

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE  
DIVISION II

STATE OF TENNESSEE

VS.

LEONARD EMBODY

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Case No. 2014-B-1019

Filed

AUG 26 2014

By: MM

ORDER

This cause came to be heard on August 15, 2014, regarding the Defendant's motion to dismiss the indictment in this case. On April 29, 2014, the Davidson County Grand Jury indicted the Defendant on one count of possession of a prohibited weapon—a silencer—in violation of T.C.A. § 39-17-1302(a)(5). The Defendant now moves to dismiss the indictment, alleging that he lawfully possessed the silencer under T.C.A. § 39-17-1302(b)(7), as he had a federal license to possess it and had registered it in the National Firearms Registration and Transfer Records. At the conclusion of the hearing on the motion, the Court took the matter under advisement and now issues this Order regarding the requested relief.

Testimony

At the hearing, the Court first heard testimony from the Defendant. The Defendant testified that he does not deny having possessed the silencer. He testified that he was a licensed firearms dealer when he purchased the silencer from another dealer. The Defendant identified Exhibit 1 as a Special Tax Registration and Return, which reflects that he paid the requisite tax to deal in National Firearms Act ("NFA") weapons, including silencers. The Defendant identified Exhibit 2 as a Williamson

County zoning application, wherein he applied to run his firearm business from his home in Williamson County. He testified that federal law requires that he comply with local zoning ordinances in order to be a licensed firearm dealer. He also identified his Williamson County business license as the second page in Exhibit 2. The Defendant identified Exhibit 3 as two tax receipts, which reflect that he paid the tax discussed in connection with Exhibit 1. The Defendant identified Exhibit 4 as a federal firearms license bearing his name. He testified that the license expires on March 1, 2015. The Defendant identified Exhibit 5 as an application for tax-exempt transfer of a firearm, wherein his application to receive the silencer at issue was approved by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). He testified that the form contained in Exhibit 5 is a confidential tax form under 26 U.S.C.A. § 6103, and that "no one should be asking to look at [it]." The Defendant further testified that he is familiar with the provisions of T.C.A. § 39-17-1302. He testified that subdivision (b)(7) of that statute permits him to possess silencers, provided that he retains proof of registration. He testified that he did retain proof of registration, referring to Exhibit 5 and reiterating that the document is confidential. He further emphasized that state law requires him to "retain" proof of registration, not to "carry" it. He testified that the statute does not require individuals to present proof of registration on demand. He testified that he told the police officers that he did not have to show them his proof of registration when they stopped him. He testified that, in addition to the silencer, the police seized his rifle, rifle case, lock, sling, ATF Form 3 (Exhibit 5), and tape that he used to seal the case.

On cross-examination, the Defendant testified that he could not recall how many times he was asked by police to present the proof of registration for the silencer,

but he conceded that he was asked several times. He testified that he refused to show them the document because it is confidential under 26 U.S.C.A. § 6103, and T.C.A. § 39-17-1302(b)(7) only requires that he retain, not present, the document. He testified that he had the document in his rifle case when the police stopped him. He testified that he was carrying the document because 26 U.S.C.A. § 6103 provides that a federal officer can demand to see it.

On redirect examination, the Defendant testified that the ATF Form 3 was discovered by the officers when he was arrested.

The Court also heard testimony from Sergeant Mark Woodfin of the Metro Nashville Police Department. Sergeant Woodfin testified that he was on duty on July 29, 2013. He testified that on that day, he received a call from police dispatch that someone was carrying a weapon in the area of 5<sup>th</sup> Avenue near the bus garage. He testified that by the time he arrived in the area, other officers located the Defendant on 2<sup>nd</sup> Avenue between the courthouse and the Criminal Justice Center.<sup>1</sup> He testified that officers stopped the Defendant at the intersection of 2<sup>nd</sup> Avenue and Gay Street. He testified that the police had received multiple calls that day from citizens who were concerned when they saw the Defendant. He testified that he spoke with the Defendant when he arrived on the scene. He testified that the Defendant was wearing blue jeans, a white shirt, and a tan bulletproof vest on top of his shirt. He testified that the Defendant also had what appeared to be an assault rifle encased in a molded plastic case strapped to his back. He testified that the Defendant refused to identify himself. He testified that

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<sup>1</sup> The area the sergeant described includes the A.A. Birch Building, which houses the Criminal Courts and General Sessions Courts, and the Historic Courthouse, which houses the Circuit and Chancery Courts, as well as City Hall. The Criminal Justice Center includes the county jail and the Metro Nashville Police Department Headquarters.

several people were gathering along the street to watch the encounter, which was causing a disturbance. He testified that he took the Defendant to an area away from the crowd. He testified that a Tennessee Highway Patrol trooper arrived on the scene and identified the Defendant as Mr. Embody. He testified that the trooper knew the Defendant from an incident that occurred at the Supreme Court Building earlier that day.

