

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellant

v.

RICHARD HOLSTON,

Appellee

IN THE SUPERIOR COURT
OF
PENNSYLVANIA

No. 223 EDA 2016

Appeal from the Order December 21, 2015
in the Court of Common Pleas of Bucks County
Criminal Division at No.: CP-09-CR-0005331-2015

BEFORE: SHOGAN, J., SOLANO, J., and PLATT, J.*

DISSENTING MEMORANDUM BY PLATT, J.: **FILED NOVEMBER 20, 2017**

I respectfully dissent. I would vacate the order dismissing all charges and remand for trial.

The Commonwealth did not have to prove Appellee's guilt beyond a reasonable doubt, only establish a *prima facie* case of guilt. The Commonwealth makes a *prima facie* case when it produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense, such that the judge would be warranted in permitting the case to go to the jury.

* Retired Senior Judge assigned to the Superior Court.

For this review, we must view the evidence in the light most favorable to the Commonwealth, together with the benefit of all inferences reasonably drawn from the evidence of record which would support a verdict of guilty. **See, e.g., Commonwealth v. Nieves**, 876 A.2d 423, 424 (Pa. Super. 2005), *appeal denied*, 891 A.2d 731 (Pa. 2005). Questions of the weight and credibility of evidence must be resolved by the fact-finder at trial, not at the preliminary hearing. **See Commonwealth v. Landis**, 48 A.3d 432, 444 (Pa. Super. 2012). “The standard clearly does not require that the Commonwealth prove the accused’s guilt beyond a reasonable doubt at this stage.” **Id.** (citation omitted).

Under this standard and scope of review, I have no difficulty in finding that the Commonwealth met its burden of establishing at least a *prima facie* case for the charged offenses, be it as a principal, accomplice, accessory, or co-conspirator.

Accordingly, I respectfully dissent.