ALD-131 March 25, 2021

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **20-2935**

HASAN SHAREEF, Appellant

VS.

JUDGE WILLIAM J.C. O'DONNELL; ET AL.

(W.D. Pa. Civ. No. 2:20-cv-00426)

Present: MCKEE, GREENAWAY, JR. and BIBAS, Circuit Judges

Submitted are:

(1) By the Clerk for a determination under 28 U.S.C. § 1915(e)(2) or for possible summary action under Third Circuit L.A.R. 27.4 and I.O.P. 10.6;

(2) Appellant's "motion [sic] failure to state a claim upon which relief may be granted," treated as an argument in support of appeal; and

(3) Appellant's additional argument in support of appeal

in the above-captioned case.

Respectfully,

Clerk

ORDER

With this appeal, appellant Hasan Shareef timely seeks review of the District Court's judgment dismissing his civil rights suit. See Fed. R. App. P. 4(a)(4)(A)(iv); cf. Banister v. Davis, 140 S. Ct. 1698, 1708 (2020). We exercise jurisdiction under 28 U.S.C. § 1291. The judgment is summarily affirmed because no substantial question is presented by this appeal. See 3d Cir. L.A.R. 27.4 (2011); 3d Cir. I.O.P. 10.6 (2018). The District Court's res judicata, immunity, Monell, and leave-to-amend determinations are all error-free, for substantially the reasons given in the Magistrate Judge's report. See, e.g., Federated

Dep't Stores v. Moitie, 452 U.S. 394, 398 (1981) (explaining that "[a] final judgment on the merits of an action precludes the parties . . . from relitigating issues that were or could have been raised in that action"); Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 691 (1978) ("[W]e conclude that a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory."); Stump v. Sparkman, 435 U.S. 349, 356-57 (1978) (holding that absolute immunity applies so long as the suit against the defendant judge challenges a judicial act that was not taken in the "clear absence of all jurisdiction"); Jablonski v. Pan Am. World Airways, Inc., 863 F.2d 289, 292 (3d Cir. 1988) (explaining that "amendment of the complaint is futile if the amendment will not cure the deficiency in the original complaint or if the amended complaint cannot withstand a renewed motion to dismiss").

By the Court,

s/Joseph A. Greenaway, Jr.
Circuit Judge

Dated: April 26, 2021
JK/cc: Hasan Shareef

20-2639

Hasan Shareef
#NU-0779
Forest SCI
P.O. Box 945
Marienville, PA 16239

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 2:20-cv-426

HASAN SHAREEF,

Plaintiff

v.

JUDGE WILLIAM O'DONNELL, *et al.*,

Defendants.

JUDGMENT

AND NOW, this **12th day of August, 2020**, it is hereby **ORDERED** that final judgment is entered in favor of Defendants and against Plaintiff. The Clerk shall mark this case **CLOSED**.

BY THE COURT:

/s/ *J. Nicholas Ranjan*
United States District Judge

20-2639

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JUDGE WILLIAM O'DONNELL, *et al.*,

Defendants.

MEMORANDUM ORDER

J. Nicholas Ranjan, United States District Judge

This is a *pro se* prisoner civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to Magistrate Judge Lisa Pupo Lenihan for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court applicable to Magistrate Judges.

Currently before the Court is a Report & Recommendation [ECF 20] filed by Judge Lenihan on July 14, 2020, recommending that the Court dismiss Mr. Shareef's complaint based on *res judicata*, Eleventh Amendment immunity, judicial immunity, and failure to state a claim. The parties were notified that, pursuant to 28 U.S.C. § 636(b)(1), objections to the Report & Recommendation were due by July 31, 2020. The Court

subsequently received various filings from Mr. Shareef—a letter on July 14, 2020 [ECF 21], a second letter on July 27, 2020 [ECF 22], a document entitled "Motion Failure to State a Claim for Which Relief May be Granted" on July 27, 2020 [ECF 23], a third letter containing citations to case law and other arguments on July 27, 2020 [ECF 24], and a filing entitled "Permission to Appeal and Notice of Appeal" on August 3, 2020 [ECF 25]. Mr. Shareef then filed a notice of appeal to the Third Circuit on August 10, 2020. [ECF 26].

The Court will collectively construe these filings as Mr. Shareef's objections to Judge Lenihan's Report & Recommendation and, given Mr. Shareef's *pro se* status and filings before the deadline, consider them all to be timely. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must make a *de novo* determination of any portions of the Report & Recommendation to which objections were made. The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The Court may also recommit the matter to the magistrate judge with instructions.

The Court has carefully reviewed Mr. Shareef's filings, many of which are difficult to interpret and appear to expound upon many of the same allegations that he made in his complaint. One thing, however, is clear—even when construed liberally, the "objections" do not reveal any legal basis for rejecting Judge Lenihan's well-reasoned conclusion that Mr. Shareef's claims are barred by the combination of *res judicata*, Eleventh Amendment immunity, judicial immunity, and the failure to identify a "policy" or "custom" to support his claims against certain police departments.

Thus, upon *de novo* review of the Report & Recommendation and Mr. Shareef's objections thereto, the following order is now entered.

AND NOW, this **12th day of August, 2020**, it is **ORDERED** that the Report & Recommendation [ECF 20] is adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Mr. Shareef's complaint is dismissed pursuant to 28 U.S.C. §

1915(E)(2)(B)(ii)-(iii) and 28 U.S.C. § 1915A(1)-(2). The Court finds that amendment of Mr. Shareef's claims would be futile, and so this dismissal is **WITH PREJUDICE**.

IT IS FURTHER ORDERED that, upon entry of final judgment by the Court, the Clerk of Court mark this case **CLOSED**.

Pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Mr. Shareef has thirty (30) days from the date of this order to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

DATED this 12th day of August, 2020.

BY THE COURT:

/s/ *J. Nicholas Ranjan*
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HASAN SHAREEF, Plaintiff, v. JUDGE WILLIAM O'DONNELL, OFFICER BRIAN PALKO, DA TERRY SCHULTZ, CO WALTEMIRE, CAPTAIN MOORE, SGT. BLUMMING, WARDEN SNEDEN, MICHAEL SCUILLO, JEFFRETY KENGERSKI, MARK BOWMAN, MARK BATISER, STATE POLICE IN BUTLER, CAPTAIN ZENTS, SGT. WAGNER, SGT. WATIMERE, WARDEN DEMORE, ASST. WARDEN FEMALE, Defendants.	Civil Action No. 20-426 District Judge J. Nicholas Ranjan Magistrate Judge Lisa Pupo Lenihan

REPORT AND RECOMMENDATION

I. RECOMMENDATION

For the following reasons, it is respectfully recommended that Plaintiff's Complaint (ECF Nos. 4, 4-1 & 4-2) be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) & (iii) and 28 U.S.C. § 1915A(b)(1) & (2).

II. REPORT

Plaintiff Hasan Shareef ("Plaintiff") is a state prisoner currently in the custody of the Pennsylvania Department of Corrections and confined at SCI-Forest. He initiated this action by

filing a Motion for Leave to Proceed *in forma pauperis*, which was granted on April 3, 2020. (ECF Nos. 1 & 3.) His Complaint, filed pursuant to 42 U.S.C. § 1983, was docketed that same day. (ECF No. 4.) On April 30, 2020, Plaintiff moved to voluntarily withdraw this case. (ECF No. 10.) As a result, the case was closed by Order dated May 1, 2020. (ECF No. 11.) On May 13, 2020, however, Plaintiff moved to reopen this case. (EF No. 12.) Said motion was granted and the case was reopened on May 15, 2020. (ECF No. 13.) Upon review, the undersigned now recommends that this case be dismissed with prejudice pursuant to the screening provisions of the Prison Litigation Reform Act.

A. The Prison Litigation Reform Act

The Prison Litigation Reform Act ("PLRA"), Pub.L. No. 104-134, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (April 26, 1996), requires a district court to review a complaint in a civil action in which a prisoner is proceeding *in forma pauperis* (28 U.S.C. § 1915(e)(2)) or seeks redress against a governmental employee or entity (28 U.S.C. § 1915A). The Court is required to identify cognizable claims and to *sua sponte* dismiss any claim that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). This action is subject to *sua sponte* screening for dismissal under both 28 U.S.C. §§ 1915(e)(2) and 1915A because Plaintiff is a prisoner proceeding *in forma pauperis* and seeking redress from governmental officers or employees.

B. Standard of Review

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) or § 1915A(b)(1) is identical to the legal standard used when ruling on a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Tourscher v.

McCullough, 184 F.3d 236, 240 (3d Cir. 1999). However, before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the screening provisions of 28 U.S.C. §§ 1915 and 1915A, a court must grant the plaintiff leave to amend his complaint, unless amendment would be inequitable or futile. *See* Grayson v. Mayview State Hosp., 293 F.3d 103, 113-14 (3d Cir. 2002).

