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2008 SEP 2 P 1:03
DEBRA IMBEL
PROthonotary
CENTRE COUNTY, PA

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

COMMONWEALTH OF PENNSYLVANIA :
: VS. : No. CP-14-~~CR~~- 1610 -2008
: HOBSON L. MCKOWN :

MOTION TO REDUCE BAIL

AND NOW, comes Defendant, Hobson L. McKown, by and through his counsel, Jason S. Dunkle, Esquire, and Masorti & Sullivan, P.C., and respectfully represents as follows:

1. On September 2, 2008, Officer R. W. Bradley of the State College Police Department 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).
2. Defendant appeared before Magisterial District Judge Leslie A. Dutchcot for a preliminary arraignment.
3. Judge Dutchcot set bail at \$10,000.00 straight.
4. Defendant's bail was posted.
5. Defendant appeared at his preliminary hearing scheduled for September 10, 2008, at 11:00 a.m.
6. Upon the conclusion of the preliminary hearing, Judge Dutchcot bound over all charges to the Court of Common Pleas.
7. The Commonwealth thereafter orally made a motion for bail modification seeking to have the court order Defendant to surrender all firearms.
8. Over Defendant's objection, Judge Dutchcot granted the bail modification.
9. Defendant was ordered to surrender his firearms to the Centre County Sheriff's Department.

10. Upon leaving the courthouse, Defendant immediately went to the Sheriff's Department to discuss the surrender of his firearms.
11. The Sheriff's Department transported Defendant to his residence.
12. Defendant attempted to enter his residence to retrieve some of the firearms.
13. The Sheriff's Department advised Defendant that they would enter the residence to retrieve the weapons.
14. Defendant declined consent for the Sheriff's to enter his residence.
15. The Sheriff's Department handcuffed Defendant and took him into custody.
16. The Sheriff's Department made a warrantless entry into Defendant's apartment.
17. The Sheriff's Department then contacted the Ferguson Township Police Department.
18. It is believed that members of the Ferguson Township and Penn State Police Departments entered Defendant's residence and conducted a warrantless search.
19. The warrantless search led to the discovery of alleged marijuana and related paraphernalia.
20. Upon finding the alleged marijuana and paraphernalia, law enforcement sought and were issued a search warrant for Defendant's residence.
21. Defendant was transported to Judge Dutchcot's office for a preliminary arraignment and filing of 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.
22. Judge Dutchcot set bail at \$250,000.00 straight.
23. Unable to post the excessive amount of bail, Defendant was transported to the Centre County Correctional Facility.
24. A preliminary hearing was on the controlled substance case was scheduled for September 17, 2008.
25. Defendant waived his preliminary hearing on the new case and thereby bound the charges over to the Court of Common Pleas.
26. Defendant was approved and recommended for supervised bail by the Center for

Alternative in Community Justice.

27. An agreement was reached between the Commonwealth and Defendant regarding the reduction of bail on the controlled substance case, and said agreement contained the following provisions:
 - a. the Commonwealth would concur in Defendant's motion to reduce bail in the amount of \$250,000.00 straight to supervised bail with the Center for Alternatives in Community Justice;
 - b. Defendant agreed that he would have a third party retrieve his remaining firearms that were not discovered during the search of his residence;
 - c. Defendant agreed that he would not be released on bail for the possession of firearms case until all firearms were surrendered to the Centre County Sheriff's Department.
28. Despite the agreement between the parties, Judge Dutchcot denied Defendant's motion to reduce bail.
29. Judge Dutchcot contended that Defendant was a flight risk.
30. "The fundamental purpose of bail is to secure the presence of the accused at trial." Commonwealth v. Truesdale, 296A.2d 829, 834 (Pa.1972).
31. 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).
32. "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.
33. 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.
34. 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.

35. "Bail was conceived as a means of securing the accused's presence at trial, while at the same time according him liberty prior to trial so he could prepare his case." Id. at 338-339.
36. In determining the appropriate amount of bail, the Pennsylvania Rules of Criminal Procedure set forth Release Criteria for the court to consider. See Pa.R.Crim.P. 523.
37. In acting in accordance with Rule 523, the court should consider the following:
 - a. Defendant was charged with two (2) ungraded misdemeanors, which have a total maximum sentence for the offenses is 1 year and 30 days incarceration and \$3,000.00 fine;
 - b. evidence obtained in the case was the result of a warrantless, non-consensual search of Defendant's residence;
 - c. Defendant has retained the services of competent counsel and is prepared to challenge the constitutional propriety of the search;
 - d. Defendant has been a residence of Centre County for over two (2) years;
 - e. Defendant maintains contact with his immediate family in Warren County;
 - f. Defendant's family has appeared at all scheduled court proceedings and remained in routine contact with both Defendant and defense counsel;
 - g. Defendant has actively participated in the defense of both his cases in conducting his own legal research and discussing defense strategies with defense counsel;
 - h. Defendant has no prior criminal record;
 - i. Defendant appeared at all scheduled court proceedings and complied with all orders of court when released on bail for the Possession of Firearms case;
 - j. Defendant has no prior record of flight to avoid arrest or prosecution;
 - k. Defendant has received no misconducts while being incarcerated pretrial;
 - l. Bail in similar cases is generally set at Released on Recognizance or unsecured.
38. In support of her denial of Defendant's motion to reduce bail, Judge Dutchcot made reference to an outstanding warrant in Elk County, Pennsylvania.

39. Neither the Commonwealth nor Defendant was or is aware of any outstanding warrant for Defendant in any county in the Commonwealth or any other state.
40. Attorney Jason S. Dunkle searched the public web docket sheets maintained by the Administrative Office of Pennsylvania Courts, and said site referenced a summary traffic violation in Elk County for which all costs and fees had been paid.
41. The docket sheet does not reference that any warrant was ever issued in the Elk County traffic case.
42. Judge Dutchcot's reference to a non-existent warrant clearly does not place the burden of proof on the Commonwealth as mandated by the Pennsylvania Supreme Court. See Commonwealth v. Truesdale, 296A.2d 829, 834 (Pa.1972).
43. The Commonwealth even agreed to Defendant's Motion to Reduce Bail, an implicit acknowledgement that they could not carry the burden of proof to justify the current bail.
44. The current amount of bail is excessive and violates Defendant's constitutional rights as set forth in the Eighth Amendment to the United States Constitution.
45. Granting the relief sought is in the interests of justice.

WHEREFORE, Defendant respectfully requests this Honorable Court grant the relief sought and modify Defendant's bail.

Respectfully submitted,

MASORTI & SULLIVAN, P.C.

By: 

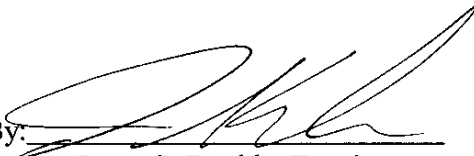
Jason S. Dunkle, Esquire
302 South Burrowes Street
State College, Pennsylvania 16801
814-234-9500
Attorney I.D. No. 93690

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: 9/22/08

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

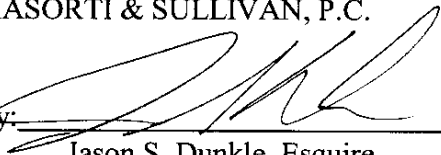
COMMONWEALTH OF PENNSYLVANIA :
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of September 2008, I served a true and correct copy of Defendant's Motion to Reduce Bail via hand delivery on the following:

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

Respectfully submitted,
MASORTI & SULLIVAN, P.C.

By: 
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Attorney I.D. No. 93690

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