

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY

TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : CR 456-2015

V.

JAMES SNUKA

**COMMONWEALTH'S PETITION TO FILE BILLS OF INFORMATION WITHOUT A
PRELIMINARY HEARING**

**TO: THE HONORABLE MARIA L. DANTOS, SUPERVISING JUDGE OF THE
LEHIGH COUNTY INVESTIGATING GRAND JURY:**

The Commonwealth of Pennsylvania, through its attorneys, JAMES B. MARTIN, District Attorney of Lehigh County, and CHARLES F. GALLAGHER III, Chief Deputy District Attorney, hereby represents the following in support of its Petition to File Bills of Information Without a Preliminary Hearing.

BACKGROUND OF THE CASE AND PROCEDURAL HISTORY

1. The Seventh Panel of the Lehigh Grand Jury Investigating Grand Jury conducted an investigation of the death of Nancy Argentino that occurred on May 11, 1983 as it was determined by an autopsy performed that day by Dr. I. Mihalakis, M.D. at Lehigh Valley Hospital Center in Allentown, PA that her death was due to craniocerebral injuries.

At the conclusion of the work by the Investigating Grand Jury, a Presentment was issued on July 17, 2015 recommending that James Snuka be arrested on charges of Criminal Homicide. This Presentment was reviewed and accepted by this Honorable Court on August 5, 2015 and

soon thereafter District Attorney James B. Martin directed that the Lehigh County Detective Gerald Procanyn file a Criminal Complaint charging James Snuka with Third Degree Murder and Involuntary Manslaughter. The Investigating Grand Jury's Presentment is hereby incorporated by reference into this Petition and it is attached as Appendix "A".

2. The defendant, James Snuka, surrendered with his Grand Jury attorney, William Moore, Esquire, on September 1, 2015 and he was charged as directed by the District Attorney; he was arraigned and informed of the charges and bail was set at \$100,000. A Preliminary Hearing was then scheduled for Monday, September 21, 2015 before Magisterial District Judge Robert Halal. The defendant posted the required 10% Bail and was released that day after being interviewed by a representative of Lehigh County Pretrial Services.

3. As the Supervising Judge of the Lehigh County Investigating Grand Jury reviewing the Presentment as well as the transcripts of the testimony presented to the Grand Jurors, this Honorable Court is well aware that this investigation is based on the testimony and/or statements of 20 witnesses and the introduction of 37 Exhibits. Many of these exhibits that were presented to the Investigating Grand Jury are from the paramedic, emergency room and autopsy reports completed on the day of Ms. Argentino's death. Additionally, the Investigating Grand Jury saw the written statements or heard the explanations made by the defendant that evening to the medical and hospital personnel, who attended to Ms. Argentino on the day she was pronounced dead at the Emergency Room, as well as statements or excerpts from the defendant's autobiography published in October, 2012. Further, the Investigating Grand Jury heard the testimony of these paramedic, emergency room professionals concerning their recollections of what was said to them by James Snuka that evening. Most importantly, the Investigating Grand Jury heard the testimony of Dr. Isidore Mihalakis, MD, the experienced forensic pathologist that

conducted the autopsy several hours after her death and authored the official autopsy report. It is respectfully submitted that a review of the testimony by the witnesses as well as the paramedic, emergency room and autopsy reports clearly provides significant evidence that supports a prima facia case that the defendant was responsible for the death of the victim as Your Honor has already determined by approving and accepting the Presentment by your August 5, 2015

Findings and Order.

4. The Commonwealth also respectfully requests this Court as the Supervising Judge of the Investigating Grand Jury immediately enter the attached order releasing all of the transcripts of testimony of all the witnesses as well as a copy of all of the 37 Grand Jury Exhibits to the counsel for the defendant as soon as possible even though Rule 230 (A)(2) of the Pennsylvania Rules of Criminal Procedure only permit such disclosure after the direct testimony at trial.

**Pa.R.Crim.P.542(E) ALLOWS HEARSAY FOR PRIMA FACIA CASE PLUS THERE IS
NO VIOLATION OF CONFRONTATION CLAUSE**

5. The Commonwealth submits that a Preliminary Hearing in this matter could possibly require testimony from at least the 20 witnesses who appeared before the Investigating Grand Jury **but most likely would** only require testimony from Detective Procanyn as a result of the very recent July 17, 2015 opinion by the Pennsylvania Superior Court. In Commonwealth v. David Edward Ricker 2015 PaSuper 153 (1693 MDA 2014), the Pennsylvania Superior Court issued this opinion holding that **hearsay evidence alone** can establish a prima facie case at a preliminary hearing.

