IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-1643-2010**
vs.	**:**	
	:	**Opinion and Order re:**
MARKALE SOWELL,	**:**	**Defendant's Post Sentence Motions**
Defendant	**:**	

OPINION AND ORDER

This matter came before the Court on Defendant's Post Sentence Motions.[1] The relevant facts follow.

On September 26, 2010, at approximately 1:00 p.m. Tamika Moore and some of her female relatives were fighting with some other females, including one or more of Defendant's female relatives. The fight broke up and the group of females dispersed. Defendant, who resided in Harrisburg, came to Williamsport in his aunt's vehicle, arriving in the later afternoon around supper time.

Ms. Moore was in a residence cooking dinner when her son ran into the house and said, "Ma, Aunt Fe is getting jumped." As Ms. Moore went to go outside to see what was going on, she was met at her front screen door by Defendant, who had a gun in the front

[1] The Court notes that Defendant sent a letter to the Court dated September 26, 2011 requesting that the Court "acquit" him of all charges, because he was never fingerprinted, photographed or read his Miranda rights. The Court denied this request, without prejudice to raise this issue in a timely post-sentence motion or appeal. Immediately after Defendant was sentenced on November 30, 2011, he made an oral motion for a judgment of acquittal and began reading from a document he had prepared prior to sentencing. The Court instructed Defendant to file the document as a written post sentence motion and the Court would promptly schedule an argument. Defendant, with the help of standby counsel, filed the document as a "Motion for Reconsideration, to Arrest Judgment, and to Acquit" on December 1, 2011. Subsequently, Defendant, who is incarcerated, sent a letter dated December 7, 2011 to the Prothonotary enclosing three documents for filing: a document styled as an oral motion to arrest judgment and enter a judgment of acquittal, amendment to argument on issue #1, another document entitled motion to acquit for insufficient evidence, and a third document captioned "verdict against the weight of evidence motion, for a new trial." The Prothonotary docketed these three documents on December 13, 2011. The Court treated all of these documents as Defendant's post sentence motions and scheduled an argument for December 22, 2011.

of his waistband. Defendant pulled a revolver with brown grips from his waistband, pointed it at Ms. Moore's hip and said "Bitch, you are coming to the other side." Ms. Moore took this to mean that Defendant wanted her to fight on the side of his wife and relatives, instead of with her relatives, who were now engaged in a second fight.[2] Ms. Moore grabbed her eleven year old son who was standing near her, and slammed the front door shut. She called the police, and then she went outside.

She saw Defendant leaving in a silver sedan just as a police officer was arriving in the area in an unmarked maroon police vehicle. She recognized the vehicle and began yelling and gesturing to the officer that Defendant was leaving in the silver sedan. The officer activated his lights and sirens, but Defendant sped off.

Defendant took the police on a high speed chase through busy intersections in the City of Williamsport. He ran numerous red lights and stop signs. When he attempted to turn left from Fourth Street onto Campbell Street, Defendant lost control of the silver sedan, striking a tree and the Weightman apartment building. Two pedestrians, Emily Moon and Alicia Binando, had to jump out of the way to avoid being hit by the vehicle. Although the vehicle was disabled, Defendant continued to flee from the police. He jumped out the vehicle and ran away on foot. The police yelled for him to stop, but Defendant did not. The police chased him on foot, and ultimately apprehended him by utilizing their tasers.

The police received consent from the owner of the vehicle and searched the vehicle. They found a .22 caliber H&R revolver with brown grips wrapped in a gold scarf.

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[2] Ms. Moore was formerly Defendant's sister-in-law, having previously been married to his wife's brother.

The police ran the serial number on the gun and discovered that it had been reported stolen. The police also ran a criminal history check on Defendant and discovered that he had a robbery conviction from New Jersey, which made it unlawful for him to possess a firearm and rendered him ineligible to obtain a license to do so.

Defendant was arrested and charged with the following offenses: fleeing or attempting to elude a police officer, a felony of the third degree under 75 Pa.C.S.A. §3733; persons not to possess firearms, a felony of the second degree under 18 Pa.C.S.A. §6105; receiving stolen property, a felony of the second degree under 18 Pa.C.S.A. §3925; firearms not be carried without a license, a felony of the third degree under 18 Pa.C.S.A. §6106; two counts of recklessly endangering another person, misdemeanors of the second degree under 18 Pa.C.S.A. §2705; simple assault by physical menace, a misdemeanor of the second degree under Pa.C.S.A. §2701; and the summary traffic offenses of reckless driving (75 Pa.C.S.A. §3736) and driving without a license (75 Pa.C.S.A. 1501).