In reviewing a *pro se* plaintiff's complaint, the court must accept all factual allegations in the complaint as true and take them in the light most favorable to the *pro se* plaintiff. *See* Erickson v. Pardus, 551 U.S. 89, 93-94 (2007); Phillips v. County of Allegheny, 515 F.3d 224, 234-35 (3d Cir. 2008). A complaint must be dismissed if it does not allege "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 570 (2007). "Factual allegations must be enough to raise a right to relief above a speculative level." Id. at 555. The court need not accept inferences drawn by the plaintiff if they are unsupported by the facts as set forth in the complaint. *See* California Pub. Employee Ret. Sys. v. The Chubb Corp., 394 F.3d 126, 143 (3d Cir. 2004) (citing Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997)). Nor must the court accept legal conclusions set forth as factual allegations. Bell Atlantic Corp., 550 U.S. at 555 (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)). Additionally, a civil rights claim "must contain specific allegations of fact which indicate a deprivation of constitutional rights; allegations which are nothing more than broad, simple and conclusory statements are insufficient to state a claim under § 1983." Alfaro Motors, Inc. v. Ward, 814 F.2d 883, 887 (2d Cir. 1987).

Finally, a court must employ less stringent standards when considering *pro se* pleadings than when judging the work product of an attorney. Haines v. Kerner, 404 U.S. 519, 520 (1972). When presented with a *pro se* complaint, the court should construe the complaint liberally and

draw fair inferences from what is not alleged as well as from what is alleged. Dluhos v. Strasberg, 321 F.3d 365, 369 (3d Cir. 2003). In a section 1983 action, the court must "apply the applicable law, irrespective of whether the *pro se* litigant has mentioned it by name." Higgins v. Beyer, 293 F.3d 683, 688 (3d Cir. 2002) (quoting Holley v. Dep't of Veteran Affairs, 165 F.3d 244, 247-48 (3d Cir. 1999)). *See also* Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996) ("Since this is a § 1983 action, the [pro se] plaintiffs are entitled to relief if their complaint sufficiently alleges deprivation of any right secured by the Constitution.") (citing Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993)). Notwithstanding this liberality, *pro se* litigants are not relieved of their obligation to allege sufficient facts to support a cognizable legal claim. *See, e.g.*, Taylor v. Books A Million, Inc., 296 F.3d 376, 378 (5th Cir. 2002); Riddle v. Mondragon, 83 F.3d 1197, 1202 (10th Cir. 1996).

C. Discussion

The allegations in Plaintiff's Complaint are difficult to comprehend, but it appears that Plaintiff complains primarily of four things: (1) that he was not brought in front of the same magistrate judge who issued the warrant for his arrest in May 2016, (2) that he was subjected to a false arrest on May 27, 2016,[1] (3) that he was subjected to a malicious prosecution by the Butler

[1] Plaintiff's docket sheet for his criminal case confirms that he was arrested on May 27, 2016. *See* Commonwealth v. Shareef, MJ-50305-CR-338-2016. The docket sheet, which is a public record that is accessible online, reveals that he was charged with four counts of Intentional Possession of a Controlled Substance by a Person Not Registered; three counts of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver; and one count each of Possession of a Firearm Prohibited, Use/Possession of Drug Paraphernalia, and Dealing in Proceeds of Unlawful Activity with the Intent to Promote. All charges were held over and sent to the Butler County Court of Common Pleas to proceed at docket number CP-10-CR-1714-2016. The docket sheet for that case reveals that Plaintiff pled guilty to one count of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver and he was found guilty of one count of Possession of a Firearm Prohibited. On December 20, 2018, he was sentenced to a term of incarceration of four-and-a-half to nine years.

County District Attorney's Office, and (4) that his property was confiscated and destroyed when he was processed into the Butler County Prison on August 20, 2018. *See*, *generally*, (ECF Nos. 4, 4-1 & 4-2.)

1. Res judicata

Plaintiff has previously filed cases in this Court complaining of issues identical to those complained of in his current Complaint. "Public policy dictates that there be an end of litigation; that those parties who have contested an issue be bound by the result of the contest; and that matters once tried shall be considered forever settled as between the parties." Baldwin v. Traveling Men's Assn., 283 U.S. 522, 525 (1931). In this regard, "[a] fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a 'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies.'" Montana v. United States, 440 U.S. 147, 153 (1979) (quoting Southern Pacific R. Co. v. United States, 168 U.S. 1, 48-49 (1897)). "To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." Id., 440 U.S. at 153-54; *see also* Allen v. McCurry, 449 U.S. 90, 94 (1980); Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979).

Pursuant to the doctrine of *res judicata*, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. Id. at 153 (citing Cromwell v. County of Sac, 94 U.S. 351, 352 (1877)). Additionally, "*res judicata* bars not only claims that were brought in a previous action, but also claims that could have been brought." In re

Mullarkey, 536 F.3d 215, 225 (3d Cir. 2008); *see also* Parkview Assocs. P'ship v. City of Lebanon, 225 F.3d 321, 329 n.2 (3d Cir. 2000) (*res judicata* "prohibits reexamination not only of matters actually decided in the prior case, but also those that the parties might have, but did not, assert in that action.") It applies where there is "(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action." In re Mullarkey, 536 F.3d at 225. Although *res judicata* is an affirmative defense for a defendant to plead, "dismissal for failure to state a claim may be appropriate when it is obvious, either from the face of the pleading or from other court records, that an affirmative defense such as *res judicata* will necessarily defeat the claim." Taylor v. Visinsky, 534 F. App'x 110, 112 (3d Cir. 2013) (citing Jones v. Bock, 549 U.S. 199, 215 (2007)).

a. Confiscation and Destruction of Property

This suit is not Plaintiff's first complaining about the confiscation and destruction of his property when he was processed into the Butler County Prison. In Civil Action No. 18-1494, Plaintiff alleged that certain officers and employees at the Butler County Prison, including Defendants Capt. Moore, Warden Demore, Assistant Warden Female, Sgt. Blumming, Capt. Zents, Sgt. Wagner, Warden Sneden, Michael Scuillo, Jeffrey Kengerski, Mark Bowman and Maj. Batiser, confiscated and destroyed his property when he was processed into the Butler County Prison on August 20, 2018. The Court construed Plaintiff's allegations concerning his property as attempting to assert a claim for the denial of due process and access to courts, found that he had failed to state either a due process or access to courts claim and dismissed them with prejudice.

All three requirements for *res judicata* are found here. Plaintiff has asserted claims against eleven of the same Defendants named in Civil Action No. 18-1494 based on their

involvement in confiscating and destroying his property when he was processed into the Butler County Prison on August 20, 2018, and the Court's Order dismissing those claims for failure to state a claim upon which relief can be granted constitutes a "final judgment on the merits" for the purposes of *res judicata*. *See* Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394, 399 n.3 (1981) ("The dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is a 'judgment on the merits'" for purposes of *res judicata*.). Therefore, under *res judicata*, the final judgment in Civil Action No. 18-1494 precludes and bars Plaintiff from relitigating any and all claims related to his property that either were litigated and decided or should have been raised and litigated in Civil Action No. 18-1494.

b. False Arrest

This is also not Plaintiff's first suit alleging that his arrest by Officer Brian Palko on May 27, 2016 was unconstitutional. In Civil Action 18-1494, Plaintiff asserted the same false arrest claim against Officer Palko, which the Court found to be time-barred under the two-year statute of limitations and dismissed it with prejudice for Plaintiff's failure to state a claim. As such, under *res judicata*, the final judgment in Civil Action No. 18-1494 also precludes and bars Plaintiff from relitigating any claims against Officer Palko stemming from his arrest.

c. Malicious Prosecution

Like the aforementioned claims brought against the officers and employees of the Butler County Prison and against Officer Brian Palko, this is also not the first suit that Plaintiff has brought against Terry Schultz, who Plaintiff identifies as the District Attorney of Butler County.[2] In Civil Action No. 19-1330, Plaintiff alleged that Defendant Schultz maliciously prosecuted

[2] According to the docket sheet for Plaintiff's criminal case, Defendant Schultz was the Assistant District Attorney of Butler County who was involved in prosecuting Plaintiff's criminal case.

him, but, pursuant to the screening provisions of the Prison Litigation Reform Act, his claim against Defendant Schultz was dismissed with prejudice based on the doctrine of prosecutorial immunity.

The requirements for *res judicata* are also present here. Plaintiff has again asserted a malicious prosecution claim against Defendant Schultz based on his involvement in prosecuting the same criminal case that was at issue in Civil Action 19-1330,[3] and, even though the Complaint in that case was dismissed pursuant to the screening provisions of the Prison Litigation Reform Act, the Court's Order dismissing that claim constitutes a "final judgment on the merits" for purposes of *res judicata*. *See, e.g.*, Cieszkowska v. Gray Line New York, 295 F.3d 204 (2d Cir. 2002) (giving *res judicata* effect to a prior suit which had been dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief could be granted and hence barring a second suit which the District Court dismissed "for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2) because the complaint was barred by *res judicata*"). Therefore, under *res judicata*, the final judgment in Civil Action No. 19-1330 precludes and bars Plaintiff from relitigating any and all claims against Defendant Schultz related to his prosecution of Plaintiff's criminal case that either were litigated and decided or should have been raised and litigated in Civil Action No. 19-1330.

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2. Defendants CO Waltemire and Sgt. Watimere

It is not clear from the Complaint whether CO Waltemire and Sgt. Watimere are the same person, although it is likely that they are. At times Plaintiff uses their titles interchangeably and their names are inconsistently spelled throughout his Complaint. However, it is clear that this defendant, or both defendants, was an employee of the Butler County Prison and that Plaintiff is

[3] Commonwealth v. Shareef, CP-10-CR-1714-2016 (Butler Cty. Ct. of Comm. Pleas).

