

MEMO

To: Richard M. Lester, Joey Lester, Sarge

From: Sy Nazif

Date: May 29, 2009

Re: Legality of Decorative Motorcycle Leashes

Legality of Decorative Motorcycle Leashes

It has recently come to the attention of this firm that a number of patch wearers have been arrested for carrying decorative motorcycle leashes, sometimes called "getbacks whips" or "getbacks." The leashes are made of braided leather, usually in club colors. At the end of each leash is a metal clip, substantially similar to what one would find on the end of a big dog's leash. Typically, they are attached to a motorcycle's handlebars for decorative purposes.

Recently, in various parts of the state of California, law enforcement officers have been arresting those people who have them attached to their handlebars, and charging them with violation of Penal Code section 12020(a). The statute makes it unlawful to, among other things, possess a wide variety of weapons. This list of "weapons" includes a number of items that may be everyday objects modified to be used as weapons.

In relevant part, the statute reads,

"Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:
(1) Manufactures or . . . gives, lends, or possesses . . . any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag."

Based upon a review of the relevant case law, it is apparent that PC 12020(a) is being applied here by categorizing the decorative leashes as "slungshots." The California Court of Appeals decision of *People v. Fannin* is on point. In *Fannin*, the defendant was arrested and charged under PC 12020(a) for carrying a "slungshot" – in that case, a "two-foot length of metal chain, with a heavy padlock attached to one end." (*People v. Fannin* (2001) 91 Cal.App. 4th 1399, 1401.) Fannin challenged the statute as unconstitutionally vague and overbroad. The court upheld the constitutionality of the statute, but provided informative definitions, and crucial specificity to its enforcement, which could greatly assist in the defense of such a charge.

In upholding the constitutionality of the statute, both generally and as applied to Fannin, the court offered a definition of the word "slungshot" as used in the statute. "California case law provides a

clear definition of *slungshot*: 'a small mass of metal or stone fixed on a flexible handle, strap, or the like, used as a weapon.' (*Id.* at 1401-02, citing *People v. Williams* (1929) 100 Cal.App.149, emphasis added.)

It would appear that this definition could reasonably be applied to the decorative leashes at issue here. Specifically, the leashes are a small mass of metal (the metal clip) on a flexible handle or strap (the leather strap).

However, *Fannin* provides language that may be crucial in defending a charge of PC 12020(a) for possession of a decorative motorcycle leash. The *Fannin* Court examined several cases wherein the defendants were charged with carrying objects that were obviously designed to be used as weapons, such as "56 one-inch metal washers, strung on rawhide . . . , knotted to hold the washers together and form a seven-and-a-half-inch handle that could be looped around the wrist." In those circumstances, mere possession was enough to support a conviction under the statute.

However, the Court acknowledged that many legal, everyday items, such as a bicycle lock or table leg, could fall within the scope of the statute. As such, the government may look to suspicious circumstances to prove that such an item was intended to be used as a weapon.

The Court explains, "The Legislature here sought to outlaw the classic instruments of violence and their homemade equivalents; the Legislature sought likewise to outlaw possession of the sometimes-useful object when the attendant circumstances, including the time, place, destination of the possessor, the alteration of the object from standard form, and other relevant facts indicated that the possessor would use the object for a dangerous, not harmless, purpose." (*Id.* at 1403, citing *People v. Grubb* (1965) 63 Cal.2d 614.)

The Court continues, however, to explain that intent to use such an object as a weapon is not vital to a conviction under the statute. "Intent to use a weapon is not an element of the crime of weapon possession. [Citations.] However, if the object is not a weapon per se, but an instrument with ordinary innocent uses, the prosecution must prove that the object was possessed as a weapon. The only way to meet that burden is by evidence indicating that the possessor *would use* the object for a dangerous, not harmless, purpose." (*Id.* at 1404, citations omitted; emphasis in original.)

The Court continues, "The evidence may be circumstantial, and may be rebutted by the defendant with evidence of 'innocent usage.' [. . .] Intended use is not an element of weapon possession, but the prosecution always bears the burden of proving that the defendant possessed a weapon." (*Id.*, citations omitted.)

Defending of the Charge of PC 12020(a)

In short, the biggest question in defense of this charge is whether decorative motorcycle leashes have an ordinary, innocent use. The simple, obvious, and convenient answer is YES – the leashes have an ordinary, innocent use – they are decorative! Bikes and cars alike are often adorned with items that have no purpose other than decoration or aesthetics – from fancy rims to “L.A. Lakers” flags. This would seem to be an ordinary, innocent use. As such, the burden should fall on the prosecution to show that the possessor would use the object for a dangerous purpose.

In *Fannin*, the prosecution met this burden by the admission of the defendant – there, the defendant told the police that he carried the metal chain “for protection.” As always, it is imperative that NO ADMISSION be made to law enforcement. A seemingly innocuous statement such as “it’s for self-defense” could all but seal the fate of a motorcyclist who is in possession of these decorative items.

In summary, the Court offered the following: “[A] slungshot is a striking weapon consisting of a heavy weight [made of metal or rock] attached to a flexible handle. An ordinary object such as a bicycle lock . . . may be a slungshot. The prosecution bears the burden of proving the defendant possessed such an object as a weapon. The prosecution may meet that burden with circumstantial evidence, or with the defendant’s statements explaining why he carried the object. On the other hand, the defendant may present evidence that he possessed the object innocently, for the purposes served by its legitimate design instead of those proscribed by Penal Code section 12020.” (*Id.* at 1406.)

Tip on Potentially Avoiding Prosecution

Recently, I spoke to one of the manufacturers of these decorative leashes, Ms. Bonnie Collins of Cactus Leathers. Bonnie is a member of the Graveyard Gamblers MC, and a member of the San Diego COC. Bonnie advised me that she is aware of recent police harassment with regard to her leashes, and has advised purchasers of her products that they “zip tie” them to their bikes. This advice has a logical appeal, as it would make the leash very difficult to remove from a bike, rendering it nearly worthless as a “potential weapon.” It should be noted, though, that no information is yet available as to what reaction this will get from law enforcement (i.e., whether they would still file charges for violation of the statute), or how it effective its use would be in a criminal defense.