IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No's. CR-1696-2011**
vs.	**:**	**CR-1699-2011**
	:	**Opinion and Order Re**
JOHN AIKEY,	**:**	**Defendant's Omnibus Pretrial Motion**
Defendant	**:**	

OPINION AND ORDER

Defendant is charged at Information No. 1696-2011 with one count of Manufacturing a Controlled Substance, two counts of Possession of Drug Paraphernalia, one count of Possession of a Controlled Substance, and two counts of Persons not to Possess Firearms. At Information No. 1699-2011, Defendant is charged with one count of Criminal Trespass.

The charges arise out of incidents that allegedly occurred on November 15, 2011. Between approximately 5:30 and 6:00 p.m., Defendant is alleged to have trespassed at the residence of his ex-wife, 401 South Main Street in Jersey Shore, PA by entering the apartment and remaining after he was told to leave multiple times.

Shortly thereafter, law enforcement officials along with agents of the Lycoming County Adult Probation Office went to Defendant's residence at 405 South Main Street in Jersey Shore and found marijuana plants, numerous items of paraphernalia related to either growing or ingesting marijuana, a pistol, and a rifle.

Defendant filed an Omnibus Pretrial Motion on February 1, 2012 which consisted of a Motion for Discovery, three Motions to Suppress and a Motion to Enforce a Plea Agreement.

A hearing was held on Defendant's Omnibus Pretrial Motion on May 3, 2012.

Testimony was taken and exhibits were admitted into evidence. Defendant subsequently filed a brief in support of his position. The Commonwealth also was given the opportunity to file a brief, but elected not to do so. The matter is now ripe for a decision.

With respect to Defendant's Discovery Motion, it was agreed that thirty (30) days prior to the pretrial hearing in this matter, the Commonwealth shall provide to the Defendant the name of any or all experts that the Commonwealth intends to utilize along with any written report of that expert or a written summary of the substance of the expert's expected testimony and the expert's basis therefore.

Additionally, to the extent not previously provided, the Adult Probation Office shall provide to the Defendant copies of any and all reports that were generated concerning the Defendant including but not limited to all reports related to any claim or tips that the Defendant was growing marijuana and any and all reports related to the search of the Defendant's residence on November 15, 2011 and Defendant's apprehension on the same date.

Finally, the Commonwealth agreed to provide to Defendant within thirty (30) days of the date of this Order copies of any and all written statements of witnesses or written summaries of any witness' oral statements.

Defendant's Motions to Suppress Evidence boil down to four separate issues. First, Defendant claims that the search of his premises constituted an illegal warrantless search and accordingly, all evidence seized as a result of the search should be suppressed. Second, Defendant claims that if the Court finds that the search was consensual, said consent

was coerced and accordingly all evidence seized must be suppressed. Third, Defendant argues that the search warrant that was issued in the case was based upon insufficient probable cause either on the face of the application or after excising from the application the evidence that was obtained illegally. Lastly, Defendant argues that any and all oral statements made by the Defendant to agents of the Adult Probation Office or police officers must be suppressed because Defendant was subjected to custodial interrogation and not Mirandized.

Prior to taking testimony, the parties stipulated to the admission of Commonwealth's Exhibit 1, which is a true and correct copy of the Lycoming County Adult Probation/Parole Rules and Conditions governing probation/parole that was signed by the Defendant on July 28, 2009. Paragraph 2 of the Rules notes that the Defendant may be required, at any time, to undergo a warrantless search, with reasonable suspicion, of his person, car or residence by his probation officer.

Eric Fortin (hereinafter P.O. Fortin) first testified on behalf of the Commonwealth. He is an agent with the Lycoming County Adult Probation Office. On November 15, 2011, he was on duty working in the Jersey Shore area with Jeff Whiteman (hereinafter P.O. Whiteman), also of the Lycoming County Adult Probation Office. They received a dispatch to assist the Tiadaghton Valley Regional Police Department (TVRPD) in connection with the Defendant. P.O. Fortin called Sergeant Nathan DeRemer of the TVRPD. Sergeant DeRemer informed P.O. Fortin that he was going to charge the Defendant with criminal trespass and asked for assistance.

