IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
vs.	:	NO. 1095-2006
	:	
Margie McLaughlin,	:	
	:	
Defendant	:	1925(a) OPINION

Date: September 5, 2008

OPINION IN SUPPORT OF THE ORDER OF IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Defendant Margie McLaughlin (hereafter, "McLaughlin") has appealed from this court's order of October 17, 2007 in which she was sentenced to a term of confinement at a State Correctional Institution for a minimum term of fifteen months and a maximum term of thirty months for the felony offense of Aggravated Assault, 18 Pa.C.S. § 2702 (a)(3), (assault of a person guarding an inmate). This sentence was imposed following a jury trial in which McLaughlin was found guilty on September 20, 2007. On appeal, McLaughlin asserts that the court committed four errors before and during her trial. This court is of the opinion that none of the alleged errors were committed, and regardless of any asserted error the jury's verdict would not have changed in any event. Therefore, McLaughlin's appeal should be denied.

I. BACKGROUND

A. FACTS

In approximately June of 2004, Defendant McLaughlin became an inmate at State Correctional Institution Muncy (hereafter "Muncy SCI" or "SCI Muncy"). N.T., 9/17/07, p. 100. McLaughlin had previously been an inmate at the State Correctional Institution Cambridge Springs. N.T., 9/11/2007, p. 11-12. In November of 2005, McLaughlin sought to file a private criminal complaint charging two Correctional Officers, Rebecca Confer and Mr. Pautz, with a

conspiracy to harm her on October 10, 2005. McLaughlin asserted Pautz gave her a body-fluid contaminated blanket after McLaughlin had filed a grievance with SCI Muncy about mistreatment by Confer. See, *inter alia*, N.T., 12/18/06, pp. 120-122, Defendant Exhibit #4.

On December 19, 2005, McLaughlin was housed in Muncy's E-Unit. N.T., 9/17/2007, p. 100. Correctional Officer Confer was assigned to work E-Unit of the SCI Muncy Prison for a shift of 2:00-10:00. ***Id.*** at 98-99. On this day, Officer Confer unlocked the door for McLaughlin to enter E-Unit. ***Id.*** at 101-102. As Officer Confer was re-securing the door McLaughlin assaulted Officer Confer by punching her with a closed fist five or six times. ***Id.*** at 100, 103. In response to the assault, Officer Confer covered her face and slumped down. ***Id.*** at 103. Officer Confer was not seen striking or hitting McLaughlin by others present, who included Correctional Officer Trainee Stevens and inmate Billie Morris. ***Id.*** at 155.

Correctional Officer Trainee Stevens (then named Piasecki) was in the nearby office at the time of the assault and inmate Billie Morris was "straight ahead in the hallway… [Morris was] the laundry detail, and that is where the washer and dryers were." ***Id.*** at 102, 149, 153. Mr. Tolomay, the unit counselor's, office was down the hall from the door that Officer Confer unlocked for McLaughlin. ***Id.*** at 104.

As Officer Confer was being punched she yelled for McLaughlin to stop and yelled for Mr. Tolomay. ***Id.*** at 104. Inmate Billie Morris assisted in pulling McLaughlin off of Officer Confer. ***Id.*** at 141, 150. When Ms. Morris saw McLaughlin attack Officer Confer with closed fist punches after entering E-Unit, Ms. Morris ran over and grabbed McLaughlin in a "bear hug." N.T., 9/18/2007, pp. 8-9. While trying to put her arms around McLaughlin, Ms. Morris was hit in the jaw by McLaughlin's elbow. ***Id.*** at 10. McLaughlin threw no punches at Ms. Morris, only at Officer Confer. ***Id.*** at 10. Eventually, as McLaughlin struggled, Ms. Morris succeeded in

pulling McLaughlin back to the laundry area. ***Id.*** at 10. After the altercation was over, Ms. Morris was escorted back to medical as a result of swelling and bruising that she sustained as a result of the incident, for which she took Tylenol for a few days. ***Id.*** at 13-14.

Officer Stevens heard Inmate Morris yelling. Stevens stopped and looked into the hallway and saw McLaughlin was punching Officer Confer in the face while Officer Confer was crouched and covering her face. N.T., 9/17/2007, pp. 149, 150. Officer Stevens came to Officer Confer's assistance. While trying to pull McLaughlin off of Officer Confer by grabbing McLaughlin's arm, Officer Stevens was hit in the lip with McLaughlin's closed fist. ***Id.*** at 150, 160.

Then, Counselor Tolomay came out into the hallway and issued an order for McLaughlin to be cuffed; McLaughlin then was stopped from attacking Officer Confer. ***Id.*** at 151. McLaughlin and Mr. Tolomay began to argue, and Mr. Tolomay told McLaughlin to turn around to be cuffed; McLaughlin did not comply. ***Id.*** at 151- 152. Eventually, McLaughlin was forcibly placed standing up against the bulletin board with Mr. Tolomay on one side of her and Correctional Officer Stevens on the other side. ***Id.*** at 104. At this point, Officer Confer "came-to" and got her handcuffs out and both she and Officer Stevens ordered McLaughlin again to "turn around and cuff up"; again, McLaughlin did not comply with the order. ***Id.*** at 105. Officer Stevens had radioed in the assault in E-Unit, back-up came and "cuffed" McLaughlin. ***Id.*** at 105, 137. It was not until more staff members arrived that McLaughlin could finally be cuffed and taken to the infirmary. ***Id.*** at 152.

McLaughlin was then taken to the Restricted Housing Unit (RHU) as a disciplinary measure; a video tape was made of her intake into RHU. She was examined at RHU for injuries by Nurse Tetlow who made out a report, dated December 19, 2005, which reported McLaughlin

had no apparent injuries. See, *inter alia,* N.T., 9/18/01, pp.76-77; Defendant Exhibit #16. Upon being examined at the infirmary by Nurse Tetlow, Nurse Tetlow made out a report stating McLaughlin had no visible injuries.

Officer Confer was first taken to the prison infirmary; afterwards she was taken to the Muncy Valley Hospital emergency room where she was diagnosed with contusions to the face and neck. ***Id.*** at 113. Officer Confer also suffered a headache. ***Id.*** at 138. At the emergency room she was prescribed to treat her contusions and headache with ice and to take over-the-counter pain relievers every four to six hours. ***Id.*** at 113. Officer Confer returned to work the next day. ***Id.*** at 140. Though Officer Confer suffered from a contusion to the eye, she could see out of it. ***Id.*** at 115. Officer Confer did not believe her contusions to be life threatening. ***Id.*** at 115. Her headache subsided the next day and the contusions disappeared in about a week. ***Id.*** at 138.

Officer Stevens was taken only to the infirmary; she had a swollen lip; she was not prescribed medications of any kind but her swollen lip lasted for a day or two. ***Id.*** at 153.

In January of 2006, McLaughlin sought to file a second private criminal complaint against Correctional Officer Confer, Correctional Officer Trainee Bridgette Piasecki (now known as Bridgette Stevens), and inmate Billie Morris alleging that she had been assaulted on December 19, 2005. See, *inter alia*, N.T., 9/19/06, p. 166, Defendant Exhibit #20. The Lycoming County District Attorney's Office refused to prosecute both private criminal complaints filed by McLaughlin. N.T., 9/17/2007, p. 91-92. McLaughlin appealed the denials to the Lycoming County Court of Common Pleas. Those denials were upheld by the court after a hearing. [1]

[1] See, *inter alia* discussion N.T., 9/17/08, pp. 89-92. Due to incomplete indexing and recordkeeping of such documents the court is not able to specify docket numbers of those appeals or supply copies of the orders.

B. PROCEDURAL HISTORY

On April 19, 2006, a Criminal Complaint was filed and a warrant of arrest was issued against McLaughlin for Aggravated Assault, 18 Pa. C.S.A. § 2702(a)(3); and Simple Assault, 18 Pa. C.S.A. § 2701(a)(1). At the time of her arrest, McLaughlin was still serving time in State Correctional Institute Muncy Prison. By an Information filed December 19, 2005 the District Attorney's Office charged McLaughlin with four offenses: Count 1 Aggravated Assault, 18 Pa. C.S.A. § 2702(a)(3) as to Officer Confer; and Counts 2, 3, and 4 Simple Assault, 18 Pa. C.S.A. § 2701(a)(1) as to Officer Confer, Officer Stevens, and inmate Morris.

On June 1, 2006, a preliminary hearing for McLaughlin was held at SCI Muncy. McLaughlin elected to proceed without counsel, knowingly waiving her right to retain counsel or have counsel assigned to her. McLaughlin was held for court on all charges.

On June 8, 2006, McLaughlin filed a Motion for Rehearing on the grounds that she, while acting *pro se*, was not able to examine two subpoenaed adverse witnesses during her preliminary hearing, stating this resulted in her inability to raise her complete list of issues. Those witnesses were SCI Muncy's Security Captain Robenolt and PSP Trooper Rausher. In an attached brief entitled "Issues Raised *Pro Se*," McLaughlin asserted also that undue delay of prosecution caused her the loss of a crucial witness, inmate Dorita Reese. In her brief McLaughlin alleged that the testimony of witnesses Captain Robenolt and Trooper Rausher would have revealed that the Pennsylvania State Police and the District Attorney's Office committed "inaction against her" by not responding to her complaint of official abuse at SCI Muncy Prison. The court responded to the Motion with an Order dated June 23, 2006. The Order denied the Motion based on the fact that McLaughlin did not assert that there was insufficient evidence presented at the

preliminary hearing to establish a *prima facie* case for the charges brought against her; it also directed that the Motion be docketed.

