

J W.W.P.

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA  
CRIMINAL ACTION - LAW

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 v. : No.: CP-14-CR-1569-2008  
 :  
 HOBSON MCKOWN :

**BRIEF IN SUPPORT OF DEFENDANT’S MOTION TO REMAND**

AND NOW, comes Defendant, Hobson McKown, by and through his counsel, Jason S. Dunkle, Esquire, and Masorti & Sullivan, P.C., and brings this Brief in Support of Defendant’s Motion to Remand, whereof the following is a statement:

**I. PROCEDURAL AND FACTUAL HISTORY**

1. On September 2, 2008, Defendant was scheduled to appear for a summary hearing before Magisterial District Judge Jonathan Grine.
2. Officer R.W. Bradley and other officers from the State College Police Department were standing inside the lobby of Judge Grine’s court facility.
3. Defendant told Bradley that he was carrying a concealed firearm and gave Bradley permission to retrieve same.
4. Defendant was transported to the court of Magisterial District Judge Carmine W. Prestia, Jr. for a preliminary arraignment.
5. Bradley filed a Police Criminal Complaint charging Defendant with two (2) counts of Firearms Not To Be Carried Without a License, 18 Pa.C.S. §§6106(a)(1) and (a)(2), and Possession of Firearm or Other Dangerous Weapon in Court Facility, 18 Pa.C.S. §913(a).
6. Judge Prestia set bail at \$10,000.00 straight.
7. Defendant’s preliminary hearing was scheduled for September 10, 2009.
8. Defendant’s bail was posted and Defendant was released from the Centre County Correctional Facility.
9. Defendant retained defense counsel on the afternoon of September 9, 2009.

10. Defendant appeared at his preliminary hearing scheduled for September 10, 2008, at 11:00 a.m.
11. Prior to the commencement of Defendant's preliminary hearing, a continuance was requested on behalf of Defendant.
12. Magisterial District Judge Leslie A. Dutchcot denied the request for continuance.
13. A preliminary hearing was held before Magisterial District Judge Dutchcot.
14. Upon the conclusion of the preliminary hearing, Judge Dutchcot bound over all charges to the Court of Common Pleas.
15. The Commonwealth then orally requested that Defendant's bail be modified so that he was required to surrender all weapons.
- 16.

## **II. MOTION TO REMAND**

### **A. DENIAL OF CONTINUANCE REQUEST**

The United States Supreme Court "has held that a person accused of crime requires the guiding hand of counsel at every step in the proceedings against him." Coleman v. Alabama, 399 U.S. 1, 7 (1970). The U.S. Supreme Court stated that a preliminary hearing serves at least four purposes: "First, the lawyer's skilled examination and cross-examination of witnesses may expose fatal weaknesses in the State's case that may lead the magistrate to refuse to bind the accused over. Second, in any event, the skilled interrogation of witnesses by an experienced lawyer can fashion a vital impeachment tool for use in cross-examination of the State's witnesses at the trial, or preserve testimony favorable to the accused of a witness who does not appear at the trial. Third, trained counsel can more effectively discover the case the State has against his client and make possible the preparation of a proper defense to meet that case at the trial. Fourth, counsel can also be influential at the preliminary hearing in making effective arguments for the accused on such matters as the necessity for an early psychiatric examination or bail." Id. at 9.

Defense counsel was retained the evening prior to the preliminary hearing. The issues present in this case include reviewing both Pennsylvania concealed weapons permits and New Hampshire concealed weapons licenses. The charges filed against Defendant often refer to various sections of the Firearms Act for definitions and clarification. Research needed to be conducted regarding the Sheriff's authority to revoke Defendant's concealed weapons

permit.

Defense counsel needed additional time to adequately research the issues involved and also to prepare a cross-examination of the Commonwealth's witnesses. While Defendant's preliminary hearing was scheduled for 11:00 a.m., defense counsel arrived at 8:30 a.m. and advised the Commonwealth of counsel's intent to request a continuance. The purpose of the early notice was to allow the Commonwealth to inform its witnesses that they need not appear if the hearing were to be continued. The witnesses that were called at the hearing included staff of Magisterial District Judge Jonathan Grine, Officer Bradley, and Sheriff Denny Nau. All of the witnesses work in either State College or Bellefonte and therefore would have encountered minimal inconvenience if the continuance had been granted. While neither the Commonwealth's case nor its witnesses would have been prejudiced by a continuance, the Defendant was prejudiced by the denial of the request in that counsel was not adequately prepared. Defense counsel was not adequately prepared to fully cross-examine witnesses or present defense witnesses to rebut the prima facie case.

#### **B. AVOID APPEARANCE OF IMPROPRIETY**

Members of the bench are to avoid all appearances of impropriety. It is common knowledge that Magisterial Judge Dutchcot and Magisterial District Judge Jonathan Grine worked as clerks together in Monroe County. The two have remained friends to this day. Judge Dutchcot should have recused herself from hearing the case at the preliminary hearing.

The impropriety of the judge's failure to recuse herself is evident in her apparent animosity towards Defendant. Judge Dutchcot's apparent animosity towards Defendant is evidenced by the following actions: 1) denial the continuance request at the first preliminary hearing; 2) modifying Defendant's bail conditions originally set by District Judge Carmine W. Prestia, Jr., eventhough no change in circumstances had occurred, Defendant had complied with all conditions imposed by Judge Prestia, and Defendant had appeared in court as required; 3) Defendant's bail for the small of marijuana and possession of paraphernalia case was set at \$250,000.00 straight.

"The fundamental purpose of bail is to secure the presence of the accused at trial." Commonwealth v. Truesdale, 296A.2d 829, 834 (Pa.1972). The "right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty" and "[b]ail set a figure higher than an amount reasonably calculated to fulfill this purpose is 'excessive' under the Eighth Amendment." Stack v. Boyle, 342 U.S. 1, 4 (1951). "Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant." Id. The Pennsylvania Supreme Court expressly stated that the "burden of proof is upon the Commonwealth" in arguing for a more restrictive bail. Truesdale, 296 A.2d at 338. The purpose of bail is not to "provide for a system of preventive detention" to be used to "incarcerate a person to prevent future offenses." Id.

After reviewing the purpose of bail, it is clear that the judge's decisions regarding bail in Defendant's cases was apparently based upon animosity. The judge did not place the burden of proof on the Commonwealth in arguing for a high bail, and the judge refused to reduce the bail in the face of an agreement.

WHEREFORE, Defendant respectfully requests that this Honorable Court issue an Order remanding this matter to the preliminary hearing.

Respectfully submitted,

MASORTI & SULLIVAN, P.C.

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 2009, I served a true and correct copy of Defendant's Brief in Support of Motion to Remand via hand delivery to the following:

Carolyn Larrabee, Esquire  
Assistant District Attorney  
Centre County Courthouse  
Belleville, PA 16875

Respectfully submitted,  
MASORTI & SULLIVAN, P.C.

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