A jury trial was held on August 3, 2011. The jury found Defendant guilty of all the misdemeanor and felony charges, except receiving stolen property. The Court found Defendant guilty of the summary offenses. On November 30, 2011, the Court imposed an aggregate sentence of 8 ½ to 17 years incarceration in a state correctional institution, and Defendant filed timely post sentence motions.

Defendant first asserts that the charges against him should be dismissed, because he was never fingerprinted, photographed, or read his Miranda rights in violation of his Due Process rights. The Court cannot agree.

The Due Process Clause does not specifically state that a defendant shall be photographed, fingerprinted, or read his Miranda rights. Although defendants are often photographed and fingerprinted by the police, the Court has found no statute, rule or case that requires dismissal of the charges filed against a defendant if he is not photographed, fingerprinted or read his Miranda rights. If a defendant is subject to custodial interrogation and makes incriminating statements, the statements can be subject to suppression pursuant to Miranda as a violation of a defendant's Fifth Amendment right against self-incrimination, but the case is not automatically dismissed.

In the case at bar, the defendant was not subject to custodial interrogation and he did not give any incriminating, testimonial statements to the police. The only questions the police asked Defendant pertained to biographical information that the police needed for booking purposes. Defendant asked the Court to suppress this evidence, but the Court did not, because case law clearly establishes that routine booking questions to secure biographical information are exempt from Miranda. Pennsylvania v. Muniz, 496 U.S. 582, 601, 110 S.Ct. 2638, 2650 (1990); Commonwealth v. Daniels, 537 Pa. 464, 644 A.2d 1175, 1181 (1994); Commonwealth v. Jasper, 526 Pa. 497, 587 A.2d 705, 708-09 (1991).

In light of the facts and circumstances of this case, Defendant's "due process" claim is frivolous. Defendant was arrested immediately following the incident and has been in custody continuously ever since. Moreover, Defendant took the stand at trial, testified his name was Markale Sowell, and admitted he was the individual driving the silver sedan who fled from the police. Clearly, this is not a case where identification was an issue. Therefore,

the fact that Defendant was not photographed, fingerprinted, or read his Miranda rights was immaterial because it had absolutely no effect on the jury's verdict.

Defendant next asserts that his rights under the Confrontation Clause were violated because Emily Moon and Alicia Binando, the individuals listed as the victims of the recklessly endangering another person charges, did not testify at his trial. Again, the Court cannot agree.

The Confrontation Clause gives a defendant the right to confront the witnesses against him. Ms. Moon and Ms. Binando were not called as witnesses against him. The DVD of the high speed chase, which was recorded by the on-board camera in the police vehicle and played for the jury, showed Defendant losing control of the silver sedan, striking a tree and two females jumping out of the way to avoid being struck by the vehicle. The police interviewed the two females, who gave the police their name, address and a cell phone number. It was apparent from the DVD that Defendant's actions placed or may have placed these females in danger of death or serious bodily injury.

On direct examination, Officer Paulhamus testified regarding the names of these two females, and Defendant did not object. When Officer Paulhamus proceeded to try to testify that these victims feared they would be hit by Defendant's vehicle, the Court sustained Defendant's objection and told the jury to disregard that testimony. On cross-examination, however, Defendant asked questions of Officer Paulhamus that showed these individuals were placed in danger of death or serious bodily injury. For example, Defendant asked Officer Paulhamus if he could testify that their lives were in jeopardy. Officer

Paulhamus testified that it was a 2,000 pound vehicle skidding out of control through an intersection; if the vehicle had struck them, they could easily have been seriously injured or killed. Defendant also asked Officer Paulhamus what the names of these individuals were and how he knew who they were. Officer Paulhamus testified that they gave him their names and dates of birth at the scene. Defendant then asked Officer Paulhamus if he had anything with their signature or any physical evidence to show who they were, and Officer Paulhamus replied that he didn't have anything like that on him. On redirect, the Commonwealth elicited testimony from Officer Paulhamus to the effect that either the females showed him their driver's licenses or he looked them up through JNET. The Commonwealth then introduced its exhibit 7, which was a piece of notebook paper with the females' names, addresses, and telephone numbers. On recross, Officer Paulhamus admitted that Exhibit 7 was not in his handwriting, but was Captain Orwig's.

