

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-762-2021**
 v. :
 :
 MIKAL JERMA SULLIVAN, II, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Mikal Sullivan (Defendant) was charged on June 16, 2021 with one (1) count of Material False Statement or Written Statement for the Sale or Transfer of Firearms¹, one (1) count of Unsworn Falsification to Authorities², and one (1) count of Sale or Transfer of Firearms—Duty of Other Persons³. The charges arise from the sale of a firearm to Defendant. Defendant filed this Omnibus Pretrial Motion on July 22, 2021. This Court held a hearing on the motion on August 20, 2021. In his Omnibus motion, Defendant argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing and the charges should be dismissed. Secondly, Defendant includes a motion for additional discovery.⁴

Preliminary Hearing

At the preliminary hearing, Trooper Jonathan Thompson (Thompson) of the Pennsylvania State Police testified on behalf of the Commonwealth. Thompson testified that he participated in an investigation at the National Range and Armory on June 2, 2021. N.T. 6/10/2021, at 1. Staff at the National Range and Armory contacted Thompson regarding a firearm transaction earlier that day. *Id.* at 2. The employee indicated that they did not have sufficient direct information to prevent the sale of a firearm, but the behavior of the buyer

¹ 18 Pa.C.S. § 6111(G)(4)(II).

² 35 Pa.C.S. § 4904(B).

³ 18 Pa.C.S. § 6111(C).

⁴ This motion was satisfied at the time of the hearing.

raised suspicions. Id. Thompson reviewed the surveillance footage of the incident. Id. Thompson testified that two individuals identified as Defendant and his brother, Jihad Sullivan (Jihad), entered the shop together and began to look at various firearms. Id. At the time of this incident, Jihad was on probation following a juvenile conviction and was prohibited from owning a firearm as a result of this conviction. Id. Defendant selected a Glock 27 with serial number BSME580. Id. Defendant filled out the ATF paperwork for this firearm while Jihad waited for Defendant in the waiting room. Id. Thompson further testified that on the ATF form Defendant filled out prior to purchase, Defendant utilized a Philadelphia address, namely “750 Hepburn” as his residence. Id. at 3-4. Thompson stated that “750 Hepburn” is a combination of addresses and that further investigation revealed that Defendant has never lived there. Id. at 4. Thompson also claimed that Defendant noted on the ATF form that he was buying the firearm as the intended owner and not purchasing it for someone else. Id.

On the store’s video footage, Jihad provided credit cards in the name of his girlfriend, Kyderah Wilson-Jennings (Wilson-Jennings). Id. That card did not have enough money to complete the transaction. Id. Jihad made phone calls to have more money put on the card. Id. Both men left the store to continue making phone calls. Id. Defendant re-entered the store and attempted to make another payment but was unable to for lack of sufficient funds. Id. Defendant retrieved additional money from the vehicle that he and his brother traveled in. Id. Thompson stated that a staff member became suspicious and took a photograph of Defendant’s vehicle in the parking lot. Id. On June 4, 2021, a search warrant was executed on the residence of Wilson-Jennings at 750 Edwin Street Apartment 2B. Id. Jihad is listed on the lease agreement for this location but Defendant is not. Id. Following the search, two (2) firearms, including the Glock 27 bought by Defendant, were recovered at the Edwin Street residence in a

backpack. Id. Thompson testified that both guns had been sent away to retrieve fingerprints but the results had not been returned. Id. at 4.

Thompson testified that Defendant had purchased a firearm previously that law enforcement believed was utilized in a shooting a few days after Defendant purchased it. Id. at 3. This firearm was a 40 caliber weapon. Id. at 4. Defendant then bought the gun at issue, which is also a 40 caliber. Thompson stated that because Defendant did not initially have sufficient funds to buy the gun related to this incident, he bought the same caliber weapon as one he had purchased before this incident. Id. at 4. Thompson stated he thought Defendant did this to save money by using ammunition purchased for the first gun in the Glock 27 at issue. Id. For these reasons, Thompson believed that Defendant had transferred ownership of this gun to Jihad. Id.

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 the charges brought against him. Defendant asserts that the Commonwealth failed to establish their *prima facie* burden on Count 1: Material False Statement or Written Statement for the Sale or Transfer of Firearms. An individual commits this offense when “in connection with the purchase, delivery or transfer of a firearm under this chapter, he knowingly and intentionally: makes any materially false written statement, including a statement on any form promulgated by Federal or State agencies.” 18 Pa.C.S. § 6111(g)(4)(ii). Defendant argues that the Commonwealth has failed to produce any evidence that Defendant made a materially false written statement on any form used to purchase or transfer a firearm.

Defendant also challenges the Commonwealth’s evidence on Count 2: Unsworn Falsification to Authorities. This offense is committed when a person “makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.” 18 Pa.C.S. § 4904(b). Defendant contends that the Commonwealth has not shown any evidence to establish

a *prima facie* case of a violation of this section based on falsification of information of ATF form 4473. The Court disagrees with the Defendant on this issue. Testimony at the preliminary hearing demonstrated that Defendant supplied an address on the ATF form that did not reflect his current residence. In fact, Thompson testified that it was determined that Defendant never resided at the address he provided on that form. If we assume in favor of the Commonwealth as required, Defendant's indication that he was purchasing this firearm for himself is also false in light of the discovery of the same firearm at Jihad's residence and not within Defendant's control. This satisfies the burden of proof at this stage of the proceedings and Counts 1 and 2 shall not be dismissed.

Lastly, Defendant argues the Commonwealth failed to establish their *prima facie* burden on Count 3: Sale or Transfer of Firearms—Duty of Other Persons.

Any person who is not a licensed importer, manufacturer or dealer and who desires to sell or transfer a firearm to another unlicensed person shall do so only upon the place of business of a licensed importer, manufacturer, dealer or county sheriff's office, the latter of whom shall follow the procedure set forth in this section as if he were the seller of the firearm.

18 Pa.C.S. § 6111(C).

Defendant believes the Commonwealth has failed to show that Defendant sold or transferred a firearm to another person, but this Court disagrees. The preliminary hearing testimony showed that Defendant purchased a firearm with a serial number of BSME580. That weapon with the same serial number was found outside of Defendant's possession in Jihad's home. Defendant does not live at the address where the firearm was found. Viewing the evidence in the light most favorable to the Commonwealth as required, Defendant purchased a firearm "which ended up in the possession of another." Commonwealth v. Dawson, 132 A.3d 996, 1002 (Pa.

Super. 2015). This establishes a *prima facie* case under this count. Therefore, the Defendant's argument does not prevail on this issue and Count 3 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 15th day of November, 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
Robert Hoffa, Esq.
Law Clerk (JMH)