IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	
	:	**CR-272-2008**
	:	
	:	
vs.	**:**	**Opinion and Order re:**
	:	**Defendant's Post Sentence Motion**
	:	
ADRIAN HARRY,	**:**	
Defendant	**:**	

OPINION AND ORDER

This matter came before the Court on Defendant's post sentence motion. The relevant facts follow.

On January 10, 2008, Trooper Tyson Havens was working a 5:00 p.m. to 2:00 a.m. shift. At approximately 11:25 p.m. while he was out looking for an individual named Tyrell Carter, who was wanted for a home invasion robbery, Trooper Havens observed a vehicle with an expired registration. He conducted a traffic stop of the vehicle. As he approached the driver's door, he shined his flashlight into the vehicle and observed Defendant dressed in a hooded sweatshirt slouched down in the back seat. Sticking out of the left side of the sweatshirt's pouch, Trooper Havens observed a 2 inch portion of a baggie containing a substance that Trooper Havens knew right away was marijuana. He removed Defendant from the vehicle, seized the baggie and told him he was being arrested for possession of marijuana. Trooper Havens asked Defendant if he had any weapons on him, and Defendant candidly admitted he had a firearm in his waistband on his right hip. Trooper Havens then searched Defendant incident to arrest and seized a loaded .22 caliber Ruger handgun, three Percocet pills, a cell phone and some cash. The aggregate weight of the

marijuana was approximately 7.6 grams of marijuana. It turned out the handgun was stolen.

Trooper Havens placed Defendant in his cruiser while he gave the driver citations for the expired registration and driving under suspension. He then released the driver and other passenger and returned to his cruiser where he advised Defendant of his Miranda rights. Defendant indicated he understood these rights and was willing to speak to Trooper Havens. The trooper believed he recorded this conversation with his on-board video equipment, but unbeknownst to him there was a problem with the equipment and the data could not be retrieved from the hard drive.

Initially, Trooper Havens took Defendant to Williamsport City Hall, so the Williamsport police could see if Defendant had any information about the recent shootings in the city. Then the trooper took Defendant back to the State Police barracks in Montoursville. Trooper Havens did not have Defendant fill out a written waiver of Miranda rights form, because he thought he had recorded Defendant's waiver in the cruiser.

Trooper Havens told Defendant he was facing five years, it was in his best interests to cooperate and, although he could not promise Defendant anything, he would let the district attorney and the judge know about any cooperation Defendant provided. Defendant then provided Trooper Havens with the name of the person from whom he obtained the handgun and made statements, including a statement that he intended to sell the marijuana.

Trooper Havens charged Defendant with carrying a firearm without a license, possession with intent to deliver marijuana, possession of marijuana, possession of Percocet, possession of drug paraphernalia, and receiving stolen property.

Defense counsel filed a motion to suppress as part of an omnibus pretrial

motion. Consistent with the foregoing paragraphs, Trooper Havens testified that he observed the baggie of marijuana sticking out of Defendant's sweatshirt pocket in plain view when he shined his flashlight into the vehicle. He also testified that he read Defendant his Miranda rights, and Defendant indicated he understood those rights and was willing to speak to him. Defendant never requested to speak to an attorney, he never indicated he did not wish to speak to Trooper Havens, and he never asked for the conversation to cease. Trooper Havens admitted he probably told Defendant back at the barracks that he was facing five years for possessing drugs and a gun. In his trial testimony, Trooper Havens acknowledged he did not tell Defendant that the mandatory five years only applied if he possessed the marijuana with the intent to deliver it.

Defendant also testified at the suppression hearing. He claimed Trooper Havens did not see the marijuana hanging out of his pocket in plain view because, when Trooper Havens activated his lights to stop the vehicle, Defendant shoved the marijuana deeper into the pocket and covered the pocket with his hands. He also indicated he told Trooper Havens that the marijuana and Percocet were for his personal use; he did not tell the trooper he intended to sell the marijuana. He also told Trooper Havens he purchased the handgun to protect himself because he heard Tyrell Carter wanted to kill him. Defendant admitted Trooper Havens read him his rights while he was in the cruiser and they were on their way to City Hall. Defendant claimed he cooperated and made statements to Trooper Havens, because the trooper told him he was facing fifteen years to life. He did not recall Trooper Havens saying he would tell the judge or the district attorney about his cooperation, and he did not recall any specifics about what would happen if he cooperated. Defendant admitted he told the trooper he understood his rights and told him he was willing to talk to

him, but claimed he did so because of what the trooper said about cooperation.

