IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CR-231-2025**
	:	
v.	:	
	:	
GEORGE SCHULTZ,	:	**OMNIBUS PRETRIAL**
Defendant	:	**MOTION-HABEAS**

OPINION AND ORDER

George Schultz (Defendant) was arrested by the Williamsport Bureau of Police and charged on January 9, 2025 for Receiving Stolen Property,[1] Theft of Secondary Metal[2] and Theft by Unlawful Taking.[3] The above charges arise from Defendant along with a co-defendant[4] who were at the time employees of Staiman's Recycling, allegedly taking copper and brass from a locomotive which was being decommissioned or scrapped by Staiman's Recycling located in the City of Williamsport, Lycoming County to Hinston's Salvage for payment to themselves rather than taking the copper and brass back to Staiman's. Defendant filed an Omnibus Pretrial Motion on April 9, 2025. In his Motion, Defendant alleges various reasons why the Commonwealth has failed to demonstrate a *prima facie* case that Defendant committed the charges. A hearing on the Motion was scheduled for July 17, 2025. At that time, the Commonwealth submitted a copy of the preliminary hearing transcript. The same witnesses from the preliminary hearing were also called to testify at the *habeas* hearing.

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[1] 18 Pa. C.S. § 3925(a).
[2] 18 Pa. C.S. § 3935.1.
[3] 18 Pa. C.S. § 3921(a).
[4] Co-defendant's case is Commonwealth v. George Emmil, CR- 230-2025. On the same day this matter was held, Emmil requested to join in Schultz's *habeas* motion. The court denied the request as Emmil waived his preliminary hearing, and as a consequence he is precluded from challenging the Commonwealth's *prima facie* case. *See* Pa. R. Crim. P. 541(A)(1).

Background

The first witness presented was Michael Kirwin the COO from Staiman's. He testified that Defendant was an employee of Staiman's Recycling ("Staiman's). In December 2024, Defendant was working on a demolition crew ("demo crew") along with George Emmil and a third person, who was terminated for allegedly being a part of the theft. The demo crew was decommissioning a locomotive in Wellsboro. Staiman's had bid one price for the whole engine. Staiman's had decommissioned the same model locomotive several months earlier with a different demo crew. Kirwin testified that the locomotives were the same size and weight. N.T., Preliminary Hearing 2/11/2024 at 7. Decommissioning the locomotive involved cutting it up and stripping materials from it such as copper wire and brass journals.[5] Mr. Kirwin noticed that there was quite a bit of copper cable going to the drive train.

The prior crew cut up the first locomotive, brought it back to Staiman's yard and the copper wire and brass journals were stripped at Staiman's premises. N.T., Preliminary Hearing, 2/11/2024 at 6. He had business records and photographs regarding the size and weights of both locomotives but these items were not provided to law enforcement.[6]

When Kirwin went up to Wellsboro to look in on the December demo crew, they were stripping the copper wire out of the locomotive; however, none of it was brought to Staiman's yard. N.T., Preliminary Hearing, 2/11/2024 at 5-6.

[5] Mike Kirwin testified that brass journals are exclusive to locomotives and explained that a brass journal goes around the axle of the locomotive and is a "wear part" like a bearing. N.T., Preliminary Hearing 2/11/2024 at 13, 17.

[6] Although he testified at the preliminary hearing that he would be able to provide these records, the Commonwealth did not present them at the *habeas* hearing and it appeared that they had not yet been provided to law enforcement or the prosecutor.

The marketing manager, Seth Keller, told Kirwin that another employee told Keller that Defendant and Emmil were spotted at a local scrap yard, Hinston's Salvage ("Hinston's"), with copper wire and brass.[7] N.T., Preliminary Hearing 2/11/2024 at 5, 13, 31.

