



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 :

**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 Brief in Support of Defendant's Petition for a Writ of Habeas Corpus, whereof the following is a statement:

I. PROCEDURAL AND FACTUAL HISTORY

On September 2, 2008, Defendant was scheduled to appear for a summary hearing before Magisterial District Judge Jonathan Grine. Defendant appeared at District Judge Grine's court facility with a concealed weapon on his person. Immediately upon entering District Judge Grine's court facility, the defendant was stopped by Officer Robert W. Bradley and approximately two (2) to three (3) other officers from the State College Police Department. Bradley even approached the defendant as he came in and asked if he was armed. The defendant was asked by Bradley whether the defendant was in possession of a gun. The defendant inquired whether Bradley was acting in the capacity of a "check station" as required by 18 Pa.C.S.A. §913(e). Bradley advised that he needed to check for weapons. In response to Bradley's demand, the defendant surrendered his firearm. The defendant immediately advised that he had a valid concealed weapons permit issued from the state of New Hampshire in his vehicle. Bradley did not allow the defendant to retrieve his valid New Hampshire permit from his vehicle. Bradley did not contact the New Hampshire State Police to inquire whether the defendant had been validly issued a New Hampshire permit. Bradley contacted Centre County Sheriff Denny Nau and inquired whether the defendant had a license to carry a concealed weapons license issued by Centre County, and Sheriff Nau advised that the defendant's privileges had been revoked on April 14, 2009.

On September 2, 2008, Defendant was taken into custody by Officer R.W. Bradley of the State College Police Department for alleged criminal violations. The defendant was transported to the court of Magisterial District Judge Carmine W. Prestia, Jr. for a preliminary arraignment. Bradley filed a Police Criminal Complaint charging Defendant with two (2) counts of Firearms Not To Be Carried Without a License, 18 Pa.C.S. §§6106(a)(1) and (a)(2), and Possession of Firearm or Other Dangerous Weapon in Court Facility, 18 Pa.C.S. §913(a). the Defendant appeared at his preliminary hearing scheduled for September 10, 2008, at 11:00

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a.m. A preliminary hearing was held before Magisterial District Judge Leslie A. Dutchcot. Upon the conclusion of the preliminary hearing, Judge Dutchcot bound over all charges to the Court of Common Pleas.

II. PETITION FOR A WRIT OF HABEAS CORPUS

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

Section 6106 of the Crimes Code generally provides that it is unlawful for any person to carry a firearm in any vehicle or on their person in a concealed manner without a valid and lawfully issued license. 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)(emphasis added).

The evidence presented by the Commonwealth at the preliminary hearing clearly evidences that the defendant was carrying a firearm on his person in a concealed manner. 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. The defendant had a valid and lawfully issued permit from the state of New Hampshire that permitted him to carry a concealed weapon. At the preliminary hearing, the Commonwealth stipulated that the defendant had a New Hampshire permit to carry a concealed weapon, but the Commonwealth did not stipulate that the permit had been valid or lawfully issued. While the Commonwealth did not expressly stipulate that the permit was valid or lawfully issued, it also failed to present any evidence that said permit was obtained via subterfuge or fraud. Therefore, the Commonwealth agreed that the defendant possessed a New Hampshire permit to carry a concealed weapon, and the Commonwealth failed to present any evidence that said permit was obtained unlawfully. While the Commonwealth argued that it believed that the permit was obtained via fraudulent or dishonest means, said argument was not supported by any evidence.

A plain reading of section 6106(b) provides that the prohibitions of subsection (a) shall not apply to a person who possesses a valid and lawfully issued permit to carry a firearm issued from another state. At the time of his arrest, the defendant possessed a valid and lawfully issued permit to carry a firearm issued by the state of New Hampshire. Pursuant to statutory authority set forth in section 6109(k) of the Crimes Code, the Pennsylvania Office of the Attorney General has entered into a Reciprocity Agreement with the state of New Hampshire that provides for the “mutual recognition of a license to carry a firearm issued by the Commonwealth and a license **or permit** to carry a firearm issued by the other state.” 18 Pa.C.S.A. §6109(k)(emphasis added). The Reciprocity Agreement between New Hampshire and Pennsylvania expressly provides that the “Commonwealth of Pennsylvania will recognize valid New Hampshire permits to carry concealed firearms by valid permit holders while said permit holders are present in the Commonwealth of Pennsylvania.” (A true and correct copy of

the Reciprocity Agreement is attached hereto as “Defendant’s Exhibit 1”).

It is extremely important to note that Pennsylvania law does not require that a Pennsylvania resident possess a Pennsylvania **license** to carry a concealed weapon issued by the state of Pennsylvania. In this case, the Commonwealth has consistently argued that section 6109 of the Crimes Code requires a Pennsylvania resident to apply for a license to carry a concealed firearm in their county of residence. While the defense disagrees with that interpretation of the statute, the argument of the Commonwealth is irrelevant if the court considers the language of section 6109 along with other sections in this chapter of the Crimes 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.