The Court denied Defendant's motion to suppress, finding that the trooper observed the marijuana in plain view, the trooper read Defendant his Miranda rights, and Defendant knowingly and voluntarily waived those rights while in the cruiser before arriving at the State Police barracks.

Prior to trial, defense counsel filed a motion in limine seeking to preclude Defendant's statements to the police under Rule 410 of the Pennsylvania Rules of Evidence, claiming the statements were part of plea negotiations. In an order dated January 12, 2009, the Court denied Defendant's motion in limine.

A jury trial was held January 13, 2009. The possession of marijuana charge was amended from a violation of 35 P.S. §780-113(a)(16) to a violation of 35 P.S. §780-113(a)(31) due to the amount of marijuana being less than 30 grams. The jury found Defendant guilty of all the charges.

The Commonwealth filed notice of its intent to seek a mandatory sentence of five years, pursuant to 42 Pa.C.S. §9712.1(a). Defense counsel filed a motion to quash the notice, claiming imposition of the mandatory in this case would violate Defendant's constitutional rights to bear arms in self-defense or his due process or equal protection rights because the district attorney was acting in an arbitrary, capricious and discriminatory manner with the purpose of punishing Defendant for litigating his motion to suppress evidence.

At the hearing on Defendant's motion to quash the notice, the district attorney indicated that Defendant had three separate drug cases in the system. The defense wanted a global plea offer. The district attorney looked at all three cases and made an offer in July 2008 that if Defendant pleaded guilty to possession with intent to deliver in all three cases as

well as the firearm without a license charge in this case, the Commonwealth would not pursue any mandatory sentence in any case. There was no offer, however, on the place of confinement, as the Commonwealth sought to seek state incarceration. The defense rejected this offer and requested an agreement that would call for a plea on some simple possession charges instead of possession with intent to deliver and a county sentence. Despite rejection of the offer, the Commonwealth's offer remained on the table through the pre-trial conference in December. After jury selection, the defense wanted to accept the offer and the district attorney said the offer was no longer available.

Defense counsel's recollection of the events was slightly different from the district attorney's. Defense counsel admitted that Defendant was willing to plead if he received a county sentence and Defendant wanted the Court to decide his suppression motions. The suppression motion in this case was decided on October 3, 2008. The pre-trial conference scheduled for October was continued at the request of defense counsel because he had jury duty. At the December pre-trial conference, defense counsel said Defendant would take the plea offer and the Commonwealth replied the offer was off the table and any plea would be an open plea. Defense counsel thought that meant he could argue for county time and the district attorney could argue for state time, but he would not seek the mandatory and then Court would determine the place of incarceration. When defense counsel indicated at the call of the list (which was held either the day before or on the morning of jury selection in this case) that the case would be a plea, the Commonwealth said it was an open plea, which meant it would have the prerogative to seek the mandatory.

The Court denied Defendant's motion to quash the Commonwealth's notice of intent to seek the mandatory. The Court found that the parties simply never got to the point

of a meeting of the minds on a plea agreement. The Court also found, regardless of whether the offer was taken off the table at the December pre-trial conference or not until the day of jury selection, the district attorney had a right to put a time limit on plea offers. The Court also did not believe that the application of the mandatory in this case violated Defendant's right to bear arms.

On April 14, 2009, the Court sentenced Defendant and imposed the mandatory minimum of five years for possessing a firearm while he possessed the marijuana with the intent to deliver pursuant to 42 Pa.C.S. §9712.1.

Defense counsel filed a post sentence motion raising three issues.