P.O. Fortin contacted his chief and informed her that the Defendant was going to be charged and the police suspected that Defendant may be growing marijuana in his apartment. P.O. Fortin was aware through Sergeant DeRemer that there were reports that the Defendant may have been growing marijuana in his residence. P.O. Fortin asked the chief for her approval to take the Defendant into custody on a violation detainer based on the pending charge. The chief approved the taking of the Defendant into custody.

P.O. Fortin indicated that he and P.O. Whiteman were specifically going to Defendant's residence to take Defendant into custody because he would be facing criminal charges.

Sergeant DeRemer, Officer Fiorelli also of the TV RPD, P.O. Fortin and P.O. Whiteman traveled to Defendant's residence. All four of them were armed. They knocked on the back door to the kitchen area. Defendant answered and allowed them to enter.

Defendant was immediately handcuffed by P.O. Fortin and informed that he was going to be taken to jail on a detainer because of the pending charge against him. P.O. Fortin testified that it was standard policy to control a Defendant with handcuffs before taking them into custody. He explained that it was for safety purposes.

After the Defendant was handcuffed, P.O. Fortin sat Defendant down in a chair in the kitchen area. "All" of the law enforcement officers started to talk to the Defendant. P.O. Fortin conceded that Defendant was not provided with any Miranda warnings.

P.O. Fortin informed the Defendant that there were suspicions that he had been growing marijuana and asked the Defendant if he either had a problem or if he minded if P.O. Fortin searched the house for drugs. He also asked Defendant if he was in possession of anything that he should not be. Defendant responded by either saying “no” he did not have a problem if P.O. Fortin searched the house or “go ahead.” The Defendant was never informed that he had the right to refuse to answer any questions.

P.O. Fortin then began a visual search of the residence. The walkthrough consisted of the kitchen, living room, upstairs rooms and attic. Sergeant DeRemer followed P.O. Fortin as he conducted the visual search.

In one of the upstairs rooms, P.O. Fortin observed “a lot of plants” in plastic flats. They appeared to be dead or wilted. He also saw, what he later discovered to be, many Hydroton balls submerged in water.

Some of the balls were located right next to the plants. Sergeant DeRemer and P.O. Fortin tried to smell the plants to see if they smelled like marijuana. P.O. Fortin could not determine the type of plants and could not identify them as marijuana plants.

While the walkthrough was conducted, Officer Fiorelli and P.O. Whiteman remained with the Defendant in the kitchen. P.O. Fortin returned to the kitchen with some of the balls and asked Defendant what they were. Defendant told P.O. Fortin that they were used in connection with growing plants and flowers.

At that point, all of the officers and agents agreed to stop the walkthrough.

P.O. Fortin and P.O. Whiteman then transported the Defendant from the residence. P.O. Fortin admitted that he and P.O. Whiteman could have removed Defendant and taken him to jail once he was handcuffed within a minute of their arrival at the residence.

Sergeant DeRemer next testified. He was on duty on November 15, 2011 and was dispatched to investigate the alleged trespassing by the Defendant. Following his investigation, he decided to speak with the Defendant at Defendant's residence.

He called the Adult Probation Office to take Defendant into custody, because he knew Defendant was under supervision. Although Sergeant DeRemer was going to file a misdemeanor trespass charge against Defendant, he could not arrest Defendant on that charge, because it was not committed in his presence. Furthermore, he was concerned that once the Defendant was taken into custody, he would need to return the Defendant's grandchild who the Defendant had taken with him when he left his ex-wife's residence.

Additionally, through a prior tip generated by his department and the Adult Probation Office, he believed that the Defendant may have been growing marijuana in his house.

As a result, he met with P.O. Fortin and P.O. Whiteman outside of Defendant's residence. They discussed the suspected marijuana growing, the trespass charge and the fact that the Defendant would be taken into custody on the parole violation detainer.

The four individuals approached the rear door. The Defendant answered the door and let everyone in. He was informed that he was going to be taken into custody at which point P.O. Fortin or P.O. Whiteman handcuffed him. The Defendant became agitated,

and he only wanted to speak with Agent Lorson, who was "his Adult Probation Officer."

Sergeant DeRemer witnessed the conversation between P.O. Fortin and the Defendant regarding the search of the premises. He decided to follow P.O. Fortin during the search for safety reasons. He explained that it was the TVRPD's policy not to permit one individual to conduct a search of a residence alone.

