

dial. Id. at 2. The number was programmed into the phone as “Q” and the CI had this phone number for “Q” prior to working with law enforcement in this instance. Id. at 2, 3. The CI explained to Caschera that “Q” did not always make the deliveries and sent runners instead. Id. Caschera admitted that “Q” could be a number of people at this point in the investigation based on the information given by the CI. Id. at 3. The CI dialed the number while in Caschera’s undercover vehicle, put the call on speakerphone so Caschera could hear, and “Q” instructed them that the location of the buy was to be in the area of Hepburn Street and Louisa Street in the City of Williamsport, Lycoming County. Id. at 1-2, 5. The CI was strip-searched and no contraband was found on their person. Id. at 2. Their vehicle was also searched and nothing was discovered. Id. A team established surveillance at the predetermined location. Id. at 6. At that point, Caschera instructed the CI to get in their personal vehicle and they separately made their way to the area that “Q” had previously indicated. Id. at 2. Caschera maintained constant police surveillance of the CI and watched them park in the predetermined area. Id. Caschera had a clear visual of the CI’s vehicle, saw a black male approach the CI’s car on foot, and reach into the front passenger window. Id. The interaction lasted approximately less than twenty (20) seconds. Id. After the suspect walked away, the CI departed the area with Caschera following close behind them. Id. Once they had left that area, the CI pulled their vehicle over and Caschera confiscated the suspected crack cocaine. Id. The CI identified the person who approached them as Defendant. Id. at 3. Caschera was not personally familiar with Defendant at this time but other members of the NEU identified the man who approached the CI’s car as Defendant. Id. at 6. NEU members were also able to identify Defendant prior to the CI’s arrival based on his presence in the general area of the buy location as told to the CI. Id. at 6-7. The

Commonwealth presented video footage of the controlled buy, marked as Commonwealth's Exhibit 2.

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. Defendant first asserts that the Commonwealth failed to establish their *prima facie* burden on Count 1: 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. Defendant also challenges the Commonwealth's evidence on Count 2: 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). Defendant argues that the Commonwealth failed to establish their *prima facie* burden because they lacked evidence to establish that Defendant was the person on the other end of the phone call with the CI. Additionally, Defendant believes that the Commonwealth did not connect the person known as "Q" with Defendant. Defendant asserts that the CI's failure to testify added to the Commonwealth's failure to establish their burden at the preliminary hearing. The Commonwealth argues that the general principle in cases of controlled purchases with a CI is that when an individual shows up at the place for the agreed upon drug transaction usually forms a *prima facie* case.

The Court agrees with the Commonwealth on this issue for the following reasons. Multiple members of the NEU were able to identify Defendant in the area before the transaction occurred. Additionally, the NEU and Caschera watched Defendant during the controlled buy. The CI had the number for "Q" already in his phone before assisting police. This Court acknowledges that the Commonwealth is not required to put forth their entire case at the preliminary hearing and their burden at this stage is lower than it would be at trial.

Viewing the evidence in the light most favorable to the Commonwealth as required, this Court agrees with the Commonwealth on this issue. Therefore, the Defendant's argument fails on this issue and the charges against Defendant shall not be dismissed.

Conclusion

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

ORDER

AND NOW, this 12th day of July, 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 (JR)
Robert Hoffa, Esq.
Law Clerk (JMH)