On July 12, 2006, McLaughlin filed a Motion to Dismiss, dated July 5, 2006, that did allege that the evidence presented at the preliminary hearing was insufficient to establish a *prima facie case*. This court issued an Order, dated July 18, 2006, responding to McLaughlin's Motion to Dismiss and stating that the motion was dismissed without prejudice for its failure to "state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested" in compliance with Pa.R.Crim.P. Rule 575(A)(2)(c).

On August 14, 2006, the date McLaughlin was scheduled for arraignment, Public Defender, Gregory Drab, Esquire entered his appearance as her defense counsel and waived arraignment. An initial pretrial was held at that time. The attorneys indicated that no useful purpose would be served by bringing McLaughlin to the courtroom on this date because the case was one that would go to trial. Accordingly, the court ordered that McLaughlin and defense counsel appear for pretrial conference on November 30, 2006, and for jury selection set for December 5 and 7, 2006.

On August 15, 2006, Attorney Drab filed a Request for Pretrial Discovery. The request had been served on the District Attorney's Office on August 14, 2006. On August 31, 2006, the Commonwealth sent an initial discovery response to Attorney Drab. (See, N.T. 9/19/07, p.36, 37.) Most of the information contained therein from the Muncy SCI had been given to the prosecuting officer, Pennsylvania State Police Trooper Rausher, on December 27, 2005. ***Id.*** at 36, 37.

On August 17, 2006, McLaughlin filed a Motion to Dismiss, dated August 4, 2006. The Motion represented that "Margie McLaughlin, *Pro Se* Defendant, moves this court" to dismiss

her case based on insufficiency of evidence. In the Motion, supported by an attached brief, McLaughlin asserted there were three reasons the evidence was insufficient to establish a *prima facie* case at her preliminary hearing, specifically: one, McLaughlin believed that the recorded *pro se* examination by defendant revealed perjury by Correctional Officer Piasecki; two, McLaughlin believed that the recorded *pro se* examination by defendant of complainant Correctional Officer Confer and inmate Billie Morris revealed inconsistency; three, McLaughlin's case was hindered at her preliminary hearing due to her inability to examine two subpoenaed adverse witnesses, Captain Robenolt and Trooper Rausher crucial to her defense at her preliminary hearing. McLaughlin also alleged that her November 4, 2005 Private Complaint involving Officer Confer was crucial to her defense as "evidentiary linkage" (sic) at her preliminary hearing.

The Court answered the Motion by Order, dated August 18, 2006 and filed August 28, 2006, stating the court could not take action on the motion because McLaughlin was represented by counsel and counsel had not signed this Motion. Furthermore, the Order directed that pursuant to Pa.C.P. Rule 576(A)(4) the Motion should be forwarded to Gregory Drab, Esquire, McLaughlin's appointed attorney.

On August 25, 2006, McLaughlin filed three motions for the issuance of subpoenas *duces tecum*, signed August 14, 2006, to subpoena Captain Robenolt, Lieutenant Swimely, inmate Joyce Schofield, inmate Naomi Bendas, inmate Tara Reilly, SCI Muncy Prison Grievance Coordinator Patricia Stover, SCI Muncy Prison Correction Counselor Steve Tolomay, SCI Muncy Prison Correctional Officer Mr. Paultz(sic), SCI Muncy Prison Correctional Officer Ms. Turner, and SCI Muncy Prison DSCS & PRCM Joanne Torma. These motions also requested subpoenaed documents, specifying the following: Department of Corrections Inmate Handbook

2005; Security surveillance for (a). 12/10/05 E-Unit and (b). 12/19/05 R-Unit on McLaughlin "intake"; E.O. Reports for McLaughlin, Confer, Piasecki and Morris. 12/19/05; SCIM's Security Office's Private Criminal Complaint Loggings for Oct. and Jan. 2005 and 2006; DC ADM 201, Use of Force Report for 12/19/05 at 2:30 p.m. against Defendant on the first floor of E-Unit; DC ADM 201, Use of Force Report for 12/19/05 at approx. 2:40 p.m. against Defendant in the Stripping Area of RHU; DC-15, Grievances Housing Unit, Officers Abuse & Misuse of Authority 139755, 136139, 132227 and 136135 previously filed by McLaughlin. McLaughlin stated in all three Motions, the subpoenas were crucial to establish official inaction committed against her. The Court, again, answered the Motion by Order, dated September 1, 2006 and filed on September 5, 2006, stating that the court could not take action on the motion because McLaughlin was represented by counsel who had not signed the Motion. Further, the Order directed that pursuant to Pa.C.P. Rule 576(A)(4) the Motion shall be forwarded to Gregory Drab, Esquire, McLaughlin's attorney.

On September 6, 2006, McLaughlin filed a Motion Compelling Discovery and a Motion for Issuance of Subpoenas *Duces Tecum*, signed August 28, 2006. Again, the court answered the Motion by an Order stating the court could not take action on the motion because McLaughlin was represented by counsel who had not signed the Motion; the Order was dated September 13, 2006 and filed on September 15, 2006. Again, the Order directed the Motion should be forwarded to Attorney Drab.

On September 13, 2006, McLaughlin filed a Petition to Dismiss Counsel for Ineffective Assistance asserting that Gregory Drab, Esquire entered his appearance as Attorney of Record without the consent of McLaughlin. McLaughlin averred that her various *pro se* pretrial motions were impaired (by Attorney Drab's involvement). McLaughlin asserted that though she made

numerous attempts to communicate with Gregory Drab, Esquire, there was never any communication or conference between her and Attorney Drab, nor were her various pretrial Motions ever acknowledged by him. McLaughlin concluded her Motion by stating that "this unsolicited Attorney of Record displayed gross negligence of due legal care and poor performance of non-affirmative defense" and that to "be forced to go to any hearing or other legal proceeding with Attorney Gregory Drab or anyone reflecting the like of him, would be the same as no representation at all."

Attorney Drab filed a Motion to Withdraw as Counsel on October 2, 2006 stating that McLaughlin never consented to having an attorney appointed to represent her. Both McLaughlin's motion to dismiss counsel and Attorney Drab's motion to withdraw were denied by this court by Order of October 30, 2006, filed November 3, 2006. This Order further directed that McLaughlin appear at the November 30, 2006 pretrial conference, that Attorney Drab meet with McLaughlin before November 17, 2006 to address her concerns, and to proceed promptly in having the issues reviewed in McLaughlin's various pro se motions properly presented and scheduled for argument.

On November 30, 2006, the pretrial conference was held, attended by McLaughlin, Attorney Drab and the District Attorney's Office. Following the pretrial conference, this court issued an Order directing that jury selection proceed January 9th, 10th, and 11th. This Court also ordered that McLaughlin and defense counsel must consult as to necessary subpoenas. We also directed that copies of documents McLaughlin had available that day which were necessary for her counsel be made at court expense on that date and given to counsel. This order further directed the District Attorney's Office review their files immediately to determine whether or not they had copies of the private criminal complaints filed by McLaughlin with their office against

correctional officers at SCI Muncy Prison in the month of November 2005 and the month of January 2006, and furnish copies of these documents to defense counsel without delay or notify defense counsel of the non-existence of such documents.

McLaughlin's case was not reached during the January jury selection date due to the number of cases with higher priority. Subsequently, on February 28, 2007, McLaughlin's new public defender, Janan Tallo, Esquire filed an Application for Continuance on the basis that defense counsel assignments had recently been transferred to her, from Gregory Drab, and she, as new defense counsel, now needed more time to prepare for jury selection and trial. On May 7, 2007 a letter was sent to Assistant District Attorney Charles Brace, Esquire and defense counsel Tallo by the Deputy Court Administrator inquiring as to their availability for trial. Thereafter jury selection was set for August 27, 2007, later continued to August 22, 2007.

On June 26, 2007 Attorney Tallo filed a Motion for Discovery on behalf of McLaughlin. The Motion stated that the defense had already received about 30 pages of police reports and statements made by the prison guards involved in the alleged attack, and it requested "any and all audio or video taped evidence relating to the events of December 29, 2005 (sic)…, including but not limited to, a copy of any and all video surveillance of the E-Unit on December 29, 2005 (sic) and a copy of any and all videotaped statements made by the defendant relating to the alleged attack." On June 27, 2007 an Order was issued scheduling Argument to hear the Motion in courtroom # 3 on July 13, 2007.

On July 13, 2007, an Order was entered after the argument on defense's Motion seeking discovery directing the Commonwealth to continue to investigate the possibility as to whether or not any films or surveillance of the event was still available, and upon discovery any such videos be made immediately available to the defense. This Order was entered without prejudice of

McLaughlin to seek any further appropriate sanctions prior to jury trial. This Order was filed on July 19, 2007. The Commonwealth then apparently made further inquiry as to the Department of Corrections for written materials, photos, and videos and on or about July 18, 2007, the Muncy SCI (Department of Corrections) provided the District Attorney's Office an additional packet of discovery. See, N.T., 9/19/07, p. 38, 53. This included an RHU intake video where Defendant McLaughlin was processed upon being admitted into the RHU on December 19, 2005 as a disciplinary matter for her role in the assault of Correctional Officer's Confer and Stevens. *Ibid.* This packet of information was provided to Attorney Tallo within a few days of its receipt by the District Attorney. Attorney Tallo made that discovery information available promptly to Defendant McLaughlin. The RHU video, however, was not furnished to Defendant McLaughlin until during the trial on September 18, 2007. See, N.T., 9/18/07, p. 94.