They walked through the first floor and then went upstairs. In the middle of one of the rooms were two bags of potting soil and a planting flat with six plants. The flat was located on the middle of the desktop. He also observed a bin full of balls. Upon smelling the plants, which appeared wilted, he noticed a "faint smell of marijuana."

Not knowing what the balls were or how they were utilized, he called Agent Sprout of the Attorney General's office. Agent Sprout informed him that they were most likely Hydroton balls, which are commonly used in growing systems.

After speaking with Agent Sprout, Sergeant DeRemer decided to go speak with the Defendant. He read the Defendant his Miranda Rights, and he and P.O. Fortin started asking the Defendant questions concerning the balls. Defendant claimed that the balls were not illegal and at first that they were his daughters. He then admitted that he used them for growing plants and flowers. He was then asked about the plants to which he laughed and said, "Six stems? My attorney will eat that up." He further indicated that they were located in his daughter's room. Sergeant DeRemer then informed the Defendant that he would be applying for a search warrant. The Defendant was then transported from the residence by P.O. Fortin and P.O. Whiteman.

Sergeant DeRemer completed the Application for Search Warrant along with the Affidavit of Probable Cause. The application was granted and the search was conducted shortly thereafter. The Application for Search Warrant and Authorization, Affidavit of Probable Cause, Attachment "A" to the Search Warrant, Return of Service and Inventory and Receipt/Inventory were Collectively Marked and Admitted as Commonwealth Exhibit 2. The Affidavit of Probable Cause was based solely on the observations Sergeant DeRemer made while he was following Probation Officer Fortin through Defendant's residence.

DISCUSSION

Defendant first asserts that the warrantless search of his residence was unlawful and violated his constitutional rights.

Both the Fourth Amendment to the United States Constitution and Article 1, §8 of the Pennsylvania Constitution protect individuals from unreasonable searches and seizures of their persons, houses, papers and property. U.S. Const., Amend. IV; Pa. Const., Art. 1, §8. A warrantless search and seizure is per se unreasonable unless it falls within a specifically enumerated exception. Payton v. New York, 445 U.S. 573, 586 n.25, 100 S.Ct. 1371, 1380 n.25 (1980); Commonwealth v. Wright, 599 Pa. 270, 961 A.2d 119, 137 (2008); Commonwealth v. Rowe, 984 A.2d 524, 526 (Pa. Super. 2009). A party asserting an exception from the requirement for a warrant bears the burden of establishing that his actions come within a recognized exception. Commonwealth v. Parker, 442 Pa. Super. 393, 619 A.2d 735, 740 (1993), citing Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586 (1979). In other words, the Commonwealth bears the burden of proving that the circumstances of the

search and seizure in this case fall within a recognized exception to the warrant requirement.

The law in Pennsylvania recognizes that parolees and probationers have a diminished expectation of privacy; however, that does not mean that a search of a parolee's or probationer's residence may occur at any time or for any reason. Commonwealth v. Williams, 547 Pa. 577, 692 A.2d 1031 (1997); Commonwealth v. Alexander, 16 A.3d 1152, 1155-56 (Pa. Super. 2011). To pass constitutional muster, a warrantless search of a probationer's residence must be based on reasonable suspicion. Alexander, 16 A.3d at 1156; see also 42 Pa.C.S.A. §9912 (regarding searches of parolees and probationers by county probation officers); 61 Pa.C.S.A. §6153 (regarding searches of probationers and parolees by state parole agents).

In determining whether reasonable suspicion exists to support a search, the Court may take into account the following factors:

> (i) The observations of officers.
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> (ii) Information provided by others.
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> (iii) The activities of the offender.
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> (iv) Information provided by the offender.
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> (v) The experience of the officers with the offender.
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> (vi)The experience of officers in similar circumstances.
>
> (vii) The prior criminal and supervisory history of the offender.
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> (viii) The need to verify compliance with the conditions of supervision.

42 Pa.C.S.A. §9912 (d)(6). Section 9912 states that prior approval of a supervisor shall be obtained for a property search absent exigent circumstances. 42 Pa.C.S.A. §9912 (d)(2). Violations of section 9912, however, do not provide an independent ground for suppression. 42 Pa.C.S.A. §9912(c).

