

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-825-2023
	:	
vs.	:	
	:	OMNIBUS MOTION
MANDON WATTS,	:	
Defendant	:	

OPINION

On or about June 16, 2023, the Defendant was charged with one count of Criminal Attempt – Make Repairs/Sell/Etc. Offensive Weapons and one count of Criminal Attempt – Possessing an Instrument of Crime. Both counts are misdemeanors of the first degree. A preliminary hearing was held on June 26, 2023, after which both counts were held for court. Defendant waived his arraignment which was scheduled for July 17, 2023. The Defendant filed an Omnibus Pretrial Motion on August 4, 2023. Argument was held on November 6, 2023, at which time the Defendant was present and represented by Robert A. Hoffa, Esquire. Joseph Ruby, Esquire, appeared on behalf of the Commonwealth.

Defendant’s Omnibus Pretrial Motion includes a Petition for Writ of Habeas Corpus with regard to both counts. Additionally, it included a Motion to Suppress Evidence, a Motion to Reserve Right, and a Motion for Additional Discovery. The Court will first address the Petitions for Writ of Habeas Corpus.

Defendant’s counsel argues that the Commonwealth failed to establish a prima facie case that the Defendant did, with the intent to commit a specific crime, take a “substantial

step” towards the commission of that crime. The definition of *prima facie* is not precise or without difficulty. On the one hand, it has been described as evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime. Commonwealth v. Packard, 767 A.2d 1068, 1070 (Pa. Super. 2001), *abrogated on other grounds by* Commonwealth v. Dantzler, 135 A.3d 1109, 1112 n.5 (Pa. Super 2016). On the other hand, it has been defined as evidence, which if accepted as true, would warrant submission of the case to a jury. Packard, *id.*; Commonwealth v. Karetny, 880 A.2d 505, 514 (Pa. 2005); Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2001). The weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person has committed the offense. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2011). The evidence must be read in a light most favorable to the Commonwealth and inferences reasonably drawn from the evidence of record which would support a verdict of guilty, must be given effect. Id.

With regard to Count 1, the Criminal Complaint alleges that the Defendant “attempted to procure a ‘Glock switch’ from an international company by utilizing the United States Postal Service (USPS), and addressing the parcel to himself at his home address.” The Defendant argues that a Glock switch is not an offensive weapon under the statute for which he was charged with criminal attempt and, furthermore, the Commonwealth did not sufficiently establish that the Defendant took a “substantial step” toward possessing an offensive weapon by being the one who ordered, paid for, or requested delivery of the item to his home.

Pursuant to 18 Pa.C.S. §908, “Offensive weapons” is defined as “[a]ny 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 blackjack, sandbag, metal knuckles, 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.” Defendant argues that a “Glock switch” alone cannot be considered an offensive weapon as it must be attached to a handgun to be functional. While this Court finds it a reasonable conclusion that a “Glock switch” is intended to be used in conjunction with a firearm for the infliction of serious bodily injury, the item in and of itself does not meet the statutory definition of an offensive weapon. For that reason, this Court finds that the Commonwealth has failed to meet its burden of establishing a *prima facie* case of Criminal Attempt - – Make Repairs/Sell/Etc. Offensive Weapons and the Defendant’s Petition for Writ of Habeas Corpus with regard to Count 1 is granted.

With regard to Count 2, the Criminal Complaint alleges that the Defendant did attempt to possess an instrument of crime with the intent to employ it criminally by “attempting to procure a ‘Glock switch’ from an international company, by utilizing the United States Postal Service (USPS) as a delivery service, and addressing the parcel to himself at his home address. Pursuant to 18 Pa.C.S. §907(d), an “Instrument of crime” is defined as “(1) [a]nything specially made or specially adapted for criminal use; or (2) [a]nything used for criminal purposes and possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have.” The Court finds that a “Glock switch” meets the definition of an instrument of crime.

The Commonwealth submitted a transcript of the Defendant's preliminary hearing on June 26, 2023, and relied on that for purposes of the Petition for Habeas Corpus argument. At the preliminary hearing Pennsylvania State Trooper Brian Seibert testified "on June 14th I received information from Homeland Security Investigations that U.S. Boarder (sic) and Customs had intercepted a package that contained an auto sear. The package was directed to Mandon Watts at [redacted]." (Preliminary Hearing Transcript, 6/26/23, pg. 4). Trooper Seibert confirmed that he had both the packaging and the contents at the station. When asked where the package came from, Trooper Seibert testified "I don't recall off the top of my head but so – it was from overseas so essentially it came from Beijing, China, but then the postal service puts their on label on it . . ." Id. at 5. On cross-examination, Trooper Seibert testified that he could not recall whether the Beijing, China, label indicated who the package was being shipped to, or whether the USPS label went over top of the Beijing, China, shipping label. Id. at 5-6. Trooper Seibert further testified that the label he saw addressed to the Defendant was from the USPS. Id. Trooper Seibert, however, testified that he did not have any receipts for the purchase of the item, no bank account information that would indicate who paid for it, and did not know who actually placed the order or how it was placed. Id. at 6-7.

Based on the evidence presented with regard to Count 2, the Court finds that the Commonwealth failed to meet its burden of establishing a *prima facie* case of Criminal Attempt – Possessing an Instrument of Crime. While one may assume a package will only be addressed and sent to a recipient upon request, a criminal case cannot be based upon an assumption in lieu of evidence. Here, the Commonwealth failed to sufficiently establish that

the Defendant took a “substantial step” towards possessing an instrument of crime and for that reason, the Defendant’s Petition for Writ of Habeas Corpus with regard to Count 2 is granted.

The Court having granted the Defendant’s Petitions for Writ of Habeas Corpus, will not address the remaining Motions contained in Defendant’s Omnibus Pre-Trial Motion as they are deemed moot.

The Court hereby enters the following Order:

ORDER

AND NOW, this 5th day of **February, 2024**, upon consideration of Defendant’s Omnibus Pre-Trial Motion and for the reasons set forth above, the Petitions for Writ of Habeas Corpus is **GRANTED**. All other Motions in the Defendant’s Omnibus Pre-Trial Motion are **DISMISSED AS MOOT**.

By the Court,

Ryan M. Tira, Judge

RMT/jel

CC: DA
Peter Campana, Esquire
Gary Weber, Esquire
Jennifer Linn, Esquire