On August 22, 2007, shortly before the jury panel entered the courtroom for selection McLaughlin made an oral Motion to represent herself in the selection of the jury in this case. The request was denied by order of that date by presiding Judge Kenneth D. Brown, P.J. because of jury selection efficiency considerations and because the court was concerned that the Motion was an effort by McLaughlin to delay jury selection. The Order noted that it was "entered without prejudice to the rights of the Defendant to raise the issue of whether she shall represent herself at the trial with the Assistant Public Defender appointed as standby counsel. This order also directed a hearing on that issue would be held in front of the trial judge, the Honorable Dudley Anderson, at a time and date before the trial date of September 17, 2007. To insure a hearing on this issue, McLaughlin wrote a Motion to Dismiss Unsolicited Counsel of Record, dated August 26, 2007, insisting on proceeding *pro* se in the proceedings against her.

McLaughlin was afforded a hearing on self-representation at trial on September 10, 2007 in front of Judge Anderson.

On August 23, 2007, however, the day after jury selection accompanied by Judge Brown's decision not to allow McLaughlin to represent herself at that proceeding, an Application for Incompetency Examination was filed by defense counsel, Janan Tallo, Esquire. The Motion asserted the examination was necessary to determine if McLaughlin was competent because McLaughlin was unable to understand the nature or object of the proceedings against her and could not participate and assist in her defense. A hearing was scheduled on this issue for September 11, 2007 in front of the Honorable Dudley Anderson.

On September 2, 2007, McLaughlin wrote to the Lycoming County Courthouse Prothonotary stating that she enclosed *pro se* Motions for the issuance of subpoenas and subpoena *duces tecums* on three inmate witnesses and SCI Muncy Prison officials together with a Motion Compelling the Preserved Testimony as Preliminary for immediate filing. Also in this letter, McLaughlin requested to have the enclosed two schematics of the alleged crime scene, 1st floor and 2nd floor drawings of E-Unit, enlarged.

On September 6, 2007, McLaughlin filed several Motions dated August 31, 2007. The first was a Motion for Issuance of Subpoena, to Subpoena the appearance of witnesses Captain K. Frey, DSFM. Joanne Torma, Lieutenant Hummell, and Correctional Officer Paultz (sic). This Motion also calls for the Subpoena *Duces Tecum* for Captain Robenolt and Notary Karen Robenolt. The Motion was accompanied by an Affidavit in Support of All Subpoenas and Subpoenas *Duces Tecum(s)* and stating these witnesses testimony as crucial to establishing official inaction linked to the charges against McLaughlin.

McLaughlin's second Motion was a Motion for Issuance of Subpoenas, seeking the Subpoenas of inmates Andi Muffley, Joyce Schofield, and Parolee Roberta Hardy. In an attached Affidavit of Support, McLaughlin argued that the testimony of these witnesses was crucial to establish that McLaughlin's personal safety was in jeopardy around certain housing unit officers, particularly Correctional Officers Paultz (sic) and Confer.

McLaughlin's third Motion was a Motion Compelling Production of Preserved Testimony at Prelim. This Motion requested the Production of the preserved testimony of the June 1, 2006 preliminary hearing of the three complainants, Rebecca Confer, Bridgette Piasecki, and inmate Billie Morris.

On September 10, 2007, a hearing on the issue of self-representation for trial was held before Judge Anderson. At this hearing McLaughlin knowingly waived the right to have a lawyer appointed to her at no cost, and chose to act as her own lawyer at her trial. Judge Anderson determined that she made a knowing, voluntary, and intelligent waiver of the right to counsel and signed McLaughlin's Written Waiver of Counsel to that effect. Then, on September 11, 2007, after a hearing on defense counsel's application for an incompetency examination, Judge Anderson denied said application. Also on this date, Judge Anderson ordered that the Sheriff of Lycoming County proceed to the SCI Muncy Prison and present the following inmates at the time of trial: Andi Muffley, Joyce Schofield, Charlessa Ott. Trial was scheduled for September 17, 2007.

On September 17, 2007, prior to trial commencing, the Pennsylvania Department of Corrections filed a Motion to Quash Subpoenas and Subpoenas *Duces Tecum*. This Motion was in regards to inmate Joyce Schofield, inmate Andi Muffley, inmate Charlessa Ott, Captain Robenolt, Notary Robenolt, and the production of documents by Michael P. Wolanin. The

Motion argued that the subpoenas and subpoenas *duces tecum* should be quashed because none of them were personally served nor served in a timely manner, and compliance with the Motions would be unreasonable, unduly burdensome, would jeopardize public safety, would jeopardize executive and deliberative process privileges, and finally because the content of the Motions were not relevant they were therefore inadmissible. A hearing was held by the court. N.T. 9/17/08, pp. 84-95. The Motion was effectively denied with the court providing for SCI Muncy to send witnesses in a sequence that would accommodate the court schedule with minimum interference with SCI Muncy's operations. ***Id.*** at 88, 94. In response, the court referenced our July 19, 2007 Order entered after argument on defense's Motion seeking discovery. The Order directed the Commonwealth to continue to investigate the possibility as to whether or not any films or surveillance of the event was still available, and upon discovery of any such videos, the videos must be immediately available to the defense, which had been entered without prejudice to McLaughlin seeking further appropriate sanctions prior to jury trial.

On September 17, 2007, prior to the trial commencing McLaughlin orally requested to dismiss the charges due to a violation of Pa.R.Crim.P Rule 600 and her rights to a speedy trial. The court, after testimony and extensive argument, (***Id.*** pp. 39-84), entered an Order denying McLaughlin's oral Motion to Dismiss relying on ***Commonwealth v. Martin***, 479 Pa. 609 (1978).

The trial proceeded on September 17, 18, 19, and 20 with McLaughlin acting *pro se*, but with assistance from "standby counsel," Janan Tallo. During the trial the court granted a defense motion to acquit McLaughlin of the charge of simple assault as to inmate Morris. On September 18, 2007, we denied McLaughlin's Motion for acquittal as would relate to the charges under count 1, count 2, and count 3. As to count 4, McLaughlin's Motion for judgment of acquittal was granted. On September 20, 2007, the jury found McLaughlin guilty on Count 1, Aggravated

Assault, and not guilty on Counts 2 and 3, each a charge of Simple Assault. Accordingly, the court ordered and directed the verdict be filed of record the same date.

On September 25, 2007 McLaughlin filed a Post-Sentence Motion, Motion in Arrest of Judgment. The motion alleged that the verdict was contrary to the actual evidence in that an RHU Intake Video did not go out with the jury. McLaughlin claimed that the RHU Intake Video, Defense Exhibit #26, would have reminded jurors upon deliberation of the staff assault against her and the injuries that she sustained. The motion also alleged that she was precluded from eliciting testimony from a subpoenaed witness, LPN Tetlow, who was not bench warranted. McLaughlin claimed that LPN Tetlow's testimony was crucial to her defense because Tetlow photographed McLaughlin's injuries to her right hand and leg. In addition, the motion alleged that the verdict was contrary to the law and the weight of the evidence because her conviction did not conform to the "*allegata et probate"* presented at trial.

On October 8, 2007, McLaughlin filed a Motion to Acquit based on defective probable cause and inability to examine subpoenaed witnesses Trooper Rausher and Captain Robenolt at her preliminary hearing. Also on October 8, 2007 McLaughlin filed a Request for Transcripts, requesting all court transcripts in this matter. Then, on October 16, 2007, McLaughlin filed a Motion for Brady Hearing. The Motion asks for a Brady v. Maryland, evidentiary hearing based on the Commonwealth's Exhibit #2 and violations thereof, Defense Exhibit #25 and the Commonwealth's failure to produce in accordance with the court's November 30, 2006 Order, and overall prosecutorial misconduct.

On October 17, 2007, a sentencing hearing was held. We first issued an order which denied McLaughlin's Motion for a Brady Hearing. We also issued an Order denying McLaughlin's Post-Trial Motion in Arrest of Judgment and Motion to Acquit. McLaughlin was

then sentenced on Count 1, Aggravated Assault, to a term of confinement at a State Correctional Institution for a minimum term of fifteen months and a maximum term of thirty months. Additionally, the court ordered that McLaughlin pay a fine of $500.00.

McLaughlin filed this appeal on November 20, 2007. An Order was entered that directed McLaughlin to file a concise statement of errors complained of on appeal in accordance with Pa.R.A.P Rule 1925(b) within twenty-one days. Pursuant to Pa.R.A.P. Rule 1911, all necessary transcripts were directed to be produced within five days by this Order. Another Order dated November 20, 2007, allowed McLaughlin to proceed *in forma pauperis.*

On November 26, 2007, McLaughlin filed a Statement of Matters Complained Of, dated November 20, 2007. This statement did not allege with specificity the errors that she intended to challenge on appeal. The statement merely averred

> "that she was subjected to prosecutorial and judicial misconduct during the preliminary, pretrial, trial and the sentencing stages of the above captioned matter and she require[s] all related transcripts to properly assert these issues on appeal involving violations against: Berger, Brady, Chapman, Darden, Fahy, Giglio, Griffen, Ritchie, Story, and Tumey."

This statement was not sufficiently specific to preserve any complaint of any specific error. However, the statement was written the same day as the Order to write the statement was issued. The Order issued directed McLaughlin to write a statement and included instructions on the specificity requirements of such a statement.

A second statement was filed by McLaughlin on December 4, 2007 superseding the November 20, 2007 statement. This statement was filed within twenty-one days of the November 20, 2007 Order and was sufficiently specific, as instructed by this court.

