

[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,	:	
	:	
Appellee	:	ARGUED: December 1, 2020
	:	

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);¹ *Commonwealth v. Ricker*, 642 Pa. 367, 381-82, 170

¹ 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.

(...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).