

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

COMMONWEALTH OF PENNSYLVANIA

v.

HOBSON MCKOWN

No.: CP-14-CR-1569-2008

FILED FOR RECORD
2008 NOV 17 P 4:48
DEBRA C. INNEL
CLERK OF COURT
CENTRE COUNTY, PA

OMNIBUS PRETRIAL MOTION

AND NOW, comes Defendant, Hobson McKown, by and through his counsel, Philip M. Masorti, Esquire, and Masorti & Sullivan, P.C., and brings this Omnibus Pretrial Motion, whereof the following is a statement:

I. PROCEDURAL HISTORY

1. On September 2, 2008, Defendant was taken into custody by Officer R.W. Bradley of the State College Police Department for alleged criminal violations.
2. Defendant was transported to the court of Magisterial District Judge Carmine W. Prestia, Jr. for a preliminary arraignment.
3. 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).
4. Judge Prestia set bail at \$10,000.00 straight.
5. Defendant's bail was posted and Defendant was released from the Centre County Correctional Facility.
6. Defendant appeared at his preliminary hearing scheduled for September 10, 2008, at 11:00 a.m.
7. Prior to the commencement of Defendant's preliminary hearing, a continuance was requested on behalf of Defendant.
8. Magisterial District Judge Leslie A. Dutchcot denied the request for continuance.
9. A preliminary hearing was held before Judge Dutchcot.

10. Upon the conclusion of the preliminary hearing, Judge Dutchcot bound over all charges to the Court of Common Pleas

II. FACTS

11. On September 2, 2008, Defendant was scheduled to appear for a summary hearing before Magisterial District Judge Jonathan Grine.
12. Defendant appeared at Judge Grine's court facility with a concealed weapon on his person.
13. Bradley and other officers were standing inside the lobby of Judge Grine's court facility.
14. Upon entering the court facility, Defendant encountered Bradley.
15. Bradley asked Defendant if Defendant was in possession of any weapons.
16. Defendant asked Bradley if there was a check station.
17. Bradley informed Defendant that Bradley intended to check Defendant for weapons.
18. Defendant told Bradley that he was carrying a firearm.
19. Defendant gave Bradley permission to retrieve the firearm.
20. Defendant told Bradley that Defendant had a valid concealed weapons permit issued by New Hampshire.
21. Defendant told Bradley that said permit was in his car parked nearby.
22. Bradley arrested Defendant.
23. Bradley made no attempt to investigate whether Defendant had a valid New Hampshire concealed weapons permit.

III. MOTION TO REMAND

24. The averments contained in the foregoing paragraphs are incorporated herein as though set forth at length.
25. 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).

26. 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.

27. Defense counsel was retained the evening prior to the preliminary hearing.
28. Defense counsel did not have adequate time to review the entire case, conduct legal research, prepare legal memorandums for the court's consideration, or subpoena witnesses.
29. Defense counsel was not adequately prepared to fully cross-examine witnesses or present defense witnesses to rebut the prima facie case.
30. By not having counsel that was adequately prepared, Defendant did not have counsel at his preliminary hearing.
31. Defendant did not have defense counsel at a critical stage of his court proceeding.
32. Defendant also avers that Judge Dutchcot should have recused herself based upon her friendly relationship to Judge Grine and his staff.
33. Members of the bar are to avoid all appearances of impropriety.
34. Judge Dutchcot's apparent animosity towards Defendant is evidenced by the following:
 - a. denial the continuance request at the first preliminary hearing;
 - b. 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;
 - c. Defendant's bail for the small of marijuana and possession of

paraphernalia case was set at \$250,000.00 straight.

35. Defendant appeared at a critical stage in his proceedings with unprepared counsel and a judge that has an apparent animosity towards him.
36. In order to protect Defendant's rights, Defendant requests that this matter be remanded to the district court and a magisterial district judge be assigned from another county.

WHEREFORE, Defendant respectfully requests that this Honorable Court grant the relief sought and issue an Order remanding the matter to the district court for a preliminary hearing.