Defendant called Captain Orwig as a defense witness to establish that the captain did not know if the information that the individuals provided to him was true. On rebuttal, the Commonwealth re-called Officer Paulhamus, who investigated those names by looking up each individual's driver's license information. The photographs depicted the two females that the police spoke to at the scene who were nearly struck by the vehicle driven by Defendant. These driver's license photographs were introduced as Commonwealth's Exhibits 12 and 13.

Based on the foregoing, it is clear that the Commonwealth did not violate Defendant's Confrontation rights. Rather, Defendant waived these rights by asking

questions of the police officers that elicited information about these individuals or statements that they made to the police.

Defendant also contends that the Commonwealth violated the Court's discovery order by failing to provide a traffic incident report written by Lieutenant Miller and the photocopies of Emily Moon's and Alicia Binando's driver's licenses that were introduced as Commonwealth Exhibits 12 and 13.[3] Therefore, he is entitled to dismissal of the charges or a new trial. Again, the Court cannot agree.

A defendant seeking relief based on a discovery violation must demonstrate prejudice to be entitled to a new trial. Commonwealth v. Williams, 581 Pa. 57, 683 A.2d 505, 516 (Pa. 2004); Commonwealth v. Jones, 542 Pa. 464, 688 A.2d 491, 512-513 (Pa. 1995). Although Defendant did not receive copies of the traffic incident report or Commonwealth's Exhibit 12 and 13 prior to trial, Defendant has not shown that he suffered prejudice as a result of the late disclosure. There was no new information in either the traffic incident report or exhibits 12 and 13. The traffic incident report contained the same information as was contained in the criminal incident report and depicted on the DVD. Defendant was aware of the identities of the alleged victims for the recklessly endangering

[3] When the Court ruled on Defendant's objection, the Court not only found that Defendant was not prejudiced but that the Commonwealth did not have to disclose this evidence because it was rebuttal. The Court is no longer relying on the fact that the evidence was being admitted during rebuttal as a basis for its decision. Rule 573 makes no distinction between rebuttal evidence and evidence the Commonwealth intends to use in its case-in-chief. Where the prosecutor can reasonably anticipate what evidence in his or her possession may be material in rebuttal, such evidence must be disclosed. See Coommonwealth v. Ulen, 539 Pa. 51, 650 A.2d 416, 418 (Pa. 1994); Commonwealth v. Hanford, 937 A.2d 1094, 1100-01 (Pa. Super. 2007). Here, Defendant's arguments could be reasonably anticipated since he filed various motions prior to trial claiming his due process and confrontation rights were being violated because Emily Moon and Alicia Binando had not appeared in court to testify against him. Moreover, as is apparent on the face of Commonwealth Exhibits 12 and 13, Officer Paulhamus printed these documents on June 30, 2011, before jury selection even began in this case.

another person charges in advance of trial, as this information was contained in the affidavit of probable cause filed with the criminal complaint and the police reports that Defendant received in discovery. In fact, it was Defendant's cross-examination of Officer Paulhamus that initially resulted in the introduction of evidence that Officer Paulhamus looked at the victim's photo identifications to confirm that they were who they said they were. Therefore, Defendant is not entitled to dismissal of the charges or a new trial based on any alleged discovery violation.

Defendant next alleges that he is entitled to a judgment of acquittal on the firearms charges for the following reasons: (1) the gun was previously reported stolen, others pleaded guilty to stealing the gun, and Defendant did not have any connection to those individuals; (2) the gun was never fingerprinted or tested for DNA; and (3) the gun was unlawfully tampered with when Officer Snyder broke the evidence seals and test-fired the gun without a court order. None of these arguments provide a basis for a judgment of acquittal.

Although the record establishes that the firearm was reported stolen to the Old Lycoming Township police and other individuals pled guilty to criminal charges arising out of that incident, there is nothing in the record to show that Defendant did not have any connection to those individuals. Furthermore, the evidence presented at trial established that the weapon was never recovered in connection with that case. Instead, the evidence clearly showed that the firearm was not recovered until it was found in the silver sedan that Defendant crashed at the intersection of Fourth and Campbell Streets.

Even if the evidence showed that Defendant did not have any connection to those individuals, it would not necessarily mean that Defendant did not possess that firearm on September 26, 2010. There are several ways the firearm could have gotten from the individuals who stole it to the Defendant, including numerous indirect ways. For example, the individuals could have given or sold the gun to someone else, who then provided it to Defendant or the individuals could have discarded the weapon and Defendant found it. It doesn't matter how Defendant came into possession of the firearm; it only matters whether he possessed it.

