

strip searched, then called Defendant to arrange a buy of crack cocaine. Id. at 4. Defendant instructed the CI to a location in downtown Williamsport. Id. The CI was provided with two hundred (200) dollars of prerecorded police funds and was escorted to the meetup location by undercover officers. Id. Before meeting with Defendant, law enforcement had equipped the CI with an electronic intercept device to record the transaction. Id. Defendant arrived in a tan mini van, the CI got into Defendant's car and provided Defendant the prerecorded funds in exchange for narcotics. Id. at 4, 8. Bell was able to see the CI enter Defendant's van from his position about one hundred fifty (150) feet away. Id. at 5, 8. The CI immediately returned to Bell's vehicle and turned over five (5) bags of suspected crack cocaine. Id. The CI was strip searched again and no contraband was found on their person. Id. at 4. The substance given to the CI was packaged in individual bags and had an off-white, rocky appearance. Id. at 5. Based on Bell's previous experience, he believed the substance in the glassine bags to be crack cocaine. Id. at 6.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a 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). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 135

A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). 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).

Defendant challenges the sufficiency of the Commonwealth’s evidence on all charges brought against him. First, Defendant argues that the Commonwealth failed to establish the *prima facie* burden on Counts 1 and 2, Delivery of a Controlled Substance. Pursuant to 35 Pa.C.S. § 780-113(a)(30), the “manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act...” is considered a crime. Lastly, Defendant challenges Count 3, Criminal Use of a Communication Facility. This crime occurs when a “person uses a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under this title....” 18 Pa.C.S. § 7512(a). For all of the charges listed above, Defendant argues that the Commonwealth’s *prima facie* burden was not met because the confidential informant did not testify as to the events of the drug deals. Defendant asserts that no one was able to verify that Defendant was the recipient of any calls or text messages from the CI attempting to set up the controlled buy nor was there any positive identification of Defendant as the person in the van or

that is represented in the photographs. Defendant believes that, since the CI is the only person who can provide this information, their failure to testify causes the Commonwealth to miss their *prima facie* burden.

Defendant relies on Commonwealth v. McClelland to assert that the Commonwealth is prohibited from relying solely on hearsay at the preliminary hearing. Commonwealth v. McClelland, 233 A.3d 717 (Pa. 2020). The Commonwealth asserts that they presented more than enough evidence at this stage to bind the charges over, namely the photographs and Bell's testimony wherein he relayed his personal experience with the CI and his view of the drug transaction. Furthermore, the Commonwealth argues that the CI is not required to testify at every hearing and that the Commonwealth is not required to put forth their entire case at the preliminary hearing. Viewing the evidence in the light most favorable to the Commonwealth as required, this Court agrees with the Commonwealth on this issue for the following reasons. Though Commonwealth v. McClelland held that it is insufficient to rely solely on hearsay at the preliminary hearing, it does not identify how much additional evidence is required. The Commonwealth's evidence, though circumstantial, demonstrated enough to show that it is likely Defendant provided the CI with crack cocaine. Therefore, the Court believes that the Commonwealth has provided sufficient additional evidence to establish their *prima facie* burden.

Conclusion

The Court finds that the Commonwealth presented enough evidence at the preliminary hearing to establish a *prima facie* case for all counts against Defendant. Therefore, Defendant's Petition for Writ of Habeas Corpus is denied.

ORDER

AND NOW, this 19th day of May, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus in his Omnibus Pretrial Motion is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Andrea Pulizzi, Esq.
Law Clerk (JMH)