



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 PETITION
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 Petition
for Writ of Habeas Corpus.

I. PROCEDURAL AND FACTUAL HISTORY

The defendant’s recitation of the facts and procedural history are sufficient that
the Commonwealth will not reiterate them here.

II. PETITION FOR WRIT OF HABEAS CORPUS

A. Legal Standard

It is well-settled legal principle that at a preliminary hearing the Commonwealth
is required to establish only a *prima facie* case. The Pennsylvania Supreme Court has
explained that “[a]t a preliminary hearing stage of a criminal prosecution, the
Commonwealth need not prove the defendant’s guilt beyond a reasonable doubt, but
rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt.”
Commonwealth v. Karetny, 880 A.2d 505, 513-14 (Pa.Super. 2005) *citing*
Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003) (citations omitted). “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 believe that

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the accused committed the offense.” Karetny, 880 A.2d at 514 *citing* Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991) (citations omitted). “The evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury.” *Id. citing* Huggins, 836 A.2d at 866.

B. Firearm Not to be Carried Without a License, 18 Pa.C.S.A. §6106

Under §6106(a)(1) of the crimes code, “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.” Additionally under §6106(a)(2), “a person who is otherwise eligible to possess a valid license under this chapter but carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person...and has not committed any other criminal violation commits a misdemeanor of the first degree.”

In order to establish a *prima facie* case on each of these charges, the Commonwealth needed to establish probable cause that the defendant carried a firearm concealed on his person without a lawfully issued license. Defendant readily admits that he carried a firearm concealed on his person thus satisfying the first element. (Brief for Defendant at 1.) The issue becomes whether the defendant had a lawfully issued license.

The statute governing the issuing of licenses to carry firearms is governed by section 6109 of the Crimes Code. Subsection “b” of the statute clearly states:

An individual who is 21 years of age or older may apply to a sheriff for a license to carry a firearm concealed on or about his person or in a vehicle within this Commonwealth.
If the applicant is a resident of the Commonwealth, he shall make application with the sheriff of the county in

which he resides or, if a resident of a city of the first class, with the chief of police of that city. (emphasis added.)

18 Pa.C.S.A. §6109(b) (1972) (amended 2008).

The defendant's address on the criminal complaint was listed as 592 Pierson Drive, State College, Pennsylvania, clearly indicating he is a resident of the Commonwealth. His driver's record lists an address of 592 Pierson Drive, State College, Pennsylvania. Furthermore, the Commonwealth presented the testimony of Sheriff Denny Nau about a license issued to the defendant, and his address being 592 Pierson Drive, State College, Pennsylvania. (N.T. Prelim. Hrng. 09/10/2008 at 29.) The Commonwealth respectfully asserts this is probable cause to believe the defendant was a resident of the Commonwealth as of September 2, 2008. Accordingly, this triggers the requirement under section 6109(b) that any license to carry concealed shall be issued by the Centre County Sheriff.

With probable cause established that the defendant was a resident of the Commonwealth at the time of this incident, the question then becomes whether the defendant had a validly issued license. In support of the fact the defendant did not have a validly issued license, the Commonwealth presented the testimony of Sheriff Denny Nau who testified a license to carry was issued to the defendant on January 19, 2007. (Id.) Further, Sheriff Nau testified he sent notice to the defendant of his intent to revoke his license on or about April 15, 2008. The defendant signed for the letter on April 29, 2008, and the defendant appeared at the sheriff's office on May 2, 2008 to turn over his license. (Id. at 30-31.)

Defendant asserts a *prima facie* case as to his not having a valid license to carry concealed was not made because of evidence that he had a permit to carry concealed

issued by the state of New Hampshire. The Commonwealth respectfully asserts this has no bearing on a *prima facie* case. In the case of Commonwealth v. Woods, 432 Pa.Super. 428, 638 A.2d 1013 (1994), the appellant asserted there was insufficient evidence to support his conviction on the charge of Firearms not to be Carried Without a License. In that case the Commonwealth presented evidence from the Deputy Sheriff of Washington County who testified the Appellant had no license to carry a concealed weapon issued by Washington County. 432 Pa.Super. at 433, 638 A.2d at 1016. The appellant claimed the Commonwealth needed to provide evidence not only that the defendant was not licensed to carry a concealed firearm by Washington County but also that the State Police had no record of a license to carry firearms anywhere in the Commonwealth. Id. The Superior Court held, “evidence of non-licensure by the appropriate issuing authority of a defendant’s place of residence at the time of arrest meets the Commonwealths burden of proof on the element of non-licensure as required by §6106.” Id. at 434, 1016.

The Commonwealth presented evidence at the preliminary hearing that the defendant, a Centre County resident, did not have a license to carry concealed issued by the Centre County Sheriff’s Department as of September 2, 2008. The Superior Court has held that such evidence is sufficient to sustain a *conviction* on the offense much less a *prima facie* case. Accordingly, the Commonwealth respectfully asserts that a *prima facie* case was made to support the charge of Firearms not to be Carried Without a License.

