

W. Weber

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR 1467-2025

vs.

**CALVIN MARKLE,
Defendant**

: CRIMINAL DIVISION

**:
:
:
:**

**FILED
LYCOMING COUNTY
2026 APR 23 AM 11:08
JULIE L. THOMAS
PROCLERK
CLERK OF COURTS**

OPINION AND ORDER

This matter was before the Court on March 3, 2026 as a result of Defendant filing an Omnibus Pretrial Motion (OPM) dated December 29, 2025. In his OPM, Defendant included Count I, a Petition for Habeas Corpus, Count II, a Motion for Discovery and finally, Count III, a Motion to Reserve the Right to File Additional Pretrial Motions. For the purpose of Count I of the OPM, both Defendant and the Commonwealth agreed that the Court should rely on Commonwealth's Exhibit one, a transcript of the preliminary hearing held before MDJ Kirsten Gardner November 14, 2025.

BACKGROUND

In his Petition for Habeas Corpus, Defendant argues that during the preliminary hearing the Commonwealth failed to establish the elements of count 4 of the Information, Strangulation, and as a result, this count should be dismissed. Per the preliminary hearing transcript, the victim of the strangulation, Brenda Markle, testified that Defendant came home to their shared residence of 328 Louise Ave, Montgomery, Lycoming County at 3:00 A.M., where he then consumed a couple bottles of alcohol and then a fight started. Markle testified that Defendant threw her around and did place his hands around her neck. Defendant's hands were on Markle's neck for a couple of minutes and she felt pressure, could not breathe and thought she was going to lose consciousness. Also, as a result of this fight, Markle was terrified and sustained bruising all over her back, legs and arms.

DISCUSSION

Count I Petition for Writ of Habeas Corpus

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).

A person commits the offense of strangulation if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by applying pressure to the throat or neck. 18 Pa. C. S. § 2718(A)(1).

In the instant matter, Markle testified that during the course of a fight with Defendant, Defendant’s hands were on her neck for a couple of minutes and she did feel pressure. Also, as Defendant’s hands were on her neck, she could not breathe and thought she was going to lose consciousness.

Based on the testimony of the victim during the preliminary hearing, the Commonwealth did satisfy its *prima facie* burden. Although Defendant urged this Court to also weigh the credibility of the victim’s testimony, the undersigned is unwilling to do so because weight and

credibility are not to be factors at this stage of the litigation. In other words, neither a magisterial district judge or a court of common pleas judge pursuant to a habeas challenge may assess weight or credibility. Further, even if credibility could be assessed at this juncture, it would be unfair to the Commonwealth for the undersigned to make any credibility determination from only the reading of a transcript. As a result, Defendant's request that Count 4, Strangulation, be dismissed, is **DENIED**.

Count II Motion for Discovery

During the OPM hearing, Defendant and the Commonwealth agreed that the photographs furnished to Defendant were grainy and lacking detail. As a result, both parties agreed that the Pennsylvania State Police shall provide new copies of photographs to the Commonwealth and same then provided to Defendant within thirty (30) days of the date of this Order.

Count III Motion to Reserve the Right to File Additional Pretrial Motions

Consistent with the Rules of Criminal Procedure, the motion to reserve right is granted but only to the extent that the opportunity to file a motion did not previously exist or defense counsel was unaware of the grounds for the motion or the interests of justice otherwise require (which reason is being utilized by the defense shall be set forth and explained in the any motion).

BY THE COURT


Ryan C. Gardner, Judge

RCG/kbc

cc: DA
Robert Hoffa, Esq.
Gary Weber, Esq.