F-Bof time missing

attempting to assert the same claims against him as those asserted with respect to his property in Civil Action 18-1494. It even appears that Plaintiff may have intended this/these individual(s) to be a defendant in Civil Action 18-1494, but they were not listed in the caption of his complaint in that case. Since this/these defendant(s) was/were not a party or parties to Civil Action 18-1494, the traditional doctrine of *res judicata* would normally not apply. However, the Third Circuit has held that *res judicata* applies when a plaintiff has "asserted essentially the same claim against different defendants where there is a close or significant relationship between successive defendants." Lubrizol Corp. v. Exxon Corp., 929 F.2d 960, 966 (3d Cir. 1991) (citing Gambocz v. Yelencsics, 468 F.2d 837 (3d Cir. 1971)). Moreover, "a lesser degree of privity is required for a new defendant to benefit from claim preclusion than for a plaintiff to bind a new defendant in a later action." Id. at 966. (citing Bruszewski v. United States, 181 F.2d 419, 422 (3d Cir. 1950) ("[W]here . . . res judicata is invoked against a plaintiff who has twice asserted essentially the same claim against different defendants, courts have . . . enlarged the area of res judicata beyond any definable categories of privity between the defendants.")); *see also* Marran v. Marran, 376 F.3d 143, 151 (3d Cir. 2004) ("Privity is merely a word used to say that the relationship between one who is a party on the record and another is close enough to include that other within the res judicata.") (internal quotation marks and citations omitted).

Indeed, in Gambocz, the plaintiff brought an action against several alleged conspirators. Following the dismissal of the action with prejudice, the plaintiff brought a second action naming additional defendants who allegedly participated in the same conspiracy. Apart from naming different defendants, the material facts of the two actions were identical. Relying on Bruszewski, the court held that res judicata barred the second action even as to those defendants who were not parties to the first action. It held that "res judicata may be invoked against a

plaintiff who has previously asserted essentially the same claim against different defendants where there is a close or significant relationship between successive defendants." Gambocz, 468 F.2d at 841. It found that where the first action alleged the existence of a conspiracy involving certain individuals and

> the sole material change in the later suit is the addition of certain defendants, some of whom had been named in the original complaint as participating in the conspiracy but had not been named as parties defendant at that time . . . the relationship of the additional parties to the second complaint was so close to parties to the first that the second complaint was merely a repetition of the first cause of action and, therefore it is barred by the application of [*res judicata*].

Id. at 842. In the Third Circuit, this is sometimes referred to as "Bruszewski doctrine". *See*, id.

In this case, Defendants CO Waltemire and Sgt. Watimere (assuming they are two different individuals) are closely related to the Butler County Prison defendants named in Civil Action 18-1494. Indeed, they were employed at the Butler County Prison at the time of the alleged violation, and, according to Plaintiff, they were allegedly involved in the same violation complained of in Civil Action No. 18-1494. For purposes of the *res judicata* assessment, the undersigned considers this a sufficiently "close" relationship. *See*, *e.g.*, Spencer v. Varano, 3:17-cv-2158, 2019 WL 384959, at *3 (M.D. Pa. Jan. 30, 2019) (for purposes of *res judicata*, finding defendant who was an official at the Columbia County Prison to be in a "close" relationship with other defendants who were also officials at the Columbia County Prison and had been sued before for the same claim based on the same allegations); Spencer v. Courtier, No. C.A. No. 09-124E, 2011 WL 2670198, at *7 n.5 (W.D. Pa. May 23, 2011) (finding a "close or significant relationship" between defendants who were employees of the Department of Corrections based on allegation that they "worked in conjunction" with each other to place him in the SMU); *see also* Gambrell v. Hess, 777 F. Supp. 375, 381-82 (D.N.J. Feb. 14, 1991). Accordingly, *res*

judicata bars this suit against Defendants CO Waltemire and Sgt. Watimere, as well, since any other ruling "would reward litigants who failed, intentionally or not, to include all relevant parties in [an] action and would permit two (or possibly many more) attempts to try the same cause of action." Williams v. City of Allentown, 25 F.Supp.2d 599, 604 (E.D. Pa. Nov. 18, 1998).

Alternatively, the undersigned would recommend dismissal of the claims against Defendants CO Waltemire and Sgt. Watimere for the same reasons that they were dismissed for failure to state a claim in Civil Action No. 18-1494.

3. Defendant Judge William O'Donnell

Although Plaintiff has previously sued a number of judges who were involved in his criminal case out of Butler County, including Judges Fullerton, McCune, and Doerr, this is the first action in which Plaintiff has sued Judge William O'Donnell. The Court should take judicial notice that Judge O'Donnell is a judge of Magisterial District Court 50-3-01, which is an entity of the Unified Judicial System of Pennsylvania. *See* 42 Pa. C.S.A. § 301(9).

To the extent Plaintiff has sued Judge O'Donnell in his official capacity, the Eleventh Amendment bars suit against him. In this regard, "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself." Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989) (internal citation omitted). Here, a claim against Judge O'Donnell in his official capacity is really a claim against the court over which he presides; which is an entity of the Commonwealth of Pennsylvania. *See* Callahan v. City of Philadelphia, 207 F.3d 668, 672 (3d Cir. 2000) ("All courts and agencies of the unified judicial system . . . are part of 'Commonwealth government' and thus are state rather than local agencies."); *see also*

Benn v. First Judicial Dist. of Pa., 426 F.3d 233, 241 (3d Cir. 2005) (holding that the First Judicial District was a state entity and thus entitled to Eleventh Amendment immunity). As such, any claim against him in his official capacity is no different than a claim against the Commonwealth of Pennsylvania.

The Eleventh Amendment, however, bars civil rights suits against a State in federal court by private parties where the State has not consented to such action. Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981) (citing Alabama v. Pugh, 438 U.S. 781 (1978)). In fact, it is subject to only three exceptions: (1) congressional abrogation, (2) state waiver, and (3) suits against individual state officers for prospective relief to end an ongoing violation of federal law under Ex parte Young, 209 U.S. 123, 159-60 (1908). MCI Telecommunication Corp. v. Bell Atlantic Pennsylvania, 271 F.3d 491, 503 (3d Cir. 2001).

No exceptions to Eleventh Amendment immunity are applicable here. Congress has not expressly abrogated Pennsylvania's Eleventh Amendment immunity from civil rights suits for damages. *See, e.g.*, Will, 491 U.S. at 66 ("Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties."); Quern v. Jordan, 440 U.S. 332, 341 (1979); Boykin v. Bloomsburg Univ. of Pa., 893 F. Supp. 378 (M.D. Pa. 1995) (holding that States' immunity has not been abrogated for actions brought under §§ 1981, 1983, 1985, and 1986), *aff'd*, 91 F.3d 122 (3d Cir. 1996). Additionally, by statute, the Commonwealth of Pennsylvania has specifically withheld its consent to be sued. *See* 42 Pa. C.S.A. § 8521(b); 1 Pa. C.S.A. § 2310; *see also* Laskaris, 661 F.2d at 25. Finally, the Ex parte Young exception does not apply because Plaintiff has not alleged an ongoing violation of federal law and he does not seek

purely prospective relief. As such, Judge O'Donnell is entitled to Eleventh Amendment immunity to the extent he is sued in his official capacity.

Additionally, to the extent Judge O'Donnell is sued in his individual capacity, he is entitled to absolute immunity from civil liability pursuant to the doctrine of judicial immunity, which "is founded upon the premise that a judge, in performing his or her judicial duties, should be free to act upon his or her convictions without threat of suit for damages." Figueroa v. Blackburn, 208 F.3d 435, 440 (3d Cir. 2000) (citing Bradley v. Fisher, 80 U.S. 335, 347 (1872)). Indeed, a judge's immunity from civil liability is overcome in only two situations: (1) for actions not taken in the judge's judicial capacity, and (2) though judicial in nature, for actions taken in the complete absence of all jurisdiction. Id. (citing Mireles v. Waco, 502 U.S. 9, 11-12 (1991)). Plaintiff's allegations against Judge O'Donnell, however, do not give rise to either situation. Accordingly, Judge O'Donnell is also entitled to absolute judicial immunity.

4. Defendant State Police of Butler

Finally, Plaintiff has sued the State Police of Butler. First, it is noted that the "State Police of Butler" is not an entity that exists, and it is unclear whether Plaintiff actually intended to sue the Pennsylvania State Police, the Butler County Sherriff's Office or the Police Department for the City of Butler.[4]

To the extent Plaintiff intended to state a claim against the Pennsylvania State Police, it is protected by Eleventh Amendment immunity for the same reasons stated above with respect to Judge O'Donnell, *see, e.g.*, Luck v. Mount Airy No. 1, LLC, 901 F.Supp.2d 547, 558 (M.D. Pa. Oct. 4, 2012), and no exceptions to Eleventh Amendment immunity are applicable here. To the

[4] Based on Plaintiff's criminal docket and the record in Civil Action 18-1494, where Plaintiff raised a false arrest claim against Officer Brian Palko, it appears that Plaintiff may have intended to sue the State Police of Pennsylvania as Brian Palko appears to be a State Police Trooper.

extent Plaintiff instead intended to state a claim against the Butler County Sherriff's Office or the Police Department for the City of Butler, it is treated as a claim against Butler County and the City of Butler, respectively. *See, e.g.*, Colburn v. Upper Darby Township, 838 F.2d 663, 671 n.7 (3d Cir. 1988) (treating Upper Darby Township and Upper Darby Police Department as one entity). However, the Supreme Court's jurisprudence "require[s] a plaintiff seeking to impose liability on a municipality under § 1983 to identify a municipal 'policy' or 'custom' that caused the plaintiff's injury." Bd. of County Com'rs of Bryan County v. Brown, 520 U.S. 397, 403 (1997) (citing Monell v. Department of Social Services of City of New York, 436 U.S. 658, 694 (1978)). This requires a plaintiff to show that "through its *deliberate* conduct, the municipality was the 'moving force' behind the injury alleged." Id. at 404 (emphasis in original). In this case, however, Plaintiff failed to allege any action by the "State Police of Butler", let alone "deliberate conduct" that would show that Butler County or the City of Butler was the "moving force" behind Plaintiff's alleged injuries. Accordingly, any claim against them is subject to dismissal for failure to state a claim upon which relief can be granted.

