



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA
CRIMINAL ACTION – LAW

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : CP-14-CR-1569-2008
 :
 HOBSON L. MCKOWN :

**COMMONWEALTH’S BRIEF IN OPPOSITION TO DEFENDANT’S
SUPPLEMENTAL BRIEF IN SUPPORT FOR A WRIT OF HABEAS CORPUS**

AND NOW, comes the Commonwealth by and through Carolyn M. Larrabee,
Assistant District Attorney and submits this brief in opposition to Defendant’s
Supplemental Brief in Support of Defendant’s Petition for a Writ of Habeas Corpus.

The majority of defendant’s arguments are merely a written recitation of points
raised in his initial brief and at oral argument. Most of these arguments the
Commonwealth has already addressed in its initial Brief in Opposition to Defendant’s
Petition for Writ of Habeas Corpus and oral argument held before this honorable court.
The few points raised that bear further clarification will be addressed separately.

I. Identification of Defendant at Preliminary Hearing

Defendant asserts there was no in-court identification of him as the person that
committed the crime as Officer Robert Bradley and Sheriff Denny Nau did not openly
identify the defendant in court. The Commonwealth would submit at this point in time
such an argument has effectively been waived. The first opportunity to raise the
argument was at the conclusion of the preliminary hearing. Defendant did not raise the
argument instead focusing his argument on the validity of his New Hampshire permit
alone. (See N.T. Prelim. Hrng. 09/10/2008 at 46-51.) To now raise the argument after
more than one year wherein Defendant effectively conceded the issue of identification

FILED FOR RECORD
2009 OCT -8 A 9:18
CLERK OF COURT
CENTRE COUNTY, PA
BRADAC, IMHILL
PROTHONOTARY

appears to be nothing more of an attempt to grasp at any straw. Furthermore, Defendant conveniently fails to mention in his brief the Commonwealth also presented the testimony of Jennifer Carson who did identify the defendant in court. On page seven of the transcript Ms. Carson's testimony was as follows:

Q. Is that gentleman in court today?

A. Yes, Ma'am.

Q. Could you point him out, please describe what he's wearing?

A. Black suit, silver tie, white striped glasses.

Q. Are you referring to the gentleman sitting next to Mr. Dunkle?

A. Yes, I am.

Ms. Larrabee: I'd ask the record to reflect that she's identified the defendant.

The court: The record will so reflect.

(N.T. Prelim. Hrng. 09/10/2008 at 7 ln. 19-25, 8 ln. 1-6).

Subsequently on page ten of the transcript Ms. Carson again identifies the defendant as the individual who came back to Magisterial District Judge Grine's Office at 4:00 p.m., the time of this incident:

Q. Okay. And did he come back at all that day?

A. Around 4:00 pm for a court proceeding of his own.

(Id. at 10 ln. 19-20.)

The additional testimony of Officer Bradley built upon the earlier identification of the defendant by Ms. Carson. Officer Bradley testified on direct examination:

A. I was told that earlier a gentleman had called asking what the procedure was for bringing a gun to court with him and later --

Q. Were any concerns expressed that this gentleman might come back?

A. Yes, everyone in the office was quite concerned that he would show back up with a gun.

Q. Okay. And did the individual come back?

A. Yes.

Q. And what time was that?

A. That was about 4:00 p.m., he had a hearing scheduled before Judge Grine.

(Id. at 18 ln. 1-14.)

Clearly Officer Bradley's testimony about the individual returning at 4:00 p.m. was connected to and built upon the previous testimony of Jennifer Carson identifying the defendant as the individual who returned at 4:00 p.m. Officer Bradley's testimony was then specifically related to his interaction with the defendant and locating the gun.