The Court finds that the facts and circumstances of this case do not support a finding of reasonable suspicion. Although P.O. Fortin got the chief's approval before taking Defendant into custody, there is nothing in the record to indicate that the chief approved the search of Defendant's residence. P.O. Fortin and P.O. Whiteman did not observe anything that would lead them to believe Defendant was growing marijuana in his house prior to the search being conducted. Defendant also did not provide any information or engage in any activities that led the probation officers to believe he was growing marijuana. Similarly, no testimony or evidence was presented regarding the probation officers' experience with Defendant; their experience in similar circumstances; or the prior criminal and supervision history of Defendant. The only information to even suggest that Defendant was growing marijuana in his house was a tip the police had received approximately one month earlier, which was "looked into" previously by P.O. Whiteman and an intern according to the testimony of Sgt DeRemer.[1] There was no evidence to establish any independent corroboration of the information the tipster provided or any other evidence presented to

[1] The Court notes that P.O. Whiteman and P.O. Lorson were available to be called as witnesses, but were not. In fact, when issues arose about the 'tip' and P.O. Whiteman's investigation thereof, it appeared that the prosecuting attorney was going to call P.O. Whiteman as a witness but, after a brief conversation was held between them, the prosecuting attorney decided not to call P.O. Whiteman as a witness.

establish the reliability of the tipster. There also wasn't any testimony that the police received any new information after they received the tip and it was "looked into" by P.O. Whiteman and an intern. Based on the totality of the circumstances, the Court finds the officers lacked reasonable suspicion to conduct a search of Defendant's residence.

The Court also finds that any alleged consent was not valid under the facts and circumstances of this case. The Commonwealth bears the burden to prove that a defendant consented to a warrantless search and seizure. Commonwealth v. Bell, 871 A.2d 267, 273 (Pa. Super. 2005).

> To establish a voluntary consensual search, the Commonwealth must prove that a consent is the product of an essentially free and unconstrained choice—not the result of duress or coercion, express or implied, or a will overborne – under the totality of the circumstances. The following is a non-exclusive list of factors which may be considered in assessing the legality of a consensual search:
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> 1. the presence or absence of police excesses;
> 2. physical contact or police direction of the subject's movements;
> 3. the demeanor of the police officer;
> 4. the location of the encounter;
> 5. the manner of expression used by the officer in addressing the subject;
> 6. the content of the interrogatories or the statements;
> 7. whether the subject was told that he or she was free to leave; and
> 8. the maturity, sophistication and mental or emotional state of the defendant (including age, intelligence and capacity to exercise free will).

Id. at 273-73, citing Commonwealth v. Strickler, 563 Pa. 47, 757 A.2d 884, 897-98, 901 (2000).

Under the unique facts and circumstances of this case, the Court finds that Defendant's consent was not voluntary. As soon as the police and

probation officers entered Defendant's residence, the probation officers handcuffed him, told him he was going to be going to jail, and sat him down in a chair in the kitchen. Despite the fact that Defendant clearly was in custody, he was not read his Miranda rights. Instead, all four of the officers, each of whom was armed, surrounded Defendant. Defendant became agitated. He wanted to know what was going on and he only wanted to speak to his probation officer, Mr. Lorson. Nevertheless, Sergeant DeRemer questioned Defendant about the trespass incident. The probations officers then told Defendant that they had suspicions that he was growing marijuana in his home. P.O. Fortin could not remember exactly what he said or how he said it, but he believed he asked Defendant if he had anything that he shouldn't have and Defendant said no, and then he asked Defendant if he minded if he searched the residence and Defendant either said "no" or "go ahead." P.O. Fortin admitted he did not tell Defendant he had a right to refuse his request to search, because Defendant had signed probation conditions, which waived his Fourth Amendment rights and provided his written consent to a search if there was reasonable suspicion. There also was no explanation how the Defendant's attitude and demeanor went from being agitated and only wanting to speak to "his probation officer" to being cooperative and saying "go ahead" in response to the "request" to search.[2]

[2] It was the Commonwealth's burden to show that the consent was freely and voluntarily given. The Commonwealth, however, failed to inquire about this change of heart. Was Defendant reminded of his signed conditions or told he would be in violation of his conditions if he did not consent or were these probation officers merely particularly adept at calming Defendant down and

Under these facts and circumstances, the Court finds the Commonwealth has not met its burden to show that Defendant's consent was the product of an essentially free and unconstrained choice.

