NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellant v. BROOK T. REESE	: : : : : : : : :	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 374 MDA 2023

Appeal from the Order Entered February 8, 2023
In the Court of Common Pleas of Bradford County Criminal Division at No(s): CP-08-CR-0000614-2022

BEFORE: OLSON, J., NICHOLS, J., and BECK, J.

MEMORANDUM BY NICHOLS, J.: **FILED: NOVEMBER 19, 2026**

The Commonwealth appeals from the order granting Appellee Brook T. Reese's pre-trial petition for habeas corpus and dismissing all charges without prejudice. On appeal, the Commonwealth challenges the trial court's evidentiary rulings and conclusions regarding the sufficiency of the evidence. We reconsider this case following remand from the Supreme Court of Pennsylvania in light of its decision in ***Commonwealth v. Sutton***, 362 A.3d 25 (Pa. 2026) (***Sutton II***). After careful review, we reverse the trial court's order and remand for proceedings consistent with this memorandum.

The record, as set forth in the January 24, 2023 habeas hearing before the trial court, establishes that Detectives David Hart and Michael Lamanna of the Bradford County Drug Task Force organized a series of controlled drug buys in January and February of 2022 with a confidential informant (CI). ***See*** N.T. Hr'g, 1/24/23, at 10, 14, 17. As a result of these controlled buys, the

Commonwealth charged Appellee with three counts each of possession of a controlled substance with intent to deliver and possession of a controlled substance (PWID).[1] Following a preliminary hearing on October 14, 2022,[2] the charges were held over to the Court of Common Pleas of Bradford County.

Appellee subsequently filed an omnibus pre-trial motion requesting that the trial court dismiss the charges with prejudice because the Commonwealth relied solely on hearsay statements to establish its *prima facie* case at the preliminary hearing. ***See*** Appellee's Omnibus Pre-Trial Mot., 12/2/22, at ¶¶ 7-11. In support, Appellee claimed that during the preliminary hearing, "[i]t was admitted . . . that the testifying officer(s) did not witness the alleged controlled buy(s) and that the alleged transaction was revealed to have occurred as a result of the CI informing the police that [Appellee] sold the CI drugs." ***See*** Appellee's Brief in Supp. of Omnibus Pre-trial Mot., 1/5/23, at 1. Further, Appellee noted that, although the CI did not testify at the preliminary hearing, "inadmissible hearsay about what the CI said to the police was [] improperly admitted . . . and that hearsay was necessary to establish the [Commonwealth's] *prima facie* case." ***See*** Appellee's Omnibus Pre-Trial Mot., 12/2/22, at ¶ 8. Finally, Appellee claimed that the CI was essential to Appellee's defense and requested that the trial court order the Commonwealth to disclose the CI's identity. ***See id.*** at ¶¶ 12-13.

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[1] 35 P.S. §§ 780-113(a)(30) and (16), respectively.

[2] The transcript from the preliminary hearing does not appear in the certified record.

On January 24, 2023, the trial court conducted a pre-trial habeas hearing. At the hearing, the Commonwealth presented testimony from Detectives Hart and Lamanna. When the Commonwealth attempted to elicit testimony from the detectives concerning out-of-court statements by the CI, Appellee objected based on hearsay, and the trial court sustained Appellee's objections. At the conclusion of the hearing, the trial court entered an order quashing the charges **without prejudice** and discharged Appellee from custody. On February 15, 2023, the trial court filed a memorandum opinion explaining the reasons for its decision.

The Commonwealth filed a timely notice of appeal and a court-ordered Pa.R.A.P. 1925(b) statement. The trial court filed a Rule 1925(a)(1) statement directing this Court to its February 15, 2023 memorandum opinion.

On May 7, 2024, this Court reversed the trial court's order and remanded for further proceedings. ***See Commonwealth v. Reese***, 374 MDA 2023, 2024 WL 2020398 (Pa. Super. filed May 7, 2024) (unpublished mem.). Appellee filed a petition for re-argument, which this Court denied on July 12, 2024. ***See*** Order 7/12/24. Appellee subsequently filed a petition for allowance of appeal with our Supreme Court. On August 28, 2026, our Supreme Court granted Appellee's petition, vacated this Court's May 7, 2024 memorandum disposition, and remanded for reconsideration in light of its July 21, 2026 decision in ***Sutton II***. ***See Commonwealth v. Reese***, ---A.3d---, 2026 WL 2542040 (Pa. filed Aug. 28, 2026) (*per curiam*).