Sergeant Woodfin testified that he took the weapon from the Defendant. He testified that the weapon was in a homemade plastic case. He testified that the plastic was molded over the rifle, which he described as an "AR-15 type weapon." He testified that the case was fashioned so that a piece of molded plastic fit on each side of the rifle, and the two pieces were wrapped and held together with electrical tape. He testified that there was also a lock around the plastic shell. He testified that the tape only held the case together very loosely. He testified that he returned the weapon to the Defendant and released him because he was unsure about whether the Defendant was breaking the law. He testified that the more he thought about it, he felt very uncomfortable because he believed that the weapon was loaded and the Defendant was in close proximity to the courthouses and the Criminal Justice Center. He testified that he was also concerned by how easily the Defendant could remove the case and access the weapon. He testified that when he released the Defendant, the Defendant walked up 2<sup>nd</sup> Avenue to James Robertson Parkway, the intersection where the courthouses and Criminal Justice Center are located.

Sergeant Woodfin testified that because he felt uncomfortable, he contacted his supervisor and informed him of the situation. He testified that officers stopped the Defendant again on Deaderick Street at 4<sup>th</sup> Avenue. Sergeant Woodfin identified several

photographs of the Defendant and the weapon, which were admitted into evidence as State's Exhibit 1. He testified that during the second interaction, the Defendant spoke with two police lieutenants and a commander. He testified that the officers were trying to gather information, but the Defendant refused to give them any whatsoever. He testified that one of the lieutenants, who is more familiar with assault weapons, took the rifle from the Defendant and examined the exterior of the case. He testified that after examining the shape of the case, the lieutenant suspected that there was a silencer attached to the weapon and asked the Defendant if he had a registration for the silencer, but the Defendant would not respond. He testified that the Defendant was then arrested for possessing a prohibited weapon. He testified that the officers assumed the Defendant did not have the proper registration for the silencer. He testified that the officers took possession of the weapon. He testified that he obtained a search warrant and opened the rifle case. He testified that the case contained an unloaded assault rifle with a silencer attached, as well as the ATF Form 3. He testified that at some time thereafter, he spoke with an ATF agent.

On cross-examination, Sergeant Woodfin testified that it is not against the law to wear a bulletproof vest. He testified that it is also legal to possess a rifle in public. He testified that the issue that led to the Defendant's arrest was the possession of a silencer. He testified that the officers did pull the plastic shell apart and peer inside the case, without opening it all the way, prior to obtaining a search warrant. He testified that this was done to confirm that there was a silencer on the weapon. He testified that he took the case completely apart after obtaining a search warrant. He testified that when he took the case apart he found the ATF Form 3. He testified that he was not familiar

with this form until he spoke with an ATF agent. He testified that he assumed that the form in the case was the correct form, but he did not know because he had never seen an ATF Form 3 before. He testified that he did not obtain a search warrant and discover the form until after the Defendant was arrested and processed into the jail. He testified that the Defendant had refused to answer any questions or even to tell the officers that the silencer was properly registered.

### Analysis

Before addressing the dispositive issue, the Court wants to commend Sergeant Woodfin and the other officers for the way they handled this case. The police received numerous calls from concerned citizens regarding a man walking all over downtown Nashville carrying an assault rifle and wearing a bulletproof vest. In light of several mass shooting tragedies that have occurred throughout the country fairly recently, it makes perfect sense that people would be concerned about this. The police responded and made contact with the Defendant, but the Defendant refused to tell them his name or give them any information. The police then learned that the Defendant had been involved in an incident around the Supreme Court Building earlier that day. In spite of all of this, Sergeant Woodfin determined that he did not have a basis upon which to arrest the Defendant or seize his weapon, and he let the Defendant go. The Defendant then proceeded to walk toward the hub of the Nashville government, where the courts, city hall, police headquarters and jail are located. Hundreds of people are walking around this area at any given time. Sergeant Woodfin was concerned about the Defendant, who had been uncooperative with the police, walking around this area carrying what he thought was a loaded assault rifle and wearing a bulletproof vest.

