

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA

No.: C-48-CR-4035-2015

v.

FRANKLYN PALMER HUTCHISON, IV,

Defendant.

OPINION OF THE COURT

This matter is before the court on Defendant Franklyn Palmer Hutchison, IV's ("Hutchison") "Petition for Writ of Habeas Corpus," seeking to quash the abuse of corpse charge in the Information. A hearing on Hutchison's petition was held on March 23, 2016. Following the hearing, the parties submitted legal briefs. For the reasons that follow, Hutchison's "Petition for Writ of Habeas Corpus" is denied.

BACKGROUND

I. The Alleged Crime

On July 7, 2015, Hutchison and Brianne Miles ("Miles") were temporarily residing in a bedroom on the second floor of April Huber's ("Huber") home at 221 Spring Street in West Easton, Northampton County, Pennsylvania ("Huber Home"). See Notes of Testimony at 4, Preliminary Hrg., *Commonwealth v. Hutchison*, No. OTN T721251-6 (C.P. Northampton Co. Dec. 16, 2015) ("N.T. Prel. Hrg."). That evening, Huber and Miles went

to McDonald's for dinner before returning to the Huber Home. *See id.* at 5. The following day, July 8, 2015, Huber noticed an unusual smell in the Huber Home. *See id.* at 6. At the time, Huber attributed the unusual smell to the septic system. *See id.* At approximately 5:00 p.m. that evening, Huber inquired of Hutchison as to Miles's whereabouts. *See id.* at 6, 10. Hutchison informed Huber that Miles was sleeping in the bedroom. *See id.* at 6.

Huber did not see Hutchison or Miles on July 9, 2015. *See id.* at 7. However, Huber noted that she heard footsteps emanating from the room Hutchison and Miles were occupying. *See id.* Additionally, the unusual smell Huber had noticed the previous day had grown stronger. *See id.* On the morning of July 10, 2015, Huber's husband returned from work and remarked that the smell was "unbelievable." *See id.* at 7, 12. Believing that the smell emanated from the room Hutchison and Miles were occupying, Huber's husband sent a text message to Hutchison inquiring about the smell. *See id.* Approximately two and a half minutes after the text message was sent, Hutchison met Huber and her husband downstairs and informed them that he believed Miles was dead. *See id.* at 7-8. Huber immediately ran up the stairs to the room where Hutchison and Miles had been residing and found Miles's body in the bed. *See id.* at 8. Huber observed that Miles "from her nose down was pitch black and her whole body was blown up and her eyeballs were bulging out." *Id.* After finding Miles's body, Huber ran down the stairs and convinced Hutchison to call 9-1-1. *See id.*

Trooper Kyle Griffith ("Trooper Griffith") responded to Hutchison's 9-1-1 telephone call at approximately 11:30 a.m. on July 10, 2015. *See id.* at 17. When Trooper Griffith entered the room where Miles and Hutchison had been staying, he observed that Miles was deceased, covered in a black blanket, and that her body was very bloated and her head was black in color. *See id.* at 17-19; *see also* N.T. Prel. Hrg. at 27, Com. Ex. 4; N.T. Prel. Hrg. at 28, Com. Ex. 5. Trooper Griffith also noted drug paraphernalia in the room, including short-cut straws, wax paper, and K2 wrappers. *See id.* at 18.

After Trooper Griffith contacted the proper authorities to remove Miles's body from the residence, Trooper Griffith spoke to Hutchison outside the Huber Home concerning his relationship with Miles. *See id.* at 21. Hutchison told Trooper Griffith that Miles was alive on the night of July 9, 2015, but that he found her dead on the morning of July 10, 2015. *See id.* Following this conversation, Hutchison was transported to the State Police Belfast barracks, where Trooper Griffith spoke with Hutchison a second time. *See id.* at 22. Initially, Hutchison repeated his claim that Miles was alive on July 9, 2015, but when Trooper Griffith stated that he believed Miles had been deceased for a longer period of time, Hutchison altered his timeline and told Trooper Griffith that he found Miles deceased on the morning of July 8, 2015. *See id.* at 23-24. Hutchison stated that he realized Miles was dead

after touching her, but he did not call 9-1-1 because he was afraid. *See id.* at 24.