Even if the consent was valid, the Court would find that the search exceeded the scope of the consent given. See Commonwealth v. Dunkley, 451 Pa. Super. 109, 678 AA.2d 789 (1996)("the accused must know what is being consented to, and if the police **exceed** the **scope** of that **consent,** then they have passed their limits of permissible deception. This is consistent with the line of cases which have held that if the accused does not understand what it was that was consented to, then the **consent** is invalid."); Commonwealth v. Favere, 14 Pa. D.& C. 4th 401 (Carbon County, 1996)(consent to search for weapons did not permit police officer to open pill vial).

The written consent in the signed Rules and Conditions Governing Probation and Parole, which was admitted as Commonwealth's Exhibit 1, states, "I understand that I may be required, at any time, to undergo a warrantless search, with reasonable suspicion, of my person, car, or residence by **my Probation Officer"**(emphasis added). It is undisputed that Mr. Lorson was Defendant's probation officer. Mr. Lorson was not present and did not participate, in any way, in the search of Defendant's residence. Furthermore, the oral consent given only applied to the probation officers. Neither of the probation officers requested that Sergeant DeRemer assist P.O. Fortin when he conducted the search. Sergeant DeRemer, on his own, followed P.O. Fortin throughout Defendant's residence.

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persuading him to voluntarily consent? The Court does not know and it is not permitted to guess.

The Court also believes any information acquired as a result of the search of Defendant's residence would be subject to suppression because the probation officers were acting as the "stalking horses" for the police. See Commonwealth v. Altadonna, 817 A.2d 1145, 1153 (Pa. Super. 2003)(with the passage of a statutory framework to allow parole agents and probation officers to search when they have reasonable suspicion, determining whether probation or parole officers are acting as "stalking horses" of the police, thereby circumventing the warrant requirement, is pertinent again).

Sergeant DeRemer could not arrest Defendant and take him into custody because the trespass charge was a misdemeanor that was not committed in his presence, See Pa.R.Cr.P. 502, so he called the probation officers to take Defendant into custody.

The probation officers also were used to search Defendant's residence in a situation where the police could not. The police could not search Defendant's house without probable cause, and the 'tip' clearly was not sufficient to establish probable cause. Probation officers, however, could search Defendant's residence based merely on reasonable suspicion.

The probation officers, though, did not need to search the house in this case, because P.O. Whiteman and an intern had already "looked into" the tip. Additionally, P.O. Fortin testified that they could have taken Defendant into custody and left the premises to transport Defendant to jail within a minute of their entry.

There also was no need for the police to stay and assist the probation officers. Sergeant DeRemer had decided to charge Defendant with trespass before he knocked on Defendant's door. As soon as Defendant's grandchild was returned to his ex-wife's

residence next door (which occurred almost immediately after Defendant answered the door and was placed in handcuffs) and P.O. Whiteman returned to Defendant's residence, the need for police involvement ceased. Furthermore, Sergeant DeRemer had already questioned Defendant about the trespass incident before the search began. Moreover, P.O Fortin did not ask Sergeant DeRemer to accompany him when he searched Defendant's residence; Sergeant DeRemer, on his own initiative, followed P.O. Fortin through the house.

Sergeant DeRemer followed P.O. Fortin for safety reasons pursuant to TVRPD's policy. Such reasons, however, fail to justify the search. First, the search allegedly was not a police search, but a search conducted by the probation officers to determine if Defendant was complying with his probation conditions. Therefore, the police department's policy would not be applicable. Furthermore, Sergeant DeRemer testified that the only people that he believed were in the house when they knocked on the door were the Defendant and Defendant's grandchild. Since there was no reason to believe anyone else was present in the house, a protective sweep was not justified in this case. See Commonwealth v. Crouse, 729 A.2d 588, 592 (Pa. Super. 1999)(A protective sweep is authorized if it is supported by articulable facts and inferences giving rise to a reasonable suspicion that the area to be swept harbors an individual posing a danger to the police).

Finally, it is clear that if Sergeant DeRemer had not followed P.O. Fortin during the search of the residence and had left the residence after questioning Defendant about the trespass incident, the results of the search would be different. P.O. Fortin sniffed the wilted plants and did not smell any odor of marijuana.

Based on these facts and circumstances, the Court finds that the probation officers were acting as the "stalking horses" for the police, circumventing the probable cause and warrant requirements.