Upon our initial review of the Commonwealth's appeal of the dismissal of all charges against Appellee, we relied upon this Court's March 19, 2024 decision in ***Commonwealth v. Sutton***, 313 A.3d 1071 (Pa. Super. 2024) (***Sutton I***). In ***Sutton I***, this Court discussed the interplay between the Commonwealth's qualified privilege in protecting the identity of a CI and the prohibition against relying solely upon hearsay testimony in a preliminary hearing, as mandated by ***Commonwealth v. McClelland***, 233 A.3d 717 (Pa. 2020), and ***Commonwealth v. Harris***, 269 A.3d 534 (Pa. Super. 2022), as well as the Commonwealth's qualified privilege in protecting the identity of CIs, as recognized by ***Commonwealth v. Bright***, 234 A.3d 744, 747 (Pa. Super. 2020) (stating that "where a defendant seeks a CI's identity, the defendant must first show that the request for disclosure is reasonable and that the information sought to be obtained through disclosure is material to the defense") (citations omitted). The ***Sutton I*** Court held that the trial court erred when it concluded that the Commonwealth was required to produce the CI at the preliminary hearing. ***See Sutton I***, 313 A.3d at 1077.

In ***Sutton II***, our Supreme Court considered whether ***Sutton I*** "erroneously create[d] an exception under ***Harris*** [], which allows the Commonwealth to prove a *prima facie* case by establishing identity using only hearsay evidence[] if a [CI] is being utilized." ***Sutton II***, 362 A.3d at 32 (citation omitted and some formatting altered). On appeal, the ***Sutton II*** Court determined that the trial court's order granting a habeas petition was interlocutory and, thus, not an appealable order. ***See id.*** at 35-36. Our

Supreme Court ultimately held that "there is no discernible basis under our current law to authorize an appeal from an interlocutory order granting a habeas petition that dismisses **all** charges when the Commonwealth has the ability to reinstate those charges." ***Id.*** at 45 (emphasis in original; footnote omitted). As the Court further explained:

> [t]here exist limited circumstances when an appeal will lie from a pretrial grant of a habeas petition, such as when the Commonwealth is precluded from reinstituting the charges. Accordingly, our jurisdictional analysis does not apply when: the lower court's order dismisses the charges **with prejudice**; the statute of limitations would otherwise expire; the Commonwealth appeals, pursuant to Pa.R.A.P. 311(d), and properly certifies that the order "will terminate or substantially handicap the prosecution[;]" or the Commonwealth's attempt to rearrest is otherwise blocked. Moreover, if **some** but **not all** of the charges are quashed, the Commonwealth would be permitted to appeal, as it would otherwise risk attaching jeopardy to those charges by proceeding to trial on the remaining charges, thereby permanently precluding prosecution of the quashed charges.

Id. (citation omitted; emphasis in original).

In the instant case, in its February 8, 2023 order, the trial court entered an order quashing **all** charges against Appellee **without prejudice**. ***See*** Trial Ct. Order, 2/8/23. Accordingly, pursuant to our Supreme Court's holding in ***Sutton II***, the order from which the Commonwealth appealed is not a final appealable order and this Court lacks jurisdiction to consider the appeal. ***See Sutton II***, 362 A.3d at 35-36.

Our analysis cannot end here, however. Relevantly, the Commonwealth charged Appellee with three counts each of PWID and possession of a controlled substance relating to drug transactions alleged to have taken place

in January and February of 2022. ***See*** N.T. Hr'g, 1/24/23, at 10, 14, 17. The Commonwealth is subject to a five-year statute of limitation for:

> [A]ny offense punishable under section 13(f) of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.[FN1]
>
> [FN1] 35 P.S. § 780-113(f).

42 Pa.C.S. § 5552(a)(2) n.1. Subsection 780-113(f) of the Controlled Substance, Drug, Device and Cosmetic Act specifically refers to punishments for offenses arising under 35 P.S. §§ 780-113(a)(12), (14), and (30). ***See*** 35 P.S. §§ 780-113(f). Accordingly, while charges of PWID under 35 P.S. § 780-113(a)(30) are subject to a five-year statute of limitations, charges for possession of a controlled substance charged under 35 P.S. § 780-113(a)(16) are subject to a two-year statute of limitations. ***See*** 42 Pa.C.S. § 5552(a).

For these reasons, we find that the instant case falls into one of the enumerated exceptions set forth in ***Sutton II*** allowing the appeal of an interlocutory order. Because some of the charges filed against Appellee are subject to a two-year statute of limitations, which would have expired in January and February of 2024, we find that the Commonwealth has established a right of immediate appeal and, therefore, we may exercise jurisdiction over the Commonwealth's appeal. ***See Sutton II***, 362 A.3d at 45. Accordingly, we shall proceed to consider the merits of the Commonwealth's appeal.

On appeal, the Commonwealth raises the following issues for our review:

> 1. Did the [trial court] err in granting the writ of *habeas corpus* on the grounds/reasoning of [***McClelland*** and ***Harris***]?
>
> 2. Did the [trial court] err in finding that the Commonwealth did not present a *prima facie* case at the preliminary hearing?

Commonwealth's Brief at 3.

In its first issue, the Commonwealth contends that the trial court misapplied ***Harris*** and ***McClelland*** "in determining that the Commonwealth could not rely on hearsay testimony from the CI at the [habeas] hearing to prove the identity of [Appellee] as the source of delivery of the controlled substance." ***Id.*** at 8. Specifically, the Commonwealth argues that it had a qualified privilege to withhold the identity of a CI and that it was Appellee's burden to demonstrate that the request for the CI's identify was reasonable and material to the preparation of the defense. ***Id.*** at 11 (citing ***Commonwealth v. Powell***, 656 WDA 2016, 2017 WL 4296970 (Pa. Super. filed Sept. 28, 2017) (unpublished mem.)).[3] Therefore, because Appellee failed to meet this burden, the Commonwealth concludes that the trial court

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[3] We note that ***Powell*** is an unpublished memorandum decision that this Court filed on September 28, 2017.