A critical issue to emphasize is that Pennsylvania law does not require issuance of a Pennsylvania **license** to carry a concealed firearm in order for a Pennsylvania resident to carry a concealed weapon. This interpretation of Pennsylvania law is supported by the fact that an exception to a violation of section 6106(a) is that the person possesses a valid and lawfully issued “**license or permit**”. 18 Pa.C.S.A. §6016(b)(15). Furthermore, section 6122 provides that a person who carries a firearm concealed about his person shall produce a license for inspection, however, the statute provides that a person carrying under an exception set forth in §6106(b) shall produce satisfactory evidence of qualification for exception. Section 6122 does not require a Pennsylvania resident to present evidence of licensure in Pennsylvania by the sheriff of their local county in order to qualify for exceptions under §6016(b) but instead simply requires satisfactory evidence of qualification for exception, meaning a valid and lawfully issued **permit** from a reciprocal state.

In drafting the statutes pertaining to the carrying of concealed firearms, the legislature could have expressly required that all Pennsylvania residents that wished to carry a concealed weapon must apply for a Pennsylvania license with the sheriff of their resident county. Instead, the legislature noted that a resident **may** apply for a license in Pennsylvania, and, if a Pennsylvania resident applies for a license to carry a concealed firearm in Pennsylvania, then he is governed by §6122. However, the legislature did not issue a mandate or requirement that Pennsylvania residents must have a Pennsylvania license to carry a concealed firearm in order to carry a concealed firearm. Clearly, the legislature was aware of the distinction in terminology between license and permit as the terms are not used interchangeably in the

statues. If the legislature had intended to require all Pennsylvania residents to possess a Pennsylvania license in order to carry a concealed weapon, it would clearly have evidenced its intent in the law. Instead, the legislature clearly evidences its understanding that other states issue permits to carry concealed weapons based upon their own considerations, and the legislature has given the Attorney General the authority to enter into agreements with other states and thereby recognize the authority of the possessor of said permit to possess a concealed weapon in Pennsylvania. The legislature provided that it is illegal in Pennsylvania to carry a concealed weapon in Pennsylvania without a valid and lawfully issued license except if the possessor has a valid and lawfully issued license or permit to carry issued from another state. 18 Pa.C.S.A. §6106. The legislature clearly recognized that a Pennsylvania resident may have a valid permit from another reciprocal state and thereby should receive reciprocal treatment without being required to obtain a Pennsylvania license.

Based upon the evidence presented at the preliminary hearing, the defendant had a permit to carry a concealed weapon issued by the state of New Hampshire. The Attorney General of Pennsylvania has entered into a reciprocity agreement with New Hampshire. Said reciprocity agreement expressly provides that the "Commonwealth of Pennsylvania will recognize valid New Hampshire permits to carry concealed firearms by valid permit holders while said permit holders are present in the Commonwealth of Pennsylvania." Defendant's Exhibit 1. There was no evidence presented that the permit to carry a concealed weapon issued by the state of New Hampshire to the defendant was not valid or lawfully issued. Any argument from the Commonwealth that the New Hampshire permit was not lawfully issued is based merely on conjecture. Furthermore, section 6122 of the Crimes Code provides a failure to produce a license or satisfactory evidence of exception pursuant to 6016(b) at the preliminary hearing presents a rebuttable presumption of nonlicensure. In this case, the defendant originally offered to produce his New Hampshire permit to the arresting officer if he would transport the defendant to the defendant's vehicle parked nearby. Also, at the preliminary hearing, the Commonwealth agreed that the defendant possessed a New Hampshire permit to carry. The presentation of the permit at the preliminary hearing should result in a presumption that the defendant was permitted to carry a concealed firearm in Pennsylvania, a presumption which the Commonwealth failed to discredit or overcome.

As the defendant had a lawfully issued and valid permit to carry a concealed firearm from New Hampshire, the Commonwealth cannot refute evidence that the defendant is entitled to application of an exception under §6106(b). The defendant, possessing a validly and lawfully issued permit to carry a concealed weapon from the state of New Hampshire, is entitled to carry said firearm in Pennsylvania and cannot be charged under §6106. Therefore, the charges that allege violations of §6106 must be dismissed by the court.

As a secondary argument, the defendant did possess a Pennsylvania license to carry a concealed firearm, but said license was revoked by Sheriff Denny Nau. Via letter dated April 16, 2007, Sheriff Nau revoked the defendant's Pennsylvania license to carry a concealed firearm. It is admitted that the defendant did not appeal the Sheriff's decision either

administratively or judicially.