II. STATEMENT OF MATTERS OF ERROR CLAIMED UPON APPEAL

In her statement of matters, McLaughlin raises four issues, numerically listed with subparts alphabetically listed. This opinion shall address each issue in the order presented by and maintaining McLaughlin's numeric-alphabetic listing of the issues.

(1) Whether the court at Preliminary violated the pro se defendant's right to examine subpoenaed adverse witnesses, PA State Trooper Rausher and SCI Muncy's Security Capt.Ron Robenolt to establish prosecutorial misconduct surrounding two (2) private criminal complaints filed by the defendant which involved official abuse by prison guards particularly complainant(s) prior to Commonwealth's malicious charges against the pro se Defendant.

(2) Whether the Commonwealth's failure to disclose evidence favorable to the pro se defense hindered her.

(a) McLaughlin's December 21, 2005 private complaints involving all three (3) complainants which was requested via court order and remain concealed to date.

(b) Photos of the Defendant's multiple injuries sustained which, through cunning and contriving error by [the] Commonwealth surfaced long after the examination of crucial adverse defense witnesses Capt[ains] Frey and Robenolt.

(c) The SCI Muncy's private criminal complaint "logging" which clearly contradict Capt[ain] Robenolt's claim that he "was not aware of McLaughlin's allegation of a staff assault against her as of January 17, 2006." This crucial evidence shows that Capt[ain] Robenolt lied under oath as his own logging of the Defendant's allegation is dated January 13, 2006 and was not disclosed to the Pro Se Defendant until day two of the pro se trial despite having been requested by the defense as early as August 8, 2006. Court allowed p[rejudice].

(d) Commonwealth's exhibit #2 was stamped "received by District Att[orney]'s Office" on July 18, 2007[,] yet made available to the Pro Se Defendant only seconds prior to being admitted into evidence and lacked photo[graph]s of Defendant's injuries sustained during the December 19, 2005 physical encounter against the Pro Se Defendant by all three (3) complainants. Foremost[,] the tainted evidence was prejudicial and inflammatory to the Pro Se Defendant.

(3) Whether the court erred when failing to safeguard the Defendant's right to effective legal counsel by appointing defective counsel who failed to execute timely motions to attack the prosecution's charging discretion; a defective probable cause, discovery violations and the like, thereby forcing and/or compelling the defendant to proceed pro se (Comm. V. Qualls; U.S. v. Cronie)

(4) Whether contamination by extraneous influence occurred prior to deliberation of the jury when the court seized defense exhibit #26, RVH Intake Video[,] which contained the Pro Se Defendant's vocal claim of a staff assault

against her and the injuries sustained, particularly since the Pro Se Defendant utilized Fifth Amendment safeguards should this crucial evidence have gone to the jury as a reminder of McLaughlin's allegations, or was Defendant being punished for taking the fifth?

(5) The pro se Defendant require[s] all related transcripts to proceed on appeal and have already made multiple requests for these transcripts to no avail to date.

III. DISCUSSION

(1) The Examinations of Witnesses Trooper Rausher and Captain Robenolt, both Subpoenaed by McLaughlin, are Irrelevant to Whether the Commonwealth Established a Prima Facie Case; As Such, Any Lack of Testimony by These Witnesses had no Effect on the Outcome of the Preliminary Hearing.

McLaughlin asserts that at her preliminary hearing, her right to examine subpoenaed adverse witnesses was violated. McLaughlin subpoenaed Pennsylvania State Trooper Rausher and SCI Muncy Prison Security Captain Robenolt for examination at her preliminary hearing. McLaughlin believes that by examination of these two subpoenaed adverse witnesses, she had the potential of proving that prosecutorial misconduct did occur because she had filed two private criminal complaints alleging abuse by prison guards prior to the Commonwealth charging her with assault.

In relevant part, Pa.R.Crim.P. 543 provides as follows: "Rule 543. Disposition of Case at Preliminary Hearing… If the Commonwealth establishes a prima facie case of the defendant's guilt, the issuing authority shall hold the defendant for court. Otherwise, the defendant shall be discharged." ***Commonwealth of Pennsylvania v. Jeffrey Jones***, 929 A.2d 205, 207 (2007).

McLaughlin's contention that the lack of testimony by Trooper Rausher and Captain Robenolt constitutes harmful error is incorrect because the testimony of Trooper Rausher and Captain Robenolt was wholly irrelevant as to whether the Commonwealth had established a

prima facie case that McLaughlin committed the offenses. McLaughlin's allegations, if true, may have impacted the credibility of the Commonwealth's witnesses but would not have negated the Commonwealth's evidence of the elements of the crimes at the preliminary hearing. Further, any error occurring for McLaughlin being held for court at the preliminary hearing was certainly harmless error upon her conviction. Whether or not the allegations made by McLaughlin, that the Commonwealth should have charged those guards with an unknown assault against her and so McLaughlin's assault charges should have been dismissed, does not disprove the Commonwealth's evidence on the charges of assault against McLaughlin which did establish a *prima facie case* against her.

(2) The Commonwealth's hindrance of McLaughlin's defense by failing to timely disclose evidence from SCI Muncy's files did not impact the jury's verdict.

McLaughlin contends that the Commonwealth's failure to timely disclose in discovery evidence favorable to her defense was prejudicial error. The evidence that McLaughlin contends was not disclosed resulting in prejudice is as follows: McLaughlin's November 4, 2005 and December 21, 2005 private criminal complaints; videos and photos of McLaughlin taken following the incident on December 19, 2005 upon her admission to the infirmary and/or placement in RHU and accompanying reports of the injuries that McLaughlin sustained; photos not provided until during trial and after the examination of witnesses Captain Frey and Captain Robenolt; SCI Muncy Prison's records of the private criminal complaint "logging" and notarization that McLaughlin contends would contradict a statement by Captain Robenolt that he was not aware of McLaughlin's allegation of a staff assault against her, evidence not disclosed

until day two of the trial; and Commonwealth's Exhibit #2, a SCI Muncy investigation report dated February 18, 2006 concerning the December 19, 2005 assault by McLaughlin.

At the close of the Commonwealth's case, an on the record discussion was held relating to various evidentiary issues of non-disclosure of evidence and availability of witnesses raised by McLaughlin. See, N.T., 9/18/07, pp.74-84; 90-96. Initially it was discussed that a Commonwealth subpoenaed witness, Nurse Tetlow had not responded to a subpoena. Nurse Tetlow had been the examining nurse of the Defendant on the incident date of December 19, 2005 when McLaughlin was taken to the RHU after the alleged assaults. A medical report dated December 19, 2005 had been made available to McLaughlin but it did not contain any photos and was apparently missing a second page. The report did indicate that the examining nurse observed no injuries. McLaughlin's intention was that it was necessary to call Nurse Tetlow to testify to establish that, in fact, McLaughlin did have injuries. Nurse Tetlow had not responded to the Commonwealth's subpoena and a bench warrant was issued for her based upon the non appearance by our order entered at that time. ***Id.*** at 93. On September 24, 2007, we vacated the bench warrant previously issued on Nancy S. Tetlow for failure to appear on a subpoena, because the subpoena was served only by mail. 42 Pa.C.S. § 5903.

The court also took testimony outside the presence of the jury from Captain Robenolt of the intelligence/investigation unit at Muncy SCI as to various documents that appeared or at least were referenced in their files. ***Id.*** at 96-105. The court then elicited testimony from Captain Robenolt in front of the jury to indicate what records he had just produced for the benefit of Defendant McLaughlin along with the disclosure that the documents had previously been given to the Office of the District Attorney. ***Id.*** at 108. Defendant McLaughlin questioned Captain Robenolt extensively about inconsistencies and absences of documents from the records

concerning the incidents of mistreatment by Correctional Officer Confer and the grievance she filed at that time as well as her grievance and private criminal complaint arising out of this supposed retaliatory action by Correctional Officer Pautz acting on behalf or at the bequest of Correctional Officer Confer. ***Id.*** at 108-152. After Defendant McLaughlin's direct examination of Captain Robenolt was completed it was revealed by the District Attorney's introduction of Commonwealth's Exhibit #2 on cross-examination of Captain Robenolt that the District Attorney's Office had received a copy of Captain Robenolt's report of his investigation into the issues raised by Defendant McLaughlin in her grievances and private complaint on or about July 18, 2007, with that report being marked Commonwealth's Exhibit #2, and had not disclosed prior to the beginning of Captain Robenolt's cross-examination the existence of that document to the Defendant and not furnished a copy thereof to the Defendant in response to the previously ordered discovery. ***Id.*** at 154-156. Defendant McLaughlin objected to the use of that document by the Commonwealth at trial and that objection was overruled. ***Id.*** at 156.

Thereafter, Defendant McLaughlin introduced testimony from Karen Robenolt, a notary employed at SCI Muncy, which noted various notarization work that had been done on the grievances and private criminal complaints made by Defendant McLaughlin concerning Officers Confer, Pautz, as well as the asserted victims in this case, Confer, Stevens, and Morris. ***Id.*** at 168-180. During the Defendant's case presentation at trial on September 19, 2007, it was also ascertained that SCI Muncy did not produce copies of various grievances against the various correctional officers and inmates which Defendant McLaughlin had raised issues about during trial. See, N.T., 9/19/07, pp. 3-15. It was also clear that a copy of the second private criminal complaint filed by McLaughlin had not been found or made available for use during the trial. ***Id.*** at 18-22. The Defendant made an extensive examination of Captain Kathryn Frey of Muncy SCI

in front of the jury at the outset of the next to last day of trial. ***Id.*** at. 23-110. This examination again brought to the attention of the jury the matter of various complaints filed by McLaughlin and that photographs had been taken of McLaughlin which were not available for trial, nor had the prison pursued obtaining or seeking to preserve evidence relating to the exposing of Defendant McLaughlin to a blanket with body fluids on it by Correctional Officer Pautz in October 2005.

