

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>No: 1654-2010</b>
<b>v.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>DAWUD ROGERS,</b>	:	<b>APPEAL</b>
<b>Defendant</b>	:	

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

The Defendant appeals the Order of Court dated September 22, 2011. A timely Post-Sentence Motion was filed October 3, 2011 and was denied on November 16, 2011. Following the reinstatement of the Defendant's appellate rights *nunc pro tunc*, the Defendant filed a Notice of Appeal on January 26, 2012 and on January 30, 2012, this Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty (30) days a concise statement of matters complained of on appeal. The Court received the Defendant's concise statement on March 1, 2012.

The Defendant raises several issues on appeal: 1) that the trial court abused its discretion by denying the Defendant's Motion for Mistrial regarding the testimony of Officer Edward Lucas; 2) the verdict was against the weight of the evidence as his conviction for Delivery of a Controlled Substance but acquittal for Criminal Use of a Communication Facility was logically inconsistent; 3) the trial court abused its discretion by denying the Defendant's Motion to Reconsider his sentence as the consecutive period of probation imposed is unnecessary and does not further any goals enumerated in the Sentencing Code; and 4) the trial court abused its discretion by applying the school zone mandatory at sentencing.

### *Discussion*

As to the Defendant's argument that the trial court abused its discretion by denying the Defendant's Motion for Mistrial regarding the testimony of Office Edward Lucas (Lucas), a review of the transcripts of the jury trial held before this Court on April 11, 2011 establishes that Defense Counsel moved for a mistrial during cross-examination of Lucas. N.T., 4/11/11, p. 29-34. Defense Counsel's requested a mistrial as Lucas volunteered information relating to the Defendant's association with drug dealers who were unrelated to the charges against him. N.T., 4/11/11, p. 31. The Court denied Defense Counsel's request for a mistrial as Defense Counsel had already accepted testimony from Lucas which connected the Defendant to a cell phone which was used in another drug transaction with a separate individual. N.T., 4/11/11, p. 30. As the Court determined that the jury was already "desensitized about the fact that some other people may have used this phone and may have engaged in drug transactions," the Court determined that a Mistrial was not appropriate. N.T., 4/11/11, p. 30. As Court finds that the revelation of the information for which the Defense requested a mistrial was already disclosed to the jury, the Court finds that its decision to deny the request for a mistrial was appropriate. See Pa. R. Crim. P. 605 where the defense may move for a mistrial when an event prejudicial to the defendant occurs at trial.

As to the issues raised relating to the weight of the evidence, the motion for reconsideration of sentence, and the application of the school zone mandatory, the Court addressed these issues in its Opinion and Order dated November 17, 2011; therefore, the Court will rely on that Opinion and Order for purposes of this Opinion.

*Conclusion*

As the Defendant's arguments are without merit, it is respectfully suggested that this Court's Order of September 22, 2011 be affirmed.

DATE: \_\_\_\_\_

By the Court,

Nancy L. Butts, President Judge

xc: DA  
Kirsten A. Gardner, Esq.  
Gary L. Weber (LLA)