

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| COMMONWEALTH | : | No. CR-101-2018 |
| | : | |
| vs. | : | |
| | : | |
| | : | |
| GRANT LONG, | : | |
| Defendant | : | |

OPINION AND ORDER

This matter came before the court on March 26, 2018 for a hearing and argument on Defendant’s “Motion to Dismiss,” which in effect is an omnibus pretrial motion seeking the suppression of evidence on the basis that the Sheriff lacked probable cause to stop Defendant’s motorcycle and a determination that an expandable metal baton is not a prohibited offensive weapon. The relevant facts follow.

On July 8, 2017 at approximately 10:00 p.m., after the fireworks finished at the Jersey Shore Town Meeting celebration, Lycoming County Sheriff R. Mark Lusk was at the intersection of Allegheny and Broad Street assisting with traffic control at the request of the Tiadaghton Valley Regional Police Department (TVRPD).¹

Sheriff Lusk heard what sounded like the revving engine of a large vehicle. He was surprised when he observed the single headlight of Defendant’s black Harley Davidson turn onto Broad Street from Lincoln Avenue. As Defendant approached, he was driving very slowly and continually revving the engine, which was “exceptionally loud.” When Defendant was within 30 to 40 feet of Sheriff Lusk, he stopped his motorcycle.

Sheriff

¹Tiadaghton Valley Regional Police Department is the municipal police department for the Borough of Jersey Shore and the surrounding townships.

Lusk waved to signal Defendant to come closer to the intersection. Instead, Defendant put his kickstand down, but left the engine still running. Defendant then got off of his motorcycle and began walking toward Sheriff Lusk. Sheriff Lusk then began walking toward Defendant. Once they reached each other, Sheriff Lusk told Defendant that the motorcycle was extremely loud and he asked him to shut it off. Sheriff Lusk subsequently asked Defendant to push the motorcycle off of the road and over to the curb.

Defendant told Sheriff Lusk that he was “an Act 120 graduate from Mansfield” and he handed an expandable metal baton (or ASP) to Sheriff Lusk. The Sheriff asked Defendant if he was a law enforcement officer and where he worked but Defendant did not answer.

As Sheriff Lusk spoke to Defendant, he noticed an odor of alcohol emanating from Defendant’s person, Defendant’s words were not clear, his actions were slow and deliberate, and he sentences weren’t structured very well. Sheriff Lusk asked Defendant for his license. Defendant handed his license to Sheriff Lusk but then pulled it out of the Sheriff’s hand as he went to look at it. The Sheriff then pulled the license back.

Believing that Defendant was under the influence, Sheriff Lusk contacted the TVRPD to handle the incident. While the Sheriff waited for Officer Tyler Bierly to arrive, Defendant became agitated. Defendant offered to take his motorcycle and go home and then he wanted to walk home, but Sheriff Lusk did not allow Defendant to do so, because Defendant was in no condition to either drive or walk home.

Ultimately, Officer Bierly charged Defendant with possession of a prohibited offensive weapon, driving under the influence of a controlled substance, and disorderly

conduct.

Defendant first contends that the evidence must be suppressed because Sheriff Lusk did not have probable cause to arrest Defendant when the Sheriff stopped him on Broad Street. Defendant argues that he was detained when the Sheriff waved at him to come toward the intersection and then the Sheriff arrested him for disorderly conduct without probable cause. The court cannot agree.

The evidence presented at the hearing clearly shows that Sheriff Lusk never arrested Defendant. The interaction between Defendant and the Sheriff began as a mere encounter. Defendant, of his own volition, stopped his motorcycle in the middle of Broad Street, approximately 30 to 40 feet away from the intersection with Allegheny Street. As part of his traffic control duties that night, the Sheriff waved at Defendant to try to get him to stop his motorcycle closer to the intersection. Instead, Defendant engaged the kickstand, got off of his motorcycle, and began walking toward the Sheriff. In other words, Defendant essentially parked his motorcycle in the middle of Broad Street.

Once the Sheriff spoke to Defendant during their mere encounter, he reasonably believed that Defendant was under the influence of something, and he discovered that Defendant possessed a prohibited offensive weapon. At that point, the Sheriff merely detained Defendant until Officer Bierly arrived.