Defendant first asserts that the Court erred in denying his motion to suppress evidence because Trooper Havens did not have probable cause to arrest Defendant. The Court cannot agree. "Probable cause exists where the facts and circumstances within the officers' knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed." ***Commonwealth v. Gibson,*** 536 Pa. 123,130, 638 A.2d 203, 206 (1994). "It is only the probability, and not a *prima facie* showing, of criminal activity that is the standard of probable cause for a warrantless arrest. Probable cause exists when criminality is one reasonable inference; it need not be the only, or even the most likely, inference." ***Commonwealth v. Quiles,*** 422 Pa. Super. 153, 167, 619 A.2d 291, 298 (1993)(en banc)(citations omitted). The Court credited Trooper Havens testimony that he saw a baggie of marijuana sticking out of Defendant's sweatshirt pocket in plain view and immediately knew it was marijuana. Trooper Havens testified he has been a trooper with the State police for fifteen years. He spent the majority of his career handling undercover drug investigations and has handled marijuana over 1000 times. Based on Trooper Havens

observations and experience, the Court found he had reason to believe Defendant unlawfully possessed a controlled substance.

Defendant claims that since there are other types of green vegetable material, the trooper would not have probable cause to believe the substance was marijuana until he field tested it. Again the Court cannot agree. Although there may be other types of green vegetable material, they usually are not carried on one's person in a baggie. The Court believes the trooper's observation of a baggie containing a green vegetable material that he immediately recognized as marijuana provided the trooper with probable cause to seize the baggie and arrest Defendant.

In the alternative, the Court finds the totality of the circumstances considered through the eyes of an experienced police officer established probable cause in this case. In ***Commonwealth v. Evans***, 443 Pa. Super. 351, 661 A.2d 881 (1995), the officer could not see the contents of a brick shaped package wrapped in plastic partially concealed under the driver's seat of appellee's vehicle, but the Superior Court found the officer had probable cause to believe the package was a brick of narcotics when the fact that the officer had seen narcotics packaged in such a manner on at least 50 prior occasions was considered along with appellee's initial attempt to avoid being stopped, his nervous demeanor and the fact the brick shaped object was partially concealed. Here, the baggie was partially concealed in the pocket of Defendant's hoodie, Defendant was slouched down in the back seat so he could not be seen, and the officer could see green vegetable material inside the baggie that he immediately concluded was marijuana based on his years of training and experience. Based on ***Evans*** and the cases cited therein, the Court finds probable cause existed to arrest Defendant and seize the baggie of marijuana.

The second issue raised in Defendant's post sentence motion is that the Court erred in admitting at trial Defendant's statements to Trooper Havens after he was arrested, because his Miranda rights were violated and the statements were made as part of plea negotiations.

Defendant argued that his ***Miranda*** rights were violated because Trooper Havens statements to Defendant that he would tell the judge and the district attorney about Defendant's cooperation were an unlawful inducement, rendering Defendant's waiver of his Miranda rights involuntary. The Court does not believe Trooper Havens' statements regarding cooperation induced Defendant to waive his ***Miranda*** rights. Both Trooper Havens testimony and Defendant's own testimony at the suppression hearing showed that Trooper Havens read Defendant his Miranda rights and Defendant waived those rights when they were in Trooper Havens' cruiser after Defendant was arrested and they were on their way to City Hall in Williamsport. Trooper Havens statement about cooperation and his questions and discussions with Defendant regarding this incident did not occur until they arrived at the state police barracks in Montoursville about half an hour later. Since Trooper Havens statements about cooperation were made after Defendant had waived his ***Miranda*** rights, these statements could not possibly have been an inducement. Furthermore, Defendant testified that he did not recall the Trooper telling him that he would make any cooperation known to the district attorney and to the judge and he did not recall any specifics about what would happen if he cooperated. Instead, Defendant claimed the reason he made statements to Trooper Havens was because the trooper told him he was facing 15 years to life. The Court, however, did not find Defendant's testimony on this point credible; instead, the Court believed the trooper's testimony that he probably told Defendant he was facing a five year

mandatory for guns and drugs.