Furthermore, defense counsel effectively conceded identification in his questioning of Officer Bradley. Defense counsel specifically asks Officer Bradley, "And so you wait 4:00, you're -- where are you positioned when you expect **Mr. McKown** to appear?" (Id. at 23 ln. 17-19.) (*emphasis added.*) Additionally, defense counsel later asks Officer Bradley, "Okay. And **Mr. McKown** did advise you that he did have a valid concealed permit license through New Hampshire." (Id. at 27 ln. 3-5.) (*emphasis added.*) Defense counsel is utterly without any legal ground to raise the issue of non-identification at this point in time. The defendant was identified in open court by Ms. Carson. Further, defense counsel effectively conceded the identification by his referencing Mr. McKown's involvement in this incident

II. Prima facie case as to Firearms Not to be Carried without a License

Defendant concedes that the testimony of Sheriff Nau was sufficient to establish a prima facie case of non-licensure in his supplemental brief. See Supplemental Brief for Defendant at 3. However, defendant again insists that he presented evidence of his entitlement to an exception. This argument was heard at length by the court at oral argument. The Commonwealth would just reiterate the plain language of 18 Pa.C.S.A.

§6109(a)(b). Subsection “a” declares the purpose of a license is in order to lawfully carry a firearm concealed on one’s person or in one’s vehicle in this Commonwealth hence creating the requirement that if one wishes to carry concealed, one must have a license to do so. Subsection “b” advises where an individual may properly apply for one. The first requirement is the individual be twenty-one years of age. Then, if the person of the required age and is a resident of the Commonwealth, he must apply to the sheriff of the county in which he resides or chief of police in a city of the first class. Once it is established that the defendant was a Commonwealth resident, any perceived entitlement to an exception under the statute is trumped by the statutory requirement that he apply for any license to carry concealed with his county sheriff.

Defendant again chooses to disregard the blatant facts that his domicile is Centre County, Pennsylvania and that his license to carry previously issued by the Centre County Sheriff was in revoked at the time of this incident opting to insist that he is entitled to an exception to the rule. Only through the looking glass would one expect to find the exception to a rule trumping the rule itself.

III. Possession of a Firearm or Other Dangerous Weapon in a Court Facility

Defendant conceded in his initial brief in support of his writ of habeas corpus that he carried a weapon into the court facility. See Brief in Support of Defendant’s Petition for a Writ of Habeas Corpus at 1. Accordingly any argument he now seeks to raise regarding in-court identification should be considered waived for the fact of his previous concession and the arguments articulated *supra*.

Defendant again attempts to raise the argument of justification based on the lack of any lock boxes or similar facilities to check his firearm at the door. The

Commonwealth addressed this argument in its original brief and again at oral argument. The Commonwealth will not reiterate arguments previously raised and would ask the court to refer to the Commonwealth's initial brief and the argument transcript.

Respectfully Submitted,

Carolyn M. Larrabee
Carolyn M. Larrabee
Assistant District Attorney

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA
CRIMINAL DIVISION – LAW

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : CP-14-CR-1569-2008
 :
 HOBSON L. MCKOWN :

CERTIFICATE OF SERVICE

I, Carolyn M. Larrabee, Esquire, hereby certify that service on the following individuals, and in the stated manner, was made of this Brief dated October 8, 2009 filed in the above-captioned matter. Said service was made on October 8, 2009.

SERVICE BY PERSONAL DELIVERY:

One Copy:

The Honorable Bradley P. Lunsford
Judge's Chambers
Centre County Courthouse Annex
Bellefonte, PA 16823

FILED FOR RECORD
2009 OCT -8 A 9:18
DEBRA C. IMMEL
PROTHONOTARY
CENTRE COUNTY, PA

SERVICE BY COURTHOUSE-ASSIGNED MAILBOX:

One Copy:

Jason S. Dunkle, Esq.
Counsel for Defendant
302 South Burrowes Street
State College, PA 16801

Carolyn M. Larrabee
Carolyn M. Larrabee, Esquire
Assistant District Attorney
Room 404, Courthouse
Bellefonte, PA 16823
clarrabee@centreda.org