On this day of trial, the court also explored the manner in which discovery had been obtained by the Commonwealth and provided to the Defendant. N.T., 9/19/07, pp. 3-49. The court ascertained that the Department of Corrections had not furnished complete information to the investigating State Police initially and did not furnish any follow-up information until a specific inquiry was made of them in July of 2007 following a court order. (See, also discussion set forth above, pp. 10-11 of this opinion.) The court, in ascertaining the discovery process, also noted that the Department of Correction records maintained by SCI Muncy appeared to be altered from the time that they were initially given to the Commonwealth in December of 2005 and the furnishing of copies of the same or similar documents in July 2007, at least as would relate to the medical records of inmate Billie Morris relating the December 19, 2005 incident. ***Id.*** at 39-46. The jury was advised by the court as to this discrepancy and the discovery process. ***Id.*** at 50-56. As noted above McLaughlin also cross-examined witnesses concerning these matters in her examination of especially Captain Kathryn Frey, Correctional Officer Pautz, and prosecuting officer Trooper David Rausher. (See, N.T., 9/19/07).

McLaughlin was also successful in presenting testimony that there likely would have been video surveillance of the December 19, 2005 incident of her confrontation with Confer, Stevens, and Morris. N.T., 9/17/07, p. 132-134. *See also* N.T., 9/18/07, pp. 26, 27, 94, 111-113,

150. The testimony thus presented to the jury was also to the effect that while surveillance cameras may have been in the unit, there might not have been any films, although the jury could have drawn an inference that any films that were made were destroyed by Muncy SCI. The significant aspect of this is that although no films were produced by Muncy SCI McLaughlin was able to fully explore the reason they were not produced. The Commonwealth is not under an obligation to produce that which they do not have.

The jury therefore was made aware of possible motivation for less than truthful testimony by the employees of SCI Muncy as well as the inferences that could be drawn from failure to disclose discovery information timely and in furnishing incomplete, incorrect, or falsified information. McLaughlin's assertion that a conspiracy existed to have harm done to her by various correctional officers and inmates was effectively presented to the jury. The Commonwealth, however, would not stipulate and acknowledge that there had been any such conspiracy or intentional harassment in any way of Defendant McLaughlin. N.T., 9/19/07, p. 19. Nevertheless, as argued by the Commonwealth outside the presence of the jury, there was sufficient evidence in the record permitting McLaughlin to argue to the jury that the guards in the case conspired to retaliate against her as a result of the various incidents she asserted occurred.

While it is true some documentary evidence may have bolstered McLaughlin's claims that she had been harassed by the prison guards, such bolstering of testimony as to these prior harassment incidents was not significant to her defense because there was no evidence that such harassment or abusive incidents occurred with the exception of Defendant's filing of the grievances. No one denied the grievances were filed. At the same time there was no testimony that any of the acts asserted in the grievances ever occurred. McLaughlin was successful in presenting her allegations to the jury through references to these various documents. She was

also able to discredit the Commonwealth's witnesses through showing that some documents and photographs were missing from the files of SCI Muncy, that some documents appeared to be altered, that witness Nurse Tetlow-favorable to the Commonwealth-failed to appear, that Muncy SCI delayed investigation, and that Muncy SCI failed to preserve certain photographs and other evidence. These failures and omissions sustained and bolstered McLaughlin's claims of mistreatment and being falsely accused. There was no direct evidence, however, introduced through the testimony of McLaughlin nor anyone else that the incidents which were the subject of her private criminal complaint had occurred, most significantly that it was she who was the victim of an assault on December 19, 2005 by Correctional Officer Confer. We certainly recognize the "catch 22" situation McLaughlin faced at trial concerning establishing incidents of harassment and mistreatment by the guards, both in October 2005 and on December 19, 2005 without her own testimony. Nevertheless, she was able to effectively convey to the jury the essence of her testimony. McLaughlin did subpoena other inmates to testify on her behalf. Specifically, she had called inmates Joyce Schofield and Andi Muffley. Unfortunately for McLaughlin, these inmates provided no positive testimony supporting McLaughlin's contentions that she was the real victim.

For example, McLaughlin called Joyce Schofield as a witness as part of her case-in-chief N.T., 9/18/07, p.180. Ms. Schofield was a fellow inmate of SCI Muncy and McLaughlin's best inmate witness. Schofield was not housed in the same unit as McLaughlin. ***Id.*** at 181. Ms. Schofield and McLaughlin would meet in the yard to discuss issues they were having whenever they could because they knew each other from being in county jail together in 1999. ***Id.*** Between October and December of 2005, Ms. Schofield heard numerous complaints from McLaughlin centered around McLaughlin trying, but failing, to obtain redress within the

institution: "[McLaughlin] tried over and over again to get help and everyone was just denying various facts." ***Id.*** at 186. Ms. Schofield recommended that after McLaughlin exhausted internal remedies, she ought to "go to an outside agency." ***Id.*** In particular, Ms. Schofield and McLaughlin discussed how McLaughlin believed that she was given a blanket with bodily fluids on it, to which Ms. Schofield recommended that she write to the National Prison Project in Washington D.C., a division of the ACLU, because the project was requesting letters from inmates with concerns about sexual abuse. ***Id.*** at 185.

In addition, Schofield explained that McLaughlin expressed that she had concerns about those that provided a living environment for her at the prison, most notably Officer Confer and an unnamed male officer. ***Id.*** at 188-189. It is important to note that everything that Ms. Schofield knows about the aggravated assault that McLaughlin committed comes from information she learned from McLaughlin herself. Ms. Schofield was housed in Lominee Unit and was not present during any of the events on December 19, 2005, the date of the assault. ***Id.*** at 192-193. Whether or not McLaughlin had concerns about Correctional Officers is corroboration of that concern only and not proof of the occurrence. The only issue for the jury was whether an assault was committed or not on December 19, 2005 and who it was who was assaulted and perhaps if McLaughlin had only acted in self-defense. Ms. Schofield testified only to what she heard McLaughlin complain about in the yard, and counseled McLaughlin on how to go about addressing concerns in the prison system. Ms. Schofield further stated that what inmates tell other inmates at SCI Muncy are, at times, embellished. ***Id.*** at 196. Further, Ms. Schofield stated that she questions the statements inmates tell her. ***Id.*** Ms. Schofield clarified that she provided McLaughlin with what she thought was appropriate advice based only on what McLaughlin told her. ***Id.***

Andi Muffley, another inmate, also testified. ***Id.*** at 202. On June 2, 2005, Ms. Muffley was housed at SCI Cambridge Springs when she got into a physical altercation with inmate Billie Morris, Ms. Muffley's roommate at the time. ***Id.*** at 203-205. According to Ms. Muffley, Ms. Morris initiated the encounter because Ms. Morris wanted to be transferred to SCI Muncy. Ms. Morris knew she would be transferred to SCI Muncy because a previous separation order pertaining to Ms. Muffley would keep Ms. Muffley from being the one who got transferred. Ms. Muffley, now housed at SCI Muncy, received a letter during September of 2007 indicating there was no current violation of a separation order as Ms. Morris was no longer at SCI Muncy and was again at Cambridge Springs. ***Id.*** at 207.

Regardless of the jury's failure to accept McLaughlin's defense, her claims that she was prevented from presenting this defense because of lack of documents or appearance of witnesses must fail since those documents would have been the mere allegations of McLaughlin that the events occurred and would not have been admissible as proof of the events asserted in the grievances and private criminal complaints. In effect, during this trial, McLaughlin got the best of both worlds, that is being able to introduce her theory, contentions, and allegations into the record without being required to take the stand to so do thus being subject to cross-examination. This coupled with the fact that the Commonwealth did not dispute that the referencing documents did exist, resulted in no prejudice to McLaughlin in as much as the jury by its verdict clearly heard but rejected McLaughlin's theory that there was a conspiracy to harm her.

Even if the jury had accepted such a theory, that theory still did not diminish the testimony as would relate to the assault perpetrated by McLaughlin upon others on December 19, 2005. Even had there been photos of injuries to McLaughlin on that date or even had there been a video taken at the time of her admission into RHU that would have shown that she had injuries,

such would not have substantiated the fact that she was not the aggressor in the incident. Clearly, given the extent of the physical struggle that went on between McLaughlin and the various individuals involved on December 19, 2005 it would not have been unusual for some bruising to have been found. The RHU intake video that was made available to the jury, while not showing a close up of McLaughlin's body clearly demonstrated that she did not have any restriction of movement, was in an agitated state and was not making any significant complaints of pain or disability. Her physical condition that was demonstrated in the video was consistent with the testimony of the Commonwealth and its theory of the case as it was with Defendant's. This video was not permitted to go out with the jury because to have sent the video out to the jury would have amounted to permitting testimonial statements of McLaughlin to be taken into the jury room. Because McLaughlin never officially testified during the jury trial, to send the video out with the jury would have been giving her testimony to the jury during their deliberations. McLaughlin asserts on appeal that the significant relevance of the video's introduction was to show whether there was or wasn't any physical injury to McLaughlin and the video images did not substantiate one way or the other.