Pursuant to a search warrant, Miles's cellular telephone was searched. *See id.* at 25. On Miles's cellular telephone, Trooper Griffith discovered a text message sent to Miles from Miles's grandfather, Brian Hargraves ("Hargraves"), on the afternoon of July 8, 2015, asking if she needed a ride home from work. *See id.* at 26, 29. Trooper Griffith noted that a response had been made from Miles's cellular telephone to Hargraves within minutes, rejecting Hargraves's offer to give Miles a ride. *See id.* at 26, 29-30. When asked about this text message, Hutchison stated that he believed Miles's cellular telephone had lost power shortly after her demise because he did not hear any activity from the phone. *See id.* at 27. The county ultimately performed an autopsy on Miles, and the coroner, Zachary Lysek, determined that Miles's death was an accidental overdose due to the presence of various drugs in her body. *See id.* at 28-29.

II. Charges

On November 3, 2015, Hutchison was charged with one count of abuse of corpse, one count of false reports to law enforcement, and one count of possession of drug paraphernalia. *See Arrest Warrant, Commonwealth v. Hutchison*, No. C-48-CR-4035-2015 (C.P. Northampton Co. Nov. 3, 2015). The Information alleged that Hutchison possessed drug paraphernalia, provided false information concerning Miles's time of death to police, and

allowed Miles's body to decompose before reporting her death to the proper authorities. See Information, *Commonwealth v. Hutchison*, No. C-48-CR-4035-2015 (C.P. Northampton Co. Feb. 11, 2016). On February 16, 2016, Hutchison was formally arraigned on the charges of abuse of corpse, false reports to law enforcement, and possession of drug paraphernalia. See Acknowledgement of Arraignment, *Commonwealth v. Hutchison*, No. C-48-CR-4035-2015 (C.P. Northampton Co. Feb. 16, 2016). On February 17, 2016, this court, by the Honorable Leonard N. Zito, entered an Order of Court, assigning all pre-trial and trial proceedings in this matter to the Honorable Michael J. Koury, Jr. See Order dated Feb. 12, 2015, *Commonwealth v. Hutchison*, No. C-48-CR-4035-2015 (C.P. Northampton Co. Feb. 17, 2016).

II. Hutchison's Omnibus Motion

On March 15, 2016, Hutchison filed an omnibus pretrial motion in the form of a petition for writ of *habeas corpus* seeking to quash the abuse of corpse charge in the Information. See generally Petition for Writ of Habeas Corpus, *Commonwealth v. Hutchison*, No. C-48-CR-4035-2015 (C.P. Northampton Co. Mar. 15, 2016) ("Habeas Petition"). Through his petition, Hutchison argues that the Commonwealth failed to establish a *prima facie* case of abuse of corpse because "there exists no evidence to indicate that [Hutchison] had any physical contact with the body of [Miles] after her death." Habeas Petition at ¶ 6.

On March 23, 2016, the parties appeared for a hearing on Hutchison's petition and agreed to submit the transcript of the preliminary hearing before Magisterial District Judge Richard Yetter, III. At the conclusion of the hearing, the court set a schedule for the filing of legal briefs. See Order of Court dated March 24, 2016, *Commonwealth v. Hutchison*, No. C-48-CR-4025-2015 (C.P. Northampton Co. Mar. 24, 2016). Both parties submitted legal briefs. See Defendant's Letter Brief in Support of Petition for Writ of Habeas Corpus, *Commonwealth v. Hutchison*, No. C-48-CR-4035-2015 (C.P. Northampton Co. Apr. 6, 2016) ("Hutchison's Brief"); Commonwealth's Letter Brief in opposition to Petition for Writ of Habeas Corpus, *Commonwealth v. Hutchison*, No. C-48-4035-2015 (C.P. Northampton Co. Apr. 20, 2016).

DISCUSSION

I. Standard of Law

A. *Habeas Corpus* Standard

The standard governing a defendant's request for *habeas corpus* relief is well-settled. A petition for *habeas corpus* is properly filed as a means for a defendant to test "a finding of a prima facie case prior to trial." *Commonwealth v. Kowalek*, 647 A.2d 948, 949 (Pa. Super. 1994) (additional citations omitted). The Commonwealth establishes a *prima facie* case when it introduces evidence that, if accepted as true, "produces evidence of each of the material elements of the crime charged and establishes probable

cause to warrant the belief that the accused committed the offense.” *Commonwealth v. Karetny*, 880 A.2d 505, 514 (Pa. 2005) (additional citations omitted). “Proof of guilt beyond a reasonable doubt is not required at this stage.” *Kowalek*, 647 A.2d at 949. Further, the weight and credibility of the testimony is not at issue. *See Liciaga v. Court of Common Pleas of Lehigh County*, 566 A.2d 246, 248 (Pa. 1989) (noting that the trial court “is precluded from considering the credibility of a witness who is called upon to testify” during such proceedings). Additionally, “[i]nferences 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. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990) (additional citations omitted).

