

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : CR-1417-2012; 964 MDA 2013  
: SA-34-2013; 965 MDA 2013  
vs. :  
: ROBERT WILLIAM LYONS. :

**OPINION**

**Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)**

**I. CR 1417-2012 / 964 MDA 2013**

This matter pertains to a two (2) hour stand-off that Defendant had with the state and local police departments.

**a. Criminal Information**

Initially, Defendant alleges that he was tried, convicted, and sentenced on three charges that were not contained in the criminal information. The Court does not agree. By order dated March 4, 2013, the Court granted an amendment of the criminal information, filed on September 7, 2013; on that date, Counts 14, 15, and 16 were added to the information to reflect charges of aggravated assault by physical menace, pursuant to 18 Pa. C.S. § 2702(a)(6). Additionally, by order dated March 5, 2013, the Court re-numbered the counts in the criminal information for purposes of jury trial. In this matter, Defendant was being charged with two counts of persons not to possess, Counts 4 and 5 of the original information; these counts were tried separately from the remaining counts of the information. In order for the verdict slip to appear less prejudicial, the Court renumbered the counts of the criminal information so that the jury would see a consecutive listing of Counts 1 through 13. Therefore, Counts 11, 12, and 13 as described in the verdict, verdict order, and sentencing order actually pertain to Counts 14, 15, and 16 of the criminal information. Thus, Defendant's argument lacks merit.

**b. Acquittal**

Next, Defendant argues that he should have been acquitted on Counts 11, 12, and 13 because the jury acquitted him on Counts 1, 2, and 3. The Court does not agree. Counts 1-3 pertain to the aggravated assault of a police officer, pursuant to 18 Pa. C.S. § 2702(a)(2)<sup>1</sup>, while Counts 11-13 pertain to the aggravated assault of an enumerated official by physical menace, pursuant to 18 Pa. C.S. § 2702(a)(6)<sup>2</sup>. These offenses are separate crimes with separate and distinct elements. Therefore, an acquittal of Counts 1, 2, and 3 do not necessitate an acquittal of Counts 11, 12, and 13, and Defendant’s argument lacks merit.

**c. Jury Instructions**

Defendant next alleges that the Court failed to properly instruct the jury of Counts 1, 2, 3, 11, 12, and 13. The Court does not agree. Counts 1, 2, and 3 pertain to the aggravated assault of a police officer, pursuant to 18 Pa. C.S. § 2702(a)(2). The Court gave the standard jury instruction on these charges. N.T., 131:1-133:15. *See also* CRIMINAL JURY INSTRUCTIONS, 2nd ed. with 2012 supp., § 15.2702C. Likewise, Counts 11, 12, and 13 pertain to aggravated assault of an enumerated official by physical menace, pursuant to 18 Pa. C.S. § 2702(a)(6). The Court also gave the standard jury instruction on these charges. N.T., 138:7-139:20. *See also* CRIMINAL

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<sup>1</sup> 18 Pa. C.S. § 2702(a)(2) provides:

(a) *Offense defined.* --A person is guilty of aggravated assault if he:

\* \* \* \* \*  
(2) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c) or to an employee of an agency, company or other entity engaged in public transportation, while in the performance of duty...

*Id.*

<sup>2</sup> 18 Pa. C.S. § 2702(a)(6) provides:

(a) *Offense defined.* --A person is guilty of aggravated assault if he:

\* \* \* \* \*  
(6) attempts by physical menace to put any of the officers, agents, employees or other persons enumerated in subsection (c), while in the performance of duty, in fear of imminent serious bodily injury...

*Id.*

JURY INSTRUCTIONS, 2nd ed. with 2012 supp., § 15.2702I. Contrary to Defendant's assertion, the Court does not believe it erred by giving the standard jury instructions in this matter.

**d. Deadly Weapon Enhancement**

Defendant also argues that the Court erred by applying the deadly weapon enhancement to Counts 11, 12, and 13. Initially, Defendant argues that the Court erred by applying the enhancement to the three (3) separate counts; secondly, Defendant argues that the Court erred by applying the enhancement at all because the jury did not make a finding that a deadly weapon was used. The Court believes Defendant waived these issues.