Defendant contends the evidence was insufficient to prove his guilt beyond a reasonable doubt, because the firearm was never fingerprinted or tested for DNA. Again, the Court cannot agree.

When deciding a sufficiency of the evidence claim, the Court considers whether the evidence and all reasonable inferences that can be drawn from the evidence, viewed in the light most favorable to the Commonwealth as the verdict winner, would permit the jury to find every element of the offense beyond a reasonable doubt. Commonwealth v. Davido, 582 Pa. 52, 868 A.2d 431, 435 (Pa. 2005); Commonwealth v. Murphy, 577 Pa. 275, 844 A.2d 1228, 1233 (Pa. 2004). Circumstantial evidence can be as reliable and persuasive as eyewitness testimony and may be of sufficient quantity and quality to establish guilt beyond a reasonable doubt. Commonwealth v. Tedford, 523 Pa. 305, 567 A.2d 610, 618 (Pa. 1989)(citations omitted). The Court notes that the term "reasonable doubt" does not mean beyond all doubt or to a mathematical certainty. Rather, a reasonable doubt is "a doubt that

would cause a reasonably careful and sensible person to hesitate before acting upon a matter of importance in his or her own affairs." PaSSJI (Crim), §7.01; see also Commonwealth v. Montalvo, 604 Pa. 386, 986 A.2d 84, 107 (Pa. 2009); Commonwealth v. Cook, 597 Pa. 572, 952 A.2d 594, 630-31 (Pa. 2008); Commonwealth v. Jermyn, 101 Pa. Super. 455, 473 (Pa. Super. 1930).

Defendant was charged with persons not to possess a firearm and possessing a firearm without a license. For the persons not to possess charge, the Commonwealth needed to prove the following elements: (1) Defendant possessed a firearm; and (2) he was convicted of an offense that prohibits him from possessing, using, controlling or transferring a firearm. 18 Pa.C.S.A. §6105; Commonwealth v. Thomas, 988 A.2d 669, 670 (Pa. Super. 2009). As used in section 6105, a "firearm" is any weapon that is "designed to or may readily be converted to expel any projectile by the action of any explosive or the frame or receiver of any such weapon." 18 Pa.C.S.A. §6105(i).

The evidence produced at trial showed these elements. Defendant stipulated that he was a person who had a conviction that precluded him from possessing a firearm. Tamika Moore testified that Defendant pulled a gun from his waistband and pointed it at her hip area. She described the weapon to the police as a revolver with brown grips. When the police arrived on the scene, Defendant was leaving in a silver sedan. The police activate their lights and sirens to get Defendant to stop, but he took them on a high speed chase, travelling in excess of 85 mile per hour on busy city streets. Defendant crashed the vehicle and fled on foot. The police obtained consent to search the vehicle from its owner and

discovered a loaded, nine-shot, .22 caliber revolver with brown grips wrapped in a scarf. Officer Snyder, a certified firearms instructor, test fired the revolver. He testified at trial that he shot nine rounds of .22 caliber police ammunition and the revolver was operable. From this evidence, the jury could conclude beyond a reasonable doubt that Defendant possessed the revolver found in the silver sedan and that the revolver met the definition of a "firearm" as used in section 6105 of the Crimes Code.

Similarly, the evidence was sufficient for the firearms without a license charge. To prove this offense beyond a reasonable doubt, the Commonwealth must prove that: "(a) the weapon was a firearm; (b) the firearm was unlicensed; and (c) where the firearm was concealed on or about the person, it was outside his home or place of business." Commonwealth v. Parker, 847 A.2d 745, 750 (Pa. Super. 2004), citing Commonwealth v. Bavusa, 750 A.2d 855, 857 (Pa. Super. 2000), affirmed, 574 Pa. 620, 832 A.2d 1042 (2003)(citations omitted); see also 18 Pa.C.S. §6106(a)(1). As used in section 6106(a)(1), "firearm" is any r revolver with a barrel length less than 15 inches or with on overall length of less the 26 inches, by measuring from the muzzle of the barrel to the face of the cylinder. 18 Pa.C.S.A. §6102.

Tamika Moore testified that Defendant was standing outside her screen door when he pulled a gun from his waistband and pointed it at her hip. She described the weapon, to police after the incident and in her trial testimony, as a revolver with brown grips. Officer Paulhamus discovered a revolver with brown grips in the silver sedan in which Defendant fled from police. The revolver was admitted into evidence and shown to the jury.