D. Amendment of Complaint

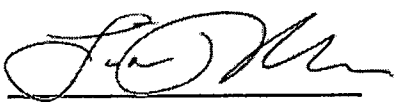
The court must allow amendment by the plaintiff in a civil rights case brought under § 1983 before dismissing for failure to state a claim, irrespective of whether it is requested, unless doing so would be "inequitable or futile." Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc., 482 F.3d 247, 251 (3d Cir. 2007); *see also* Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004) (asserting that where a complaint is vulnerable to dismissal pursuant to 12(b)(6), the district court must offer the opportunity to amend unless it would be inequitable or futile). The undersigned is cognizant of these holdings but finds that allowing for amendment by Plaintiff would be futile.

III. CONCLUSION

For the following reasons, it is respectfully recommended that Plaintiff's Complaint (ECF Nos. 4, 4-1 & 4-2) be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) & (iii) and 28 U.S.C. § 1915A(b)(1) & (2).

In accordance with the applicable provisions of the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B)&(C), and Rule 72.D.2 of the Local Rules of Court, the parties shall have fourteen (14) days from the date of the service of this report and recommendation to file written objections thereto. Any party opposing such objections shall have fourteen (14) days from the date on which the objections are served to file its response. A party's failure to file timely objections will constitute a waiver of that party's appellate rights.

Dated: July 14, 2020.



Lisa Pupo Lenihan
United States Magistrate Judge

Cc: Hasan Shareef
NU-0779
SCI Forest
P.O. Box 307
Marienville, PA 16239

In The Superior Court of Pennsylvania

WESTERN DISTRICT

SUPERIOR COURT DOCKET NO.: 815 WDA 2019
TRIAL COURT DOCKET No: CP-10-CR-0001714-2016

COMMONWEALTH OF PENNSYLVANIA

Appellee

VS

HASAN SHAREEF

Appellant

APPELLANT'S BRIEF AND REPRODUCED RECORD

Appeal from the Order of Court dated December 20, 2018

in the Court of Common Pleas of Butler County, Pennsylvania

Armand R. Cingolani, III, Esquire
Supreme Court I.D. No. 72767
CINGOLANI & CINGOLANI
Attorney for Appellant
Armand R. Cingolani, III, Esquire
Supreme Court I.D. No. 72767
300 North McKean Street
Butler, Pa. 16001
724-283-0653

STATEMENT OF THE CASE

This case began on May 27th 2016 when the Appellant was detained and arrested in an attic where he was found with guns and drugs and money at the same time the State Police were executing a search warrant granted on the acts of others. By coincidence Appellant just happened to be there. The Appellant was a convicted felon so he ran afoul of the Statute holding such persons are not to own or possess weapons, 18 Pa. C.S.A. §6105 , a felony 2. He was convicted of 35 Pa. C.S.A. §780 -112(a) (30), possession with intent to deliver, a felony.

Over time the defendant was appointed various public defenders. Discovery was provided. Omnibus Pre-trial hearings were finally held. Prior to trial the defendant was released after pleading to another charge in another county. To avoid the present trial he entered a rehabilitation center and was picked up on a bench warrant and detained in Allegheny County. When Appellant was returned by Sherriffs to Butler County the DOC destroyed or quarantined his case law paperwork because it was covered in a substance that burned the eyes of DOC employees.

The Appellant was tried before a jury in late December of 2018 and convicted of intent to deliver and former felon not to own weapons. He complained he lost the trial because the DOC withheld his papers so he did not have his case law notes which he calls evidence due to his attorney not calling the warden & DOC employees to testify to admit they were lying about the cause of withholding his papers. If they had testified they lied, he would have won his case.

This timely appeal followed.

SUMMARY OF THE ARGUMENT

The Appellant was searched and seized in his own separate location without a warrant.

The Appellant was convicted in error when the Court and Jury concluded that he possessed weapons Appellant claims he did not own, in his space, merely because his genetics were on the surface.

The Appellant lost his trial because the Court and his counsel failed to ensure the jail either returned his cases/ evidence or required reconstruction of his cases/ evidence.

ARGUMENT

From the moment Hasan Shareef heard the police knocking on the door of the apartment house nothing has happened as he thought it should. As far as he was concerned he never should have been arrested, charged, tried and convicted. He still can't understand how he ended up in the wrong place and at the wrong time. When the police came to the door the Appellant was inexplicably in the attic. He never explained why he was there. When the police started knocking on the door, even though he claims he was doing nothing wrong, he tried to break open the tiny attic window to get out of the house and escape by racing off the roof. He maintained the story the police did not knock and announce, but rushed in and rushed up the steps and detained him before he could escape. Escape is neither evidence nor proof of guilt or criminality. Commonwealth v. Phillips, Pa.Superior Court, 1427 WDA 2014. When he was captured, he was covered in blood, he advises, as a result from glass cuts. Some blood got on the guns and other objects. The spray of blood did not cause him to be the owner of the surprising array of gunnery and contraband which did not belong to him and for which he had no knowledge or explanation about how these inculpatory objects appeared coincidentally in the same location as he was embarrassed to be found.

ISSUE ONE: Whether a warrant was required to search and seize this particular person and the baggage in his separate attic room.

The Appellant claimed the police just broke in. He claimed he did not hear them knock and announce. The police must knock and announce. Wilson v. Arkansas, 514 U.S. 927 (1995),

but see, Hudson v. Michigan, 547 U.S. 586 (2006). It was permissible for the police to wait a few seconds after knocking before entering to execute the search warrant.

Correlation in time and place of Appellant with contraband is not enough circumstance to establish proof of guilt beyond a reasonable doubt that he was a felon not to be in possession of a gun.

Further, Appellant argues that he was not aware of guns and drugs and money in the same location as he was. He did not see it. The police fabricated these facts and lied. While there may have been guns and drugs and money in the attic with him, these things were not in plain sight but hidden in closed baggage. Sometimes it's his baggage; sometimes the baggage must belong to an unknown stranger. It depends. The police just fabricated the visuals that they saw these things sticking out of bags. Then, because his blood somehow got splattered on these objects, the police falsely concluded they must be his possessions, especially the guns and drugs. The Appellant avers the Court erred in failing to properly instruct the jury on what constitutes constructive possession. The Court should have instructed the jury that the police had to prove he actually owned the money, drugs and guns.

Worse, the police detained him and searched his separate attic room without a warrant and without his consent. May be they had a warrant to search the rest of the house, but they did not have a warrant to search and enter this attic room. In the Ybarra v. Illinois, 444 U.S. 85 (1979) it was not permissible to search a person on the premises of an authorized search but in Michigan v. Summers, 452 U.S. 692 (1981) a limited intrusion on a detained person on site was permissible. See also, U.S. v. Banks, 540 U.S. 31 (2003) which defines the proper exigency time to enter to avoid a drug dealer disposing of his contraband.

Search and seizure of a person at in a residence is per se unreasonable. Coolidge v. New Hampshire, 403 U.S. 443(1971).

The Appellant challenges the sufficiency of the warrant as to him in the attic because when the PSP applied for the warrant it was to search for fruits of the burglary committed by the two boys. Therefore the warrant failed to comply the particularity requirement of the Fourth Amendment so the search of his attic location must be unconstitutional. Massachusetts v. Sheppard, 468 U.S. 981, 988 n.5 (1984).

This is a story about how things that you don't even know are happening off stage can leap from the background and grab you up without you even realizing until it is too late. The story began when the Appellant, Hasan Shareef, a man with felony convictions, was granted permission to stay at a three story house at the edge of town by Sarah Snodgrass, soon to be deceased. Sarah has also granted two other men, both coincidentally named Christopher with surnames of Anthony and Snyder, permission to stay at the same apartment house she was renting from a landlord who was probably completely unaware of her generosity. The two Christophers imagine they are both smarter than they are and better burglars that later events would actually indicate. Anyway, these two started rolling the snowball downhill when they burglarized Crescent Bay Marine to steal boat motors and then tried to sell the fruits of their crime to West Penn Marine sales. The sales desk agent at West Penn was suspicious and called the police.

After interrogation, the two Christophers revealed they were staying at Sarah Snodgrass' rental apartment at 1004 E. Jefferson Street, Butler PA. The PSP obtain a warrant to search the house to find missing parts at the place. Snyder advised a character named "Red" used the attic

and sells drugs from there, according to the probable cause statement in incident report involving the two Christophers, Pa. 160 240358 on 5/27/2016. Two warrants were obtained to search 1004 E. Jefferson Street, Apt. 2 and a 2009 Chevrolet Silverado driven by the two Christophers but owned by Sarah Snodgrass. These warrants were approved by the on call Magistrate William S. O'Donnell. The Appellant will later claim he was denied due process by not being brought before Magistrate William S. O'Donnell and by claiming the warrant is a fraud with a forged signature. The Magistrate William S. O'Donnell swears he signed the warrant.