McLaughlin cites to the authority of ***Pennsylvania v. Ritchie***, 480 U.S. 39 (1987). This case, however, does not show that any error of this court was committed against McLaughlin. ***Pennsylvania v. Ritchie*** entailed an attempt by the defendant to obtain the contents of the file that the Children and Youth Services made in its investigation of the victim's complaint. Defendant was denied access, since those files were confidential under Pa. Stat. Ann. tit. 11, § 2215(a) (1986). The state supreme court vacated the conviction, remanded the case, and ordered the court to allow defendant's attorney full access to the files. On appeal, however, the court held that U.S. Const. amend. VI granted defendant the right to confront his witnesses at trial. Thus,

defendant was entitled to pretrial disclosure of confidential information, but only if that information was material as determined by the trial court; the defendant did not have the total right to examine the file. The court affirmed only that part of the judgment of the state supreme court and remanded the case for the court to determine if the file contained material, exculpatory evidence, which would warrant a new trial, and reversed the remaining part of the judgment.

When compared to McLaughlin, of course McLaughlin has a right under U.S. Const. amend. VI to confront her witnesses at trial. The right to confront witnesses at trial does not create reversible error if, as in McLaughlin's case, evidence was not disclosed until partially through trial or evidence was never disclosed either because it is hidden or because it was inadvertently destroyed or because it never existed, if that information is not determined by the trial court to be material in the first place.

Finally, in reference to the Commonwealth's misconduct in the way of hindering evidence, although McLaughlin has not specifically referenced the matter in her issues listed in the Statement of Matters Complained upon Appeal there was an issue at trial over the failure of Nurse Tetlow to appear despite having been subpoenaed by the Commonwealth. (See discussion under facts set forth above). At trial, McLaughlin made an issue as to Tetlow's non-appearance, N.T. 9/18/07, pp. 75-76, 79-80. In spite of McLaughlin's assertions that Nurse Tetlow was subpoenaed by her as early as August 2006, see N.T., 9/18/07, p. 75, a review of the documents filed by McLaughlin does not reveal a request that Tetlow be subpoenaed. Further, there is no reason ever asserted by McLaughlin to believe that Nurse Tetlow would have in any way recanted the statements set forth in her written examination report to the effect that she reported that McLaughlin had no visible injuries from the December 19, 2005 altercation.

As discussed in part 1 of the discussion section, whether the Commonwealth should or should not have charged guards with unknown assault(s) against McLaughlin has nothing to do with the charges of assault against her.

Although the Commonwealth's actions hindered and slowed some of the evidence, this evidence may have been relevant to, though not determinative of her case.

Nevertheless, the relevant evidence did surface to come out at trial. Trial testimony was received on the subject of the possible missing or altered evidence, including the existence of video and/or documents, without the presence of the physical evidence. N.T., 9/18/07, p. 101. Physical evidence was being pursued by the Commonwealth at all times during trial, and McLaughlin was given ample time to review the physical evidence, when found, before proceeding with questioning. ***Id.*** at 101, 108. All in all, McLaughlin had ample opportunity to cross examine all witnesses as to their knowledge of events, and recordings made thereof, related to McLaughlin's defense strategy. Most significantly, McLaughlin has not demonstrated how the Commonwealth's failure to have brought forth evidence and/or made it available to McLaughlin more timely would have changed either the verdict or the way the jury evaluated the evidence in order to read their verdict.

(3) McLaughlin Elected to Represent Herself.

McLaughlin claims that though she elected to represent herself at trial, the court erred by not supplying her effective assistance of counsel. McLaughlin contends that she was forced to proceed at trial *pro se* because the court did not provide her with effective counsel. Thus, she contends that the court erred because even though waiver of counsel was done knowingly, waiver was forced, was not by choice and, thus, was not *per se* voluntary. We found and

continue to find, however, that McLaughlin's waiver of counsel was knowing and voluntary. Furthermore, this court took great pains to ensure McLaughlin effective and appropriate representation by appointed counsel under the constraints of her exercise of her constitutional right to represent herself.

The test for ineffective assistance of counsel is the performance and prejudice paradigm set forth by the U.S. Supreme Court in ***Strickland v. Washington***, 466 U.S. 668 (1984). To better focus the ***Strickland*** analysis, the Superior Court "requires the defendant to rebut the presumption of professional competence by demonstrating that: (1) his underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and (3) but for counsel's ineffectiveness, there is a reasonable probability that the outcome of the proceedings would have been different." ***Commonwealth v. Bryant***, 855 A.2d 726, 735-736 (2004); *citing*, ***Commonwealth v. Pierce***, 786 A.2d 203, 213 (Pa. 2001); ***Commonwealth v. Kimball***, 724 A.2d 326, 333 (Pa. 1999).

Bryant noted that where, as here McLaughlin chose to represent herself review, of appellant's claims can be "complicated by the fact that he waived his right to counsel and represented himself during substantial portions of his trial …'to now ignore the issue of waiver [of the issues that appellant himself failed to raise at trial] would allow [appellant] to make a mockery of the judicial process and guarantee immunity from the consequences of self-representation … [A] defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of 'effective assistance of counsel.'" ***Bryant***, 855 A.2d 726, 736 (2004); quoting ***Faretta v. California***, 422 U.S. 806, 834 (1975).

After McLaughlin had elected to proceed *pro se* at her preliminary hearing, Gregory Drab, Esquire of the Public Defender's Office was appointed by the court to represent

McLaughlin at the time set for her argument on August 14, 2006. McLaughlin nevertheless held a Motion to Dismiss on August 17, 2006 (dated August 4, 2006), and two Motions to Compel Discovery on August 25, 2006 and September 6, 2006, all of which were *pro se* motions that were returned to McLaughlin and forwarded to Attorney Drab under Pa.C.P Rule 576. On September 13, 2006 McLaughlin filed a Petition to Dismiss Counsel for Ineffective Assistance, asserting *inter alia* discovery had not been pursued. Attorney Drab did, however, on August 15, 2006, file a Request for Pretrial Discovery. The request was sufficiently detailed and included a request for the discovery of all issues that McLaughlin's motions were concerned with discovering. McLaughlin's motion to dismiss counsel also alleged that her various *pro se* pretrial motions were impaired, thereby making counsel ineffective. McLaughlin further asserted without any factual allegation that to "be forced to go to any hearing or other legal proceeding with Attorney Drab or anyone reflecting the like of him, would be the same as no representation at all." The Petition to Dismiss Counsel for Ineffective Assistance, stated that inevitably for McLaughlin "various constitutional guarantees would in fact be abridged by this state and the judicial system denying this petitioner a fundamentally fair trial, contrary to the rights of due process." Many times throughout the case, McLaughlin also expressed concern and irritation that the Public Defender's office, as an entity, was interested in protecting the interests of the District Attorney's office rather than her interests. McLaughlin's thoughts were that anyone reflecting the likes of Mr. Drab would be like having no representation at all, she decided to represent herself in the proceedings and that this would be better representation for her case than the appointed Public Defender. No facts supporting this contention have been produced by McLaughlin.

McLaughlin was first introduced, by this court, to the ramifications of self representation on August 22, 2007 at her jury selection proceeding. Judge Kenneth D. Brown denied McLaughlin's request to represent herself at this proceeding because the Motion was made only moments before the jury panel entered the courtroom for selection. Upon the request, Judge Brown informed McLaughlin, "[f]or me to permit that, I have to do a hearing and at the hearing I would have to take testimony from you and make a determination after going over a lot of information that you understand all the ramifications of self representation, giving up your right to counsel." N.T., 8/22/07, p. 4. Ms. Tallo represented McLaughlin at this proceeding upon the condition that during jury selection, the Judge informs the jurors that McLaughlin may represent herself at trial in case that would prejudice the jurors in any way to her case. ***Id.*** at 7. Also, during this discussion, Ms. Tallo ensured that a hearing was scheduled on McLaughlin's request to represent herself at trial. ***Id.*** at 8. On August 31, 2007, McLaughlin also filed a Motion to dismiss counsel to make sure that the court heard this issue. ***Id.*** at 10.

The only issue that McLaughlin left for McLaughlin to pursue, then, is whether the September 10, 2007 determination that McLaughlin was competent to stand trial was incorrect, that McLaughlin's waiver was not in fact knowing, voluntary and intelligent.

> Before a defendant is permitted to proceed *pro se*, however, the defendant must first demonstrate that he knowingly, voluntarily and intelligently waives his constitutional right to the assistance of counsel… Specifically, the court must inquire whether or not: (1) the defendant understands that he has the right to be represented by counsel, and the right to have free counsel appointed if he is indigent; (2) the defendant understands the nature of the charges against him and the elements of each of those charges; (3) the defendant is aware of the permissible range of sentences and/or fines for the offenses charged; (4) the defendant understands that if he waives the right to counsel he will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules; (5) defendant understands that there are possible defenses to these charges which counsel might be aware of, and if these defenses are not raised at trial, they may be lost permanently; and (6) the defendant understands that, in addition to defenses, the defendant has many rights that, if not timely asserted, may be lost

> permanently; and that if errors occur and are not timely objected to, or otherwise timely raised by the defendant, the objection to these errors may be lost permanently.

Commonwealth v. Starr, 664 A.2d 1326 (1995); citing, Comment to Pa. R.Crim.P. 318.

