

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-9-2022
	:	
vs.	:	
	:	CRIMINAL DIVISION
HAFIZ DURBIN,	:	
Defendant	:	

OPINION AND ORDER

This matter is before the Court on a Motion for Habeas Corpus Relief filed by the Defendant on January 25, 2022. For the reasons set forth below, the Motion is denied.

I. Introduction

Following an arrest that occurred on November 2, 2021, Defendant, Hafiz Durbin, was charged with Fleeing or Attempting to Elude a Police Officer pursuant to 75 Pa.C.S.A. § 3733(a), Recklessly Endangering Another Person pursuant to 18 Pa.C.S.A. § 2705, and Possession With Intent to Deliver pursuant to 35 P.S. 780-113(a)(30). A preliminary hearing was held on December 30, 2021 before MDJ Aaron Biichle at which time Detective Kevin Dent of the Lycoming County Narcotics Enforcement Unit [hereinafter “NEU”] testified. All charges were bound over for trial. Defendant filed a Petition for Habeas Corpus on January 25, 2022 seeking dismissal of all charges. Specifically, Defendant argues that the majority of the Commonwealth’s evidence was hearsay, which alone is insufficient to establish a *prima facie* case pursuant to *Commonwealth v. McClelland*, 233 A.3d 717 (Pa. 2020).

Argument was scheduled for February 11, 2022 at which time, over Defendant’s

objection, the Commonwealth presented the testimony of Detective Tyson Havens of the NEU and Sergeant Jody Miller of the Williamsport Bureau of Police.¹ Defendant argues that the Commonwealth is precluded from producing evidence at a habeas hearing that was not produced at the primary hearing.

II. Commonwealth May Present Additional Evidence at Habeas Corpus Stage

Initially, we must address whether this Court can consider the additional testimony and evidence of Detective Havens and Sergeant Miller or whether it is limited to that evidence produced at the preliminary hearing. It is well-settled that, “the scope of evidence which a trial court may consider in determining whether to grant a pretrial writ of habeas corpus is *not* limited to the evidence as presented at the preliminary hearing. On the contrary . . . the Commonwealth may present additional evidence at the habeas corpus stage in its effort to establish at least *prima facie* that a crime has been committed and that the accused is the person who committed it.” *Com. v. Morman*, 541 A.2d 356, 359 (Pa.Super. 1988) (emphasis in original). *See also Com. v. Lambert*, 244 A.3d 38, 42 (Pa.Super. 2020), *appeal denied*, 260 A.3d 71 (Pa. 2021) (“the Commonwealth may meet this burden by introducing the preliminary hearing record and/or by presenting evidence at the *habeas corpus* hearing); *Com. v. Carroll*, 936 A.2d 1148, 1152 (Pa.Super. 2007) (to “meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and also may submit additional proof.”).

¹ The Court allowed the Commonwealth to present this evidence without first definitively ruling on the Defendant’s objection to prevent the need for a second hearing date should the Court overrule the Defendant’s argument.

Having found that the Commonwealth is permitted to present evidence at the habeas hearing in addition to that presented at the preliminary hearing, we must now determine whether the Commonwealth has, in fact, met its burden.

III. Facts Established at Habeas Corpus Hearing

On November 2, 2021, following an undercover purchase of narcotics from an individual driving a white Subaru Legacy, Detective Havens contacted Sergeant Miller to assist in conducting a traffic stop of the Legacy for the purpose of identifying the driver and passenger. Detective Havens related that the Legacy had a disabled taillight and tinted windows, providing Sergeant Miller with probable cause to stop the vehicle. Sergeant Miller, who was driving an unmarked police cruiser, was able to locate the Legacy and, upon doing so, activated his emergency lights to conduct the stop. The Legacy pulled to the side of the road as if it was going to stop, but before Sergeant Miller could exit his vehicle, the Legacy fled north on Walnut Street at a high rate of speed. Sergeant Miller activated his siren and followed.