Officer Paulhamus testified that the barrel of the revolver was about six or seven inches in length. Defendant stipulated that he had a conviction that prohibited him from possessing a firearm. Officer Paulhamus testified that such a conviction also would preclude Defendant from obtaining a license. This evidence was sufficient for the jury to convict Defendant of the offense of possessing a firearm without a license.

Despite this evidence, Defendant asserts his firearms convictions cannot be permitted to stand because the firearm was tampered with by Officer Snyder, who was a canine handler and not a certified Pennsylvania State Police firearms instructor. Defendant relies on the definition of tampering with physical evidence contained in the Crimes Code, 18 Pa.C.S.A. §4910.

Initially, the Court notes there seems to be some confusion on Defendant's part about Officer Snyder's qualifications. Although Officer Snyder is a canine handler with the Williamsport police,[4] he also is a firearms instructor. Officer Snyder did not testify that he was employed by the State Police. He stated he was a municipal firearms instructor, certified by the Pennsylvania State Police. In other words, Officer Snyder took training and was certified by the Pennsylvania State Police to be a firearms instructor, but he instructs municipal police officers, like the officer employed by the Williamsport Bureau of Police, and not State Police Troopers.

Defendant's contention that Officer Snyder "tampered with" the firearm also is meritless. Officer Snyder test fired the weapon to prove it was operable. The Commonwealth routinely sends evidence to experts for testing and does not need to obtain a

court order to do so. Furthermore, Officer Snyder's conduct does not meet the Crimes Code definition of tampering with physical evidence. Section 4910 states: "A person commits a misdemeanor of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, he: (1) alters, destroys, conceals or removes any record, document or thing with intent to impair its verity or availability in such proceeding or investigation; or (2) makes, presents or uses any record, document or thing knowing it to be false and with intent to mislead a public servant who is or may be engaged in such proceeding or investigation." 18 Pa.C.S.A. §4910. Although Officer Snyder removed the firearm from its evidence envelope, he did not do so with the intent to impair its availability in these criminal proceedings. The firearm was available and was introduced into evidence. Instead, Officer Snyder removed the firearm from its evidence envelope in order to prove that the firearm was operable.

Defendant next asserts he is entitled to dismissal of all the charges against him because he was not sentenced within 60 days of the date of his conviction. Defendant, however, is relying on an old rule of criminal procedure that has since been amended and renumbered, as well as cases that have been vacated or overruled. Rule 704 of the Pennsylvania Rules of Criminal Procedure states that sentencing shall ordinarily be imposed within 90 days of the conviction. Pa.R.Cr.P. 704(1). A violation of this rule, however, does not automatically entitle a defendant to discharge. Rather, a defendant is only entitled to discharge if he can demonstrate that the delay prejudiced him. Commonwealth v. Anders, 555 Pa. 467, 725 A.2d 170, 173 (Pa. 1999).

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4 No evidence, however, was presented at trial to show that Officer Snyder is a K-9 handler.

Defendant was convicted on August 3, 2011. The Court sentenced Defendant on November 30, 2011.[5] Therefore, Defendant's sentence occurred approximately 119 days after his conviction. Defendant, though, has not demonstrated how this 29 day delay prejudiced him. Prejudice is not presumed by the mere fact that the rule was not complied with and sentencing was delayed. Anders, supra; Commonwealth v. Glass, 526 Pa. 329, 586 A.2d 369, 372-73 (Pa. 1991). Since Defendant has not shown any prejudice as a result of this brief delay, he is not entitled to the relief requested.

Defendant also alleges that the evidence was insufficient to sustain his conviction for simple assault by physical menace, because Ms. Moore's statements were inconsistent and the DVD showed her with a knife, but did not show Defendant with a gun.

The elements that must be proven for the offense of simple assault by physical menace are intentionally placing another in fear of imminent serious bodily injury through the use of menacing or frightening activity. 18 Pa.C.S.A. §2701(a)(3); Commonwealth v. Reynolds, 835 A.2d 720, 726 (Pa. Super. 2003). "The act of pointing a gun at another person [can] constitute simple assault as an attempt by physical menace to put another in fear of imminent serious bodily injury." Reynolds, supra, quoting, In re Maloney, 431 Pa. Super. 321, 636 A.2d 671, 674 (Pa. Super. 1994)(citations and internal quotation marks omitted).