To meet its burden in a *habeas corpus* proceeding, the Commonwealth may solely rely on the evidence presented at the preliminary hearing or it may submit additional evidence. *Commonwealth v. Fowlin*, 676 A.2d 665, 673 (Pa. Super. 1996). In this matter, the Commonwealth relied upon the testimony presented at the December 17, 2015 preliminary hearing. Thus, we must examine the evidence presented at the preliminary hearing, viewed in the light most favorable to the Commonwealth and accepted as true, to determine whether the Commonwealth produced evidence of the material elements of the crime of abuse of corpse, and whether Hutchison is probably

the perpetrator of this crime. See *Kowalek*, 647 A.2d at 949; *Karetny*, 880 A.2d at 514.

B. Abuse of Corpse

Hutchison is challenging the abuse of corpse charge in the Information. See Habeas Petition at ¶ 5. The abuse of corpse statute provides that “except as authorized by law, a person who treats a corpse in a way that he knows would outrage ordinary family sensibilities commits a misdemeanor of the second degree.” 18 Pa.C.S.A. § 5510. Hutchison argues that the Commonwealth failed to establish a *prima facie* case because the abuse of corpse statute was not intended to cover a situation where a defendant does not harm the deceased, but simply fails to report the death of the deceased. See *generally* Hutchison’s Brief. We disagree.

In *Commonwealth v. Smith*, the Pennsylvania Superior Court ruled upon the issue of “whether a person who knowingly leaves a corpse to rot, without making arrangements for a proper burial has ‘treat[ed] a corpse in a way that [s]he knows would outrage ordinary family sensibilities.’” See 567 A.2d 1070, 1073 (Pa. Super. 1989) (citing 18 Pa.C.S.A. § 5510). In *Smith*, the defendant was the mother of a three year old child who died as a result of malnutrition and neglect. See *id.* at 1071. The defendant admitted that she discovered her child’s death in February of 1987, but did nothing to properly dispose of her child’s body. See *id.* at 1072. The child’s body was discovered on May 21, 1987, after defendant had moved out of the

apartment where she had resided with the child. *See id.* at 1071. After a bench trial, the defendant was convicted of third degree murder, voluntary manslaughter, and abuse of corpse. *See id.*

On appeal, the defendant argued that the evidence presented at trial was insufficient to support her conviction for abuse of corpse because “there must be some affirmative act upon the corpse, and that [defendant’s] inaction with regard to the corpse precipitated nothing more than the natural decaying process.” *Id.* at 1072. The Superior Court disagreed. *See id.* at 1073.

In analyzing this issue the Superior Court examined Model Penal Code § 250.10, on which the Pennsylvania abuse of corpse statute is based. *See id.* at 1073. The court noted that Comment 2 to Model Penal Code § 250.10 provided that “[t]he distinguishing features of the Model Penal Code offense are the generality and comprehensiveness with which the proscribed conduct is defined.” *Id.* Further, from its interpretation of Comment 2 to Model Penal Code § 250.10, the Superior Court determined that “the purpose of drafting the abuse of corpse statute in very broad and general language was to ensure that offenses such as concealing a corpse came under the purview of the statute.” *Id.* Ultimately, the Superior Court determined that defendant’s conduct in concealing her child’s corpse from the police, and failing to make proper burial arrangements, even if due to defendant’s fear, constitutes an “outrage to ordinary family sensibilities.” *See id.* at 1073.

Therefore, the court found that such conduct was sufficient to establish the material elements of the charge of abuse of corpse and the statute did not require the defendant to perform some affirmative act upon the corpse. See *id.*

II. Hutchison's Habeas Corpus Analysis

We find that the issue before us is the identical issue which was before the Superior Court in *Smith, i.e.*, "whether a person who knowingly leaves a corpse to rot, without making arrangements for a proper burial has 'treat[ed] a corpse in a way that he knows would outrage ordinary family sensibilities.'" See *id.* (citing 18 Pa.C.S.A. § 5510). The Commonwealth presented evidence that Hutchison informed Trooper Griffith that he found Miles deceased on the morning of Wednesday, July 8, 2015. See N.T. Prel. Hrg. at 23-24. Hutchison did not contact the authorities to report Miles's death until July 10, 2015, when Huber's husband inquired about the smell emanating from the bedroom that Hutchison and Miles were occupying. See *id.* at 8. Both Huber and Trooper Griffith testified that when Miles's body was ultimately recovered by law enforcement on July 10, 2015, her face was extremely bloated and black in color. See *id.* at 8, 17-19. The photographs submitted by the Commonwealth depict Miles's decomposing body, which is clearly unfit for burial in an open casket. See N.T. Prel. Hrg. at 27, Com. Ex. 4; N.T. Prel. Hrg. at 28, Com. Ex. 5.

