

FLORIDA CASE LAW UPDATE 15-01

Case: Curry-Pennamon v. State, 40 FLW D110g (Fla. 1st DCA)

Date: January 2, 2015

Subject: On-duty employee was not guilty of carrying a concealed firearm when he was in his employer's parking lot at the time of the offense

FACTS: The defendant, who was an on-duty Wal-Mart employee at the time of the offense, was arrested for carrying a concealed firearm, in addition to other charges, arising from a shooting incident which occurred in the store's parking lot. At trial, the defense moved for a judgment of acquittal on the concealed firearms charge, arguing that Florida law permits a person to lawfully possess a concealed firearm at their place of business, and in the defendant's case, the Wal-Mart parking lot constituted his place of business. The trial judge denied the motion, and Curry-Pennamon was convicted. This appeal ensued.

RULING: The First District Court of Appeal reversed the trial court, holding that as an on-duty employee, the defendant was lawfully possessing a firearm at his "place of business" at the time of his arrest. Judgment of Acquittal on the firearms charge was ordered.

DISCUSSION: The court noted that Section 790.01(2), Florida Statutes, generally holds that "a person who carries a concealed firearm on or about his or her person commits a felony of the third degree." However, Section 790.25(3) provides an exception for persons "possessing arms at his or her home or place of business." The Florida Supreme Court addressed a similar issue in *Peoples v. State*, 287 So.2d 63 (Fla. 1973), holding that the exception in 790.25(3) applies not only to owners of a business, but also to its employees. Additionally, other Florida courts have held that the "place of business" exception also applies to property surrounding the business, including parking lots. See *State v. Anton*, 700 So.2d 743 (Fla. 2d DCA 1997); *State v. Little*, 104 So.3d 1263 (Fla. 4th DCA 2013). Finally, pursuant to Section 790.25(4), courts are directed to liberally construe the provisions of Section 790.25 "in favor of the constitutional right to keep and bear arms for lawful purposes." *Florida Carry, Inc. v. University of North Florida*, 133 So.3d 966 (Fla. 1st DCA 2013). Because of the statutory and case law addressing the issue, the trial court should have found that the defendant's possession of the firearm in his employer's parking lot, while he was in an "on-duty" status, fell within the legal exemption.

COMMENTS: In evaluating concealed firearms charges, officers should consider the above factors and determine whether the "place of business" exception might apply in those individual cases. Also, note that the court did not specifically address whether the result would have been different had the defendant simply been visiting the Wal-Mart in an off-duty status at the time of the offense, though it did emphasize his "on-duty" status in this opinion.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.