Sergeant Miller pursued the vehicle down Walnut Street and into the parking lot of the UPMC hospital. The Legacy drove about the parking lot for a time and then fled east on High Street at a high rate of speed. When the Legacy turned left onto Hepburn Street, the driver lost control of the vehicle and drove over the curb, rendering the Legacy inoperable. In addition to driving at a high rate of speed in a residential area and in a hospital parking lot, the Legacy drove through at least one red light and at least one stop sign without stopping. The Legacy also nearly hit several vehicles on the road and in the UPMC parking lot. The pursuit of the Legacy was recorded on the dash cam that Sergeant Miller had in his

vehicle, which was admitted as Commonwealth's Exhibit 5 at the hearing.

Once the Legacy stopped, the passenger got out and put his hands up in surrender. The driver, however, fled the scene. Sergeant Miller witnessed the driver exit the vehicle and saw in which direction he ran. Sergeant Miller contacted Detective Havens and provided the driver's direction of flight as well as his description including that he was a black male with dread locks, and what he was wearing.

A short time later, Detective Havens witnessed an individual running down the street, fitting Sergeant Miller's description. The individual slowed to a walk at which time Detective Havens witnessed him tear up several small white bags. The next block down, Detective Havens then took the individual into custody and identified him as the Defendant, Hafiz Durbin. Sergeant Miller testified that the person the NEU took into custody was the same person he saw flee from the Legacy. The Lycoming County Sheriff's Office then took the Defendant into its custody and, upon search of Defendant's person, found \$1,380 in cash.

On the sidewalk where Defendant was witnessed tearing apart the bags, Detective Havens located plastic sandwich bags containing several blue glassine bags stamped "applejack." *See Commonwealth Exhibit 3 and 4.* Detective Havens testified that these bags are commonly used in drug distribution and the substance inside of the bags appeared to be crack cocaine, based on how it was packaged. Additionally, the same "applejack" stamp was on the packaging of narcotics bought in the undercover buy just prior to the pursuit.

The parties stipulated prior to Detective Havens' testimony that Detective Havens was an expert in the field of the possession of narcotics with the intent to distribute.

IV. Commonwealth Has Established a *Prima Facie* Case

When a Defendant chooses to test whether the Commonwealth has sufficient evidence to establish a *prima facie* case that he or she has committed a crime, the proper means is a motion for habeas corpus. *Dantzler*, 135 A.3d at 1112, citing *Carroll*, 936 A.2d at 1152. “To demonstrate that a *prima facie* case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant's complicity therein” and may do so by utilizing evidence presented at the preliminary hearing as well as submitting additional proof. *Id.*

It is well settled that the preliminary hearing is not a trial and the Commonwealth need not establish Defendant's guilt beyond a reasonable doubt at that stage. *Com. v. McBride*, 595 A.2d 589, 591 (Pa. 1991). Rather, the Commonwealth bears the burden of establishing a *prima facie* case “that a crime has been committed and that the accused is probably the one who committed it.” *Id.*; Pa.R.Crim.P. 141(d). Additionally, the weight and credibility of the evidence are not factors for the Court to consider. *Com. v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); see also *Com. v. Huggins*, 836 A.2d 862, 866 (Pa. 2003) (holding that “[t]he evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury”). “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.” *Com. v. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990).

It should be noted that the only evidence this Court considered in determining whether the Commonwealth met its burden was that presented at the habeas hearing on

February 11, 2022. In light of Defendant's hearsay argument, the Court did not consider the evidence presented at the preliminary hearing. Even so, the Commonwealth has met its burden on all counts.

a. Fleeing or Attempting to Elude a Police Officer

Pursuant to Section 3733, “[a]ny driver of a motor vehicle who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police officer, when given a visual and audible signal to bring the vehicle to a stop,” commits the offense of fleeing or attempting to elude a police officer. 75 Pa.C.S.A. § 3733(a). Any emergency lights or siren is considered a “signal” by the police. 75 Pa.C.S.A. § 3733(b). One defense is that the police officer’s vehicle was “not clearly identifiable by its markings or, if unmarked, was not occupied by a police officer who was in uniform and displaying a badge or other sign of authority.” 75 Pa.C.S.A. § 3733(c)(1).