Kirwin contacted Hinston's to inquire if Defendant and Emmil had been there and the materials they brought there. Trenton Hinston and one of his office employee, Emilie Dylina, looked up Defendant and Emmil's names in their business records. They found records and video surveillance footage that showed Defendant and Emmil brought copper and brass to Hinston's in Defendant's truck on December 7 and December 14, 2024 and received a total of $3544.79 for it.[8] More specifically, Hinton's records showed that Defendant and Emmil brought #2 copper, irony brass, yellow brass, and clean brass auto rads. *See* Commonwealth Exhibit #2, pp. 2, 3, 5 and 7. Hinston testified that copper wire can come from anything including wire in your house and cars. He said they buy scrap all day long and nothing caught his eye when Defendant and Emmil brought the copper and brass except maybe that the copper was tin coated. *See* N.T., Preliminary Hearing 2/11/2024 at 32. At the hearing on Defendant's motion, Hinston identified Defendant in the courtroom and testified that Defendant and Emmil indicated that they obtained the materials from tearing a dozer apart or something of that nature. He testified that he was present for one of their transactions but either Mike Dylina or Austin McEwen, who both still work for him and could be available for trial, would have taken their information.

[7] Neither Mr. Keller nor the unnamed employee testified at the preliminary hearing or the hearing on Defendant's *habeas corpus* motion.

[8] Emilie Dylina took screen shots from the video surveillance but did not preserve the video. N.T., Preliminary Hearing 2/11/2024 at 34, 35. Trenton Hinston testified that the video system only holds the data for 30 days. *Id.* at 33. Therefore, while the screen shots are available, it is unlikely that the actual video footage still exists.

During his testimony at the preliminary hearing, Kirwin identified Defendant in the courtroom and in still photographs from Hinton's surveillance footage. N.T., Preliminary Hearing 2/11/2024 at 4, 11. Kirwin testified that copper and brass could be obtained off of other things but the locomotive copper was industrial grade, which would be on large pieces of equipment or in a huge factory and not easily available. *Id.* at 12. He also testified that neither Defendant nor anyone else had permission to the take copper and brass from the locomotive and keep it for themselves or their own benefit. *Id.* at 8. When asked on cross-examination if it was acceptable for them to sell materials somewhere else and return the money to Staiman's, Kirwin testified it depends on what the item was; if it were a working engine that would be acceptable. *Id.* at 9. When asked if he had any photographs or surveillance of Defendant stripping the locomotive, Kirwin testified that he had an eyewitness who said Defendant had a screw gun in his hand and was taking out screws and pulling stuff out.[9] *Id.* at 13. Defense counsel asked if it was general practice of stripping a locomotive to take those things out and Kirwin testified that it all depends on the crew, how they want to do it and how fast Kirwin needed it (the locomotive) moved. *Id.* at 14.

Schultz was an employee at the time and not a contractor. Kirwin also testified that none of the three the employees working at the site were given permission to remove anything for themselves. Kirwin said that one of his employees said he saw Schultz at the site of the locomotive salvaging with a screw gun removing things from the locomotive. Kirwin said that the coworker did not describe what he saw him removing. He also testified that they had a locomotive at an earlier time which was similar that they successfully salvaged but did not provide any records, photos, or details about what was obtained from that job that was different

[9] That person was not named and did not testify at the preliminary hearing or at the hearing on Defendant's *habeas* motion.

from what was salvaged from this similar locomotive. There were usually four people on the salvage crew, one was on vacation and the other was terminated. *Id.* at 3-16.

At the *habeas* hearing, Kirwin added that they should have recovered more materials from the second locomotive but did not testify to any specific information that the locomotives were completely similar. Through Kirwin, the Commonwealth admitted a nine page exhibit (Commonwealth's exhibit #2) consisting of a picture of Schultz's pickup truck that Kirwin identified, a receipt of materials taken to Hinton Salvage by Schultz and Emmil, a photo of Schultz and Emmil at Hinston's, another receipt of materials, a photo of Schultz pushing a cart at Hinston's on 12/13/2024, and 3 receipts from Hinston's (#7, 8, 9,). He also testified from the receipts that the value of materials brought to Hinston's totaled $3444.79 (exhibits 8,9). There would have been two other people on the crew working that day who could testify if needed about what happened with the materials. He did acknowledge that he had no photos of what was brought to Hinston's to verify that they were items taken from the locomotive salvage job. He also testified that they do not track the time from the job to Staiman's. The job site was in Wellsboro about 45 minutes away.