The Ricker case arose from an altercation initiated by the defendant with Trooper Michael Trotta of the Pennsylvania State Police after Trooper Trotta responded to a report that the Ricker had run over a neighbor's mailbox and lawn ornament with his truck. Upon Trooper

Trotta's arrival at the defendant's residence, the defendant became belligerent and ordered the trooper from his property. During the course of the interaction, the trooper observed the defendant strike his wife and draw a small handgun from his pants. Trooper Trotta called for backup and another trooper arrived. As this second trooper was giving commands for the defendant to show his hands, Trooper Trotta observed the defendant in possession of an assault rifle which the defendant leveled at the trooper. Trooper Trotta fired his duty weapon striking the defendant twice; however, the defendant returned fire striking the Trooper Trotta several times.

Neither Trooper Trotta nor the second trooper on scene testified at the preliminary hearing. The lead detective testified as to his investigation and played a recorded interview with Trooper Trotta detailing the applicable facts for the court. The defendant objected to the hearsay evidence and requested a continuance in order to call the two troopers on his own behalf. Both requests were denied and charges of attempted murder, assault of a law enforcement officer, and aggravated assault were bound over for trial. The defendant filed a pre-trial writ of habeas corpus which was also denied. This appeal followed.

In their opinion, the Superior Court conducted an analysis into whether **Pa.R.Crim.P. 542 (E) Preliminary Hearing; Continuances** allows for hearsay evidence alone to establish a prima facie case at preliminary hearing. The Court noted that Rule 542 (E) is not in conflict with any binding precedent and that it provides that hearsay evidence alone is sufficient to establish one or more elements of an offense for the purpose of establishing a prima facie case. **The Superior Court held that it logically follows that hearsay evidence alone can establish all elements of an offense to support a prima facie case.**

The defendant in Ricker next argued that permitting hearsay evidence alone at the preliminary hearing violated his rights under state and federal confrontation clauses. The Court

considered the history and purpose underlying the confrontation clauses and found that an accused does not have a right to confront witnesses against him at a preliminary hearing. The Court stated, “*Appellant has not provided, nor have we been able to uncover, any binding precedent that constitutionally mandates an accused be afforded the opportunity to confront and cross-examine a witness against him at a preliminary hearing based on the federal or state confrontation clause.*”

Accordingly, if a preliminary hearing were held in the instant case, all that would be presented by the Commonwealth and reviewed by the Magisterial District Judge (MDJ) would be the attached Presentment via the testimony of Detective Procanyn. Since Your Honor has already held that the same Presentment is sufficient to warrant the charges recommended by the Investigating Grand Jury, it would be completely useless to have the MDJ do the same reading and review that Your Honor as the Supervising Judge of the Investigating Grand Jury has already done. It would be a complete waste of judicial resources for an MDJ to conduct a preliminary hearing.

THERE IS GOOD CAUSE FOR A PRELIMINARY HEARING BYPASS

6. It is well settled that there “is no constitutional right, federal or state, to a preliminary hearing.” Commonwealth v. Ruza, 511 Pa. 59, 64, 511 A.2d 808, 810 (1986); Commonwealth v. McCloskey, 443 Pa. 117, 277 A.2d 764 (1971), cert. denied, 404 U.S. 1000, 92 S.Ct. 559. The principal function of a preliminary hearing is to protect the individual against unlawful detention. Commonwealth v. Ruza, supra. There have always been exceptions to the normal procedure of affording defendants a preliminary hearing. See Commonwealth v. McCloskey, supra. Furthermore, James Snuka, the defendant in the instant case has been granted bail and he is not awaiting the prosecution of his case in pretrial detention,

7. Specifically, the Pennsylvania Supreme Court has held that “an investigating grand jury presentment is a constitutionally permissible and reasonable alternative to a preliminary hearing.” Commonwealth v. Bestwick, 489 Pa. 603, 414 A.2d 1373 (1980), citing Commonwealth v. McCloskey, 443 Pa. at 140, 277 A.2d at 776. The Supreme Court has repeatedly expressed the belief that preliminary hearings after Investigating Grand Jury presentments are unnecessary because they subject the administration of criminal justice “to another superfluous layer of delay . . . with only a slight expectation for what at most would be a highly speculative de minimis advantage to an accused.” Commonwealth v. Bestwick, 489 Pa. at 615, 414 A.2d at 1378, quoting Commonwealth v. McCloskey, 443 Pa. Super. at 139, 277 A.2d at 775.

8. The Pennsylvania Rules of Criminal Procedure, promulgated by the Supreme Court, explicitly provide for a bypass of a preliminary hearing. Pursuant to Pa.R.Crim.P. 565(A). **Presentment of Information Without Preliminary Hearing**, a court may grant the prosecutor leave to file an information without a preliminary hearing upon a showing of good cause:

“When the attorney for the Commonwealth certifies to the court of common pleas that a preliminary hearing cannot be held for a defendant for good cause, the court may grant leave to the attorney for the Commonwealth to file an information with the court without a preliminary hearing.”

The Commonwealth hereby certifies that a preliminary hearing should not be held for the good cause that it would be a complete waste of judicial resources as well as a redundant review by the MDJ as explained *supra*.