> An unpublished memorandum decision filed prior to May 2, 2019, shall not be relied upon or cited by . . . a party . . . except that such a memorandum decision may be relied upon or cited (1) when it is relevant under the doctrine of law of the case, *res judicata*, or collateral estoppel, and (2) when the memorandum is relevant to a criminal action or proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior action or proceeding.

210 Pa. Code § 65.37(B); ***see also*** Pa.R.A.P. 126(b).

erred in sustaining Appellee's hearsay objections and dismissing the charges. ***See id.*** at 13.

Our Supreme Court has held that the Commonwealth may not rely solely upon hearsay evidence to meet its *prima facie* burden in a preliminary hearing or *habeas corpus* proceeding. ***See McClelland***, 233 A.3d at 736; ***see also Harris***, 269 A.3d at 548 (reiterating that ***McClelland*** "preclude[s] the Commonwealth from relying on hearsay alone at a preliminary hearing to establish a *prima facie* case that the defendant committed a crime").

It is also well settled that the Commonwealth enjoys a qualified privilege not to disclose the identity of a CI. ***Bright***, 234 A.3d at 747. As noted above, "where a defendant seeks a CI's identity, the defendant must first show that the request for disclosure is reasonable and that the information sought to be obtained through disclosure is material to the defense." ***Id.*** (citation omitted and formatting altered).

In ***Sutton I***,[4] law enforcement conducted a series of controlled drug buys with a CI and ultimately charged the defendant with several drug-related offenses. ***Sutton I***, 313 A.3d at 1072. During the preliminary hearing, a detective testified as to the CI's out-of-court statements, which identified the defendant as the person from whom the CI purchased controlled substances. ***Id.***

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[4] Our Supreme Court did not address the merits of ***Sutton I***'s analysis of the evidentiary issues considered in ***Sutton II***. Accordingly, despite ***Sutton I*** having been vacated by ***Sutton II***, we find that the ***Sutton I*** Court's analysis is nonetheless persuasive and continue to apply it to the instant case.

After the charges were held for court, the defendant filed a pre-trial habeas motion arguing that the charges should be dismissed because the Commonwealth relied on inadmissible hearsay to establish the defendant's identity. ***Id.*** at 1072-73. In the alternative, the defendant requested disclosure of the CI's identity, arguing that it was essential to the preparation of his defense. ***Id.*** at 1073. Ultimately, the trial court concluded that the Commonwealth improperly relied on hearsay evidence to establish the defendant's identity at the preliminary hearing and dismissed the charges. ***Id.***

On appeal, the ***Sutton I*** Court acknowledged that, under ***Harris***, the Commonwealth was precluded "from relying solely on hearsay evidence at a preliminary hearing to make its *prima facie* case that the defendant was the person who committed the crime charged, even if direct evidence established that the alleged crime occurred." ***Id.*** at 1075 (citation omitted). However, the ***Sutton I*** Court explained:

> ***Harris*** ... does not vitiate jurisprudence that has promoted an accountable, prescribed system recognizing a qualified privilege of keeping informants' identities confidential and permitting use of their statements [by] law enforcement at preliminary hearings. This is particularly so where, as in the present case, the Commonwealth certified with the trial court that the CI will be produced at trial and where [the defendant] had not established at the preliminary hearing that the qualified privilege rubric required disclosure because the information sought was material to the preparation of the defense and that the request is reasonable.

> To apply ***Harris*** to the facts in the case *sub judice* would eliminate the qualified privilege of protecting the identity of confidential informants at the preliminary hearing stage of the proceedings.

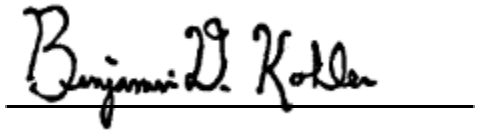
Id. at 1075-76.

Here, following our review of the record, and in light of this Court's substantive reasoning in ***Sutton I***, we conclude that the trial court erred in precluding the detectives from providing testimony concerning out-of-court statements by the CI. ***See id.*** at 1076 (holding that the Commonwealth may present hearsay concerning out-of-court statements from a CI to prove a defendant's identity in cases (1) where the Commonwealth certifies that the CI will be produced at trial; and (2) in the absence of evidence from the defendant that "the qualified privilege rubric required disclosure because the information sought was material to the preparation of the defense and that the request is reasonable"). Therefore, we conclude that remand is necessary.

On remand, the trial court shall conduct a new pre-trial habeas hearing consistent with this Court's substantive reasoning in ***Sutton I***.

Order reversed. Case remanded for further proceedings consistent with this memorandum. Jurisdiction relinquished.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/19/2026