

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **NO. CR 968-2025**
:
vs. : **CRIMINAL DIVISION**
:
NATHAN BANKS, :
Defendant :

OPINION and ORDER

Nathan Banks (Defendant) was charged with four counts of Delivery of a Controlled Substance¹ and four counts of Criminal Use of a Communications Facility². The charges arise from four separate alleged controlled buys of cocaine on August 7th, 2023, August 17th, 2023, September 28th, 2023 and October 4th, 2023. As a result, the Defendant was charged criminally on May 16th, 2025. Defendant, following his preliminary hearing, filed an Omnibus Pretrial Motion that included a Petition for Writ of Habeas Corpus. Defendant argues that the Commonwealth failed to meet their burden of proof at the preliminary hearing specifically because they relied on hearsay testimony to identify the Defendant as the criminal actor.

Background

At the time of the hearing on Defendant’s Omnibus Pre-Trial motion the parties stipulated to submitting the preliminary hearing transcript to the Court and providing argument. Additionally, the Court ordered a briefing schedule and both the Commonwealth and Defendant submitted briefs. At the time of the preliminary hearing the Commonwealth presented only one witness, Trooper Eichenlaub (Trooper).

¹ 35 Pa. C.S. § 780-113(a)(30)

² 18 Pa. C.S. § 7512(a)

The Trooper testified that he works for the Vice Unit for Troop F of the Pennsylvania State Police out of Montoursville, PA. The Trooper testified that on August 7th, 2023 he met with a confidential informant (CI) for the purpose of purchasing cocaine from the Defendant. On that date the CI allegedly contacted the Defendant in this case to set up a buy for cocaine. On this date the Trooper stated that he was in the room with the CI, made contact with the Defendant, the phone was on speaker phone and he had listened to the conversation.

After the first phone call a buy operation was planned in which the CI would meet the Defendant in Bubb's Alley in Jersey Shore, PA. At the same time surveillance units observed the Defendant enter a black Chevy Impala in the area of 505 Park Ave, Williamsport. Thereafter the Defendant was observed arriving at Bubb's Alley and the trooper observed the CI entering the black Chevy Impala. The CI then entered the car and shortly exited and shook the Defendant's hand. Once the CI returned to the Trooper he handed over a plastic bag containing cocaine.

On August 17th, 2023 the second controlled buy occurred. On that date the CI allegedly contacted the Defendant in the Trooper's presence once again for the purposes of buying cocaine. After the buy was set up the Trooper transported the CI to the area of 505 Park Ave., Williamsport. The CI exited the vehicle and approached the residence at that same address. At the same time the Trooper observed the same Chevy Impala approach the residence and the Defendant was observed exiting the vehicle and entering the residence at the same address. After a few minutes the CI returned the to Trooper with cocaine.

The third controlled buy occurred on September 28th, 2023. Once again, the CI allegedly contacted the Defendant in the presence of the Trooper for the purposes of buying cocaine. This time the CI was directed to meet the Defendant at 517 Steven St, Williamsport, PA. The CI was

taken to the residence at that address and entered and exited within a few minutes. After exiting the CI returned to the Trooper with cocaine.

Finally, the last buy for cocaine happened on October 10th, 2023. Like the previous buys the CI allegedly contacted the Defendant to the purposes of buying cocaine. This conversation happened in the presence of the Trooper and the CI was instructed to return to the 517 Steven St. address to purchase the cocaine. The CI was transported to the residence and entered and exited again within a few minutes. The CI then returned to the trooper with cocaine.

Discussion

Defendant argues that the Commonwealth relied solely on hearsay evidence and failed to provide any non-hearsay or admissible hearsay evidence to establish the identity of the Defendant as the criminal actor.

At a preliminary hearing the Commonwealth “bears the burden of establishing at least a prima facie case that the crime was committed”. *Commonwealth v. McBride*, 528 Pa. 153, 591 (Pa. Super. 1991). Further, to prove its burden at this hearing, “the Commonwealth is required to present evidence with regard to each of the material elements of the charge and to establish sufficient probable cause to warrant the belief that the accused committed the offense”. *Id.* 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. The evidence presented at the preliminary hearing must be considered in the light most favorable to the Commonwealth. *Commonwealth v. Hilliard*, 172 A.3d 5, 10 (Pa. Super. 2017).

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, 10 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”).

A person is guilty of Delivering a Controlled Substance when:

(a)(30) The following acts and the causing thereof within the Commonwealth are hereby prohibited: Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or

knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.³

Here, when viewing the evidence in the light most favorable to the Commonwealth, the Court finds that they have met their prima facie burden. The Commonwealth did utilize hearsay evidence for the initial identification of the Defendant from the CI. With that said the Trooper also testified that the Defendant was personally observed at the 505 Park Ave residence before the first controlled buy and was observed at the same residence at the time of the second controlled buy. Further, the Defendant's vehicle was observed at the time of the first two controlled buys by the Trooper. As for the second two controlled buys the Trooper was present for all of the phone calls between the CI and Defendant and testified that the same phone number was used to contact the Defendant each time.

ORDER

AND NOW, this ____ day of **March, 2026**, the Court DENIES Defendant's Petition for Habeas Corpus.

BY THE COURT

Ryan C. Gardner, Judge

RCG/kbc

cc: DA (Lindsay Sweeley, Esq)
Matthew Diemer, Esq.
Gary Weber, Esq.

³ 35 Pa. C.S. § 780-113(a)(30)