An allegation that the Court improperly applied the deadly weapon enhancement challenges the discretionary aspects of a sentence. *See, e.g., Commonwealth v. Rhoades*, 8 A.3d 912, 915 (Pa. Super. Ct. 2010), *appeal denied*, 25 A.3d 328 (Pa. 2011), *cert. denied*, 132 S. Ct. 1746 (U.S. 2012); *Commonwealth v. Raybuck*, 915 A.2d 125, 127 (Pa. Super. Ct. 2006); *Commonwealth v. Magnum*, 654 A.2d 1146, 1149 (Pa. Super. Ct. 1995); *Commonwealth v. Reading*, 603 A.2d 197, 199 (Pa. Super. Ct. 1992).

Issues challenging the discretionary aspects of a sentence must be raised in a post-sentence motion or by presenting the claim to the trial court during sentencing proceedings. Absent such efforts, an objection to a discretionary aspect of a sentence is waived.

*Rhoades*, 8 A.3d at 915 (citations omitted). *See also Commonwealth v. Shugars*, 895 A.2d 1270, 1273-74 (Pa. Super. Ct. 2006). In this matter, Defendant did not file any post-sentence motions. Additionally, this Court does not believe that Defendant objected to the use of the deadly weapon enhancement at the time of sentencing.<sup>3</sup> Therefore, the Court believes that Defendant waived his deadly weapon enhancement issues.

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<sup>3</sup> Defendant did not request transcripts of the sentencing proceeding to be made.

Even if Defendant did not waive these issues, it is not within the Court's discretion to refuse to apply the deadly weapon enhancement, when appropriate. *Commonwealth v. Raybuck*, 915 A.2d 125, 129 (Pa. Super. Ct. 2006). *See also Commonwealth v. Magnum*, 654 A.2d 1146, 1150 (Pa. Super. Ct. 1995) (providing that the sentencing court may depart from the guidelines after considering first the range including the deadly weapon enhancement); *Commonwealth v. Reading*, 603 A.2d 197 (Pa. Super. Ct. 1992) (remanding the matter for resentencing because the sentencing court failed to consider the deadly weapon enhancement provision of the sentencing guidelines when a deadly weapon, to wit: a gun, was possessed during the commission of the convicted crime). The deadly weapon enhancement provision of the sentencing guidelines provides that any loaded or unloaded firearm should be considered to be a deadly weapon for enhancement purposes. 204 Pa. Code § 303.10(a)(i). *See Raybuck*, 915 A.2d at 128. The guidelines provide that the *Court*, not the jury, must determine if the offender possessed the deadly weapon during the course of the convicted offense. 204 Pa. Code § 303.10(a). *See Raybuck*, 915 A.2d at 128. If the convicted possessed a deadly weapon during the commission of the convicted crime, the Court *must* apply the guidelines outlined in the deadly weapon enhancement matrix. *Raybuck*, 915 A.2d at 129. Turning to the facts of this matter, Defendant possessed a rifle during his encounter with the state and local police departments for which he was convicted on separate counts. Therefore, the Court was required to apply the deadly weapon enhancement guidelines when calculating Defendant's sentence as to these convictions.

**e. Unreasonable and Excessive Sentence**

Lastly, Defendant argues that his sentence is unreasonable and excessive. As with Defendant's deadly weapon enhancement arguments, the Court believes that Defendant waived this issue. Defendant's argument that his sentence is excessive raises a challenge to the

discretionary aspects of his sentence. *See Shugar*, 895 A.2d at 1273-74. As previously provided, issues challenging the discretionary aspects of a sentence must be raised in a post-sentence motion or by presenting the claim to the court during the sentencing proceedings. *Id.*; *Rhoades*, 8 A.3d at 915. As Defendant failed to file a post-sentence motion, the Court believes Defendant waived his excessive sentence issue. However, when considering the facts surrounding Defendant's case, the Court does not believe it imposed an excessive or unreasonable sentence upon Defendant.

## II. SA 34-2013 / 965 MDA 2013

This matter pertains to three (3) citations that Defendant received from the Pennsylvania Game Commission for alleged violations of the Wildlife Code, 34 Pa. C.S. §§ 101-2965.

