

**IN THE COUNTY COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR ST LUCIE COUNTY, FLORIDA**

STATE OF FLORIDA
Plaintiff,

vs.

Case No. 562012MM000530
Judge: Clifford H. Barnes

DALE NORMAN
Defendant.

FOURTH DEFENSE MOTION TO DISMISS

COMES NOW the Defendant, DALE NORMAN, by and through undersigned counsel, and pursuant to Florida Rules of Criminal Procedure and the United States Constitution, respectfully moves this Honorable Court to dismiss Count one (1) of the Information, charging the Defendant, DALE NORMAN, with Open Carry of a Weapon, a violation of Fla. Stat. 790.053, and as grounds therefore, the Defense would show as follows:

1. On February 19, 2012, the Defendant, DALE NORMAN, was arrested by the Fort Pierce Police Department for a violation of *Fla. Stat. 790.053*, Open Carry of a Weapon.
2. That Dale Norman has a carry concealed weapons permit.
3. That subsequent to the Defendant's arrest, the Office of the State Attorney filed a one count Information charging the Defendant, DALE NORMAN, with that offense in violation of *Fla. Stat. 790.053*.
4. That pursuant to the United States Constitution, the right to bear arms is a constitutionally protected right.
5. The Defendant, DALE NORMAN, respectfully moves this Honorable Court pursuant to *Fla. R. Crim. Proc. 3.190*, and the Second Amendment to the United States Constitution, to dismiss the instant information asserting that the instant Statute, *Fla. Stat. 790.053*, violates the Second Amendment.
6. That as a result, the Defendant, DALE NORMAN, moves this Honorable Court for an Order dismissing Count one (1) of the instant information declaring *Fla. Stat. 790.053* unconstitutional for any and/or all of the reasons asserted herein.
7. That all other grounds shall be argued *ore tenus*.

MEMORANDUM OF LAW

The law states that the legislature's ability to impose crimes without a *mens rea* requirement is not unfettered. The Legislature can be limited in three ways; (1) if the crime is *mala in se* rather than *malum prohibitum*, (2) if the statute imposes an affirmative duty to act, and (3) if the statute impinges or curtails a constitutional right, such as the first amendment right to free speech. *State v. Gruen*, 586 So.2d 1280, Fla 3DCA (1991).

This statute touches on two of the limitations placed on the Legislature when attempting to enact laws that have no mens rea requirement, Fla. Stat. 790.053 imposes an affirmative duty to act, ie. conceal the weapon at all times (other than briefly), and it curtails the Second Amendment right to bear arms. Based the statute imposing an affirmative duty to act and curtailing the Second Amendment right to bear arms, the Legislature is not allowed by law to proscribe conduct without requiring a mens rea element, thereby making open carry a strict liability crime. Therefore, Fla. Stat. 790.053 should be found to be unconstitutional due to the lack of *mens rea* requirement.

WHEREFORE, the Defendant, DALE NORMAN, by and through undersigned counsel, and pursuant to Fla. R. Crim. Pro. 3.190 moves this Honorable Court for an Order Dismissing the instant information.

BEFORE ME the undersigned authority, personally appeared, DALE NORMAN, who is personally known to me and who being duly sworn, deposes and says that the facts set forth in the above motion are true.

By: _____
DALE NORMAN

SWORN AND SUBSCRIBED before me this _____ day of June, 2012.

By: _____
NOTARY PUBLIC-STATE OF FLORIDA

I HEREBY CERTIFY that a copy hereof has been furnished to Frank Alessi, Assistant State Attorney, by in open court on September 4, 2012.

Respectfully submitted,

BY: _____
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