

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1106-2022
	:	
vs.	:	
	:	CRIMINAL DIVISION
DAVERE MCCLAIN,	:	
Defendant	:	

OPINION AND ORDER

This matter is before the Court on a Motion to Dismiss filed by the Defendant on September 23, 2022. For the reasons set forth below, the Motion is denied.

I. Introduction

Defendant, Davere McClain, was initially charged on August 11, 2022, with Conspiracy – Possession with Intent to Deliver and Criminal Use of a Communication Facility. At the preliminary hearing the Commonwealth withdrew the charge of Criminal Use of a Communication Facility and the Conspiracy charge was held for court. The charge related to Possession with Intent to Deliver was subsequently changed from Conspiracy to Attempt.

The Defendant’s Motion to Dismiss alleges that the testimony of the detective at the preliminary hearing indicated he was conducting surveillance in the area of Rite Aid on Fifth Street in Williamsport relative to a controlled buy he had set up with a woman named Yvonne Fromille. The Defendant was seen pulling into the parking lot with Ms. Fromille and Ms. Fromille exited the vehicle and sold the oxycodone to the undercover detective. Ms. Fromille allegedly later told the Narcotics Enforcement Unit (NEU) that she obtained the

pills from the Defendant, but Ms. Fromille did not testify at the preliminary hearing and the Defendant had no interaction with the undercover detective. The Defendant alleges that the Commonwealth's case relied solely on hearsay and that they did not present sufficient evidence to establish a prima facie case on the charges, as the Commonwealth did not establish that the Defendant possessed the controlled substances actively or constructively.

It is well settled that hearsay evidence alone is insufficient to establish a prima facie case at a preliminary hearing. *Commonwealth v. McClelland*, 233 A.3d 717 (Pa. 2020). It is equally 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.”).

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.

II. Facts Established at Habeas Corpus Hearing

At the Habeas Corpus hearing on April 3, 2023, the Commonwealth called Yvonne Fromille to testify. Ms. Fromille testified that she knows the Defendant as “Damian” and has known him for approximately 1.5 years. As they were in a romantic relationship, Ms. Fromille testified that she would know his voice and phone number. She testified that in May of 2022 she was contacted by a man wishing to purchase \$200 worth of Percocet. She further testified that she knew the Defendant could get them and the next morning he picked her up at her house in a black Mercedes and they proceeded to the designated meeting spot, which was the Rite Aid on 5th Street in Williamsport. Ms. Fromille testified that when they got to the parking lot the Defendant gave her five blue pills in a plastic baggie. She exited the Defendant’s car, walked to the vehicle of the person wanting to buy the pills, did the exchange and returned to the Defendant’s car. Ms. Fromille testified that she gave the Defendant all of the money obtained in exchange for the pills and the Defendant took her home, after which she had no further interaction with him that day.

The Commonwealth also called Detective Tyson Havens of the Lycoming County Narcotics Enforcement Unit. Detective Havens testified that he was supervising another detective with the NEU who reached out to Ms. Fromille to purchase \$200 worth of Percocet on May 10, 2022. Detective Havens testified that he watched a black Mercedes enter the Rite Aid parking lot from the north side and Ms. Fromille exited the vehicle, which then continued to travel west to the Alpine Plaza parking lot. Ms. Fromille got into the vehicle and made the exchange for the pills, then promptly exited, at which time the black Mercedes traveled east and picked her up and continued to travel to Brandon Place and

Elizabeth Street, where she exited and walked to her house. Detective Havens testified that he continued to follow the black Mercedes to Wilson Street and Grove Street where a traffic stop was initiated by the Williamsport Bureau of Police at the NEU's request. The Defendant was identified as the driver and the only occupant of the black Mercedes during the stop. Detective Havens testified that the pills sold during the controlled buy were sent to the lab and tested positive for fentanyl.

III. 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. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016), *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).

After hearing the testimony of both Ms. Fromille and Detective Havens, and viewing the evidence in the light most favorable to the Commonwealth, the Court finds that the Commonwealth has met its burden of establishing a *prima facie* case of criminal conspiracy to deliver a controlled substance.

a. Criminal Conspiracy – Delivery of a Controlled Substance

A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime. 18 Pa.C.S. §903. In the present case, the Defendant is charged with conspiracy to deliver a controlled substance, namely Percocet.

In reviewing a habeas corpus motion, the Court must accept as true the Commonwealth's evidence as well as any reasonable inferences drawn therefrom. Here, the evidence and its reasonable inferences are clear. Yvonne Fromille was contacted as part of a controlled buy. She, in turn, contacted the Defendant who picked her up and drove her to the location where the exchange was to take place. The Defendant gave Ms. Fromille blue pills in a plastic bag and Ms. Fromille gave the Defendant the money she received in exchange

for the Percocet. Detective Havens followed the black Mercedes from the parking lot where the exchange took place until Ms. Fromille exited the vehicle near her home. He continued to follow the black Mercedes until the Williamsport Bureau of Police initiated a traffic stop, at which time the Defendant was identified as the driver and the sole occupant.

Based on these facts, and accepting all evidence as true, the Commonwealth has established a *prima facie* case that the Defendant conspired with Ms. Fromille to deliver a controlled substance.

IV. Conclusion

As the Commonwealth has established a *prima facie* case for the crime charged, Defendant's Motion to Dismiss in the form of a request for Habeas Corpus Relief is **DENIED**.

ORDER

AND NOW, this 14th day of **June, 2023**, for the reasons set forth above, it is **ORDERED and DIRECTED** that Defendant's Motion to Dismiss in the form of a request for Habeas Corpus Relief is hereby **DENIED**.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: DA (M. Welickovitch, Esq.)
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