### a. Corpus Delicti Rule

Defendant argues that the Court erred by admitting his statements to a Wildlife Conservation Officer as proof of his culpability in violation of the *corpus delicti* rule. The Court does not agree. The *corpus delicti* rule provides that the fact finder cannot base a criminal conviction upon solely the accused's extra-judicial admission. *Commonwealth v. Bullock*, 868 A.2d 516, 526 (Pa. Super. Ct. 2005), *aff'd*, 913 A.2d 207 (Pa. 2006), *cert. denied*, 550 U.S. 941 (2007); *Commonwealth v. Ahlborn*, 657 A.2d 518, 520-21 (Pa. Super. Ct. 1995), *appeal denied*, 688 A.2d 170 (Pa. 1997).

Establishing the *corpus delicti* in Pennsylvania is a two-step process. The first step concerns the trial judge's *admission* of the accused's statements and the second step concerns the fact finder's *consideration* of those statements. In order for the statement to be admitted, the Commonwealth must prove the *corpus delicti* by a preponderance of the evidence. In order for the statement to be considered by the fact finder, the Commonwealth must establish the *corpus delicti* beyond a reasonable doubt.

*Bullock*, 868 A.2d at 526 (citations omitted) (emphasis in original).

During the officer's testimony of his encounter with Defendant on November 7, 2012, the officer provided that Defendant admitted to taking a deer that the officer found in Mr. Hall's field; the officer charged Defendant with this taking at citation NT 636-2012. N.T., 10:7-15, 11:18-21, 13:18-14.2, and 19:7-9. During trial, Defendant did not object to the officer's testimony regarding Defendant's admissions. *See* N.T., 9:24-15:4.<sup>4</sup> Therefore, the Court admitted these statements. Yet, as to the second prong of the *corpus delicti* test, the Court did not consider Defendant's alleged admissions to the officer concerning citation NT 636-2012; this fact is evidenced by the Court's grant of Defendant's appeal and dismissal of that citation.<sup>5</sup>

Pertaining to Defendant's conviction on the remaining two (2) citations (NT 637-2012 and NT 638-2012), evidence of record establishes that Defendant possessed these two (2) sets of antlers in violation of 34 Pa. C.S. § 2307(a). Neither of these two (2) remaining citations pertained to the initial deer found in Mr. Hall's field; instead, these citations pertained to antlers found on Defendant's property after the execution of a search warrant. N.T., 19:2-3 and 22:18-21. As to these remaining citations, the Court based Defendant's convictions upon the officer's testimony as to what he observed when he executed the search warrant, along with his expertise as a fourteen-year employee with the Pennsylvania Game Commission. N.T., 15:15-19:3.

Based upon these facts, the Court believes that Defendant's *corpus delicti* argument lacks merit because the Court did not consider Defendant's alleged confessions when determining whether the Commonwealth proved its case beyond a reasonable doubt.

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<sup>4</sup> The first mention of the *corpus delicti* rule or an objection to the officer's statements occurred during Defendant's closing arguments to the Court. *See* N.T., 30:22-33:16.

<sup>5</sup> The Court found that there was not sufficient evidence to tie the deer found in Mr. Hall's field to Defendant. *See* Order, May 15, 2013.

**b. License Plate Identification**

Lastly, Defendant argues that the Court improperly admitted evidence of his license plate number and vehicle information during the trial; Defendant argues that the Court violated the hearsay rule, along with his confrontation and due process rights. The Court does not agree. During trial, the officer did not testify as to Defendant's license plate number or vehicle registration number. N.T., 8:5-9:22. The officer simply testified that his investigation lead to Defendant. N.T., 9:18-22. This fact is not hearsay nor does it violate Defendant's confrontation and due process rights. Therefore, the Court believes that Defendant's argument lacks merit.

For the reasons stated above, the Court respectfully requests our Superior Court to affirm its sentencing orders of May 15 and 21, 2013.

BY THE COURT,

\_\_\_\_\_  
Date

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Richard A. Gray, J.

cc: Mary Kilgus, Esq. – Counsel for Defendant  
District Attorney's Office  
Gary L. Weber, Esq. – Lycoming County Reporter