The Court also believes Defendant's reliance on ***Commonwealth v. Gibbs***, 520 Pa. 151, 553 A.2d 509 (1989) is misplaced, because ***Gibbs*** is factually distinguishable. In ***Gibbs***, when the police read the defendant his Miranda rights, he responded "Maybe I should talk to a lawyer. What good would it do me to tell you?" The trooper replied, "I really don't know what good it would do. The only thing is I would tell the District Attorney you cooperated for whatever good that would be, but I would have no idea whether it would help your case or not." The Pennsylvania Supreme Court found the trooper's response induced Gibbs not to pursue his inquiry regarding the presence of an attorney. Here, Defendant never said anything to indicate he wanted to talk to an attorney. Instead, the testimony presented at the suppression hearing established that while Defendant was in the police cruiser on his way to Williamsport City Hall, Trooper Havens read him his Miranda rights and Defendant indicated he understood those rights and he was willing to talk to the police prior to any statements being made about cooperation.

Defendant also claims his statements were inadmissible under Rule 410 of the Rules of Evidence because they were made as part of plea negotiations. Rule 410 states, in relevant part: "Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions… (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which does not result in a plea of guilty or which results in a plea of guilty later withdrawn." The rule on its face applies to discussions with an attorney. Trooper Havens is not an attorney for the prosecuting authority and he was not authorized to make plea bargains.

Defendant relies on ***Commonwealth v. Stutler***, 966 A.2d 594 (Pa. Super. 2009) to argue negotiations with police officers also are covered by the rule when the prosecuting attorney has authorized the police officer to negotiate. Defendant argues that since the district attorney was aware that Trooper Havens routinely tells individuals that if they want to cooperate and help themselves out, he will let the district attorney and the sentencing judge know the extent of their cooperation, Trooper Havens was acting with the district attorney's authorization; therefore, the statements made to Trooper Havens also would be inadmissible. The Court cannot agree.

The Court finds ***Stutler*** distinguishable. In ***Stutler***, when the defendant was being transported to arraignment on other, unrelated charges, the troopers transporting him had a discussion about the defendant cooperating with the Commonwealth. The defendant declined to cooperate at that time, but indicated he would be willing to cooperate with the Commonwealth if he received judicial consideration for his cooperation. Sometime in the next few weeks, one of the troopers spoke to the district attorney regarding Stutler. The district attorney told the trooper if Stutler decided to cooperate, the troopers were authorized to communicate the district attorney's plea bargain offer of a county sentence on Stutler's pending charges as well as immunity for information regarding any other crimes in which Stutler had been involved. After the troopers conveyed the district attorney's offer to Stutler, he decided to cooperate with the Commonwealth.

In ***Stutler***, although the defendant never spoke directly to the district attorney, the district attorney made a specific plea offer to the defendant. Here, unlike ***Stutler***, the district attorney did not authorize Trooper Havens to convey a specific plea offer to Defendant. Defendant did not indicate he wanted to plead guilty and Trooper Havens did

not make an offer. Although Trooper Havens admitted he told Defendant he would tell the district attorney and the sentencing judge if he cooperated, Defendant indicated in his testimony at the suppression hearing that did not recall the trooper saying he would make his cooperation known.

The Court also finds based on the facts and circumstances of this case that Defendant has not shown that he made the statements with the intent to negotiate a plea; instead, the Court finds Defendant had a mere hope or expectation of leniency. In his book Ohlbaum on the Pennsylvania Rules of Evidence, Professor Edward Ohlbaum states:

> When the defendant participates and makes admissions, the defendant's statements are protected only insofar as the defendant intended to negotiate and seek a deal or plea bargain. The defendant's mere hope, anticipation, or expectation of leniency is not plea bargaining. The defendant must be seeking a concession from the prosecuting authority in exchange for a plea of guilty…. When a defendant cooperates in an investigation, even providing information, but neither discusses nor contemplates pleading guilty, the defendant's statements will not be barred by Rule 410.

1-410 Ohlbaum on the Pennsylvania Rules of Evidence §410.06(3)(a). Defendant never said anything in his statements to the trooper or his testimony at the suppression hearing that indicated he discussed pleading guilty with the trooper or that he even contemplated pleading guilty.

Finally, Defendant claims the mandatory five year minimum sentence should be vacated for two reasons: (1) the Commonwealth improperly sought the mandatory in an attempt to punish Defendant for attempting to vindicate his constitutional rights to be free from illegal searches and seizures by litigating the motion to suppress evidence contained in his omnibus pre-trial motion; and (2) the mandatory minimum as applied in this case violates Defendant's state and federal constitutional right to bear arms because he intended to utilize

the weapon for self-defense and not to protect his three Percocet pills and roughly 7½ grams of marijuana. The Court cannot agree.

