

**[J-108-2020][M.O. – Dougherty, J.]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 9 EAP 2020
	:	
Appellant	:	Appeal from the Judgment of Superior
	:	Court entered on 10/7/19 at No. 1392
	:	EDA 2017 affirming the order entered
v.	:	on 4/5/17 in the Court of Common
	:	Pleas, Philadelphia County, Criminal
	:	Division, at No. MC-51-CR-0005268-
	:	2017
CARLOS PEREZ,	:	
	:	ARGUED: December 1, 2020
Appellee	:	

**CONCURRING OPINION**

**JUSTICE SAYLOR**

**DECIDED: April 29, 2021**

I join the majority opinion.

I write separately only to highlight my point of view that additional clarification of the “*prima facie*” standard governing preliminary hearings in Pennsylvania is needed. See *Commonwealth v. McClelland*, \_\_\_ Pa. \_\_\_, \_\_\_, 233 A.3d 717, 742-43 (2020) (Saylor, C.J., concurring and dissenting) (favoring a unitary probable cause standard applicable to both the determination whether a crime has been committed and commission by the defendant);<sup>1</sup> *Commonwealth v. Ricker*, 642 Pa. 367, 381-82, 170

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<sup>1</sup> Notably, the majority opinion reinforces the application of a probable cause standard relative to commission by the defendant, see Majority Opinion, *slip op.* at 17, and the fact that a crime was committed is undisputed in the present case.

Because the use of the term “*prima facie*” in the applicable Rules of Criminal Procedure seems facially incongruent with a “probable cause” standard, I take the position that (continued...)

A.3d 494, 503 (2017) (Saylor, C.J., concurring) (discussing this Court's varying expressions of the standard of evidentiary sufficiency applicable at preliminary hearings).

I read the majority opinion as reasonably refraining from addressing the incongruity in the rule-based delineation of a *prima facie* standard meant in whole or in part to connote probable cause, in light of the more limited argumentation presented by the parties.

Justice Todd joins this concurring opinion.

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(...continued)

modifications to the applicable Rules of Criminal Procedure are warranted. *Accord, McClelland*, \_\_\_ Pa. at \_\_\_, 233 A.3d at 742-43 (Saylor, C.J., concurring and dissenting).