Tamika Moore testified that Defendant pulled a revolved with brown grips from his waistband, pointed it at her hip and said, "Bitch, you are coming to the other side." The police recovered a loaded, .22 caliber revolver with brown grips inside the car Defendant

[5] This was the only sentencing date the Court had in November, due to the Court's criminal trial schedule during that month. The Court had a sentencing date on October, 11, 2011, but that date was already full.

was driving. This evidence was sufficient to prove Defendant committed the offense of simple assault by physical menace.

Defendant basically argues that the jury should not have believed Ms. Moore's testimony because her statements were inconsistent. When deciding an sufficiency of the evidence claim, however, the Court must view the evidence and all reasonable inferences that can be drawn from the evidence in the light most favorable to the Commonwealth, as verdict winner. Commonwealth v. Davido, 582 Pa. 52, 868 A.2d 431, 435 (Pa. 2005); Commonwealth v. Murphy, 577 Pa. 275, 844 A.2d 1228, 1233 (Pa. 2004). The credibility of witnesses is within the sole province of the jury, which is free to believe all, part, or none of any witness's testimony. Commonwealth v. Johnson, 910 A.2d 60, 65 (Pa. Super. 2006); Commonwealth v. Gibson, 553 Pa. 648, 720 A.2d 473, 480 (Pa. 1998). Therefore, Defendant is not entitled to relief on this claim.

Similarly, the mere fact that Ms. Moore is depicted on the DVD with a knife but the DVD does not show Defendant with a gun does not entitle Defendant to relief, as this fact can readily be explained from the circumstances of this incident. Ms. Moore testified that Defendant had the gun in his waistband. She also testified that she was making dinner and when she exited the residence after calling the police, she still had a knife in her hands. When the police arrived, Defendant was already leaving the scene in the silver sedan, and Ms. Moore flagged them down by waving her hands and arms, including her hand holding the knife. Therefore, it is not surprising that Ms. Moore is depicted holding a knife on the DVD, but one cannot see Defendant with a gun.

Defendant's final contention is that his convictions for the firearms offenses and simple assault by physical menace are against the weight of the evidence.

An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. Commonwealth v. Sullivan, 820 A.2d 795, 805-806 (Pa. Super. 2003). A new trial is awarded only when "the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." Id. at 806 (citation omitted). The evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court. Id.

The jury's verdict did not shock the court's conscience. Ms. Moore testified that Defendant possessed a revolver with brown grips, pointed it at her hip and said, "Bitch, you are coming to the other side." Her testimony that Defendant possessed a firearm was corroborated by the fact that the police found a revolver with brown grips in the vehicle in which Defendant fled from the police. During the high speed chase, Defendant was the only occupant of that vehicle. Defendant did not contest the fact that he had a conviction that prohibited him from possessing a firearm and precluded him from obtaining a license to carry a firearm concealed about his person.

Despite Defendant's protestations to the contrary, Ms. Moore's testimony was not hearsay; it was competent evidence upon which the jury could base its verdict. A witness's in-court, sworn testimony is evidence; a witness's out-of-court statements that are offered in court for the truth of the matters contained therein without the witness being

subject to cross-examination constitute inadmissible hearsay. As previously discussed, the fact that the DVD showed Ms. Moore carrying a knife but did not show Defendant with a knife was not at all surprising under the facts and circumstances of this case. Similarly, the gun did not need to be fingerprinted or subject to DNA testing to prove beyond a reasonable doubt that Defendant possessed it. In fact, since the firearm was wrapped in a scarf during a high speed chase that resulted in a crash, any fingerprints may have been wiped from the firearm before it was placed in the scarf or obliterated beyond usefulness when it was jostled around in the car during the high speed chase and crash.

Accordingly, the following order is entered:

O R D E R

AND NOW, this ___ day of March 2012, the Court DENIES Defendant's Post Sentence Motions.

Defendant is notified that he has a right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the county courthouse, with notice to the trial judge, the court reporter and the prosecutor. The Notice of Appeal shall be in the form and contents as set forth in Rule 904 of the Rules of Appellant Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.App.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, the defendant may lose forever his right to raise these issues.

Defendant is notified that he has the right to assistance of counsel in the

preparation of the appeal.

If Defendant is indigent, he has the right to appeal in forma pauperis and to elect to proceed with court-appointed counsel.

Defendant also has a right to qualified bail under Rule 521(B).

By The Court,

_____
Marc F. Lovecchio, Judge

cc: A. Melissa Kalaus, Esquire (ADA)
Joel McDermott, Esquire (standby counsel)
Markale Sowell, #KH 2090
SCI-Pine Grove, 191 Fyock Rd, Indiana PA, 15701