PSP advised Butler City Police will assist as this is a known drug house with a reputation for being a place where drug addicts regularly overdose.

When they tried to enter a locked house, Appellant Hasan Shareef tried to escape out a tiny window in the attic. His attempt failed but he was injured and was bleeding. The authorities observed the Appellant is in the location and possession of an entire dealer's panoply of guns, drugs and money. The PSP obtain a warrant Pa -16- 248429 to secure legal search rights in this interesting presentation of contraband. The money found under Pa. warrant 16 248429 on Hasan Shareef was buy money from a drug deal in Clarion.

In incident Pa 17-203053 in April 18, 2016 PSP related that the guns found with Hasan Shareef were taken from a residence at 339 Dick Rd. Franklin Twp. Butler County Pa. being the Intratec-22 and the Bond Arms Defender. These guns had been stolen from the family by their friend Christopher Anthony. The police believe Anthony was a runner for Hasan Shareef. In yet another incident Pa. - 18- 200009 Amanda Brommer admitted she bought the Texas Defender along with 4 other guns for Hasan Shareef.

The Defendant interrupted the District Attorney's opening to fire his own counsel. (T.24)

PSP Trooper Palko explained he went to 1004 E. Jefferson with a warrant, in order to investigate items taking in the burglary would be found at the residence as the burglars reported they stayed there. (T.30-31-) In clearing the house he heard glass breaking above him. When he ascended the flight of stairs in plain view he saw a gun and the Appellant. (T.32)

Once the Appellant was in custody they saw a gun sticking out of a black bag, and a glassine bag of heroin in plain view. (T.33) They secured a warrant and they found more drugs, guns and $2,570 in currency wrapped in rubber band. They found another gun behind a couch. (T.36, T.39)

On cross examination, PSP Palko revealed he was investigating a burglary of boat motors and he was after two boys with the first name of Christopher. (T.44) It was by chance that the Appellant was caught up in their investigation when they searched the residence. (T.45-46)

After indicating the presence of others on the property Counsel elucidated the fact that neither the gun is titled and therefore not title owned by the Appellant. (T.49)

The officer observed that the Appellant was bloody and injured in trying to escape from a small black window. (T.49)

The Appellant verbally denied ownership of the guns as well (T.50)

On direct examination the blood expert Biondi, admitted there was no blood on the Band Arms Defender or the other gun nor were there finger prints. (T.51-59)

The DNA expert Kukosky testified DNA from three individuals showed up on the weapon. (T.71) one sample from Appellant showed up on the TEC pistol (p.74)

The expert Kukosky admitted on cross examination that his examination does not prove ownership or how long someone touched a gun nor does he know how DNA got on the gun (T.-77-78) Appellant advises DNA or fingerprints alone do not prove ownership or possession. A being may touch another's property to see what it is or to satisfy curiosity.

The ADA introduced the Appellants prior convictions for possession with intent to deliver into the record (T.81- 82) To prove a felon may not possess or own weapons the prosecution must prove the Appellant had a certified record of prior felony convictions.

The Appellant fired his counsel. (T. 98-101)

The Appellant holds that his room was searched without his consent and PSP Palko averred he could search the room because he had a warrant. (T.105)

The Appellant disagrees with the witness version of his events, so he posed his questions to contradict and discredit the trooper's testimony. In his artful questions Appellant tries to get the trooper to admit:

He had no consent to search the attic. (T.105)

That the search was unrelated to guns and drugs. (T.105)

That neither warrant was adequate to search and seize either guns, money or drugs. (T.105)

That there was no warrant for DNA. (T.106)

That trooper planted DNA on guns. (T.106)

That the cell phone was not Appellant's. (T.106)

ISSUE THREE: Appellant was denied due process because the jail withheld or destroyed his papers full of legal cases which Appellant claims is exculpatory evidence and the Court erred in not requiring the jail to provide the papers to Appellant for trial.

Finally, the Appellant avers a manifest injustice occurred because the warden and the jail destroyed or withheld his evidence which, because he did not have this evidence to exculpate himself at trial, through their either willful destruction of his evidence or their refusal to provide his evidence for use at trial which caused him to lose the trial because he could not produce the evidence at trial. The Court refused to allow Appellant to have his papers/ evidence given to him by the DOC & jail. (T.87, T.100) As a result he was denied due process.

The Appellant lost his evidence because he took it with him when he had Court in another County and was released. He decided to avoid the current trial by checking into a rehabilitation facility in Pittsburgh and was later picked up and detained in Allegheny County. When he was returned to Butler County his papers were checked by D.O.C. employees. Inspection caused the examiners to get dizzy and ill as they were laced with some drug such as fentanyl so the papers were quarantined and were therefore not available for him so they said.

The evidence Appellant relief upon was his multipage, handwritten, jumble of cases from a pot pourri of jurisdictions. Appellant looks upon his magical lists of cases as if they are essential to abolishing his legal woes. He believes cases are evidence. Appellant holds that counsel was ineffective in not obtaining the paperwork containing his cases, if withheld by the warden, or in not reconstructing them if they were destroyed by the warden.

Appellant required counsel to demand a hearing for release of his papers. Appellant thought counsel should require the warden and his deputies to testify. Appellant believed if they

were forced to testify they would admit they maliciously withheld Appellant's papers/ evidence just to frustrate his defense.

Appellant in a Pro-Se brief asserted "My lawyer Cingolani never called warden down Bowman or any other CO who said this was true. I lost my trial because CO took all my law work, denied access to court, and violated my right to due process." Appellant related jail personal took his law work, legal notes and research saying it was contraband because employees of the DOC began to experience burning and irritated skin and burning of the eyes so the warden refused to give back to Appellant's papers and another deputy said the papers were destroyed. Still, it is in the domain of the Superior Court to determine whether counsel erred in not calling the warden or deputy to testify at a hearing as to why they quarantined or destroyed Appellant's trial papers. Did counsel's failure to call the warden and his deputy to testify cause the trial court to not require the Appellant to have his papers at trial, and since he did not have his papers he could not prove his innocence or rebut the Commonwealth's evidence with his case law and therefore lost his case through no fault of Appellant's own and solely at the fault of Appellant's counsel? Appellant urges the Court to accept his personal version of the "for want of a nail in a horseshoe", due to his counsel's ineffectiveness the shoe was lost, the horse slipped, the knight fell and the kingdom was lost" proverb to prove Appellant deserves a remand. Appellant requests a new trial and new counsel because he was denied due process where the D.O.C. withheld his papers of legal cases which he calls evidence. Appellant urges this Court to hold the lower Court erred in refusing to order the jail to give Appellant his papers for his defense.

That Police dogs sniffed false positives for drugs. (T.107)

That the house was surrounded searching for another person. (T.108)

That he was in handcuff custody too long. (T.109)

That seeing him flee is not a crime. (T.109, 111)

That there was nothing on him when he fled. (T.111)

The Appellant asserted his frustration and the magnitude of the harm he suffered because property was destroyed in jail because it was alleged to be covered with fentanyl dust and so he was denied the opportunity to produce exculpatory evidence and argument. (T.115)

The Court erred in allowing the PSP to obtain his DNA and to allow the PSP and forensics people to check the strange weapon for DNA without his permission of consent. DNA is a sacred bodily fluid which can only be obtained by penetrating his mouth or flesh.

ISSUE TWO: There is no proof Appellant owned the guns found in the same location.

Since blood splattered on these objects, that does not prove the Appellant, a felon

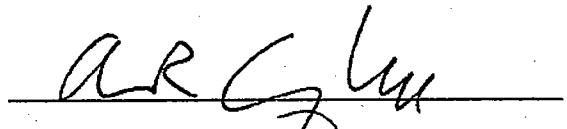
Possessed a weapon in violation of 18 Pa. C.S.A. §6105. Even if his fingerprints or DNA was found on any weapon that is not sufficient to prove he actually possessed or owned the weapons.

Touch alone is not ownership.

CONCLUSION

WHEREFORE, given the proceeding arguments, the relief requested is reversal of the verdict of the jury and a remand for a new trial.

Respectfully submitted,



Armand R. Cingolani, III

Attorney for Appellant

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

COMMON WEALTH OF PENNSYLVANIA : C.A. NO.: 1714-2016

VS.

HASAN SHAREEF

10 DAY POST SENTENCE MOTIONS

AND NOW COMES the Defendant, Hasan Shareef, by and through his attorneys, CINGOLANI & CINGOLANI, per Armand R. Cingolani, III, files the following: 10 Day Post Sentence Motions

1. Pursuant to Pa. Crim. Pro. Rule 720 a written post sentence motion shall be filed no later than 10 days after imposition of sentence. The Defendant was sentenced on December 20, 2018.

2. The Defendant requests a motion for Judgment of Acquittal or a Motion for a New Trial or a Motion to Modify Sentence.

3. Several Omnibus Motions for the Defendant were filed prior to appointed counsel of Armand R.Cingolani III. His prior counsels at the time filed but they were denied, as untimely filed. This is not the Defendant's fault as he had counsel and counsel knew the rules and Defendant should not be prejudged by the counsel's failure to file. If Defendant had an Omnibus hearing he would have been able to timely object to several issues and probably had the charges dismissesd.