9. In a case similar to this one, the Pennsylvania Superior Court affirmed the trial court’s finding of good cause to bypass a preliminary hearing where a grand jury returned a presentment against the appellant after an eight (8) month investigation. See Commonwealth v. Cassidy, 423 Pa. Super. 1, 620 A.2d 9, allocatur denied, 536 Pa. 619, 637 A.2d 270 (1993). In Cassidy, one of multiple defendants appealed the filing of an information without a preliminary hearing. In

affirming the lower court's finding of good cause for a preliminary hearing bypass, the Cassidy Court noted the prosecution's offer to provide the appellant with substantial, pre-trial discovery, and cited the following factors: the complexity of the case, the expenses involved in conducting a preliminary hearing, and the fact that the preliminary hearing would merely reiterate the prima facie case made in the presentment. As indicated above in paragraph 4, the Commonwealth has requested that Your Honor as Supervising Judge of the Investigating Grand Jury immediately enter the attached order releasing all of the transcripts of testimony of all the witnesses as well as a copy of all of the 37 Grand Jury Exhibits to the counsel for the defendant.

10. The factors in this case compelling a preliminary hearing bypass are even stronger than those in Cassidy. All of the Cassidy factors are present here: complexity, unjustifiable expense, and the prosecution's offer of substantial discovery to the defendants.

11. The complexity of this case, and the number of witnesses are factors demonstrating good cause to bypass a preliminary hearing. The vast majority of all preliminary hearing testimony would be the same evidence that was introduced before the Grand Jury. Thus, as in Cassidy, a preliminary hearing here "would merely reiterate the prima facie case which [was] . . . made more than adequately in the presentment." Cassidy, 423 Pa. Super. at 5, 620 A.2d at 11. Moreover, the delay occasioned by a preliminary hearing here would run afoul of the Supreme Court's repeatedly expressed concern for superfluous delay. Commonwealth v. Bestwick, *supra*; Commonwealth v. McCloskey, *supra*.

12. The expense associated with conducting a preliminary hearing, another Cassidy factor, also supports a bypass here. The enormous expenses associated with a preliminary hearing here would include at a minimum, court staff time, attorneys' fees, and possible law enforcement overtime. Such expenses are wholly unnecessary.

13. The third factor that, according to the Cassidy Court, demonstrates good cause to bypass a preliminary hearing is also present in this case: the Commonwealth will provide the defendants with the presentment and discovery material from the Grand Jury proceedings.

14. The Investigating Grand Jury process in this case has given the defendant the rights that a preliminary hearing protects: **independent judicial review to determine probable cause, notice of the charges, and a preview of the evidence.** In fact, with the Commonwealth's provision of substantial discovery, the defendants will have far more: a full and fair opportunity to evaluate the evidence, discuss it with their attorneys, prepare for trial, and gauge their case. Additionally, a preliminary hearing would render the Investigating Grand Jury's efforts during their investigation virtually meaningless. The Grand Jurors heard and examined volumes of evidence and concluded that it established probable cause – a decision that you as the Supervising Grand Jury Judge endorsed through your independent review of the presentment. Compelling the re-presentation of this same evidence would undermine the Investigating Grand Jury's hard work as well as Your Honor's through review of the Grand Jury record and exhibits.

15. A preliminary hearing in this case would also squander judicial resources. A preliminary hearing in this case would likely drain the resources of the court system. Magisterial District Judge Robert C. Halal of District Court 31-1-07 to which the hearing is assigned would basically review the 30 page Presentment that he already accepted at the time of the defendant's Preliminary Arraignment. This factor, the burden on the judicial process, is one the Pennsylvania Supreme Court has cited as militating in favor of a preliminary hearing bypass. See Commonwealth v. Bestwick, supra, 489 Pa. at 1378, 414 A.2d at 615.

16. Simply put, to require lengthy, complex testimony from an Investigating Grand Jury to be repeated, for the sole purpose of establishing probable cause a second time, could be considered

as not only a waste of scarce grand jury and judicial time, but also a repetitious, costly, and superfluous layer of delay before trial. As cited above, our Courts under far less compelling circumstances have specifically approved the bypass of a preliminary hearing. Commonwealth v. Cassidy, supra.

CONCLUSION

WHEREFORE, in view of the fact that the Commonwealth has satisfied its obligation under Pa.R.Crim.P. 565(A) to show good cause for proceeding without a preliminary hearing in this case, the Commonwealth respectfully submits that this Honorable Court should grant the Commonwealth's Petition to File Bills of Information Without a Preliminary Hearing and authorize the return of the Bills of Information against the defendant as recommended in the Presentment.

Respectfully submitted:

JAMES B. MARTIN
District Attorney

BY: _____
CHARLES F. GALLAGHER III
Chief Deputy District Attorney

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY

TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : CR 456-2015

V.

JAMES SNUKA

VERIFICATION

The undersigned hereby verifies that the facts set forth in the foregoing motion are true and correct to the best of my knowledge, information, and belief. This verification is made subject to the penalties for unsworn falsification to authorities under 18 Pa.C.S. § 4904.

CHARLES F. GALLAGHER III
Chief Deputy District Attorney