The Court does not believe the Commonwealth sought the mandatory in a vindictive, arbitrary, capricious or discriminatory manner. In ***Commonwealth v. Smith***, 444 Pa. Super. 652, 664 A.2d 622 (1995), the Superior Court noted the United States Supreme Court recognized two distinct situations in which the appearance of vindictiveness may require inquiry and judicial intervention: (1) where a prosecutive decision is based on discriminatory grounds of race, religion, national origin or other impermissible classification; and (2) where the accused is treated more harshly because he successfully exercised a lawful right, e.g. the right to seek a new trial. 444 Pa. Super. at 665, 664 A.2d at 628-29. There is no allegation in this case that the decision to seek the mandatory was based on discriminatory grounds. Instead, the allegation is that the mandatory was invoked to punish Defendant for exercising his right to a suppression hearing. However, Defendant was not **successful** in exercising his rights; the Court denied his suppression motion. The "give-and-take" of plea bargaining generally has a cost/benefit or risk/reward component for both parties. While the motion was pending, there was a risk to the Commonwealth that the Court would grant suppression and its case would become weaker. Once the motion was decided adversely to Defendant, the Commonwealth had less of an incentive to waive the mandatory. Similarly, the longer the case is in the system, the more resources are expended by the Commonwealth in preparing the case for trial. In ***Commonwealth v. Schmoyer***, the Superior Court noted the following advantages to both sides of plea bargaining:

> The defendant avoids extended pretrial incarceration and the anxieties and uncertainties of trial; he gains a speedy disposition of his case, the chance to acknowledge his guilt, and a prompt start in realizing

> whatever potential there may be for rehabilitation. Judges and prosecutors conserve vital and scarce resources. The public is protect from the risks posed by those charged with criminal offenses who are at large on bail while awaiting completion of criminal proceedings.

280 Pa.Super. 406, ___. 421 A.2d 786, 789 (1980). It was the decrease in these advantages the longer the case remained in the system that resulted in the offer being withdrawn. The Court notes that under either side's version of the plea negotiations, the offer to not seek the mandatory was held open for at least two months after the Court denied Defendant's motion to suppress evidence. The district attorney advocated that there was nothing wrong with rewarding a timely acceptance of responsibility. When, however, that acceptance of responsibility was not forthcoming, the district attorney could withdraw the offer and prepare the case for trial. Since the Commonwealth is not under any obligation to plea bargain with a defendant, see ***Commonwealth v. Stafford***, 272 Pa. Super. 505, 416 A.2d 570, 573 (1979), the Commonwealth would not be required to indefinitely keep an offer on the table. It appears to the Court that it was the defense's continued pursuit of a county sentence even after the suppression motion was decided adversely to the defense, and not the litigation of the suppression motion, that resulted in the offer being withdrawn.

The Court also does not believe that imposing a mandatory under the facts and circumstances of this case violated Defendant's right to bear arms under either the Second Amendment to the United States Constitution or Article 1, Section 21 of the Pennsylvania Constitution. In his post sentence motion, Defendant cites ***District of Columbia v. Heller***, 1285 S.Ct. 2783 (2008). In ***Heller***, the United States Supreme Court found a District of Columbia statute unconstitutional that prohibited anyone from possessing a handgun in their home without a trigger lock or other similar device to render it inoperable. In so holding, the

Supreme Court cautioned that its ruling should not be taken to mean to right to bears arms was unlimited or that its ruling cast doubt on longstanding prohibitions regarding the possession of firearms. Specifically, the Supreme Court noted the following:

> Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to case doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of firearms.[26]
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> [26]We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.

