

Commonwealth's Exhibit 3, wherein I.W.'s grandfather testified about the incident and Laura Quick of the Lycoming Children and Youth Assessment Unit testified as to her investigation into any abuse of I.W. that may have occurred from this event.

Weber testified that Defendant was arrested on June 16, 2019 following a search of his residence at 412 High Street in the city of Williamsport that yielded approximately twenty-nine (29) bags of heroin as well as drug packaging material. N.T. 4/16/2020, at 3. Defendant's two-year old child, I.W., was an additional resident of the home Defendant occupied. Id. at 5. On the morning of June 19, 2019, the child's mother gave I.W. some Tylenol with juice from a Gatorade bottle because she was fussing. Id. The mother saw I.W. with the Gatorade bottle but never imagined that there would be heroin in there. Commonwealth's Exhibit 3, at 35-36. I.W. became unresponsive shortly afterwards and the mother took her to the emergency room. N.T. 4/16/2020, at 5. I.W. had gone into full cardiac and respiratory arrest and was resuscitated in the emergency room before being life-flighted to Geisinger Medical Center. Id. The staff at Geisinger performed blood and urine tests to determine the cause of the child's injuries. Id. at 6. The results from those tests showed the drugs used to resuscitate I.W. in the emergency room as well as the presence of opiates in her system. Id. The child had not been given opiates by any doctor or medical staff during her course of treatment. Id. After the results, I.W.'s mother and grandfather were interviewed to figure out how the opiates got into her system. Id. They indicated to doctors and medical staff that, after the incident with I.W., they had called Defendant at the jail to tell him about I.W.'s condition and to ask him what was in the Gatorade. Id. at 11. Defendant admitted to them over the phone that he had brought the Gatorade into the home where I.W. also lived and that there was heroin in the Gatorade. Id. at 6, 7. Weber testified that in his thirty-nine (39) years of law enforcement experience, it is

common for a “kind of syrup” to be made with narcotics and mixed in different substances like Gatorade before being sold. Id. at 4, 11-12. Weber also testified at the hearing on the motion before the Court. Weber indicated that he was not sure of the state of the house following the search by police on June 16th a few days prior to I.W.’s overdose.

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: Endangering Welfare of Children. This crime occurs when a “parent, guardian or other person supervising the welfare of a child under 18 years of age...commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.” 18 Pa.C.S. § 4304(a)(1). Defendant also challenges the Commonwealth’s evidence on Count 2: Aggravated Assault. An individual commits this offense when he “attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to a child less than 13 years of age, by a person 18 years of age or older.” 18 Pa.C.S. § 2702(a)(9). Defendant believes that his incarceration at the time of the child’s overdose prevents him from accountability under these offenses. Defendant argues that the Commonwealth failed to satisfy their burden on these charges primarily because Defendant was incarcerated and not in the home when the incident occurred. Furthermore, Defendant states that I.W. was in the care of her mother at the time she ingested the opiates. Defendant also asserts that the Commonwealth did not present any evidence that he acted in such a way as to be physically damaging to I.W. Therefore, Defendant believes that the officers who tore apart his home during the search and the child’s mother are to blame for the harm done to I.W. and these counts should be dismissed.

The Commonwealth argues that Defendant had the Gatorade in the home prior to the drug raid in addition to the heroin that was found during the search. By bringing this concoction into his home, he endangered the lives of everyone living there, particularly his

young child. The Commonwealth's position is that I.W.'s injuries were caused by Defendant's reckless actions. This Court agrees with the Commonwealth on this issue for the following reasons. Defendant brought the narcotics into the home and left it in an area commonly used by others and within reach of his two year old. Testimony given from I.W.'s grandfather at the hearing in Harrisburg indicated that the mother had no idea that drugs were in the Gatorade and thought nothing of letting her daughter have some. Defendant did not forewarn the mother of his child that heroin was in the Gatorade and that I.W. should not be allowed to consume any of it. Audio from the phone calls show that Defendant stated, "I hope it wasn't that same Gatorade" and that there was "a bunch of shit in that Gatorade. I hope that ain't the Gatorade I brought in the house." Commonwealth's Exhibit 2. Defendant claims the Gatorade was not his, he was not consuming it, and he planned to throw it in the trash but he did admit to bringing it into the house. Id. After the child's grandfather asked Defendant if he knew what was in it, Defendant responded, "yea, heroin." Id. It is clear from the testimony and the phone calls that no one other than Defendant knew that the Gatorade contained heroin. As I.W.'s parent, it is Defendant's duty to protect her from harm. By bringing that substance into the home, he placed her in grave danger and recklessly caused her life-threatening injury. Therefore, Defendant's argument fails on this issue and the charges shall not be dismissed.

Lastly, Defendant argues that the Commonwealth failed to establish a *prima facie* case for Count 3: Possession of a Controlled Substance. This offense occurs by "[k]nowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act..." 35 Pa.C.S. § 780-113(a)(16). Here, Defendant argues that no evidence was presented showing that he possessed a controlled substance. Defendant believes that, since he was charged under a separate docket with drug-related charges related to the search of his home

and that case has been disposed, he cannot be charged for this possession offense. However, this Court disagrees with Defendant on this contention as well. Defendant admitted to bringing the heroin-laced Gatorade bottle into the home on phone calls with I.W.'s mother and grandfather. The child's mother was not aware of the presence of drugs in the Gatorade bottle until Defendant told her what was in it following I.W.'s overdose. Simply because Defendant was charged with drug possession in a different case does not preclude him from being charged with additional drug possession charges for narcotics that were discovered after the fact. Therefore, the Defendant's argument fails on this issue and the charge 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 15th day of July, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

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