Defendant makes many assertions over the fact that at the time he had a permit issued by the state of New Hampshire as proof that he could in fact carry concealed within his home state. (Brief for Defendant at 2-4.) Defendant cites to different sections of sections 6106 and 6109 relating to reciprocity agreements and “license or permit” in

order to establish the statute is unclear and thus subject to interpretation. However under 18 Pa.C.S.A. §105 the legislature clearly stated “the provisions of this title shall be construed according to the fair import of their terms.” Following the defendant’s logic section 105 has no meaning and the Uniform Firearms Act should be non-existent. Why impose the requirement that a Commonwealth resident shall make his application to the sheriff of the county in which he resides if he could simply pick a state with which Pennsylvania has reciprocity with and make his application to that state? Such logic would not fulfill the legislative intent of the Uniform Firearms Act and undermine the plain language of the section 6109(b). Defendant selectively ignores certain requirements of the act in favor of provisions that support his position without regard for the fact that the provisions he is ignoring are so clear in their meaning that the Superior Court has already addressed the issue in Woods, and the Pennsylvania Supreme Court determined the issue was not worthy of granting allocatur. See Commonwealth v. Woods, 539 Pa. 650 (1994) (appeal from the Superior Court denied.)

Defendant also makes an argument relative to the revocation of his Pennsylvania License to Carry that somehow the sheriff revocation of that license was not legal under the statute. However, Defendant also readily admits that while there was a legal avenue to challenge that revocation he could have pursued in the form of an appeal to the Court of Common Pleas, he did not exercise that option. (Brief for Defendant at 4.) See 18 Pa.C.S.A. §6109(i). Instead, the defendant signed for the certified letter indicating his license was being revoked and promptly turned it over to the Centre County Sheriff never taking an appeal effectively acquiescing to the revocation of his license to carry.

Defendant now claims the reason for which his license was revoked was insufficient. The official reason for which the defendant's Centre County License to Carry was revoked was the fact that the defendant failed to inform Pennsylvania University Police officers that he was armed when he had an interaction with them that resulted in three non-traffic summary offenses were issued.¹ Under section 6109(i), "A license to carry firearms may be revoked by the issuing authority for good cause." Defendant states, "the Sheriff did not revoke the defendant's license for any reason as set forth in section (e)(1) of section 6109." (Brief for Defendant at 5.) The Commonwealth respectfully disagrees with the defendant's reading of the statute. Under 6109(e)(1)(i) an individual's character and reputation are relevant in determining whether to issue a license in the first place. Further, the Commonwealth Court has acknowledged an issuing authority's prerogative to examine and consider an applicant's character and reputation in not only the issuance but also the revocation of the license. See Harris v. Sheriff of Delaware County, 675 A.2d 400 (Pa.Cmwlt. 1996) (affirming the revocation of a license to carry when petitioner was only believed to be involved in illegal activity.)

Defendant had the opportunity to be heard on this issue and appeal the revocation of his Centre County license to carry concealed, but he did not exercise that appeal right. Accordingly, any challenge to the revocation of that license should be considered waived. Furthermore, legally the defendant does not have sufficient grounds to challenge the revocation of his Centre County license based on the plain language of section 6109(e)(1) and prior case law interpreting the discretion of the issuing authority in revoking licenses to carry concealed.

¹ Defendant included a copy of the letter sent to him by Centre County Sheriff Denny Nau as part of his brief for the court's review.

C. **Possession of a Firearm or Other Dangerous Weapon in Court Facility, 18 Pa.C.S.A. §913**

Defendant's sole argument in support of his contention that the Commonwealth failed to establish a *prima facie* case on this charge is the fact that there was no lock box facility available for him to check his weapon as required by 18 Pa.C.S.A. §913. Defendant readily admits that he brought a firearm in to District Judge Grine's court facility. (Brief for Defendant at 1.) The Commonwealth believes that the inquiry should stop there in terms of addressing whether a *prima facie* case was established. However, the defendant claims that his actions were somehow justified on the grounds that the court facility was not in compliance with the statute.

At the preliminary hearing the Commonwealth presented testimony of Jennifer Carson. Ms. Carson testified that at approximately 1:00 pm on September 2, 2008, she received a phone call from a male asking if he had court business, if there was a lock box for his gun. When she advised him there was not, the caller became persistent asking about the lock box. (N.T. Prelim. Hrng. 09/10/2008 at 6.) Approximately one hour later the defendant was observed running into the office with a camera and running out. Ms. Carson could not determine what the defendant was taking a picture of but surmised he was taking a picture of the posted notice prohibiting weapons in the building. (Id. at 7-9.) The defendant later returned around 4:00 p.m. for his court proceeding at which time he was found to be in possession of the firearm.

The Commonwealth asserts that the defendant's "justification" claim is legally without any merit. The non-compliance of a court facility with the mandates of section

913 does not give the defendant any right to knowingly violate the provisions of the law. In support of that assertion, the Commonwealth would point the court toward 18 Pa.C.S.A. §913(b)(3), which makes the offense a summary offense if the person fails to check the firearm at a lock box facility. The focus of this statute is not on the court facility's providing or not providing a lock box but rather on preventing weapons from entering in the court facility such that even when the court facility is in compliance and provides a lock box, a person is still in violation of the statute if he fails to make use of those lock boxes.

III. Conclusion

The Commonwealth established a *prima facie* case for all the elements of the offenses charged at the preliminary hearing. Accordingly, the defendant's petition for writ of habeas corpus should be denied.

Respectfully Submitted,

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Assistant District Attorney

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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 September 24, 2009 filed in the above-captioned matter. Said service was made on September 24, 2009.

SERVICE BY PERSONAL DELIVERY:

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