Next, Nathan Braunsberg from Staiman's also testified. He currently is the Environmental/Compliance Officer and has worked there for 4 years. He testified that he got the information from Hinston's of what was brought to them by Schultz and how much they paid him for it. He oversaw theft investigations and gathered materials from Hinston.
He saw records from Hinston showing that Schultz delivered copper and brass on Dec. 13, 2024 and they were paid $3,544.79. He was able to identify both Schultz and Emmil from a still photograph provided by Hinston's. He also reviewed screen shots of the monitor at Hinston's of the items that were purchased by them and their weights. He thought that the

materials came from the December locomotive solely based upon the description that Kirwin gave him that the materials "matched" what came off of a locomotive. He also testified that Staiman's did keep business records about what did come in from the first locomotive, but they were not admitted at the hearing or even given to police. He believed that the locomotives were identical but no records or documentation was provided to show that they were identical. He testified that he only focused on the items sold to Hinston. N.T., Preliminary Hearing 2/11/2025, at 18-27. Braunsberg testified to essentially the same thing at the *habeas* hearing.

The next Commonwealth witness was Trenton Hinston, the owner of Hinston Salvage. He testified that his system showed two transactions involving Schultz and Emmil. He personally saw them present on one of the days, pushing carts and conducting the sale. He did not identify the materials from personal knowledge beyond "stripped copper wire." He said nothing looked unusual except the copper was "tin-coated." He acknowledged tin-coated wire can come from anywhere, including houses and cars. Nothing about the wire alone made him think that it was from a locomotive. He said that he only investigated after Kirwin contacted him with names and suspected materials. Hinston testified that he was not shown the video or still shots at the hearing but that they were sent to Kirwin and that the surveillance video was not preserved after 30 days. N.T., Preliminary Hearing 2/11/2024 at 28-47. At the *habeas* hearing, he was shown the screen shots from the video. He stated that he even looked at the items brought in by Schultz and Emmil on one of the times. He testified they told him they tore apart a dozer or something of that nature. Hinston testified that no flags went off about the materials brought to Hinston's until Kirwin contacted him.

Finally, Emilie Dylina an office employee of Hinston's testified. She testified that she took the screen shots of the business record printouts, but that she did not preserve the

surveillance video. She was the person who viewed the video showing Schultz and Emmil when they came to the salvage yard on December 13, 2024 in a truck and brought carts of copper. She also testified that they had come in probably four (4) times total but did not give dates from when those times were other than the December 13, 2024 date. N.T., Preliminary Hearing 2/11/2024 at 34-40. At the *habeas* hearing, she testified that she could identify the screen shots from the video and business records of their tickets that they still have in their computer system.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove 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). "A prima facie case in the criminal realm is the measure of evidence, which if accepted as true, would warrant the conclusion that the crime charged was committed." *Commonwealth v. MacPherson*, 752 A.2d 384, 391 (Pa. 2000). While the weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense, the absence of evidence as to the existence of a material element is fatal. *Commonwealth v. Ripley*, 833 A.2d 155, 159-60 (Pa. Super. 2003). 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). Speculation, suspicion, assumptions and conjecture, however, are not sufficient to support a *prima facie* case. *See Commonwealth v. Bostian*, 232 A.3d 898, 908 (Pa. Super. 2020). "[W]here the Commonwealth's case relies solely upon a tenuous inference to establish a material element of the charge, it has failed to meet its burden of showing that the crime charged was committed." *Commonwealth v. Wojdak*, 502 Pa. 359, 466 A.2d 991, 997 (1983) (emphasis in original). Instead, to satisfy due process, any inference in a criminal prosecution must "more likely than not" flow from the basic facts proven by the Commonwealth upon which the inference was is founded. *See In re J.B.*, 647 Pa. 339, 189 A.3d 390, 415 n.25 (2018) citing *County Court of Ulster v. Allen*, 442 U.S. 140, 165, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979).