4. Defendant intended to object to the fact that District Justice William O'Donnell signed the warrant but the District Justice did not hear the case. The magistrate issuing the warrant or signing the case must hear the case. Under Pa.Crim. Pro.Rule 117, the President Judge must guarantee sufficient issuing authorities to provide services to the Defendant, to ensure service of warrants and preliminary arraignments and bail. The Defendant was denied a hearing before the impartial Magistrate William O'Donnell who set his case, but he was forced to have his case heard before District Judge William Fullerton although the jurisdiction was probably with Kevin O'Donnell. This error violates the rules as William O'Donnell issued the case and the address of the property to be searched was East Jefferson St, which should be in the city of Butler. All of these irregularities violate Pa. Crim. Pro. Rule 130. B.T. Fullerton should have been the issuing Magistrate but he was not.

5. Although Pa. Crim. Pro.Rule 130 seems to say any authority can hear a case it should be heard in the jurisdiction where it occurred by that magistrate. This is confirmed by Pa.Crim. Pro. Rule 131 whereby proceedings should be heard in the jurisdiction where they occurred. Therefore the charges should be thrown out for violating the rules.

6. No warrant was issued to arrest the Defendant in the house where he was arrested. The police broke into the house without knocking and bounded up the stairs to the attic. There was no reason to go up to the attic to search and seize the Defendant as he was just present and not a threat.

7. While it is true that Defendant broke a tiny window in the attic and cut his hand, supposedly in a peculiar claim of escape (although the window appears to be too small to enable a grown man to escape) that is not a probable cause to arrest him as escaping or running away are not grounds to justify an arrest.

8. No warrant was issued to arrest the Defendant in the first place so there is a prima facie violation of Pa.Crim. Pro. Rule 205, contents of a search warrant.

9. The police violated Pa. Crim. Pro. Rule 207 manner of entry in premises. They just burst in without giving the Defendant a chance to enter the door. This violated his citizenship rights under the 4th and 5th Amendments so the charges must be dismissed.

10. Pa.Crim. Pro. Rule 513 was violated because there was no arrest with a prior warrant based in probable cause.

11. The Defendant was denied his rights to have an Omnibus Pretrial hearing under Pa.Crim. Pro. Rule 581. The Defendant was denied a hearing because his counsel at the time did not file timely for a hearing, but that is ineffective assistance of counsel and while his counsel may be punished, this denial wrongfully prejudices the Defendant who requested an Omnibus Motion from all counsels. If the evidence has been suppressed, then the charges would have been dismissed and the Defendant could not be convicted at trial. An Omnibus hearing would have shown the Defendant could not be connected to the evidence against him, that the weapons and drugs were not his and that the police improperly searched his closed bags and containers without a warrant in violations of his rights.

12. The Defendant was denied a timely trial having been held in jail in an excess of a year pursuant to Pa.Crim. Pro. Rule 600. The charges should have been dismissed.

13. Under Pa.Crim. Pro. Rule 606 the Defendant challenges the sufficiency of the evidence by to motion for acquittal by this paragraph within 10 days of the trial.

14. The evidence, improperly obtained, was not in any case sufficient to convict the Defendant. The fact that guns and drugs were in the vicinity of Defendant in a home use by many criminals does not prove that the Defendant owned or controlled the drugs and weapons by mere presence with guns and drugs is not sufficient to prove the Defendant owned or controlled the weapons.

15. Under Pa.Crim. Pro. Rule 607 the Defendant challenges the weight of the evidence and requests a new trial. Neither the testimony of the officers nor the lab report

conclusively lead the jury to conclude the Defendant had ownership or possession or control of guns and drugs. The lab report did not prove the guns and drugs were his. The testimony of the officers just bolstered the belief that because guns and drugs were present in a room with Defendant that they must be his guns and drugs. This is a Post Hoc Propter Hoc argument, an assumption that the conclusion proves the premises which are not justified or proven true. The officers merely restated their beliefs.

16. The Defendant was denied his paperwork to prepare for trial because it was sequestered by the jail. He therefore could not properly prepare for trial because he was denied access to his case notes. As a result his winning plans turned into the defeat.

17. The Defendant was denied a fair trial because the jury discriminated against on the basis of his race. For example a juror declared his fear of Defendant and expressed fear that Defendant would hunt him down.

18. The Defendant was denied the opportunity by the Court to ask questions of the experts and the police.

19. The Court and the prosecutor objected to questions the Defendant wished to ask and the Court refused to let the Defendant ask the questions his own way. The Defendant was denied the opportunity to present competent evidence. Competent evidence was excluded.

20. The Defendant had prepared questions for the witnesses and the police and the District Attorney but since the papers were locked up the Defendant could not reconstruct his case. And so he was denied the right to participate in his trial.

21. The Court did not properly instruct jury on what constitutes constructive possession.

22. Evidence was not considered at trial by lawyer or Judge McCune that Captain Moore and Warden Conspired and took the Defendants legal law work needed to defend himself in trial in violation of Defendants Eighth and Fourteenth Amendment Rights.

23. Outside range of professional competence evidence was excluded.

24. Defendant's Counsel, committed misconduct in that evidence was admitted without proper defense or objection.

25. False arrest not going in front of Magistrate District Judge who issue warrant. .

26. Admitting incompetent evidence and excluding competence evidence errors in Admission.

27. Defense counsel failed to subpoena Warden and Captain Moore in pretrial hearing and then again at trial to submit to cross examination about why they withheld or destroyed Defendant's evidence and trial preparation notes. Defendant believes they deliberately withheld or destroyed his trial papers.

28. Defendant objects that the court and defense counsel did not properly instruct jury about witness testimony lab reports and admissibility of evidence.

29. Counsel did not put motion as evidence for jury.

30. Need evidentiary hearing see if this true.

31. Prior counsel Cuebas did not put motion suppress the gun.

32. Pokice Maliciously and without probable cause procured criminal complaint against Defendant in violation of his fourth and fifth Amendment right against illegal search and seizure.

33. Conviction was by fraud or pejury or other undue means

34. Defendant's counsel erred in failing to demurrer to the charges at trial and therefore demurrers in this post-trial motions.

35. The Defendant complains counsel did not argue the error complained of by appellant were prejudicial of his substantial rights to receive a fair and impartial trial because the verdict was palpably against evidence. Further counsel failed in not putting in due process hearing, and untimely filing for motion of suppression evidence and failing to file Motion to Reconsider Denial of Prior Motions.

WHEREFORE, the relief respectfully requested is reversal of the charges and a new trial.

Respectfully Submitted,

Armand R. Cingolani III

To: Hasaan SHAREEF
Date: June 10, 2019
Re: Property

Mr. SHAREEF,

I spoke with your father who is willing to take your property. I am willing to mail it at no cost to. You simply have to send me a signed release of property form which I have sent you twice previously. You have responded to me by mail but failed to send the required form. Please do so immediately.

Beau Sneddon
Deputy Warden of Operations

CINGOLANI & CINGOLANI

300 North McKean Street
Butler, Pennsylvania 16001

ARMAND R. CINGOLANI (1904-1983)
ARMAND R. CINGOLANI, JR. (1929-2004)
ARMAND R. CINGOLANI, III

OFFICE: 724-283-0653
FAX: 724-283-2439
EMAIL: arcing3@gmail.com

November 26, 2018

Hasan Shareef
Butler County Prison
202 S. Washington Street
Butler, PA. 16001

Re: Return of Property

Dear Hasan,

Enclosed is a copy of the response of your returned property. As I suspected, and as I have been saying all along, your property made the captain and processing officer ill when processing your property. Therefore it was placed in a large black bag for safe keeping until your depart the locked gates that keep you.

Because of the chemical substance that appears to be on your property I have declined to have your personal belongings signed over to me for safe keeping. I am not in business to store client's personal property.

So I guess at this time you will have to trust that your stuff is locked away for safe keeping and you will get it when you released.

Respectfully,

Armand R. Cingolani III

ARC/rlc

IN THE COURT OF COMMON PLEAS

BUTLER COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL DIVISION
VS	:	C.A. 1714 OF 2016
HASAN SHAREFF	:	

FOR THE COMMONWEALTH: Terri Schultz, ADA
FOR THE DEFENDANT: Stand-by Counsel Armand Cingolani, III, Esquire

ORDER OF COURT

NOW, this 22nd day of October, 2018, the Defendant has made a decision to proceed with the remainder of the trial without representation. Attorney Cingolani will remain as part of the trial as stand-by counsel. He shall be available to provide advice to the Defendant but will not be doing the questioning of any witnesses. The attorney will not be presenting any closing argument for the Defendant.

BY THE COURT,

_____ J.
TIMOTHY F. McCUNE, JUDGE

LISA WEILAND LOTZ
CLERK OF COURTS
ENTERED AND FILED
2018 OCT 23 PM 3:37
BUTLER COUNTY
COURT OF COMMON PLEAS

10/23/18
MCL
ICL
DA
Def/BW
Atty Cingolani III
(5)
ech

Inmate

BUTLER COUNTY PRISON

Inmate Grievance Form

Inmate Name Hasan Shareef BCP# 31505 Date 11-26-18

Housing Pod D Cell 12

Date and Time of Alleged Incident 8-20-18 (Date) 7:30 night (Time)

Describe your grievance. Be specific. I had CO took my property I filed work want back

Specific Remedy you are seeking my property back Judge order

(Continue on Back if Necessary)

Inmate Signature: Hasan Shareef Date 11-26-18

Inmate does not write below this line

Grievance Officer

Date Received 11-30-18 Grievance # 1488 Forwarded to Sgt Waltemire

Grievance Officer M. Rychorczewicz Signature M. R

1st Level Response

Non-Grievable, Court order says you have to release it to your attorney. Not that you are to receive it.