Sergeant Woodfin exercised even more restraint, and instead of immediately stopping the Defendant again to address his concerns, he contacted his supervisors. The supervisors apparently shared the same concerns and stopped the Defendant a second time. The Defendant still refused to cooperate with the officers and would not give them any information whatsoever. The police were faced with a serious public safety concern that day. The Defendant was causing a scene, to the extent that the media became involved, and the police were left with the choice of letting a man walk all over town inciting fear in the public and possibly using the assault rifle or making what they believed at the time to be a valid arrest.

It should be noted that the Defendant could have prevented all of this. Even if he believed that he did not have to produce a document proving he had registered the silencer, he could have, at the very least, told the officers that the silencer was registered. Instead, the Defendant refused to answer any questions and put the officers in the position they were in. The Defendant may have been within his rights to possess the weapon and to refuse to speak to the officers, but the propriety of his conduct was seriously lacking. As far as this Court is concerned, the officers acted reasonably given the circumstances of the situation.

Turning to the issue at hand, the question remains whether the Defendant's motion to dismiss must be granted. It is not disputed that the Defendant possessed a silencer, which is a prohibited weapon in this state unless it is validly registered with the federal government. T.C.A. § 39-17-1302(a)(5). The State concedes that the silencer is validly registered with the federal government. Thus, the Defendant relies on T.C.A. § 39-17-1302(b)(7), which provides:

(b) It is a defense to prosecution under this section that the person's conduct:

(7) Involved acquisition or possession of a sawed-off shotgun, sawed-off rifle, machine gun or firearm silencer that is validly registered to the person under federal law in the National Firearms Registration and Transfer Records. A person who acquires or possesses a firearm registered as required by this subdivision (b)(7) shall retain proof of registration.

According to the Defendant, he complied with this statute because the silencer was validly registered, and he “retained” proof thereof. The State argues that the Defendant should have presented the registration form to the police upon request.

The question of whether the Defendant was required to carry proof of his federal registration and present it to local law enforcement upon request is one of statutory interpretation. Specifically, the meaning of the word “retain” as used in the statute is at issue. The Legislature’s intent in using the word “retain” is clear in light of other statutory provisions. For example, with regard to *handgun* carry permits, the law provides:

The permit holder shall have the permit in the holder's immediate possession at all times when carrying a handgun and shall display the permit on demand of a law enforcement officer.

T.C.A. § 39-17-1351(n)(1). Similarly, for a person to lawfully carry a handgun in this state based on a permit or license issued in another state, “the person must be in possession of the permit or license at all times the person carries a handgun in this state.” Id. § 39-17-1351(r)(2). If the Legislature had intended for a person carrying an otherwise prohibited weapon—in this case, a silencer—to be required to carry proof of registration with him when carrying the weapon, the Legislature would have made this intent clear. The Court finds that the Defendant was in compliance with state law by



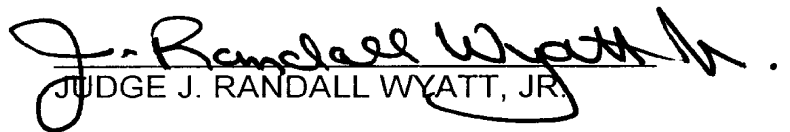
retaining proof of his federal registration in his records.<sup>2</sup> It makes no difference, under these particular facts, that the Defendant actually had the ATF Form 3 with him during this encounter, or whether the form was confidential, because he was not required under state law to carry it or to show it to local law enforcement. Based on the Defendant's valid federal registration, the Court is of the opinion that the defense under T.C.A. § 39-17-1302(b)(7) applies and the case must be dismissed.

Conclusion

The Defendant would be well-advised—for the safety of the public, the police, and himself—to avoid situations like this in the future. The Defendant can exercise his Second Amendment rights without scaring or endangering the public, and without being uncooperative with a legitimate law enforcement investigation. However, the Court finds that the Defendant did not commit an offense under T.C.A. § 39-17-1302(a)(5) in this case.

It is therefore hereby ORDERED, ADJUDGED, and DECREED that the motion to dismiss be GRANTED and that this case be DISMISSED.

Entered this 26 day of August, 2014.

  
JUDGE J. RANDALL WYATT, JR.

cc: Honorable Chad Butler,  
Assistant District Attorney General;  
Honorable David Collins,  
Attorney for the Defendant.

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<sup>2</sup> The Court reiterates that while the Defendant was not required by law to present proof of registration to police, he could have at least told the officers that the weapon was properly registered with the federal government.