In *Commonwealth v. Harris*, 315 A.3d 26, 37 (Pa. 2024) the Supreme Court discussed the type and use of hearsay by the Commonwealth to establish its burden of *prima facie* at the preliminary hearing. To summarize the state of the law regarding the use of hearsay at preliminary hearings, Rule 542(E) "is intended to allow some use of" otherwise inadmissible hearsay by the Commonwealth to establish a prima facie case that an offense has been committed. *Commonwealth v. McClelland*, 233 A.3d 717, 735 (Pa. 2020). But "[t]he plain language of the rule does not state a *prima facie* case may be established solely on the basis of hearsay[,]" and to do so would violate due process in any event. *Id*. Finally, we now hold, based on the plain language of Rule 542, that inadmissible hearsay alone may not be used to prove a *prima facie* case as to the defendant's identity. This means the Commonwealth at a preliminary hearing is required to produce some non-hearsay or admissible hearsay evidence to

sustain its *prima facie* burden as to the defendant's identity. See *Commonwealth ex rel. Buchanan v. Verbonitz*, 581 A.2d 172, 174 (Pa. Super. 1990) (plurality). ("In order to satisfy [its] burden of establishing a prima facie case, the Commonwealth must produce ... legally competent evidence to demonstrate the existence of facts which connect the accused to the crime charged.").

Harris goes on to say that despite affirming the Superior Court's holding, we disapprove its rationale in three respects. See, e.g., *Commonwealth v. Chisebwe*, —— Pa. ——, 310 A.3d 262 (2024) ("because we review not reasons but judgments," we may uphold a lower court order for any valid reason appearing from record) (internal quotation marks and citations omitted). First, we do not endorse its discussion of "core" elements and the like, terms which do appear in the text of Rule 542. We also reject the panel's opinion to the extent it implies due process "require[s] direct evidence that the defendant was the person who committed the crime[.]" *Harris*, 269 A.3d at 547 (emphasis added). It has long been the law that "[d]irect evidence of identity is, of course, not necessary and a defendant may be convicted solely on circumstantial evidence." *Commonwealth v. Hickman*, 453 Pa. 427, 309 A.2d 564, 566 (1973); see *Commonwealth v. Lovette*, 498 Pa. 665, 450 A.2d 975, 977 (1982) ("The fact that the evidence establishing a defendant's participation in a crime is circumstantial does not preclude a conviction where the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence."). Put simply, circumstantial evidence and hearsay evidence are not opposite sides of the same coin, and Rule 542(E) only precludes the latter from serving as sufficient evidence to bound a case over for court. Third and finally, both the preliminary hearing judge and the panel seemed to believe that only non-hearsay evidence could suffice to establish a prima facie case as to appellee's identity. See N.T. Hearing, 9/16/20,

at 6 (referencing lack of "non-hearsay evidence"); *Harris*, 269 A.3d at 547-48 (same). To reiterate, what matters to establish identity — what Rule 542 demands — is the use of legally competent evidence, such as non-hearsay evidence or admissible hearsay evidence falling under a hearsay exception. Accord supra note 8; see *McClelland*, 233 A.3d at 738 (Wecht, J., concurring) ("the result of a hearing so intertwined with one's liberty interests cannot rest exclusively upon evidence that is unreliable, inadmissible, and provides no assurances as to the future viability of a particular prosecution").

Defendant contends that the Commonwealth failed to establish a *prima facie* case for the charges because it failed to prove that the items were removed from property belonging to Staiman's. Additionally, Defendant argues that the Commonwealth failed to establish a *prima facie* case for Receiving Stolen Property because it failed to demonstrate he intentionally received stolen goods or was part of the theft from the Locomotive BPRR626.

Receiving Stolen Property

An individual commits the offense of Receiving Stolen Property when he/she "intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner." 18 Pa. C.S. § 3925(a). Receiving is defined under the statute as "acquiring possession, control or title, or lending on the security of the property." 18 Pa. C.S. § 3925(b). At the preliminary hearing stage, the Commonwealth may meet its burden entirely through circumstantial evidence, and the court must view all reasonable inferences in favor of the Commonwealth. *Commonwealth v. McBride*, 595 A.2d at 591; *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003).

Here, the evidence supports each element. The copper and brass belonged to Staiman's; Defendant disposed of that property by selling it to Hinston Salvage; and Defendant's knowledge that the property was stolen may be inferred from the surrounding circumstances. Defendant was an employee assigned to dismantle the locomotive, had no permission to sell materials for personal benefit, removed the materials from the job site rather than returning them to Staiman's, and sold them shortly thereafter for a substantial sum. Such circumstances permit a reasonable inference that Defendant knew or believed the property was stolen. See *Commonwealth v. McBride*, *supra*, *Commonwealth v. Huggins*, *supra.*

Defendant's assertion that copper wire could originate from other sources does not defeat the *prima facie* case. The Commonwealth is not required at this stage to disprove every hypothetical lawful source of the materials. The proximity in time between the demolition work and the sales, combined with Defendant's employment status and lack of authorization, supports the inference that the materials sold were taken from the locomotive.

