

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

STATE OF FLORIDA  
Plaintiff,

Case no.: 562012MM000530

vs.

DALE NORMAN  
Defendant.

**ORDER DENYING DEFENDANT'S MOTIONS AND CERTIFYING ISSUES OF GREAT PUBLIC IMPORTANCE**

This cause having come before this court, the court having held several hearings regarding Defendant's five motions to dismiss on Constitutional grounds, the court having presided over the trial wherein a jury found Defendant guilty as charged of violating Florida Statute 790.053, the "Open Carry" law, the court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. On February 19, 2012 in the early afternoon hours, Defendant was observed by citizens carrying a firearm in plain view in a holster on his waist, while walking down a city sidewalk.
2. Defendant was duly licensed to carry a concealed firearm.
3. A member of the public called 911 and officers from the Fort Pierce Police Department responded to the scene and made the same observations.
4. One responding officer videotaped a view of Defendant just before his encounter with the officers.
5. Officers arrested Defendant for a violation of 790.053.
6. At trial, there was no credible evidence presented that the firearm had been concealed before Defendant's arrest, or that it could have been, considering his manner of dress.

**CONCLUSIONS OF LAW**

1. Florida's Open Carry Law, 790.053, is constitutional in that the state may set reasonable limits and conditions on the right to bear arms, and the conditions set forth in Florida's law are reasonable.
2. The court reads this statute in conjunction with 790.25, which sets forth specific persons, places, and activities where it is legal to "own, possess, and lawfully use" (and in some cases openly display), firearms without first obtaining any permit or license. This law specifically excludes

prosecution for Open Carry violations in those instances. The court believes it is an affirmative defense on the part of any defendant prosecuted under the Open Carry law to assert that he/she fit within one of the clearly defined exceptions.

3. Although the court believes that the recent exception to the law, allowing those with concealed carry licenses to "briefly and openly display" the weapon, would be unconstitutionally vague under other fact patterns, in the case at bar it is not since there was no credible evidence presented that this defendant at any time prior to his arrest attempted to conceal the firearm as required by the exception, which is designed to protect those with concealed carry licenses who are carrying the weapon concealed prior to its display.

Wherefore, it is Ordered and Adjudged that the Defendant's Motions to Dismiss 1 through 5 are hereby denied.

**CERTIFICATION OF ISSUES OF GREAT PUBLIC IMPORTANCE**

The court was unable to find any Florida cases which directly ruled on the following issues, which affect the millions of Floridians who own firearms and wish to possess and use them in a manner that comports with Florida law and the United States Constitution, and which affect the thousands of law enforcement officers who are charged with enforcing Florida's laws relating to firearms. The court thus certifies as issues of great public importance:

1. Is Florida's statutory scheme related to the open carry of firearms constitutional?
2. Do the exceptions to the prohibition against open carry constitute affirmative defenses to a prosecution for a charge of open carry or does the State need to prove beyond a reasonable doubt that a particular defendant is not conducting him/herself in the manner allowed?
3. Does the recent "brief and open display" exception unconstitutionally infect the Open Carry Law by its vagueness?

Done and Ordered this 22<sup>nd</sup> day of August, 2012, at Fort Pierce, St. Lucie County, Florida.

  
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CLIFF BARNES, St. Lucie County Judge

  
cc: Fender & Minton, P.A.  
State Attorney's Office