128 S.Ct. at 2816-2817.

There is a federal statute, 18 U.S.C. §924(c)(1)(A)(I) that is similar to the mandatory in this case. The federal statute provide, in pertinent part, that: "[A]ny person who, during and in relation to any crime of violence or drug trafficking crime…uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime – (I) be sentenced to a term of imprisonment of not less than 5 years." A defendant challenged the constitutionality of this statute under ***Heller***. The Third Circuit Court of Appeals rejected the challenge, stating: "***Heller*** did not address – let alone invalidate- section 924(c)(1)(A), and its reasoning does not render that statute unconstitutional." ***Costigan v. Yost***, 2009 U.S. App. LEXIS 12955. Similarly, this Court finds ***Heller*** does not render 42 Pa.C.S. §9712.1

unconstitutional.

The Court finds the statute is not unconstitutional as applied to Defendant. Defendant seems to argue that since he testified at trial that he possessed the weapon for self-defense and not to protect his drugs that the statute is unconstitutional in its application to him. The Court cannot agree. Just because a defendant testifies to something does not necessarily make it so. The Court is not required to accept the credibility of Defendant's self-serving statements. Moreover, ***Heller*** makes clear the Second Amendment does not convey a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. Similarly, the right to bear arms under Article 1, Section 21 of the Pennsylvania Constitution also is not unlimited. In ***Minich v. County of Jefferson***, 919 A.2d 356, 361 (Pa.Commw. 2007), the Commonwealth Court rejected a challenge under Article 1, §21 of the Pennsylvania Constitution to a county ordinance providing that the Sheriff subject every person entering the County courthouse to a point of entry search and stated: "The right to bear arms, although a constitutional right, is not unlimited, and it may be restricted in the exercise of the police power for the good order of society and the protection of citizens."

In ***Minich***, the petitioners had a valid license to carry a concealed weapon. Here, Defendant did not have the right to carry the weapon that he had on his person in the manner that he did for several reasons. First, Defendant had no right to possess the weapon in question because it was stolen and he told the trooper he had reason to believe the gun was stolen. Second, Defendant concealed the weapon on his person. As ***Heller*** noted, "the majority of 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." 128 S.Ct. at 2816. Finally, Defendant was committing a felony at the time he possessed the weapon

because he possessed marijuana with the intent to distribute it. Defendant ignores these facts and claims that his bald assertion that he possessed the weapon for self-defense means the statute is unconstitutional as applied in this case. To find in favor of Defendant under the facts and circumstances of this case would mean Defendant simply by claiming he possessed the weapon for "self-defense" would have the right to receive stolen property, to possess a firearm without a license and to possess a firearm while committing a felony. Neither the United States Constitution nor the Pennsylvania Constitution requires such an absurd result. Rather, the Court finds the mandatory set forth in section 9712.1, both on its face and in its application to the facts of this case, represents a reasonable and appropriate exercise of police power for the good order of society and the protection of the citizens of this Commonwealth. Certainly the state has a significant interest in protecting its citizens from armed felons and that interest is further by punishing armed felons more harshly than those who committed their crimes without possessing a firearm.

ORDER

AND NOW, this ___ day of September 2009, the Court DENIES Defendant's post sentence motion.

Defense counsel orally requested the Court to address bail pending appeal if it denied Defendant's post sentence motion. The Court indicated that if it found that Defendant raised any legitimate issue, the Court would consider allowing Defendant to remain on bail pending appeal. Although the Court is not indicating it believes Defendant will be successful on appeal, the Court finds that Defendant's issues regarding the admissibility of his statements under Rule 410 of the Rules of Evidence raises a legitimate issue. If Defendant is

successful in his appeal on this issue, the odds that he would be convicted of possession with intent to deliver and receive a five year mandatory minimum sentence would be reduced significantly. Defendant was incarcerated from January 11, 2008 until he posted bail on or about July 14, 2009. In light of these factors, the Court will allow Defendant to continue on bail pending appeal. The Court reminds Defendant of the conditions of his bail, including but not limited to, he must refrain from criminal activity and he must notify the Clerk of Courts and the District Attorney's office **in writing** of any change in his address. If Defendant fails to comply with the conditions of bail, the Court will revoke his bail and return him to prison even if his appeal is still pending. Defense counsel shall provide Defendant with a copy of this order and remind him of his bail conditions and obligations.

By The Court,

_____

Kenneth D. Brown, President Judge

cc: Peter T. Campana, Esquire
Henry W. Mitchell, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)