



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

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 v. : No.: CP-14-CR-1569-2008  
 :  
 HOBSON MCKOWN :

**SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT’S PETITION FOR A WRIT OF HABEAS CORPUS**

AND NOW, comes Defendant, Hobson McKown, by and through his counsel, Jason S. Dunkle, Esquire, and Masorti & Sullivan, P.C., and brings this Supplemental Brief in Support of Defendant’s Petition for a Writ of Habeas Corpus, whereof the following is a statement:

**I. PETITION FOR A WRIT OF HABEAS CORPUS**  
**a. Legal Standard**

“The purpose of a preliminary hearing is: ... to avoid the incarceration or trial of a defendant unless there is sufficient evidence to establish a crime was committed and the probability the defendant could be connected with the crime. Commonwealth v. Wodjak, 466 A.2d 991 (Pa. 1983).” Commonwealth v. Jackson, 849 A.2d 1254, 1257 (Pa. Super. 2004). “At the pre-trial stage of a criminal prosecution, it is not necessary for the Commonwealth to prove the defendant's guilt beyond a reasonable doubt, but rather, its burden is merely to put forth a *prima facie* case of the defendant's guilt.” Commonwealth v. Nieves, 876 A.2d 423, 424 (Pa. Super. 2005). “A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense.” Commonwealth v. Karetny, 880 A.2d 505, 514 (Pa. 2005).

**b. FIREARM NOT TO BE CARRIED WITHOUT A LICENSE, 18Pa.C.S.A. §6106**

Section 6106 of the Crimes Code provides that “any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.” 18 Pa.C.S.A. §6016(a)(1). Subsection (b) of section 6106 expressly provides that subsection (a) “shall not apply to...[a]ny person who possesses a valid and lawfully issued license or permit to carry a firearm which has been issued under the laws of another state.” 18 Pa.C.S.A. §6106(b)(15).

In order to support the charge of violating section 6106, the Commonwealth presented

testimony from Officer R.W. Bradley and Centre County Sheriff Denny Nau. In response to the Defendant's Habeas Petition, the Commonwealth admitted the testimony from the preliminary hearing and did not supplement that testimony at the habeas hearing. The transcript from the preliminary hearing is devoid of any testimony in which Officer Bradley identified the defendant in court as being the individual that carried a concealed weapon on his person without being licensed to do so. In order to establish a *prima facie* case, the Commonwealth must present evidence "to warrant the belief that the accused committed the offense," and a failure of the Commonwealth to identify the defendant in court as being the individual that committed the offense requires that the charges be dismissed. Karetny, 880 A.2d at 514.

In the event that the court believes that the Commonwealth presented evidence that the defendant was identified in court, the issue then becomes: 1) whether the defendant had a valid and lawfully issued license; OR 2) whether the defendant had a valid and lawfully issued permit issued under the laws of another state. When he was arrested, the defendant informed Officer Bradley that the defendant had a New Hampshire permit to carry a concealed weapon and that the permit was in the defendant's car. At the time of the preliminary hearing, the defendant presented a photocopy of the front and back of his New Hampshire permit. Sheriff Nau also testified that he had contacted the New Hampshire state police and been informed that a New Hampshire permit had been issued to the defendant. The Commonwealth did not present any evidence that the permit from New Hampshire was not valid or lawfully issued.

The Commonwealth argues that Pennsylvania law, mainly section 6109 of the Crimes Code, requires that the defendant, as a Pennsylvania resident, must have a Pennsylvania license to carry a concealed weapon that was issued by the sheriff of the defendant's county of residence. Under the Commonwealth's argument, a resident of Pennsylvania must have a Pennsylvania license in order to carry a concealed weapon in Pennsylvania. In support of its argument, the Commonwealth cites to Commonwealth v. Woods, 638 A.2d 1013 (Pa. Super. 1994). The Woods case expressly held "that evidence of non-licensure by the appropriate issuing authority of a defendant's place of residence at the time of arrest meets the Commonwealth's burden of proof on the element of non-licensure as required by § 6106." Id. at 1016. While the holding of Woods appears to support the Commonwealth's argument, the facts of Woods must also be considered. The Superior Court in Woods allowed the Commonwealth to prove the non-licensure element of §6106 by presenting evidence from a deputy sheriff in the defendant's county of residence that that the defendant did not have a license issued by the local sheriff, and Woods stated that the Commonwealth did not have to present evidence from the Pennsylvania State Police that the defendant did not have a license from any county in Pennsylvania. It is important to note that the defendant in Woods did not claim that he was licensed to carry by Pennsylvania or that he was eligible to carry under an exception set forth in §6106(b), instead the defendant simply argued that the Commonwealth had to prove beyond all doubt that the defendant was not licensed. The Superior Court stated that if the "appellant could negate this evidence, then he should have presented the evidence in his defense." Id. at 1017. Therefore, if the defendant was licensed by another county in

Pennsylvania or was claiming an exception under §6106(b), then the defendant must present evidence of such licensure or exception.

By presenting testimony that the defendant's license to carry in Pennsylvania had been revoked by Sheriff Nau, the Commonwealth did present *prima facie* evidence that the defendant was not licensed to carry. However, the defendant set forth evidence that he was entitled to an exception to application of §6106(a) as set forth in §6016(b)(15).

While the Commonwealth argues that §6109 requires a Pennsylvania resident to have a Pennsylvania license in order to carry a concealed weapon, said requirement is not supported by the language of the statute. As section 6109 is penal in nature, it is subject to strict construction. 1 Pa.C.S.A. §1928. "An Act of Assembly which imposes penal sanctions for violation of its provisions must be strictly construed." Commonwealth v. Hooks, 921 A.2d 1199, 1206-1207 (Pa. Super. 2007). "In attempting to ascertain the meaning of the statute, we are required to consider the intent of the legislature and are permitted to examine the practical consequences of a particular interpretation," and "[w]e are to presume the legislature did not intend a result which is absurd or unreasonable." Id.