McLaughlin asserts that the court erred by not appointing her effective council. Again, McLaughlin produces no facts supporting this. Counsel, while representing her, followed appropriate procedures. This included obtaining discovery through a timely filed discovery motion. That discovery motion filed by Attorney Drab in August 2006 obtained all the information the Commonwealth then had. When it came to the attention of subsequent appointed counsel, Janan Tallo, that there must be additional material that the Commonwealth should have available, her timely and appropriate Motion to Compel Discovery which resolved in a court order compelled the District Attorney to dig further and find the existence of other evidence, some of which benefited McLaughlin and some of which did not. During the course of trial, although McLaughlin represented herself, she was constantly coached by Attorney Tallo and the trial transcript reveals both that McLaughlin on her own initiative asked appropriate questions and was an effective advocate and further that she was receiving appropriate and timely information from Attorney Tallo to raise legal issues for the court to consider. Again, McLaughlin has the best of both worlds in that she exercised her right to represent herself and at the same time benefited from the experience and ability of counsel throughout the prosecution.

McLaughlin's assertion that she was prejudiced and that the court committed error regarding her self-representation and lack of effective counsel also implies that the Honorable Dudley N. Anderson erred in allowing McLaughlin to proceed to trial *pro se* upon McLaughlin's own motion to do so. An analysis of Judge Anderson's September 10, 2007 and September 11, 2007 hearings pertaining to self-representation show that McLaughlin understood all the matters

required under the ***Starr*** analysis that she had the right to be represented by counsel, and the right to have free counsel appointed if she were indigent; she understood the nature of the charges against her and the elements of each of those charges; she was aware of the permissible range of sentences and/or fines for the offenses charged; she understood that if she waived the right to counsel she would still be bound by all the normal rules of procedure and that counsel would be familiar with these rules; she understood that there are possible defenses to these charges which counsel might be aware of, and if these defenses are not raised at trial, they would be lost permanently; she understood that, in addition to defenses, the defendant has many rights that, if not timely asserted, would be lost permanently; and, finally, she understood that if errors occurred and were not timely objected to, or otherwise timely raised by her, the objection to these errors would be lost permanently

On September 10, 2008 Judge Dudley N. Anderson convened a hearing to determine the issue of McLaughlin's waiver of counsel. Judge Anderson initially asked whether McLaughlin wanted to represent herself at trial, to which McLaughlin answered, "[a]ctually that's what I am forced to do;" she furthered, "initially I asked standby counsel to address issues as far as retrieving two private criminal complaint[s] from the Lycoming County District Attorney's Office, which were filed prior to the charges against me, and when counsel failed to address that matter then I felt that she wasn't performing in my interest." N.T., 9/10/2007, p. 2, 4. Judge Anderson then explained that though McLaughlin does have the right under the Constitution to represent herself, but trial "is a complex process. That's why it takes after college three additional years in law school… [T]he attorneys in the DA's office… know how to try cases. They know what the rules of evidence are. They know the rules of the road." ***Id.*** at 5, 6. Judge Anderson assured McLaughlin that as a public defender, Ms. Tallo had trial experience. ***Id.*** at 6.

To this, McLaughlin responded that she was not questioning the abilities of Ms. Tallo but questioning "the motive and the relationship between the DA's office and the public defender's office in terms of being under the Commonwealth" asserting that because of this commonality, Ms. Tallo would "protect the DA's office more than her client." ***Id.*** at 7. Judge Anderson answered definitively that this would not happen. ***Id***. Judge Anderson further addressed McLaughlin's reasoning for believing that Ms. Tallo was not performing in her interest by explaining that it "oftentimes takes a professional to say… [t]his is a waste of court's time. We're not going to prevail on this particular issue. We do have a shot on this, this and this. This is what I think we can do in order to best protect your rights… It's often at odds with what a defendant wants." ***Id.*** at 8. After Judge Anderson explained this, McLaughlin still asserted that she would like to represent herself. After hearing this, Judge Anderson attempted to drive home his point by testing McLaughlin on what the best evidence rule is, what is admissible as far as prior records are concerned, what is demurrer and what are the reasons for a demurrer; respecting the fact that McLaughlin did not understand these points of law, Judge Anderson advised McLaughlin that she was charged with aggravated assault, and aggravated assault is a felony two and "nothing to fool around with." ***Id.*** at 12. Judge Anderson colloquially advised McLaughlin against self representation on the basis of advantage of counsel, essentially advising McLaughlin of the criteria set forth under stars as (4)(5)(6), which McLaughlin persistently ignored. Judge Anderson, however, went much further.

At this point McLaughlin was placed under oath and Judge Anderson began "Miss McLaughlin, we've had an informal conversation about your wish to go ahead and represent yourself in this matter and to proceed what's called *pro se*. You understand what that means?" ***Id.*** at 14. McLaughlin responded in the affirmative. ***Id.*** Judge Anderson asked "I want to

advise you that you are charged with some serious crimes in that – as I read the information in this matter, count one, an aggravated assault. Then there's a series of simple assaults, but the aggravated assault is graded as a felony two. A felony two carries with it a maximum sentence of ten years imprisonment and a $10,000 fine… Do you understand that?... Do you understand the nature of the charges against you and the elements of those charges along with the permissible ranges of sentences on – or fines for the offenses charged?... Do you understand with aggravated assault… that the Commonwealth would have to prove that you did attempt to cause or intentionally or knowingly did cause bodily injury, in this case to a police officer, while that person was in their official capacity? Do you understand that?" ***Id.*** at 14-16. McLaughlin answered in the affirmative to all of these questions; thus, McLaughlin understood the nature of the charges against her, the elements of each of those charges, and the permissible sentence range of sentences and/or fines for the offenses charged. ***Id.***

Judge Anderson also addressed whether McLaughlin understood that she had "a right to be represented by counsel and the right to have free counsel appointed if [she] cannot afford an attorney" meaning that the court was "prepared to have a counsel appointed for [her] from the public defender's office," to which McLaughlin responded that she did understand thus satisfying another element of the legal test enabling one to represent themselves at trial. ***Id.*** at 15. In addition, Judge Anderson asked, and McLaughlin answered in the affirmative, that she "understand[s] that if [she] waive[s] the right to an attorney [she] w[ould] still be bound by all the normal rules of procedure that an attorney, if one represented [her], would be familiar with those rules[,]… that there are possible defenses to the charges with which an attorney might be aware, and if these defenses are not raised at trial they may be lost permanently[,]… that in

addition to the defenses [she] may have [had] many rights that if not timely raised by [her might have been] lost permanently." ***Id.*** at 16-17.

As such, McLaughlin was apprised of all the issues required so to ensure a defendant is knowingly, voluntarily and intelligently waiving their right to assistance of counsel and appropriately proceeding *pro se*, according to Pa.R.Crim.P. 318. Not only did she acknowledge all the elements of the test, but Judge Anderson went through great pains to ensure that McLaughlin knew what she was waiving by waiving assistance of counsel and even tried to dispel McLaughlin's misgivings about Ms. Tallo as a public defender. McLaughlin opted to proceed *pro se* regardless, and she signed a waiver to this effect at this hearing.

In fact, McLaughlin was adjudged competent to represent herself by a hearing on this matter by Judge Dudley Anderson on September 11, 2007. At this proceeding, McLaughlin reiterated her desire to proceed to trial *pro se* and made voluntary and knowing waiver of her right to have counsel provided for her at no cost. On appeal, however, McLaughlin asks whether the court erred by failing to safeguard her right to effective legal counsel because it is her opinion that appointing counsel was defective which forced McLaughlin to proceed *pro se*. In opposite, although not required to do so, we appointed standby counsel in an effort to safeguard effective representation for McLaughlin. Effective representation was ensured, as standby counsel went above and beyond what was required of her by acts including, but not limited to, assisting McLaughlin in filing various motions.

At the hearing of September 10, 2007, Attorney Tallo also had asserted that McLaughlin was incompetent to represent herself as she "was unable to assist in her defense." ***Id.*** at 24. Ms. Tallo first raised this issue in a Motion for a competency hearing right after McLaughlin's jury selection proceeding, where McLaughlin made an oral motion to represent herself for that

proceeding and at trial which was denied by Judge Brown. ***Id.*** at 28. Then, a competency hearing was scheduled for the day after the hearing on self representation, also in front of Judge Anderson. At this hearing, on September 11, 2007, Judge Anderson did suggest that if McLaughlin was truly incompetent that the order of the scheduling of the two hearings could be an issue of "the cart before the horse." N.T., 9/11/2007, p. 3.

At the hearing on September 11, 2008, Judge Anderson found that McLaughlin did have an appreciation of where she was, who the players were in court, and what was going on in her case and in court. ***Id.*** at 8. McLaughlin could explain what she was charged with, the elements of those crimes, and that she was charged with the count of aggravated assault because the person that was alleged to be assaulted was a correctional officer. ***Id***. at 8. The court found that because, among other considerations, McLaughlin possessed the knowledge stated above, there was no preliminary showing that McLaughlin was unable to assist counsel and that she was competent to represent herself at trial. ***Id.*** at 24-26.

For her part, McLaughlin cites two cases in support of her assertion that the court erred by not providing effective assistance of counsel, "***Comm. V. Qualls; U.S. v. Cronie***." Upon diligent search we cannot find any reason that either case would support such a holding. Try as we might, this court found no case called "***U.S. v. Cronie***." We found ***Commonwealth v. Ellis A. Qualls***, 785 A.2d 1007 (Pa. Super 2001), which does consider the issue of ineffective assistance of counsel.

