendant at the hospital was told by Defendant that he and another adult male were in the house. *Id.* at 19. The infant had been fussy all day and that night he took him upstairs to his crib after feeding him. *Id.* Defendant then went downstairs for approximately ten to fifteen minutes before coming back up to check on the infant and finding him facedown and unresponsive. *Id.* at 19-20. The next morning Bolt again interviewed Defendant. *Id.* at 20. Defendant stated that the child had been active that day and had not had any accidents or injuries prior to being taken upstairs. *Id.* at 21. Defendant also stated that he was the only person that had physical contact with the child throughout entire day and the child never left his sight that day. *Id.*

Discussion

Under the Pennsylvania Constitution “[a]ll prisoners shall beailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great.” Pa. Const. Art. 1, § 14. At a bail hearing, the Commonwealth bears the burden of proof. *Commonwealth v. Truesdale*, 296 A.2d 829, 836 (Pa. 1972). “It can satisfy its burden to prove that a defendant is not entitled to bail by establishing a prima facie case of murder in the first degree.” *Commonwealth v. Heiser*, 478 A.2d 1355, 1356 (Pa. Super. 1984).

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. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). 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). However, “suspicion and conjecture are not evidence and are unacceptable as such. Where the Commonwealth’s case relies solely upon a tenuous inference to establish a material element of the charge, it has failed to meet its burden of showing that the crime charged was committed.” *Commonwealth v. Holston*, 211 A.3d 1264, 1269 (Pa. Super. 2019).

“A criminal homicide constitutes murder of the first degree when it is committed by an intentional killing.” 18 Pa. C.S. § 2502(a). An intentional killing is defined as “[k]illing by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing.” 18 Pa. C.S. § 2502. The Commonwealth provided two cases for the Court to examine. The first, *Commonwealth v. Paquette*, stands for the proposition that when

“an adult has sole custody of a child for a period of time, and, during that time the child suffers wounds which unquestionably are neither self-inflicted nor accidental, the evidence is sufficient to allow a jury to infer that the adult inflicted the wounds.” 301 A.2d 837, 840 (Pa. 1973). The second, *Commonwealth v. Walter*, stands for the proposition that violently shaking an infant is sufficient to support a conviction of First Degree Murder. 849 A.2d 265, 267-68 (Pa. Super. 2004).

Based on the case law presented by the Commonwealth and a reading of the preliminary hearing transcript this Court finds the Commonwealth has satisfied its *prima facie* burden of First Degree Murder. The testimony provided at the preliminary hearing established, as in *Paquette*, that Defendant was the only individual that had custody of the infant and was the only individual that had physical contact with the infant all day. P.H. 4/12/18, at 20-21. Additionally, Bruno testified that the wounds could not be self-inflicted. *Id.* at 11. In fact, the wounds could have only been caused by a severe blow to the head or significant shaking. *Id.* at 13-15. Taking reasonable inferences drawn from the record in conjunction with the case law provided by the Commonwealth, the evidence is sufficient to demonstrate a *prima facie* showing Defendant intentionally killed the infant. Therefore, this Court finds the Commonwealth had presented enough evidence at the preliminary hearing to establish a *prima facie* case for the charge of First Degree Murder. Therefore Defendant is not entitled to bail pursuant *Commonwealth v. Heiser*. Defendant’s Motion for Modification of Bail is denied.

ORDER

AND NOW, this 5th day of December, 2019, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Motion for Modification of Bail is **DENIED**.

BY THE COURT,

Nancy L. Butts, P.J.

cc: DA (MW)
PD (MW)