Since the affidavit of probable cause for the search warrant was based solely on Sergeant DeRemer's observations during the unlawful search of Defendant's residence, any evidence seized pursuant to that warrant would be subject to suppression as fruit of the poisonous tree. Similarly, Defendant's statements to Sergeant DeRemer when Defendant was confronted about the Hydroton and plants also would be the fruit of the unlawful search and subject to suppression. See Commonwealth v. Goodwin, 561 Pa. 346, 750 A.2d 795, 799-800 (2000).

Defendant next contends his statements are subject to suppression because he was not read his Miranda rights before the police and probation officers questioned him. The Court agrees.

Statements made during custodial interrogation are presumptively involuntary, unless the accused is first advised of his Miranda rights. Commonwealth v. DiStefano, 783 A.2d 574 (Pa. Super. 2001). Miranda safeguards come into play whenever a person in custody is subjected to either expressed questioning or its functional equivalent. Commonwealth v. Gaul, 912 A.2d 252 (Pa. 2006), cert. denied, 128 S. Ct. 43 (2007). Interrogation occurs "where the police should know that their words or actions are reasonably likely illicit an incriminating response from the suspect". Commonwealth v. Ingram, 814 A.2d 264 (Pa. Super. 2002). In determining whether the police words and

conduct are the functional equivalent of interrogation, the inquiry must look to the suspect's perceptions rather than the intent of the police. Gaul, supra.

Defendant clearly was in custody. As soon as the police and probation officers entered Defendant's residence, Defendant was placed in handcuffs and told he was going to jail on a probation detainer because the police were going to file a trespass charge against him. P.O. Fortin testified that Defendant was never read his Miranda rights. Sergeant DeRemer and P.O. Fortin admitted that they asked Defendant questions about the trespass incident, the Hydroton and the marijuana plants. This type of questioning was reasonably likely to illicit an incriminating response. Therefore, all of Defendant's statements, including but not limited to the alleged statement "six stems, my attorney will eat that up," will be suppressed.

Given the Court's rulings on the suppression issues, the Court believes Defendant's motion to enforce the plea agreement has been rendered moot. The Court notes that the plea agreement contemplated a plea to charges related to the items seized during the search of Defendant's residence. Since that evidence is being suppressed, the Court questions whether the Commonwealth will be able to prove these charges and doubts that Defendant still intends to plead guilty to these charges in accordance with the plea "recommendation" entered at the time Defendant waived his preliminary hearing.

ORDER

AND NOW, this ____ day of July, 2012, in accordance with the foregoing Opinion, it is ORDERED and DIRECTED as follows:

1. With respect to Defendant's Discovery Motion, it was agreed that thirty (30) days prior to the pretrial hearing in this matter, the Commonwealth shall provide to the Defendant the name of any or all experts that the Commonwealth intends to utilize along with any written report of that expert or a written summary of the substance of the expert's expected testimony and the expert's basis therefore.

To the extent not previously provided, the Adult Probation Office shall provide to the Defendant copies of any and all reports that were generated concerning the Defendant including but not limited to all reports related to any claim or tips that the Defendant was growing marijuana and any and all reports related to the search of the Defendant's residence on November 15, 2011 and Defendant's apprehension on the same date.[3]

The Commonwealth also agreed to provide to Defendant within thirty (30) days of the date of this Order copies of any and all written statements of witnesses or written summaries of any witness' oral statements.

2. The Court GRANTS Defendant's motions to suppress evidence. All evidence seized from Defendant's residence and all statements made by Defendant to police

[3] Given the Court's suppression rulings, some of the discovery requests may be moot. There is, however, some overlap since the probation officers took Defendant into custody due to the trespass incident and Sergeant DeRemer participated in the search of Defendant's residence for evidence of marijuana growing. Therefore, the Commonwealth should provide the requested items in accordance with this Order, unless defense counsel

or probation officers on November 15, 2011 are hereby suppressed.

3. The Court believes the motion to enforce plea agreement is moot in light of the suppression rulings. If the either of the parties disagree, that party shall notify the Court and the other party in writing within seven (7) days of the date of this Order.

By The Court,

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Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire
Ronald Travis, Esquire
Work file
Gary Weber, Lycoming Reporter

notifies it that the request is now moot.