Here, Sergeant Miller testified that when he was positioned directly behind the Defendant’s vehicle, he activated his emergency lights. Defendant acted as though he was going to pull over for Sergeant Miller, which infers that he saw the lights and understood he was being stopped. However, he then fled at a high rate of speed. During the pursuit, Sergeant Miller also activated his sirens. While Defendant was driving through the UPMC parking lot, he almost had a head-on collision with Sergeant Miller’s vehicle. The dash cam in Sergeant Miller’s vehicle corroborates this information. Although Sergeant Miller was driving an unmarked police cruiser, it was equipped with full emergency lights and sirens, which Sergeant Miller activated. Additionally, Defendant’s actions of driving at a high rate of speed and later fleeing the vehicle on foot indicate that he in fact saw and heard the lights

and sirens and nevertheless willfully failed to stop *and* fled from Sergeant Miller both in his vehicle and on foot.

Based on these facts, the Commonwealth has established a *prima facie* case for this charge.

b. Recklessly Endangering Another Person

Pursuant to Section 2705, when a person “recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury,” he commits the crime of recklessly endangering another person. 18 Pa.C.S.A. § 2705. “Recklessness” is a “conscious disregard of a known risk of death or great bodily harm to another person.” *Com. v. Cottam*, 616 A.2d 988, 1004 (Pa.Super. 1992) (internal citations omitted). “Serious bodily injury” is “bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” 18 Pa.C.S.A. § 2301. Reckless endangerment of another person requires the creation of danger and therefore, the Commonwealth must present proof that an actual present ability to inflict harm to another existed. *Com. v. Reynolds*, 835 A.2d 720, 727-28 (Pa.Super. 2003).

Here, the Defendant drove through a residential area and a busy hospital parking lot at a high rate of speed. Additionally, he drove through at least one stop sign and red light without stopping. This occurred during the day on Tuesday at which time several people were out driving. Defendant’s erratic driving lasted several minutes. Defendant was forced to stop the vehicle only after losing control of the it and driving it over the curb and onto a sidewalk, where people could have been walking. Sergeant Miller’s dash cam shows

Defendant nearly coming into contact with several vehicles including Sergeant Miller's and members of the NEU. Clearly, Defendant was aware that his actions would have caused serious injury, if not death, to an innocent bystander had they accidentally gotten in his way.

For these reasons, the Court finds that the Commonwealth has established a *prima facie* case for this charge.

c. Possession with Intent to Deliver

Pursuant to subsection 30 of Section 780-113, "the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act . . . or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance" is prohibited. 35 P.S. § 780-113(30). "The Commonwealth establishes the offense of possession with intent to deliver when it proves beyond a reasonable doubt that the defendant possessed a controlled substance with the intent to deliver it." *Com. v. Little*, 879 A.2d 293, 297 (Pa.Super. 2005). All facts and circumstances surrounding a possession of narcotics is relevant, and all of the elements required for this crime may be proven by circumstantial evidence. *Id.* Further, possession with intent to deliver may be inferred from the quantity of drugs found, along with other surrounding circumstances. *Id.*

In reviewing a habeas corpus motion, the Court must accept as true the Commonwealth's evidence as well as any reasonable inferences drawn therefrom. Detective Havens, who was established as an expert in the field of possessing controlled substances with the intent to deliver them, testified that the packing and the amount of suspected narcotics found on the sidewalk is indicative of selling drugs. Additionally, based on his

experience, he opined that the substance inside the bags was crack cocaine, a controlled substance. While no drugs were found on Defendant's person after his was arrested, Detective Havens witnessed Defendant tearing apart the bags in the same location as they were found. Further, Detective Havens testified that, just prior to this incident, Defendant sold narcotics to an undercover NEU agent, the packaging of which contained the same stamp as that found on the packaging discarded on the sidewalk by the Defendant.

Based on these facts, and accepting all evidence as true, the Commonwealth has established a *prima facie* case on this charge.

V. Conclusion

As the Commonwealth has established a *prima facie* case for each of the above crimes, Defendant's Motion for Habeas Corpus Relief is denied.

ORDER

AND NOW, this 15th day of **February, 2022**, for the reasons set forth above, it is **ORDERED AND DIRECTED** that Defendant's Petition for Habeas Corpus is hereby **DENIED**.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: DA (M.Wade)
Paul Petcavage, Esq.
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