

DEBRA C. JMMEL
PROTHONOTARY
CENTRE COUNTY, PA

2010 OCT 25 P 4: 33

FILED FOR RECORD
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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY
Criminal Division

COMMONWEALTH OF PENNSYLVANIA)
)
 v.) CP-14-CR-1569-2008
)
 HOBSON MCKOWN)

MOTION TO QUASH DEFENDANT'S MOTION TO SUPPRESS

To the Honorable Daniel Milliron, Specially Presiding:

NOW COMES the Commonwealth of Pennsylvania and respectfully represents as follows:

1. On September 2, 2009, Defendant was arrested and charged with firearms offenses set forth at 18 Pa.C.S. §6106(a) and 18 Pa.C.S. §913(a).
2. Following his September 10, 2008, preliminary hearing, Defendant filed numerous motions and briefs in this case and its companion case, docketed at Centre County Criminal Action 2008-1610, including, but not limited to, the following:
 - a. an omnibus pre-trial motion filed 11/17/08, setting forth various claims, including a request for habeas corpus relief supported by a brief and supplemental brief;
 - b. an eighty-three (83) paragraph bail motion requesting that this

Court order the return of his firearms and ammunition seized incidental to these proceedings;

- c. a motion for return of non-firearm property seized by police;
- d. a motion requesting that this Court amend its October 21, 2009, Opinion and Order to certify additional issues for interlocutory appeal;
- e. a motion for reconsideration from the Court's order declining to return defendant's firearms;
- f. a petition for allowance of appeal to the Superior Court;
- g. a motion for recusal;
- h. a motion for modification of bail (08-1610);
- i. an omnibus pretrial motion to suppress (08-1610);
- j. a "motion to amend order" (08-1610); and
- k. an appeal to the Superior Court (08-1610).

3. On June 28, 2010, the United States Supreme Court decided McDonald v. City of Chicago which made the Second Amendment personal right to bear arms created by District of Columbia v. Heller applicable to the states by operation of the Fourteenth Amendment. McDonald represents a dramatic shift in the law.

4. Despite the age of this case and Defendant's record of filing vexatious motions, sometime in late June or early July of 2010 undersigned counsel advised Defendant's counsel that he would not object to a motion challenging sections 6106 and 913 on the basis of McDonald v. City of Chicago, given the radical nature of that decision.

5. Defendant filed a "Motion to Declare Statutes Unconstitutional" on July 8, 2010.

6. On August 10, 2010, this Court issued a briefing schedule for said Motion.

7. On September 3, 2010, counsel for defendant filed a "Motion to Suppress."

8. Undersigned counsel advised defense counsel at the time of this filing that he would be strenuously objecting to the Motion to Suppress, as it bears no relation to the issues raised by Heller/ McDonald.

9. Neither Defendant's September 3, 2010, Motion to Suppress nor the briefed arguments he has advanced in support of it cite or in any way rely on the issues raised by District of Columbia v. Heller and City of Chicago v. McDonald.

10. The Motion to Suppress is not based on any state or federal decisional law. It is based, rather, on a broad recitation of various Fourth Amendment doctrines coupled with the cursory assertion that "the unconstitutional application of section 913 to the facts of this case led to the discovery of the firearm on the Defendant's person."

11. The Motion to Suppress and its supporting brief advance numerous claims that are either unsupported or marginally supported by the record, such as "[Officer] Bradley lied to the Defendant in telling the Defendant that [Officer] Bradley was the check station." Motion of 9/8/10, ¶ 27.

12. The Motion to Suppress lacks a viable legal foundation.

13. Defendant's Motion to Suppress lacks a factual foundation.

14. Given the Defendant's history of repeated filings with this Court, it is apparent that Defendant's Motion to Suppress has been filed merely for the purposes of vexation and delay.

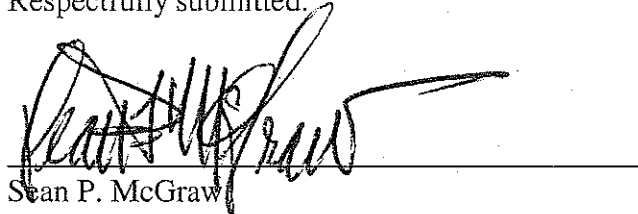
15. Since Defendant's arraignment was in September of 2008, his Motion to Suppress has been filed approximately two years beyond the deadline for filing such a motion under Pennsylvania Rules of Criminal Procedure 578-579.

WHEREFORE, this Honorable Court should quash Defendant's September 8, 2010,
Motion to Suppress and portions of Defendant's brief related thereto.

Respectfully submitted:

Date:

10-25-10

A handwritten signature in black ink, appearing to read "Sean P. McGraw", written over a horizontal line.

Sean P. McGraw

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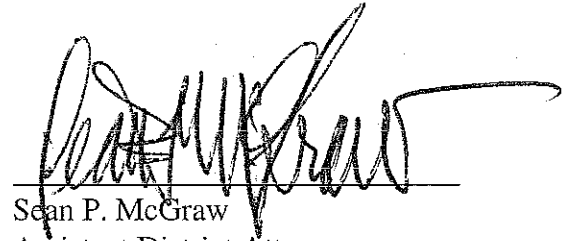
PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.Crim.P. 576:

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