Section 6109 does not expressly state that a Pennsylvania resident must have a Pennsylvania license in order to carry a concealed weapon. If the legislature had intended to require a Pennsylvania resident to possess a Pennsylvania license in order to carry a concealed weapon, it could have so written, as it did in the area of driver's licensing and exercising of driving privileges in Chapter 15 of the Vehicle Code. By its title and provisions, section 6109 only governs issuance of a **license** to carry a firearm in Pennsylvania. It does not state that any resident in Pennsylvania must follow the procedures set forth section 6109 in order to carry a concealed weapon. Again, section 6109 does not expressly state that a Pennsylvania resident must possess a Pennsylvania license in order to carry a concealed firearm. To the contrary, the statute expressly provides that an individual **may** apply to the sheriff for a license to carry a concealed firearm, and a resident of Pennsylvania that chooses to seek issuance of a license to carry a concealed firearm from Pennsylvania "shall make application with the sheriff of the county in which he resides." 18 Pa.C.S.A. §6109(b). Section 6109 does not state a Pennsylvania resident that wishes to carry a concealed firearm must apply for a license in Pennsylvania and is therefore subject to the requirements of section 6109.

As the defendant had a valid and lawfully issued permit from the State of New Hampshire, the defendant did not need a license in order to carry a concealed weapon in Pennsylvania. Under the Reciprocity Agreement that was entered into between the Attorney General for the state of Pennsylvania and the appropriate authorities from the State of New Hampshire, Pennsylvania agreed to recognize the rights of a New Hampshire permit holder while that individual was in the state of Pennsylvania. Under section 6106(b)(15), the defendant was entitled to assert an exception to application of §6106(a).

**c. POSSESSION OF A FIREARM OR OTHER DANGEROUS WEAPON IN COURT FACILITY, 18 Pa.C.S.A. §913**

Section 913 of Title 18 of the Pennsylvania Consolidated Statutes provides that a person commits an offense if he: 1) “knowingly possesses a firearm or other dangerous weapon in a court facility or knowingly causes a firearm or other dangerous weapon to be present in a court facility”, or he 2) “knowingly possesses a firearm or other dangerous weapon in a court facility with the intent that the firearm or other dangerous weapon be used in the commission of a crime or knowingly causes a firearm or other dangerous weapon to be present in a court facility with the intent that the firearm or other dangerous weapon be used in the commission of a crim.” 18 Pa.C.S.A. §913(a). Subsection (e) of section 913 provides that “[e]ach county shall make available at or within the building containing a court facility by July 1, 2002, locker or similar facilities at no charge or cost for the temporary checking of firearms by persons carrying firearms under section 6106(b) or 6109 of the for the checking of other dangerous weapons that re not otherwise prohibited by law.” 18 Pa.C.S.A. §913(e). Subsection (e) of section 913 additionally provides that [n]otice of the location of the facility shall be posted as required under subsection (d).” 18 Pa.C.S.A. §913(e). Subsection (d) of section 913 provides that notice of the provision of subsections (a) and (e) “shall be posted conspicuously at each public entrance to each courthouse or other building containing a court facility and each court facility”. 18 Pa.C.S.A. §913(d). Subsection (d) additionally provides that “no person shall be convicted of an offense under subsection (a)(1) with respect to a court facility if the notice was not so posted at each public entrance to the courthouse or other building containing a court facility and at the court facility.” 18 Pa.C.S.A. 913(d).

Again, the Commonwealth failed to present evidence via in-court identification that the defendant carried a weapon in a court facility. Therefore, it is not more likely than not that the defendant was the perpetrator of the crime. Furthermore, the Commonwealth failed to present evidence that the defendant possessed a weapon in a place that he knew was a court facility. The Commonwealth failed to present evidence that the incident occurred with an area that fell with the statutory definition of a “court facility.” As such the Commonwealth failed to present a *prima facie* case on the two critical elements of identification and location of the crime as being within a “court facility.” The Commonwealth also failed to present evidence that the defendant was provided with “notice” as required by section 913(d). Section (d) expressly requires that the defendant be provided with notice of the provision of section 913(a), and any notice that was provided here does not constitute adequate notice as required by subsection (d). Without proper notice of the provision of subsection (a), the charge of section 913(a) should be dismissed.

In order to sustain the charge of Possession of Firearm or Other Dangerous Weapon in Court Facility, the Commonwealth must present evidence that the defendant knowingly possessed a firearm in an area that the defendant knew was a court facility, and the Commonwealth must present evidence that the public entrance to the courthouse or building containing the court facility was posted in accordance with subsection (e) and (a) of 913. The

Commonwealth witnesses admitted at the preliminary hearing that the court failed to comply with the law and did not have lockers or similar facilities for the temporary checking of firearms or other weapons as required by law. Therefore, it is admitted that the Commonwealth cannot present evidence that the courthouse or building containing the court facility contained conspicuous notice of the requirements set forth in subsection (d). Subsection (e) expressly allows the court to provide the lockers or similar facilities for checking within the building containing the court facility. If the lockers or similar facilities are permitted to be housed without the building or courthouse, it is clear that the legislature is granting permission to a citizen to enter the courthouse or building containing a court facility in order to check their weapons. The legislature clearly would not draft a law that permitted the construction of lockers or similar facilities within a courthouse, thereby requiring a person to enter the courthouse or building to check their weapons, and then immediately prosecute the individual for entering the courthouse or building in order to check the weapon.

WHEREFORE, the Defendant respectfully requests that the charges be dismissed.

Respectfully submitted,

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