

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

COMMONWEALTH OF PENNSYLVANIA

v.

HOBSON MCKOWN

No.: CP-14-CR-1569-2008

MOTION TO DECLARE STATUTES UNCONSTITUTIONAL

AND NOW, comes the Defendant, Hobson McKown, by and through his counsel, Jason S. Dunkle, Esquire, and Masorti & Sullivan, P.C., and brings this Motion to Dismiss, whereof the following is a statement:

1. On September 2, 2008, Officer R. W. Bradley of the State College Police Department filed a Police Criminal Complaint charging the Defendant with one count of Firearms Not To Be Carried Without a License, 18 Pa.C.S. § 6106(a)(1), one count of Firearms Not To Be Carried Without a License, 18 Pa.C.S. § 6106(a)(2), and Possession of Firearm or Other Dangerous Weapon in Court Facility, § 913(a)(1).
2. On or about September 30, 2008, the Commonwealth filed an Information setting forth the above referenced charges.
3. "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S. Const. amend. II.
4. The Second Amendment to the United States is applicable to the states via the Fourteenth Amendment. See *McDonald v. Chicago*, 561 U.S. ___, (2010).
5. "In sum, it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." *Id.* (slip op., at 31).
6. "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 1. ("Privileges and Immunities Clause of Article IV")
7. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States[.]" U.S. Const. amend. XIV, § 1.

(“Privileges or Immunities Clause”)

8. “[N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]” U.S. Const. amend. XIV, § 1. (“Due Process Clause”)
9. “The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.” Pa. Const. art. I, § 21.
10. “All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” Pa. Const. art. I, § 1.
11. “The right of citizens of Pennsylvania to bear arms in defense of themselves; their property and the State predates any Constitution of the Commonwealth, and has been embodied in every Constitution we have had.” Commonwealth v. Ray, 272 A.2d 275, 278 - 279 (Pa. Super. 1970).
12. When the court must construe a provision of the Pennsylvania Constitution, the “ultimate touchstone is the actual language of the Constitution itself” and the “language of the Constitution must be interpreted in its popular sense, as understood by the people when they voted on its adoption.” Jubelirer v. Rendell, 953 A.2d 514, 528 (Pa. 2008) (internal citations omitted)
13. “In seeking the ‘ordinary, natural interpretation the ratifying voter would give’ to provisions of the Constitution, we avoid reading them ‘in a strained or technical manner’.” Id., quoting Commonwealth ex rel. Paulinski v. Isaac, 397 A.2d 760, 765 (Pa. 1979).
14. 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).
15. 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).
16. The Commonwealth has argued that section 6109 of the Crimes Code requires the Defendant, an alleged resident of Pennsylvania, to have a license to be issued by the state of Pennsylvania to carry a concealed firearm on his person or in his vehicle.
17. Section 913 of Title 18 of the Pennsylvania Consolidated Statutes provides that a

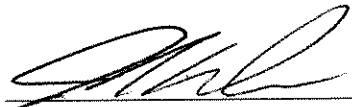
person commits an offense if he: 1) “knowingly possesses a firearm or other dangerous weapon in a court facility or knowingly causes a firearm or other dangerous weapon to be present in a court facility”, or he 2) “knowingly possesses a firearm or other dangerous weapon in a court facility with the intent 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).

18. 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).
19. 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).
20. 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).
21. 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).
22. Section 6016 is unconstitutional as applied to the Defendant as it violates the Defendant’s rights as set forth in the United States Constitution and the Pennsylvania Constitution.
23. Section 6016 is unconstitutional on its face as it violates the Defendant’s rights as set forth in the United States Constitution and the Pennsylvania Constitution.
24. Section 6019 is unconstitutional on its face and as applied as it violates the Defendant’s rights as set forth in the United States Constitution and the Pennsylvania Constitution.
25. Section 913 is unconstitutional on its face and as applied as it violates the Defendant’s rights as set forth in the United States Constitution and the Pennsylvania Constitution.

WHEREFORE, the Defendant respectfully requests this Honorable Court grant the relief sought and hold the aforementioned statutes violate the Defendant's constitutional rights and thereby dismiss the Information.

Respectfully submitted,

MASORTI & SULLIVAN, P.C.

By: 

Jason S. Dunkle, Esquire
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(814) 234-9500
Attorney I.D. # 93690

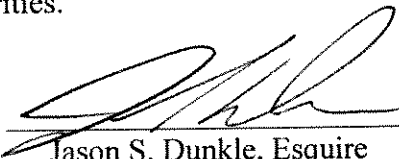
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COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : No.: CP-14-CR-1569-2008
 :
 HOBSON MCKOWN :

VERIFICATION

I, Jason S. Dunkle, Esquire, do hereby verify that I am the Attorney for the Relator, that I am fully authorized to make this verification on his behalf and that the Relator is unavailable to this make this verification and that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that the source of my information is from discussions with my client and the documents provided.

I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. A. §4904 relating to unsworn falsification to authorities.

By: 
Jason S. Dunkle, Esquire
Attorney for Relator

Dated: 7/8/10

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2010, a true and correct copy of
the Defendant's Motion to Declare Statutes Unconstitutional was served via hand delivery to the
following:

Sean McGraw, Assistant District Attorney
4th Floor, Centre County Courthouse
Allegheny and High Streets
Bellefonte, PA 16823

Respectfully submitted,

MASORTI & SULLIVAN, P.C.

By: 

Jason S. Dunkle, Esquire
302 South Burrowes Street
State College, PA 16801
(814) 234-9500
Attorney I.D. # 93690

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SCHEDULING REQUEST

Kindly schedule the attached Motion for Hearing before the Court. It is anticipated that the matter will require approximately 20 minutes for resolution.

July 8, 2010
Date

Jason S. Dunkle
Name

814-234-9500
Phone

jdunkle@statecollegelawyers.com
E-Mail Address

ORDER

AND NOW, this ____ day of _____, 20____, upon consideration of the
Petition/Motion, it is the **ORDER** of this Court that the hearing/argument/conference is
scheduled for the _____ day of _____, 20____, at _____
_____, in the Annex Courtroom/Courtroom No. _____, Centre County Courthouse
Annex/Centre County Courthouse, Bellefonte, Pennsylvania.

BY THE COURT:

Judge