The Sheriff's beliefs were based upon his observations of an odor of alcohol emanating from Defendant's person, Defendant's slow and deliberate actions, Defendant's inability to say his words clearly, as well as Defendant's poor sentence structure.

Defendant also voluntarily showed the ASP or expandable baton to the

Sheriff. The Sheriff did not search Defendant's person or his motorcycle to find the ASP.

For Defendant's own safety and the safety of the public, Sheriff Lusk detained Defendant. Sheriff Lusk testified that Defendant was in no condition to drive the motorcycle or to walk home. Sheriff Lusk appropriately called the TVRPD and waited with Defendant for Officer Bierly to arrive. Officer Bierly was the one who arrested Defendant and filed the charges against him. Even assuming, for the sake of argument, that Sheriff Lusk arrested Defendant on Broad Street, the Sheriff had probable cause to arrest Defendant for DUI and possessing a prohibited offensive weapon.

Discerning no violation of Defendant's constitutional rights, the court will deny Defendant's request for suppression of evidence.

Defendant also contends that an extendable baton is not a prohibited offensive weapon. Again, the court cannot agree.

Section 908 of the Crimes Code states that a "person commits a misdemeanor of the first degree if, except as authorized by law, he ...uses, or possesses any offensive weapon." 18 Pa. C.S.A. §908(a). An offensive weapon is defined as:

Any bomb, grenade, machine gun, sawed-off shotgun with a barrel less than 18 inches, firearm specially made or specially adapted for concealment or silent discharge, any black jack, sandbag, metal knuckles, dagger, knife, razor or cutting instrument, the blade of which is exposed in an automatic way by switch, push-button, spring mechanism or otherwise, any stun gun, stun baton, taser or other electronic or electric weapon ***or other implement for the infliction of serious bodily injury which serves no common lawful purpose.***

18 Pa. C.S.A. §908(c)(emphasis added).

Both the Sheriff and Officer Bierly testified that the extendable metal baton was a law enforcement tool used to obtain compliance through the use of pain by striking an

individual in the upper arm/shoulder area or in the meaty part of the thigh. They also testified that the baton had no common lawful civilian use, and use by an untrained individual on other areas of the body, such as the head or chest, would cause serious bodily injury or even death.

Defendant noted that a metal baton was not one of the items specifically listed in the statute and, in his brief, he contended that the baton “exist[ed] for self-defense.” According to Defendant, as that is a common, lawful purpose, the item cannot be considered a prohibited offensive weapon.

The Pennsylvania appellate courts have found that a New York conviction for possession of a “billy” or “billy club” was the equivalent to a Pennsylvania conviction for possession of a prohibited offensive weapon. *Freeman v. Pa. State Police*, 2 A.3d 1259 (Pa. Commw. Ct. 2010). The *Freeman* court noted that a “billy” was a stick used to beat somebody and it inherently lacked a common lawful purpose. *Id.* at 1263. Like a billy club, an extendable baton is a stick used to beat somebody, which has no common lawful purpose in the hands of a civilian.

The mere fact that Defendant may have intended to use the baton in self-defense does not remove it from the definition of an offensive weapon. In *Commonwealth v. Lawson*, the Superior Court rejected the same argument with respect to a knife that could be locked in a 90-degree position as well as in a straight position. The Court stated:

Lawson also argues that self-defense is his common lawful purpose for carrying the knife. Under the definition suggested by Lawson, any weapon could be used for self-defense, and the purpose of the statute would be nullified. Moreover, the intent of the actor has been specifically held to be irrelevant with respect to the analysis of the elements of section 908(c).

977 A.2d 583, 585 (Pa. Super. 2009)(citation omitted and emphasis original).

Accordingly, the following order is entered.

ORDER

AND NOW, this ____ day of May 2018, the court DENIES Defendant's Motion to Dismiss.

By The Court,

Marc F. Lovecchio, Judge

cc: Scott Werner, Esquire (ADA)
Matthew Ziegler, Esquire
Work file