(Continue on Attachment if Necessary)

Name Waltemire Signature [signature] Date 11-30-18

2nd Level Response

(Continue on Attachment if Necessary)

Name _____ Signature _____ Date _____

3rd Level Response/Appeal

(Continue on Attachment if Necessary)

Deputy Warden _____ Signature _____

BCP 13 Q

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**CRIMINAL DIVISION**
	:	
vs	:	**CP-10-CR-0001714-2016**
	:	**CP-10-CR-0000592-2018**
Hasan Shareef	:	

ORDER OF COURT

AND NOW, this **26th** day of **November**, 2018, the Defendant's Motion for Return of Property is granted. The property may be returned to the Defendant's attorney or other designee as long as the inmate executes an authorization provided by the Butler County Prison.

BY THE COURT,

Timothy F. McCune
Judge

11-27-18
MCC
ICC
DA(~~AG~~) Rev + 1 Cert (3)
Def/Atty Gryson III
~~Filed~~ ( )
Other Hasan Shareef SCI.

Filed
BCP - w/order

(9) cc.

LISA WILLARD LOTZ
CLERK OF COURTS
ENTERED AND FILED
2018 NOV 26 PM 3:07
BUTLER COUNTY
COURT OF COMMON PLEAS

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

COMMONWEALTH	)	CRIMINAL DIVISION
vs	)	
	)	CP-10-CR-0001714-2016
Hasan Shareef	)	CP-10-CR-0000592-2018

RESPONSE TO MOTION FOR RETURN OF PROPERTY

AND NOW comes the County of Butler and Butler County Prison, by and through their counsel, Julie M. Graham, Esquire, Solicitor for the County of Butler, and in support of the within Response to Motion for Return of Property, avers as follows:

1. On September 25, 2018, Attorney Armand R. Cingolani, III, attorney for Inmate Hasan Shareef, filed a Motion for Return of Property.

2. A hearing was held on Defendant's Motion on November 1, 2018. The Movant, Hasan Shareef, did not serve a copy of the Motion for Return of Property on the Butler County Prison (the "Prison"), nor did he notify the Prison of the hearing scheduled on or about November 1, 2018.

3. By Order of Court dated November 1, 2018, the Prison was directed to respond to the allegations made in the Motion for Return of Property within 30 days of the Order of Court.

4. On August 14, 2018, immediately prior to inmate Hasan Shareef's move from the Allegheny County Jail to the Prison six Prison employees were exposed to an unknown substance, resulting in those six employees being transferred to Butler Memorial Hospital for treatment. The Prison was placed on lockdown status pending an investigation. During the investigation, the unknown substance was discovered to be K2, a

synthetic cannabinoid. While the exposure method remains unknown it is believed that this substance was infiltrated into the Prison via inmate mail or personal effects.

5. On August 20, 2018, inmate Hasan Shareef was transported to the Prison from the Allegheny County Jail. Captain Clyde Moore and Corrections Officer Mark Bowman processed inmate Hasan Shareef into the facility and started to search his property. While searching inmate Hasan Shareef's property, both employees reported "they began to experience burning and irritated skin and burning eyes." These symptoms were similar to the symptoms the six prior employees experienced on August 14, 2018 when they were transported to Butler Memorial Hospital.

6. Captain Clyde Moore sealed the property in a secure black garbage bag and placed the sealed property bag in his secure office for when inmate Hasan Shareef would be released from the Prison. Captain Moore's and Correction Officer Bowman's symptoms subsided to where medical treatment was not required. At that time, Captain Moore explained to inmate Hasan Shareef his property was deemed bio-hazard and to contact his attorney to send in any legal work to the facility. The incident reports of Captain Moore and Correction Officer Bowman on this issue are attached hereto, incorporated herein and marked Exhibits A and B, respectively.

7. On August 29, 2018 the Pennsylvania Department of Corrections ("DOC") placed the entire state prison system on an extended lockdown to combat the numerous number of DOC employees becoming sick while being exposed to an "unknown substance." Multiple policy changes were enacted for the DOC varying from inmate mail being sent off site and photocopied, legal mail opening practices, etc.

8. During the week of September 16-20, Warden DeMore spoke with inmate Hasan Shareef about his property. The Warden explained to inmate

Shareef that there were concerns his property was contaminated and was deemed bio-hazard but was stored on-site for when he was released from the Prison custody. Warden, Joe DeMore, reaffirmed that Captain Moore told inmate Hasan Shareef to have his attorney send any pertinent legal mail to the facility. Warden DeMore explained in detail that the jail could have sent his bagged up property out to be tested for K2 which would result in all his property being deemed bio-hazard and consequently could be destroyed by the haz-mat team/testing agency. Inmate Hasan Shareef thanked Warden DeMore for not sending his property out to be tested and said he understood.

9. A letter was sent to the Prison on October 3, 2018 from inmate Hasan Shareef's attorney, Armand Cingolani, regarding inmate Hasan Shareef's property. On October 4, 2018 at approximately 1155 hours, Deputy Warden Beau Sneddon ("D.W. Sneddon") spoke to Attorney Cingolani on the telephone about inmate Hasan Shareef's property. Attorney Cingolani indicated he was "under the impression inmate Hasan Shareef's property was destroyed or lost." D.W. Sneddon offered Attorney Cingolani the option of having inmate Hasan Shareef sign a release of property form and that Attorney Cingolani could take possession of his client's property. Attorney Cingolani refused this option. Copies of the two Prison Incident Reports filed by D.W. Sneddon documenting this issue are attached hereto, incorporated herein and marked Exhibits C and D, respectively.

10. Based on the above information and difficulties of identifying synthetic cannabinoids on property, paperwork, etc. with the naked eye as well as detection tools, the Prison administration made the decision to mark inmate Hasan Shareef's property as bio-hazard and to have it securely stored and returned to the inmate upon his release from Prison custody. The Prison administration has made every effort to communicate with inmate Hasan Shareef and his attorney to get any needed copies of legal material back in his hands through his attorney as well as having inmate

Hasan Shareef sign a property form releasing his property to his attorney Armand Cingolani. Safety is paramount and the Prison Administration's decision was based solely on keeping all the employees and inmates of the Prison safe by not re-opening inmate Hasan Shareef's property risking contamination to any employees or inmates.

11. In light of the safety issues and risks associated with the return of the Inmate's property, the Prison Administration intends to hold his property in a safe and secure location unless or until the time of his release and/or transfer at which point it will be returned to him following appropriate safety protocols.

12. Alternatively, the Prison Administration's previously made proposal that the inmate execute an authorization for release of this property to his attorney or other designee remains open.

13. The Prison has broad discretion in establishing policies and procedures relative to the handling of inmate property to preserve and protect the safety of inmates and correctional officers. The course of action identified herein is within the guidelines established by the Pennsylvania Supreme Court in, O'Toole v. Pennsylvania Department of Corrections, --- A.3d.--- (2018), 2018 W.L. 4998392.

By: _____

Julie M. Graham
Butler County Solicitor
124 West Diamond Street
P.O. Box 1208
Butler, PA 16003-1208
Telephone No. (724) 284-5100
Fax No. (724) 284-5400
PA I.D. No. 36483

2018
R2527
183 A3d 1009

Date: November 20, 2018

BUTLER COUNTY PRISON

INCIDENT REPORT

Reporting Officer MOORE, CLYDE

Incident DateTime: 08/20/2018 17:00

Location Type PROCESSING

Location of the Incident:

Incident Type INFORMATIONAL

Inmates Involved

Inmate #	Name
031505	SHAREEF JR, HASAN AL

Employees Involved

Name
SCUILLO, MICHAEL
BOWMAN, MARK
KENGERSKI, JEFFREY

Narrative

On 8/20/2018, Butler County Prison received 5 new commitments from Allegheny County Jail. As we do for all commitments, all property was placed into separate plastic bins, as to not mix up any inmates property. As the Sheriffs Deputies were taking the transport gear off the new commitments, Hasan Shareef began asking about his paperwork, and property. Inmate Shareef has been in our facility in the past, and knows he is to receive his property after it has been properly searched. Inmate Shareef continued to inquire about his property during the duration of his time in processing. As I began looking thru the property belonging to inmate Shareef, my right arm, and both eyes began to bum, and become irritated. I instructed Officer Mike Scuillo to dawn a protective mask, and gloves, and place the property into a garbage bag, and tie the bag shut. I then went to my office, and called Sgt Jeff Kengerski, and asked him to bring the decontamination wipes from medical to my office. I relayed all information to Sgt Kengerski concerning the property. Property was left in my office.

The following day, as I spoke to Officer Mark Bowman, he relayed that he too had a reaction to said property. Due to two Officers having reactions to this property, it was deemed a bio-hazard. inmate Shareef was informed of this, and was instructed to contact his Attorney, and have all his legal work sent to the facility.

