

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
 : CHESTER COUNTY, PENNSYLVANIA
 v.
 : CRIMINAL ACTION
 WILLIAM FENNIE : NO. 4532-10

Thomas M. O'Keefe, Esquire, Assistant District Attorney
 Michael J. Reed, Esquire, Attorney for the Defendant

ORDER

AND NOW, this 11th day of February, 2011, upon consideration of the Defendant's "Motion for Habeas Corpus," filed on January 3, 2011, and after oral argument heard on February 9, 2011, it is hereby **ORDERED** and **DECREED** that the Defendant's Motion is **DENIED**.¹

BY THE COURT:



JAMES P. MacELREE II

P.J.

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¹ The issues before the Court were (1) whether a piece of pizza constitutes a "solid object" within the meaning of 18 Pa.C.S.A. § 2707(b) and (2) whether the arrest of the Defendant was lawful.

Counsel stipulated that Officer Stuart Smith of the West Chester Police Department witnessed the Defendant throw a piece of pizza toward a roadway, striking the windshield of a vehicle moving in the lane of travel. Officer Smith contacted the Defendant and asked for identification, a request with which the Defendant repeatedly refused to comply. When advised by Officer Smith that he was under arrest, the Defendant physically struggled and resisted to such an extent that Officer Smith used a taser to subdue him.

Basic chemistry principles provide that matter is made from atoms which are combined into molecules. Matter normally exists as a solid, a liquid, or a gas. In the solid phase, the molecules are closely bound to one another by molecular forces. A solid holds its shape, and the volume of a solid is fixed by the shape of the solid. In the liquid phase, the molecular forces are weaker than in a solid. A liquid will take the shape of its container with a free surface in a gravitational field. In the gas phase, the molecular forces are very weak. A gas fills its container, taking both the shape and the volume of the container. NASA, Phases of Matter, Glenn Research Center (September 9, 2010).

Using personal funds, I bought some pizza in order to test its physical properties. The first thing I noticed is that it came in a box (a.k.a. container). It was resting in the bottom of the container, held in place by gravity, and did not take up the shape or full volume of the container. I therefore concluded it was not a gas. My next experiment was to attempt to slice the pizza into six pieces because I was not hungry enough to eat eight pieces. I observed that the slicing process actually produced six separate and distinct pieces which did not re-form to take on the shape of the bottom of the container. I therefore concluded it was not a liquid. My next experiment was to attempt to pick up one of the slices and eat it. I observed that the slice of pizza retained its basic shape, although it did droop a bit at the end. Further, I was able to bite off one piece which required some chewing before I could swallow it. I put the remainder on top of a paper towel and observed that it stayed in place, did not spill onto my desk, and held its shape (less one bite). I therefore concluded that it was a solid.

I would like to thank the esteemed defense attorney for giving me the opportunity to order an early lunch and spend the rest of my lunch time writing this extremely weighty opinion. I hope his client enjoyed paying his lawyer for the time used in making his completely frivolous argument. I am inclined to assess the defense attorney a \$500 summary penalty for advancing such frivolity which wasted the time of the District Attorney, the police, and the Court.

I find that the piece of pizza thrown constitutes a "solid object" and satisfies the required element of 18 Pa.C.S.A. § 2707(b). Furthermore, because Officer Smith's personal observations provided probable cause to arrest the Defendant, I find that the arrest was a lawful one.