In ***Qualls***, the Pennsylvania Superior Court reversed a PCRA court determination. The Superior Court's holding, however, did not relate to McLaughlin's contention. The Superior Court held that under Pa.R.C.P. Rule 120(C), defense counsel was not permitted to abandon the client without leave of the court. ***Commonwealth v. Qualls***, 785 A.2d 1007. Because defense

counsel's improper withdrawal led to the defendant's loss of a direct appeal, defense counsel provided ineffective assistance, and the defendant was prejudiced. ***Id.*** As such, he was entitled to an opportunity to directly appeal the case. ***Id.***

Commonwealth v. Qualls recites a rule that pertains to timely appeals and the withdrawal of counsel without the consent of the court so that the court can be on reasonable notice of the need to appoint a pubic defender. McLaughlin had a public defender who she dismissed because she elected to represent herself. N.T., 9/17/07, p. 3. McLaughlin filed a timely appeal. She did so with the assistance of backup counsel. Furthermore, ineffective assistance of counsel was not and could not have been a court error in ***Qualls*** or in the case of McLaughlin. In any case, ineffective assistance of counsel, if proven, is the fault of counsel and not the court; appropriate remedy may be sought by filing under the PCRA. ***Commonwealth v. Grant***, 813 A.2d 726, 738 (Pa. 2002).

Even though not required to do so, this court ensured proper representation at trial by requesting that back-up counsel, Janan Tallo, Esquire, be present at all times during McLaughlin's trial. Janan Tallo went above and beyond her obligations as back-up counsel not only by answering the court's questions as to questions of procedural history, but also by counseling McLaughlin as to suggested strategy at various times throughout the trial. For instance at the close of the Commonwealth's case-in-chief, Janan Tallo, Esquire counseled McLaughlin, upon McLaughlin's request and consent, as to how to proceed with her case-in-chief. N.T., 9/18/07, p. 74.

(4) Defense Exhibit #26, RHU Intake Video, Wrongfully Seized and Prohibited by Court from Being Viewed by Jury During Deliberations.

Following the incident of December 19, 2005 between McLaughlin and the officers and inmates at her housing unit, McLaughlin was taken to the restricted housing unit where she was strip searched and then detained and at that time a video was made of her intake into RHU. N.T., 9/19/07, pp. 201-203. *See also*, N.T., 9/18/07, p. 94 and N.T., 9/19/07 pp. 38, 39, 62, 172, 186, 200, 204-205. This RHU intake video was admitted as Exhibit # "25", ***Id.*** at 218, 219 although actually marked and referenced at various times including in the Defendant's Statement of Issues Complained of On Appeal as Defendant Exhibit #26. This video had been introduced at the end of the Defendant's case after Defendant had been permitted to reopen her case to allow it to be played in its entirety before the jury. ***Id.*** at 205, 206. After the jury began deliberations the court sustained the Commonwealth's objection to McLaughlin's request that the video be sent out with the jury for their use during deliberations. N.T., 9/20/07.

McLaughlin's position as to the RHU video is that it demonstrates that she had suffered injuries at the hands of the guards during the incident of December 19, 2005 and supported her contentions that it was she that had been assaulted and not that she had assaulted the guards. The video simply does not amount to such evidence. The video does not depict McLaughlin's body and particularly the portion of her arms where she asserts she had sustained injuries from being assaulted by Correctional Officer's Confer and Stevens. For the most part, McLaughlin's body exposure in the video when such injuries would be observable is from behind a screen utilized for modesty purposes during the RHU intake process as it is being videoed. What is heard on the video is McLaughlin's verbal assertions that she has injuries. During the course of these proceedings, McLaughlin continually presented this contention to the jury although she never testified to that effect with her decision not to testify having been made early in the case as she advised the jury in her opening statement that she would not be testifying. ***Id.*** McLaughlin

chose to, instead of testifying, have her position made known to the jury through the introduction of the video tape. ***Id.*** at 202-205. This was a clever tactic on McLaughlin's part as it avoided her being subjected to cross-examination yet left her get her contentions and her statements to the jury. She clearly understood that she was able to accomplish this. *Ibid.*

The court did not permit the video tape to go out to the jury essentially because it would have been the same as sending a transcript of McLaughlin's testimony to the jury for them to consider during their deliberations which would be improper. This decision to not send the video out to the jury was therefore proper and regardless of any error that may be asserted by McLaughlin, the jury clearly was very well aware of the contents of the video. Further, the video is subject to interpretation even if it had shown actual injuries received by McLaughlin in that it very well could be determined by the jury that those injuries were sustained by her at a time that she was perpetrating an assault upon the guards just as well as it would support that she had been struck by the guards. Even if it supported that she was being struck by the guards, it is clear from their description of the incident that they would have been doing so in an effort to subdue McLaughlin and prevent her from assaulting others as they took her into custody.

Pa.R.C.P. Rule 646 (1) provides that: "Upon retiring, the jury may take with it such exhibits as the trial judge deems proper…" The judge's decision on what exhibits to send out with the jury is committed to his or her discretion, and will not be reversed absent an abuse of that discretion. ***Commonwealth v. Rucci***, 670 A.2d 1129, 1141 (Pa. 1996), cert. denied, 520 U.S. 1121 (1997). Absent an abuse of discretion, the trial judge will not be reversed on appeal. ***Commonwealth v. Lybrand***, 416 A.2d 555 (1979). An abuse of discretion "is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill

will, as shown by the evidence of record, discretion is abused." ***Melzer v. Witsberger***, 480 A.2d 991, 997 (1984); see also, ***Commonwealth v. Long*** 625 A.2d 630 (1993).

"The underlying reason for excluding certain items from the jury's deliberations is to prevent placing undue emphasis or credibility on the material, and de-emphasizing or discrediting other items not in the room with the jury. If there is a likelihood the importance of the evidence will be skewed, prejudice may be found; if not, there is no prejudice per se and the error is harmless." ***Commonwealth v. Strong***, 575 Pa. 433 (Pa. 2003).

In ***Commonwealth v. Bridges***, 757 A.2d 859 (2000), the trial judge properly refused to send out a defense exhibit to the jury for their deliberations. The exhibit was a letter written by one of the Commonwealth's witnesses while he was in jail on material witness bail. ***Bridges,*** 757 A.2d at 877. The Appellant argued that the letter cast a dark shadow on the witness' credibility, was crucial to his defense, and should have been sent out with the jury. ***Id.*** at 877-878. The appellate court found no abuse of discretion by the trial court in refusing to send the exhibit out with the jury because: (1) it would have been the sole piece of evidence sent out with the jury; (2) it would have been unnecessarily highlighted; (3) the jury was well aware of the letter; (4) the witness had been cross-examined about the contents of the letter; and (5) defense counsel read the letter in its entirety to the jury during his closing argument. ***Id.*** at 878.

McLaughlin not only contends that the RHU Intake Video was crucial to her defense and should have gone to the jury, but also that there was contamination by extraneous influence regarding the video. The existence of potentially prejudicial extraneous influence may only be established by competent testimony, and only in the case that this potential exists must the trial judge assess the prejudicial effect of such influence. ***Commonwealth v. U.S. Mineral Prods. Co.***, 927 A.2d 717, 736 (citing ***Carter v. United States Steel Corp.***, 529 Pa. 409, 604 A.2d 1010

(1992); ***Pratt v. St. Christopher's Hosp.***, 2003 PA Super 155, 824 A.2d 299 (Pa. Super. 2003)). McLaughlin, however, asserts contamination by extraneous influence without making reference to any testimony or evidence that would create such a potential. Rather, she states in her 1925(b) Statement of Matters Complained of on Appeal that contamination occurred when "the court seized Exhibit #26." The court decided not to allow the video to go out with the jury based on firmly rooted law, not upon design or neglect that may cause extraneous influence; the courts law-based objective ruling cannot be rationally conceived as extraneous influence.

McLaughlin also contends that by not allowing the video to go out with the jury, she believes the court was punishing her for exercising her Fifth Amendment right against self incrimination. McLaughlin was *pro se* counsel but did not testify herself in the proceedings against her. She figured that her vocal claim of a staff assault against her and the injuries sustained was sufficient testimony on her behalf in her case. McLaughlin asks the appellate court to consider whether the exhibit should have gone to the jury as a reminder of her allegations.

(5) Transcripts Have Been Requested and McLaughlin's Lack of Transcripts in her Possession, Does not Constitute Error on Appeal

Whether or not McLaughlin is in possession of the transcripts of her proceedings did not affect the process of her conviction. The court understands that McLaughlin may have been inhibited from fully briefing her issues on appeal. The court has diligently sought production of the transcripts in this case, but court reporter staffing issues at the Lycoming County Court of Common Pleas have frustrated the timeliness of the production of such transcripts. The following transcripts are completed and have been forwarded to McLaughlin: September 10,

2007 (Motion to Proceed Pro Se), September 11, 2007 (Motion for Competency Exam), and September 17, 18 and 19, 2007 (Trial). The transcripts of September 17 and 20, 2007 (Trial, opening and closing statements, and charge) are in the process of being completed and will be immediately forwarded to McLaughlin upon their completion.

CONCLUSION

The foregoing opinion demonstrates that no procedural or evidentiary error occurred during the trial. If any alleged error did occur, it is clearly harmless, given the overwhelming volume and weight of the evidence which established Defendant's guilt beyond a reasonable doubt. Accordingly, McLaughlin's appeal should be denied and the sentence of October 17, 2007 affirmed.

BY THE COURT,

William S. Kieser, Judge

cc: Margie Mclaughlin-#OF2537, SCI Muncy, P.O. Box 180, Muncy, PA 17756
DA
Terra Girolimon (Law Clerk)
Judges
Gary L. Weber, Esquire (Lycoming Reporter)