

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

MOTION TO SUPPRESS EVIDENCE

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

I. FACTUAL ALLEGATIONS

1. On September 2, 2008, Officer R. W. Bradley of the State College Police Department filed a Police Criminal Complaint charging the Defendant with one count of Firearms Not To Be Carried Without a License, 18 Pa.C.S. § 6106(a)(1), one count of Firearms Not To Be Carried Without a License, 18 Pa.C.S. § 6106(a)(2), and Possession of Firearm or Other Dangerous Weapon in Court Facility, § 913(a)(1).
2. Section 913 of Title 18 of the Pennsylvania Consolidated Statutes provides that a person commits an offense if he: 1) “knowingly possesses a firearm or other dangerous weapon in a court facility or knowingly causes a firearm or other dangerous weapon to be present in a court facility”, or he 2) “knowingly possesses a firearm or other dangerous weapon in a court facility with the intent that the firearm

or other dangerous weapon be used in the commission of a crime or knowingly causes a rearm or other dangerous weapon to be present in a court facility with the intent that the firearm or other dangerous weapon be used in the commission of a crim.” 18 Pa.C.S.A. §913(a).

3. Subsection (e) of section 913 provides that “[e]ach county shall make available at or within the building containing a court facility by July 1, 2002, lockers or similar facilities at no charge or cost for the temporary checking of firearms by persons carrying firearms under section 6106(b) or 6109 or for the checking of other dangerous weapons that are not otherwise prohibited by law. Any individual checking a firearm, dangerous weapon or an item deemed to be a dangerous weapon at a court facility must be issued a receipt. Notice of the location of the facility shall be posted as required under subsection (d). 18 Pa.C.S.A. §913(e).
4. Subsection (d) of section 913 provides that notice of the provision of subsections (a) and (e) “shall be posted conspicuously at each public entrance to each courthouse or other building containing a court facility and each court facility”. 18 Pa.C.S.A. §913(d).
5. Subsection (d) additionally provides that “no person shall be convicted of an offense under subsection (a)(1) with respect to a court facility if the notice was not so posted at each public entrance to the courthouse or other building containing a court facility and at the court facility.” 18 Pa.C.S.A. 913(d).
6. At the preliminary hearing, Bradley testified that he approached the Defendant at the front door as the Defendant entered the court hallway from the street. (A true and correct copy of the preliminary hearing transcript was previously admitted into

- evidence during the Habeas proceeding, and the noted of testimony from the hearing will be referenced hereafter as N.T. 9/10/08, p. 18, 24).
7. Bradley was wearing his full police uniform, visibly displaying his badge of authority and sidearm. (N.T. 9/10/08, p. 18, 24).
 8. Bradley asked the Defendant if the Defendant was armed. (N.T. 9/10/08, p. 19, 24).
 9. In response to Bradley's questioning, the Defendant asked Bradley "whether or not I [Bradley] was the check station and I [Bradley] stated, yes, I [Bradley] am checking for weapons." (N.T. 9/10/08, p. 19).
 10. "I [Bradley] said yes, I'm checking for weapons." (N.T. 9/10/08, p. 26).
 11. The Defendant then advised Bradley that he was armed and the firearm was located in his right front pants pocket. (N.T. 9/10/08, p. 18).
 12. Bradley told the Defendant that Bradley was going to remove the weapon from the Defendant's person. (N.T. 9/10/08, p. 19).
 13. Bradley removed the firearm from the Defendant's person. (N.T. 9/10/08, p. 20).
 14. The district court did not actually have a check station or facility for the storage of weapons as mandated by section 913. (N.T. 9/10/08, p. 26).

II. LEGAL ARGUMENT

15. The Fourth Amendment of the United States Constitution, made applicable to the states through the Fourteenth Amendment of the United States Constitution, and Article 1, Section 8 of the Pennsylvania Constitution states that people shall be free from unreasonable searches and seizures.
16. Searches by the state shall be permitted only upon obtaining a warrant issued by a neutral and detached magistrate, and, as a general proposition, warrantless searches

are unreasonable for constitutional purposes. Commonwealth v. Perry, 798 A.2d 697, 699-700 (Pa. 2002).

17. Searches by the state shall be permitted only upon obtaining a warrant issued by a neutral and detached magistrate, and, as a general proposition, warrantless searches are unreasonable for constitutional purposes. Perry, 798 A.2d at 699-700.
18. Exceptions to the warrant requirement include: 1) exigent circumstances; 2) consent; 3) plain view. See Commonwealth v. Dommel, 885 A.2d 998, 1003 (Pa. Super. 2005)(holding that exigent circumstances justified warrantless arrest of suspect in suspect's residence); See Commonwealth v. Bell, 871 A.2d 267 (Pa. Super. 2005)(holding that consent is a recognized exception to the warrant requirement); See Commonwealth v. Harris, 888 A.2d 862 (Pa. Super. 2005)(holding that plain view is exception to the warrant requirement).
19. Bradley conducted a warrantless search of the Defendant's person to obtain the firearm.
20. Bradley's probable cause to believe that the Defendant was armed was based solely on the Defendant's admission.
21. The Defendant admitted to possessing a firearm only after being told that Bradley was the check station.
22. Section 913(e) of the Crimes Code mandates that every building containing a court facility shall have lockers or similar facilities for the temporary checking of firearms or other dangerous weapons. 18 Pa.C.S.A. §913(e).
23. The location of the lockers or facilities for the temporary checking of firearms and dangerous weapons are to be posted conspicuously at each public entrance. 18

Pa.C.S.A. §913(d).

24. It is undisputed that the building containing the court facility did not have lockers or a facility for the temporary checking of firearms or dangerous weapons as required by 913(e).
25. It is undisputed that the building containing the court facility did not post the location of the lockers or similar facilities as required by 913(d).
26. As the court failed to comply with the mandates of both subsection (d) and (e) of 913, the Defendant was forced to question Bradley as to the location of the check station in order to comply with the requirements of 913 and temporarily check his weapon.
27. Bradley lied to the Defendant in telling the Defendant that Bradley was the check station.
28. Based upon the Defendant's effort to comply with the requirements of section 913, he advised Bradley that he was armed.
29. The unconstitutional application of section 913 to the facts of this case led to the discovery of the firearm on the Defendant's person.
30. "Evidence, both tangible and intangible, must be excluded when such evidence is obtained during, or as a direct result of, an unlawful intrusion." Commonwealth v. Rood, 686 A.2d 442, 447 (Pa. Cmwlth. 1996).
31. Evidence of the firearm must be suppressed as "fruits of the poisonous tree".

WHEREFORE, the Defendant respectfully requests this Honorable Court grant the relief sought and issue an Order suppressing evidence that the Defendant possessed a firearm.

Respectfully submitted,

MASORTI & SULLIVAN, P.C.

By: 

Jason S. Dunkle, Esquire
302 South Burrowes Street
State College, PA 16801
(814) 234-9500
Attorney I.D. # 93690

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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, Esquire
Attorney for Defendant

Dated: 9/3/10

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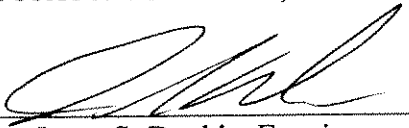
CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2010, a true and correct copy of
the Defendant's Motion to Suppress Evidence was served via hand delivery to the following:

Sean McGraw, Assistant District Attorney
4th Floor, Centre County Courthouse
Allegheny and High Streets
Bellefonte, PA 16823

Respectfully submitted,

MASORTI & SULLIVAN, P.C.

By: 
Jason S. Dunkle, Esquire
302 South Burrowes Street
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