

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1155-2020  
:   
VS :   
:   
JAHREESE M. STRICKLAND : OMNIBUS PRETRIAL MOTION

OPINION AND ORDER

In *Commonwealth v. McClelland*, J-78-2018, the Pennsylvania Supreme Court held that hearsay alone is not sufficient to establish a prima facie case.

Where a defendant seeks to challenge the sufficiency of the evidence presented by the Court, he may do so by filing a writ of habeas corpus, *Commonwealth v. Landis*, 48 A.3d 432, 444 (Pa. Super. 2012) (en banc). At a habeas corpus hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a prima facie case against the defendant, *Commonwealth v. Williams*, 911 A.2d 548, 550 (Pa. Super. 2006).

The definition of prima facie is not precise or without difficulty. On the one hand, it has been described as evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is possibly the perpetrator of that crime, *Commonwealth v. Packard*, 767 A.2d 1068, 1070 (Pa. Super. 2001); *Commonwealth v. Prado*, 393 A.2d 8 (Pa. 1978).

On the other hand, it has been defined as evidence, that if accepted as true, would warrant submission of the case

to a jury. *Packard*, Id.; *Commonwealth v. Karetny*, 880 A.2d 505 (Pa. 2005); *Commonwealth v. Huggins*, 836 A.2d 862 (Pa. 2003), see also, *Commonwealth v. Ricker*, 120 A.3d 349 (Pa. 2015) (Chief Justice Saylor, concurring).

Fortunately, at this stage, this Court need not distinguish the two definitions nor set forth a more understandable definition.

Defendant is charged by information filed on September 18, 2020, with possession with intent to deliver, delivery of a controlled substance, possession of a controlled substance, and criminal use of communications facility. Defendant has filed a petition for habeas corpus alleging that the entire case against him is based on hearsay alone. As the *McClelland* Court explained, fundamental due process requires no adjudication be based solely on hearsay evidence. *McClelland*, at 22. Further, because hearsay does not constitute legally competent evidence, the Court cannot utilize it solely to establish a prima facie case. *McClelland*, at 22.

Hearsay is generally admissible in legal proceedings unless it falls under a recognized exception. *Commonwealth v. Ali*, 10 A.3d 282, 315 (Pa. 2010). In establishing a prima facie case, the Commonwealth cannot rely exclusively or only on evidence that could not be presented at trial. *McClelland*, at 29.

In this case, Defendant argues that the Commonwealth has done just that. To prove all of the charges against the defendant, the Commonwealth would need to prove that the defendant was the person who possessed controlled substances, delivered controlled substances, and used a communications facility to facilitate a violation of the Controlled Substance Act.

The testimony provided through the preliminary hearing and presented on the record in this case relies exclusively on hearsay to prove the above elements.

The Commonwealth's argument however, is nuanced. While admitting that hearsay alone was utilized to prove the identity of the Defendant and that he conducted the sale to the confidential informant, the Commonwealth argues because Defense Counsel solicited the hearsay testimony regarding such on cross-examination and that it was not objected to by the Commonwealth, the evidence is legally competent.

In support of its argument, the Commonwealth cites the non-precedential decision of *Commonwealth v. Bodanza*, 2019 WL 5063372 (Pa. Super. October 9, 2019). While the case is not determinative nor precedential, it is instructive. The habeas corpus hearing followed a stipulated preliminary hearing. At the preliminary hearing the Defendant stipulated to hearsay

evidence. This evidence that was stipulated to was deemed sufficient for prima facie purposes.

The same can be said here. During the preliminary hearing, Defense Counsel asked the testifying police officer whether the confidential informant identified the Defendant as the individual who sold the controlled substances. The law enforcement officer testified "Yes". The law enforcement officer further elaborated upon questioning that it was stated directly after the buy.

This evidence is hearsay. Nonetheless, it was not objected to and is part of the record. All evidence is legally competent evidence if it is relevant and not objected to. *Commonwealth v. Moore*, 323 A.2d 25, 26 (Pa. Super. 1974); *Commonwealth v. Farquharson*, 467 Pa. 50, 65, 354 A.2d 545, 552 (1976); *Poluski v. Glen Alden Coal Co.*, 286 Pa. 473, 476, 133 A. 819, 820 (1926). In the absence of an appropriate objection, the applicable rule of evidence is waived. *Commonwealth v. Viall* 890 A.2d 419, 424 (Pa. Super. 2005); *Commonwealth v. Smith*, 213 A.3d 307, 311 (Pa. Super. 2019), Because the evidence was relevant and not objected to, it can and will be considered by the Court in determining whether the Commonwealth has met its prima facie standard.

**AND NOW** this 24th day of February, 2021, following an argument by counsel and review of the transcript in this matter, the Court DENIES Defendant's Motion for Habeas Corpus.

BY THE COURT,

MARC F. LOVECCHIO, JUDGE

CC: Martin Wade, Esquire  
    Andrea Pulizzi, Esquire  
    Work File  
    Gary Weber, Esquire(Lycoming Reporter)  
MFL/clj