

FILED FOR RECORD
2008 SEP 19 9 1:11

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

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : No.: CP-14-CR-1610-2008
 :
 HOBSON MCKOWN :

MOTION TO AMEND ORDER

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

I. PROCEDURAL HISTORY

1. On September 10, 2008, Detective Joshua A. Martin of the Ferguson Township Police Department filed a Police Criminal Complaint charging Defendant with Possession of a Small Amount of Marijuana, 35 P.S. §780-113(a)(31), and Possession of Paraphernalia, 35 P.S. §780-1113(a)(32), charges.
2. A preliminary hearing was on the controlled substance case was scheduled for September 17, 2008.
3. Defendant waived his preliminary hearing on the new case and thereby bound the charges over to the Court of Common Pleas.
4. Defendant appeared for Formal Arraignment on October 13, 2008.
5. Defendant filed a timely pretrial motion to suppress on November 17, 2008.
6. On January 8, 2009, a hearing was held on Defendant's Omnibus Pretrial Motion.
7. On February 23, 2009, Proposed Finding of Fact and Conclusions of Law were submitted on behalf of Defendant.
8. On April 28, 2009, this Honorable Court issued an Order denying the relief sought by Defendant.
9. Defendant requests that the trial court amend its Order of April 28, 2009, to include the language set forth in 42 Pa.C.S. §702(b), more specifically that the "order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the

ultimate termination of the matter.” 42 Pa.C.S. §702(b).

10. “In determining whether a matter is ripe for judicial resolution, Pennsylvania courts will examine whether the issues have been sufficiently developed for judicial review and what hardship the parties will suffer if review is delayed.” Commonwealth v. Barber, 2007 Pa. Super. 360, p. 8.
11. “Here, the potential hardship that will be suffered if review is delayed is obviously the time and expense of holding a criminal trial that might later be determined to have been barred.” Id.
12. Defendant’s dismissal issue is ripe for judicial resolution as appellate review as such review may avoid the potential hardship that would be suffered if review was delayed.
13. Granting defendant’s request may eliminate the time and expense associated with a lengthy criminal trial for all parties, including the defense, the Commonwealth, the court, and the citizens of Centre County.
14. Defendant also requests that this Honorable Court stay the proceedings at the trial court level in accordance with 42 Pa.C.S. §702(c) during Defendant’s interlocutory appeal efforts.
15. Granting the relief sought is in the interest of justice.

WHEREFORE, Defendant respectfully requests that this Honorable Court amend its Order of April 28, 2009, to include the language set forth in 42 Pa.C.S. §702(b), and issue an Order in accordance with 42 Pa.C.S. §702(c) which stays the proceedings at the trial court level while Defendant files a petition for allowance of appeal.

Respectfully submitted,

By: 

Jason S. Dunkle, Esquire
MASORTI & SULLIVAN, P.C.
302 South Burrowes Street
State College, PA 16801
814-234-9500
Attorney I.D. 96390

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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 this make this verification and that the facts 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, Esq.
Attorney for Defendant

Dated: 5/19/09

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May, 2009, a true and correct copy of
Defendant's Motion to Amend Order was served via hand delivery to the following:

Carolyn Larrabee, Esquire
Assistant District Attorney
Centre County Courthouse
Bellefonte, PA 16823

Respectfully submitted,

By: 
Jason S. Dunkle, Esquire
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