Inmate file

OFFICER NAME PRINT: Clyde Moore DATE: 8-29-18

OFFICER NAME SIGN: [signature] TIME: 0919

ADMINISTRATION: [signature] DATE AND TIME: 9/18/18 2300

EXHIBIT A

BUTLER COUNTY PRISON
INCIDENT REPORT

Incident DateTime: 08/20/2018 13:45

Reporting Officer BOWMAN, MARK

Location Type PROCESSING

Location of the Incident: PROCESSING

Incident Type INFORMATIONAL

Inmates Involved

Inmate #	Name
031505	SHAREEF JR, HASAN AL

Employees Involved

Name

Narrative

On the above date and approximate time Inmate Hasan Ali Shareef was committed to the BCP. This officer had been organizing Inmate Shareef's property to keep it from getting misplaced. Shortly after his property was handled this officer had received small red bumps all over my left hand . This officer had no other symptoms , and after washing my hands the irritation was gone. This officer didn't realize this to be an issue until I spoke with Capt. Clyde Moore on 8/21/2018 and he was commenting on having similar symptoms after handling Inmate Shareef's property. No further incident to report.

Respectfully Submitted,

C/O Mark Bowman

OFFICER NAME PRINT: M-L Bowman DATE: 8-23-18

OFFICER NAME SIGN: TIME: 8:15 AM

ADMINISTRATION: DATE AND TIME:

EXHIBIT B

BUTLER COUNTY PRISON

INCIDENT REPORT

Incident DateTime: 10/04/2018 11:55

Reporting Officer SNEDDON, BEAU

Location Type

Location of the Incident:

Incident Type

Inmates Involved		Employees Involved
Inmate #	Name	Name
031505	SHAREEF Jr, HASAN ALI	

Narrative

On Thursday, October 4, 2018 at approximately 1155hrs., I received a return phone call from Inmate Hasan SHAREEF's attorney, Armand CINGALONI in reference to some of Inmate SHAREEF's property. I explained to CINGALONI that I was calling in reference to some court paperwork that the Warden had recently received in which CINGALONI was petitioning the courts requesting that the prison return property that had been taken from Inmate SHAREEF. I advised CINGALONI that the property in question had been sealed up after two officers who were searching the property began to experience burning and irritated skin and burning eyes. I told CINGALONI that BCP as well as numerous other correctional facilities throughout Pennsylvania have been experiencing similar incidents recently. I advised CINGALONI that BCP staff would not be re-opening the bags of property in question. I advised CINGALONI that if Inmate SHAREEF was willing to sign a release of property form, CINGALONI could respond to the prison and take possession Inmate SHAREEF's property, otherwise the property would be stored as is and returned to SHAREEF upon his release from BCP. CINGALONI responded that he was under the impression that the property had been destroyed or lost and expressed that he had no interest in taking possession of the property.

Beau Sneddon
Deputy Warden of Operations

INMATE
WARDEN
SECURITY

OFFICER NAME PRINT: BEAU SNEDDON DATE: 10-4-18

OFFICER NAME SIGN: TIME: 1310

ADMINISTRATION: DATE AND TIME: 10-4-18

EXHIBIT C

BUTLER COUNTY PRISON

INCIDENT REPORT

Incident DateTime: 10/04/2018 09:15

Reporting Officer SNEDDON, BEAU

Location Type BUTLER COUNTY PRISON

Location of the Incident:

Incident Type

Inmates Involved		Employees Involved
Inmate #	Name	Name
031505	SHAREEF JR, HASAN AL	

Narrative

On Thursday, October 4, 2018 at approximately 0915 I attempted to contact Attorney Armand Cingolani in regards to some motions to the court in reference to property belonging to Inmate Hasan SHAREEF. I was advised by the female that answered the phone and did not identify herself that Cingolani was not in the office. The female took my contact information and stated that she would have Cingolani call me back.

Beau Sneddon
Deputy Warden of Operations

INMATE
WARDEN
SECURITY

OFFICER NAME PRINT: Beau Sneddon DATE: 10-4-18

OFFICER NAME SIGN: TIME: 0930

ADMINISTRATION: DATE AND TIME: 10-4-18

EXHIBIT
tabbies
D

VERIFICATION

I, the undersigned, state that I am the Warden of the Butler County Prison; that the attached Response to Motion for Return of Property is based upon facts which I have personal knowledge of and that the facts set forth in the foregoing are true and correct to best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Joe DeMore, Warden, Butler County Prison

CERTIFICATE OF SERVICE

I, Julie M. Graham, hereby certify that I served a true and correct copy of the foregoing Praecipe for Entry of Appearance in the above-captioned matter by First Class, U.S. Mail to the following on this 20th day of November, 2018:

Armand R. Cingolani, III, Esquire
Cingolani & Cingolani
300 North McKean Street
Butler, PA 16001

Richard A. Goldinger, Esquire
Butler County District Attorney
Third Floor, County Government Center
124 West Diamond Street
P.O. Box 1208
Butler, PA 16003

Julie M. Graham,
Butler County Solicitor

IN the Courts of Common Pleas
of Butler County Pennsylvania

CLERK OF COURTS
ENTERED AND FILED

2018 DEC 6 AM 9:15

BUTLER COUNTY
COURT OF COMMON PLEAS

Commonwealth of
Pennsylvania
VS
HASAN Shaleef
Aka Red

LA-NO-CR-10
CR 1714-2016
CP-10-CR 592-2018

11-30-18

Motion Bill exception and New trial

• ON ground
New discovered Evidence NOT considred
At trial buy lawyer or dudge MCCUNE
That captain Mooree and warden consipary
and took my legal law work to ~~defend~~ defend
my self in trial violation 8-14 Amendents
HANIES vs KERNER 404 US 519 SPARK 435 US 349
Castillo vs cook Canty 990 F.2d 304
Hudson vs US 468 517 Heding 10w2 Mw2d
WYRICK vs 686 SW2d 56 Mo 745

• Out side RANGE of Professional Competence
Evidence was Exclude

3. Admitting In Competence Evidence and

Exclude Competence Evidence

Error in Admission & Rejection of Evidence

Lawyer denied calling witness head warden

and Captain mooree taking my law work

Falsefing official documents saying it=

Contraband Lie Abouts this

Lok 50H US 158 Commonwealth vs Meredith 148 Ky 106

moore vs 282 667

3 Iowa 214 Olson Dobbs 47 NE 863

Whitaken 217 vs 966

Hopkins Commonwealth 210 KY 378

Commonwealth vs Whitaal 3 SW 2d 775

KY App 1928

US Ogden US 112 Fed 523

Counsel misconduct No Evidence should have

been Admitted without Proper dontense

10 Conviction was procure by fraud or perjury or other undue means.

11 Motion demurrer dismissing

12 Unless the errors complained of by, Counsel Appellant were prejudicial

13 of his substantial rights.

Not receive a fair impertial trial

15 because the verdict palpably against Evidence

14 Not Puting due Process Hearing

Untimely motion to suppressing

Motion reconsider.

Motion Cross Examine

witness warden Linde Moore

1 Officers came in Room I was in for try/
Jump out window get on floor Place Handcuffs
On me my Person was wade Cash no weapons
On me in Plain view was Gun on stack well
I was no where by Gun I was out window

2 I was in Attic in tight space No where
To could not get buy police no wall saying
The Cardboard is mind that in Room Florida vs
Bostick 501 US 1429

3 I Been in Jail for 19 months on Drug
Charges on Investigation Between Marion
County and Butler County Never got out Jail
No trial in Butler County Yet Just motion
Was in trial Butler County

4 No Evidence in Preliminary Hearing Bind
Case over No Court Report or Recording
Hearing Com vs Woodlocks 502 Pa 359
Com vs Early 121 A3d 1135

Gun in Plain View Are Defense weapons

Under Lon vs McInteris 371 A2d 941

Fire Lawyer in trial Not Answer my Questions

Judge o Donnell Not Metral detached

Trooper Patko might forged warrant out on me in 2016

State vs Hawkins 130 Ga App 126 1973

Not INSTRUCT the Jury Properly.

Not PUT motion AS Evidence for Jury

Need evidentiary hearing see if this true.

Hernandez

Lukas Lawyer NOT PUT motion SUPPRES. the GUNZ

Maliciosly and without Probable CAUSE. Procured Criminal Complant AGAINST me

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**CRIMINAL DIVISION**
	:	
vs	:	**CP-10-CR-0001714-2016**
	:	**CP-10-CR-0000592-2018**
Hasan Shareff	:	

ORDER OF COURT

AND NOW, this **1st** day of **November**, 2018, the Court held a hearing on Defendant's Motion for Return of Property. The Commonwealth, as per the District Attorney's Office, did not appear as they informed the Court that they had no part of this matter. No one from the Butler County Prison appeared and counsel for the Defendant informed the Court that he had not notified anyone from the prison to appear.

Testimony was taken from the Defendant who indicated that when he was transferred to the Butler County Prison from the Allegheny County Prison on August 20, 2018 his personal belongings including legal pads containing notes, random papers containing notes, copies of orders and motions he had received from his attorneys as well as a receipt from the Allegheny County Prison regarding his jewelry was taken by Captain Moore of the Butler County Prison. The Defendant indicated that in spite of his requests these items were never returned to him. The Butler County Prison is directed to respond to these allegations in writing within 30 days of the date of this order. If the Court feels that an additional hearing is needed, the Court will schedule the same.

BY THE COURT,

Timothy F. McCune
Judge

2018 NOV -2 AM 11:41
LISA WEILAND LOTZ
CLERK OF COURTS
ENTERED AND FILED
COURT OF COMMON PLEAS
BUTLER COUNTY

11-5-18:

MCC
ICC
DA~~(s)~~/~~AG~~
Def/~~Atty~~ Chifelli
File ~~(V)~~
Other Butler Co. Warden Q 30