IV. PETITION FOR A WRIT OF HABEAS CORPUS

37. The averments contained in the foregoing paragraphs are incorporated herein as though set forth at length.
38. "The purpose of a preliminary hearing is: ... to avoid the incarceration or trial of a defendant unless there is sufficient evidence to establish a crime was committed and the probability the defendant could be connected with the crime. Commonwealth v. Wodjak, 466 A.2d 991 (Pa. 1983)." Commonwealth v. Jackson, 849 A.2d 1254, 1257 (Pa. Super. 2004).
39. "At the pre-trial stage of a criminal prosecution, it is not necessary for the Commonwealth to prove the defendant's guilt beyond a reasonable doubt, but rather, its burden is merely to put forth a *prima facie* case of the defendant's guilt." Commonwealth v. Nieves, 876 A.2d 423, 424 (Pa. Super. 2005).
40. "A *prima facie* case exists when the Commonwealth 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).
41. "The evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury." Nieves, 876 A.2d at 424.
42. At the time of his arrest, Defendant had a valid New Hampshire concealed weapons permit.
43. Pursuant to a Reciprocity Agreement reached between Pennsylvania and New Hampshire, Defendant's New Hampshire permit enabled him to carry a concealed

weapon in Pennsylvania.

44. No evidence was presented that Defendant did not have a valid New Hampshire permit.
45. As Defendant has a valid permit to carry a concealed weapon in Pennsylvania, the charges against Defendant must be dismissed.

WHEREFORE, Defendant respectfully requests that this Honorable Court grant the relief sought and dismiss all charges against Defendant.

.V. MOTION TO COMPEL

46. The averments contained in the foregoing paragraphs are incorporated herein as though set forth at length.
47. Pursuant to Pennsylvania Rule of Criminal Procedure 573, the Commonwealth is mandated to provide to Defendant via discovery the following items: “(a) Any evidence favorable to the accused that is material either to guilt or to punishment, and is within the possession or control of the attorney for the Commonwealth; (b) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made that is in the possession or control of the attorney for the Commonwealth; (c) the defendant's prior criminal record; (d) the circumstances and results of any identification of the defendant by voice, photograph, or in-person identification; (e) any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the defendant that are within the possession or control of the attorney for the Commonwealth; (f) any tangible objects, including documents, photographs, fingerprints, or other tangible evidence; (g) the transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.” Pa.R.Crim.P. 573(B).
48. Testimony was presented at the preliminary hearing that video of Judge Grine’s court facility was reviewed.
49. Defendant seeks an Order of Court compelling the Commonwealth to provide a true and correct copy of said video.
50. Testimony was presented at the preliminary hearing that Sherriff Denny Nau sent Defendant a letter regarding the suspension of his Pennsylvania concealed weapons permit.

51. Defendant seeks a true and correct copy of said letter that the Commonwealth may seek to admit at any future court proceeding.

.VI. MOTION FOR RESERVE

52. The averments contained in the foregoing paragraphs are incorporated herein as though set forth at length.
53. Defendant requests the opportunity to supplement the foregoing Motion in the event new evidence is presented by the Commonwealth or received in discovery.
54. Defendant anticipates receiving additional discovery materials in the future.
55. Defendant requests that permission to file additional and supplemental motions, including appropriate additional motions in limine.
56. Defendant's investigation in this case is also not complete and Defendant requests the right to file other motions, if required.

WHEREFORE, Defendant respectfully requests that this Honorable Court issue an Order granting the relief sought and preserve Defendant's right to file additional motions as the basis therefore is discovered.

Respectfully submitted,

MASORTI & SULLIVAN, P.C.

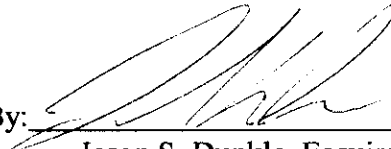
By: 

Jason S. Dunkle, Esquire
302 South Burrowes Street
State College, Pennsylvania 16801
814-234-9500
Attorney I.D. No. 93690

VERIFICATION

I, Jason S. Dunkle, Esquire, do hereby verify that I am the Attorney for the Defendant, that I am fully authorized to make this verification on his behalf and that the Defendant is unavailable to make this verification and that the fact set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that the source of my information is from discussions with my client and the documents provided.

I understand that the statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

By: 

Jason S. Dunkle, Esquire
Attorney for Defendant

Dated: 11/17/01

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 :

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November 2008, I served a true and correct copy of Defendant's Omnibus Pretrial Motion via hand delivery to the following:

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

Respectfully submitted,

MASORTI & SULLIVAN, P.C.

By: 

Jason S. Dunkle, Esquire
302 South Burrowes Street
State College, Pennsylvania 16801
814-234-9500
Attorney I.D. No. 93690

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 :

ORDER

AND NOW, after consideration of the foregoing Omnibus Pretrial Motion, a hearing on the above-captioned matter shall be held the _____ day of _____, 2008, at _____:_____ o'clock, __.m. in Courtroom _____ of the Centre County Court of Common Pleas, Bellefonte, Pennsylvania.

BY THE COURT:

Honorable Judge
Centre County Court of Common Pleas