Section 6109(i) sets forth the requirements for revocation of a Pennsylvania license to carry a concealed firearm license. "A license to carry firearms may be revoked by the issuing authority for good cause." 18 Pa.C.S.A. §6109(i). "A license to carry firearms shall be revoked by the issuing authority for any reason stated in subsection (e)(1)" and "[n]otice of the revocation shall be in writing and shall state the specific reason for the revocation." 18 Pa.C.S.A. §6109(i).

In the letter from Sheriff Nau to the defendant dated April 16, 2007, advising of the revocation of the Pennsylvania license to carry a concealed weapon, the Sheriff fails to state the specific reason for the revocation in light of the reasons set forth in subsection (e)(1) of section 6109. (A true and correct copy of the letter is attached hereto as "Defendant's Exhibit 2"). The letter simply references that the defendant was charged with three (3) summary non-traffic offenses and that the defendant failed to advise the investigating officers that he was carrying a loaded firearm. First, the non-traffic offenses are all summary charges, and therefore relatively minor allegations of violations of the law. Second, the fact that the defendant failed to inform an officer that he was carrying a concealed weapon is not material based upon the facts of the case. The defendant was under no obligation to inform the officers that he was carrying a concealed weapon relative to that incident. There was no allegation that the defendant brandished the firearm or threatened injury related to the brandishing of a firearm. The officer did not arrest the defendant, so he would not have had the authority to search incident to arrest. Also, the officer had no reason to suspect that the defendant was armed and dangerous, so he had no reason to subject the defendant to a patdown search.

The revocation of the defendant's license was without justification. Furthermore, the Sheriff failed to state the specific reason under section (e)(1) which supported the decision to suspend the defendant's license. In support of the defendant's argument that the revocation was without legal justification and failed to follow the revocation procedures set forth by statute, the court must review the letter supplied by Sheriff Nau to the Pennsylvania State Police. (A true and correct copy of the letter is attached hereto as "Defendant's Exhibit 3"). The letter is a form letter that clearly sets forth a checklist of statutorily acceptable reasons to revoke a license to conceal a firearm. The form and possible check options track the reasons for revocation as set forth in section (e)(1) of section 6109. The Sheriff did not check any reason for revocation that correlates to a reason as set forth in section (e)(1).

It is clear that the Sheriff did not revoke the defendant's license for any reason as set forth in section (e)(1) of section 6109. The law expressly requires the sheriff to state the specific reason for the revocation in light of the reasons set forth in section (e)(1). In the instant case, the Sheriff utterly failed to follow the mandates of the law. He didn't advise the defendant of the specific violations of (e)(1) that allegedly justified the revocation, and the Sheriff's failure is further evidenced in the letter to the Pennsylvania State Police as none of the reasons for revocation as set forth in the statute as checked. The Sheriff's decision to revoke

the defendant's license was not in accordance with the mandates of Pennsylvania law and was therefore void ab initio. Since the Sheriff did not follow the statutory mandates in attempting to revoke the defendant's license to carry a concealed firearm, the defendant cannot be expected to follow the appellate procedures regarding revocation. It is fundamental that due process of law requires notice and the opportunity to be heard. Here, the sheriff failed to follow the notice requirements for revocation as set forth in statute. As such, the defendant was not put on adequate notice of the alleged violation and therefore was prevented from seeking redress.

If the court deems that the defendant's Pennsylvania license to carry a concealed firearm was not revoked, then the Commonwealth cannot present evidence that the defendant was not licensed to carry a concealed firearm in Pennsylvania.

**B. 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 rearm 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).

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,

MASORTI & SULLIVAN, P.C.

By: 

Jason S. Dunkle, Esquire
302 South Burrowes Street
State College, Pennsylvania 16801
814-234-9500
Attorney I.D. No. 93690

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September 2009, I served a true and correct copy of Defendant's Brief in Support of Petition for a Writ of Habeas Corpus via email to the following:

Carolyn Larrabee, Esquire
Assistant District Attorney
Centre County Courthouse
Bellefonte, PA 16875

Respectfully submitted,

MASORTI & SULLIVAN, P.C.

By: 

Jason S. Dunkle, Esquire
302 South Burrowes Street
State College, Pennsylvania 16801
814-234-9500
Attorney I.D. No. 93690

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PROBATIONARY
OFFICE (PHOTOGRAPHY)

Reciprocity Agreement

This Reciprocity Agreement is between the Commonwealth of Pennsylvania by and through the Office of Attorney General, and the State of New Hampshire by and through the Department of Safety.

WHEREAS, the purpose of this Reciprocity Agreement is to extend reciprocal concealed firearm carry permit/license privileges to the citizens of the State of New Hampshire and the Commonwealth of Pennsylvania,

WHEREAS, the respective state offices are authorized by statute to enter into this Reciprocity Agreement,

WHEREAS, in consideration of the matters described herein, and of the mutual benefits and obligations set forth in this Reciprocity Agreement, the Parties hereby agree and covenant as follows:

1.