In addition, non-hearsay testimony from Hinston and Dylina, along with authenticated business records, established that Defendant and Emmil brought stripped copper and brass to Hinston Salvage on two dates in December 2024, arriving together in Defendant's truck, and received $3,544.79 in payment. Surveillance stills showed Defendant physically present with the material. Knowledge is proven circumstantially. Defendant had exclusive access to the materials as a member of the three-man crew, none of the expected metal was returned, and Defendant personally transported and salvaged it. These facts support the inference that he knew the property belonged to Staiman's and that he did not have permission to salvage it for his own personal use.

Theft of Secondary Metal

An individual commits the offense of Theft of Secondary Metal if the person unlawfully takes or attempts to take possession of, carries away, or exercises unlawful control over any secondary metal with intent to deprive the rightful owner thereof. 18 Pa. C.S. § 3935.1. Based upon the testimony from Hinston the Commonwealth has established that the materials taken to Hinston's was secondary metal. He described it as copper which falls under the statute.

For similar reasons, the Commonwealth presented sufficient evidence to support *prima facie* findings for Theft by Unlawful Taking and Theft of Secondary Metal. The evidence, viewed in the light most favorable to the Commonwealth, establishes that Defendant unlawfully exercised control over Staiman's property with intent to deprive the owner thereof, and that the property consisted of secondary metals within the meaning of the statute. The material sold at Hinston's was the same type expected from a locomotive demo. None was returned to Staiman's. Defendant transported the material in his personal vehicle rather than Staiman's truck and sold it for personal profit. These facts support an inference of unlawful control and intent to deprive.

Theft by Unlawful Taking

Finally, a person commits the offense of Theft by Unlawful taking if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof. 18 Pa. C.S. § 3921(a). To be guilty of theft under this definition, the actor's intention or conscious object must be to take unlawfully the property of another for the purpose of depriving the other of his or her property. *Commonwealth v. Dombrauskas*, 418 A.2d 493,

496–97 (Pa.Super. 1980). "Moveable property" is defined as "property of which location can be changed." § 3901. "Deprivation" occurs if a person "withhold[s] property of another permanently" or "dispose[s] of the property so as to make it unlikely that the owner will recover it." *Commonwealth v. Torsunov,* 2025 PA Super 207, 345 A.3d 339, 347 (2025) The Commonwealth needed only to show that Defendant unlawfully took movable property of another with intent to deprive. It was not required to produce detailed inventory records[10] at this stage. The Commonwealth presented evidence that copper and brass belonging to Staiman's was expected from the demolition; that none were returned. Defendant was part of the crew with access to the materials, and that Defendant personally sold those materials shortly after the work. This evidence, if accepted as true, permits a jury to conclude that Defendant unlawfully took Staiman's property.

Conclusion

While the Commonwealth's case relies largely on circumstantial evidence and reasonable inferences, such proof is sufficient at the preliminary hearing stage. The gaps and inconsistencies identified by Defendant raise issues of credibility and evidentiary weight that are properly reserved for trial. Accordingly, the Court finds that the Commonwealth has met its burden of establishing a *prima facie* case as to the charged offenses.

[10] The court strongly encourages the Commonwealth to provide the documentary evidence referred to at the preliminary hearing to the defense to facilitate discovery and promote a non-trial disposition of the case. Since the materials were not provided at the preliminary hearing and also not at the *habeas* hearing, providing the materials may eliminate a last-minute challenge to a violation of Rule 573 of the Pa.R.Crim.P.

ORDER

AND NOW, this 15th day of December, 2025, based upon the foregoing Opinion, Defendant's Petition for Writ of Habeas Corpus hereby **DENIED.**

By the Court,

Nancy L. Butts, President Judge

cc: DA (EB)
Giovanna Daniele, Esquire
Jerri Rook
Gary Weber, Esq.

NLB/