We are satisfied that the evidence shows that, as the defendant in *Smith*, Hutchison left Miles's "corpse to rot" and prevented her family from making proper burial arrangements, thereby engaging in the conduct prohibited by the abuse of corpse statute. See 567 A.2d 1070, 1073 (Pa. Super. 1989) (citing 18 Pa.C.S.A. § 5510). Therefore, examining the evidence in the light most favorable to the Commonwealth, we find the evidence supports a *prima facie* case that Hutchison committed the crime of abuse of corpse. See *Commonwealth v. Kowalek*, 647 A.2d 948, 949 (Pa. Super. 1994) (additional citations omitted); *Commonwealth v. Karetny*, 880 A.2d 505, 514 (Pa. 2005) (additional citations omitted).

We note that Hutchison argues that his case is distinguishable from *Smith*, and therefore he is entitled to *habeas corpus* relief, because 1) the Commonwealth did not present evidence that Hutchison concealed Miles's body; and 2) the holding in *Smith* was based upon a violation of a legal duty, which Hutchison did not owe to Miles. See Hutchison's Brief at ¶ 5-6. We reject both arguments as specious.

Contrary to Hutchison's assertion, we find that there is evidence that Hutchison concealed Miles's body. The Commonwealth presented evidence that a text message was sent on the afternoon of July 8, 2015 from Miles's cellular telephone in response to Hargraves's text message. See *id.* at 26, 29-30. As Hutchison told Trooper Griffith that Miles was dead in morning of July 8, 2015, it is reasonable to infer that Hutchison sent the text message

to Miles's grandfather on the afternoon of July 8, 2015 in an effort to conceal her death. *See Commonwealth v. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990) (additional citations omitted) (trial court can draw reasonable inferences from the evidence in determining a petition for *habeas corpus*). Additionally, on July 9, 2015, the day after Hutchison knew Miles was deceased, he informed Huber that Miles was sleeping when Huber inquired as to Miles's whereabouts. *See* N.T. Prel. Hrg. at 6, 10. Thus, it is reasonable to infer that Hutchison lied about Hutchison's whereabouts in an effort to conceal her death. *See Owen*, 580 A.2d at 414. This evidence clearly demonstrates that Hutchison attempted to conceal Miles's death. Therefore, we find no merit to Hutchison's argument that the Commonwealth did not present evidence that Hutchison concealed Miles's death.

We also find no merit to Hutchison's argument that criminal liability for abuse of corpse stems from a defendant's legal duty to the deceased. The Superior Court's opinion in *Smith* is devoid of any statement that defendant's criminal liability for abuse of corpse arose from her legal duty as the child's mother. *See generally Commonwealth v. Smith*, 567 A.2d 1070 (Pa. Super. 1989). Rather, the court clearly specified that the defendant's liability for abuse of corpse arose from her action in concealing the child's corpse, and her failure to make arrangements for burial. *See id.* at 1073. Therefore, because the court in *Smith* never stated that criminal liability for

abuse of corpse arose from a violation of a legal duty, we refuse to infer that the Superior Court intended to hinge criminal liability for this offense on a violation of a legal duty. As such, Hutchison's second argument must fail.

WHEREFORE, we enter the following:

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COMMONWEALTH OF PENNSYLVANIA

No.: C-48-CR-4035-2015

v.

FRANKLYN PALMER HUTCHISON, IV,

Defendant.

ORDER OF COURT

AND NOW, this 18th day of May, 2016, upon consideration of Defendant Franklyn Palmer Hutchinson, IV's ("Hutchison") "Petition for Writ of Habeas Corpus," moving to quash the abuse of corpse count in the Information on the basis that the evidence presented at his preliminary hearing did not establish a *prima facie* case, and the legal briefs and arguments presented thereon, it is hereby **ORDERED** that Hutchison's petition is **DENIED**.

BY THE COURT:

MICHAEL J. KOURY, JR., J.