The Commonwealth of Pennsylvania will recognize valid New Hampshire permits to carry concealed firearms by valid permit holders while said permit holders are present in the Commonwealth of Pennsylvania.

2.

The State of New Hampshire will recognize valid Pennsylvania licenses to carry concealed firearms by valid Pennsylvania permit holders while said permit holders are present in the State of New Hampshire

3.

This Reciprocity Agreement applies only to the carrying of firearms by valid license/permit holders from respective states and not to any other types of weapons.

4.

The State of New Hampshire and the Commonwealth of Pennsylvania will inform each other of any changes in their respective concealed firearm statutes that may affect the eligibility of the recognition granted by each state.

5.

The State of New Hampshire and the Commonwealth of Pennsylvania will each provide the other with copies of their current laws regarding concealed weapons and firearm carry licenses/permits.

6.

This Reciprocity Agreement is contingent upon and shall only remain effective as long as the respective statutory authority in each state authorizing the reciprocal privileges remains effective.



7.

This Reciprocity Agreement shall become effective upon the execution of the authorized Parties' signatures.

8.

This Reciprocity Agreement may be terminated by either Party or their successor upon (30) days written notice.

9.

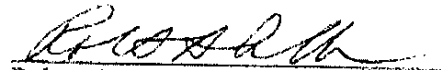
This Reciprocity Agreement is not intended to limit or restrict the statutory authority of either state, and the permit/license holders benefiting from this Agreement shall abide by and respect the prohibited places of carry specified by each case.

WITNESSETH, each Party to this Reciprocity Agreement has caused to be executed on the date indicated below.

Date: _____

Date: 10/18/04


Richard M. Flynn
New Hampshire Commissioner of Safety


Robert A. Mullen
Chief Deputy Attorney General
Office of Attorney General
Commonwealth of Pennsylvania

County of Centre



SHERIFF DENNY NAU

Sheriff's Office
213 E. High St.
Bellefonte, Pa. 16823
Phone 814-355-6803 Fax 814-548-1111

Polly Clontz
Chief Deputy

Tracey G. Benson
Solicitor

April 16, 2007

Hobson McKown
592 Pierson Dr.
State College, Pa. 16803

Dear Mr. McKown:

This is your official notification that your license to carry a firearm has been revoked. This revocation is a result of an investigation by the Pennsylvania State University Police, of a criminal incident, Incident number 41-08-1169. As a result of the investigation you were charged with Harassment, disorderly conduct, and public drunkenness. In addition you failed to advised officer(s) you were carrying a loaded firearm prior to their search.

The law requires you return your license to carry a firearm to this office within five (5) days of receipt of this notice. Please forward your license to carry to our office along with the laminated copy via mail or feel free to drop it off in person.

Should you have any questions please feel free to contact me at our office at the number listed above.

Notification of this revocation will be forwarded to the Pennsylvania State Police Firearms Division, Harrisburg, Pa. as well as the Pennsylvania State University Police.

Very truly yours,


Denny Nau, Centre Co. Sheriff



County of Centre



SHERIFF DENNY NAU

Polly Clontz
Chief Deputy

Sheriff's Office
213 E. High St.
Bellefonte, Pa. 16823
Phone 814-355-6803 Fax 814-548-1111

Tracey G. Benson
Solicitor

April 14, 2008

Pennsylvania State Police
Firearm Records Unit
1800 Elmerton Ave.
Harrisburg, Pa. 17710

RE: NOTICE OF REVOCATION OF LICENSE TO CARRY PERMIT

NAME: Hobson McKown
DOB: 9/24/85
SSN: Unknown
PERMIT #: 14-020273

DATE ISSUED: 1/19/07
DATE REVOKED: 4/14/08

Firearms Record Unit:

This correspondence is to advise you that a license to carry permit has been revoked in accordance with Section 6109 of the Uniform Firearms Act. The license to carry permit was revoked due to the following reason(s).

- Individual convicted of a crime enumerated in section 6105.
- Individual is the subject of an active protection from abuse order pursuant to 23 Pa. C.S. section 6108.
- Individual is not of sound mind or has been committed to a mental institution.
- Individual has been convicted of an offense under the controlled substance, drug device and cosmetic act.
- Character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.
- OTHER / ADDITIONAL INFO: Hobson was been cited by Penn State University Police on 4/6/08 for harassment, disorderly conduct, & public drunkenness. Hobson punched a PSU student on the campus of Penn State. During search by Police he was asked by officer if he had anything on his person that would hurt officer, to which he replied no. A subsequent search revealed Hobson was carrying a loaded Kel-Tec 380.

Signature - 
Denny Nau, Centre County Sheriff

