

WA Open Carry Gets Boost from Appeals Court Ruling...Sort Of

by Dave Workman

Senior Editor

Washington state gun rights activists have reservedly greeted a somewhat obscure state appeals court ruling that appears to expand the scope of open carry rights while more narrowly defining the terms of a state law that has limited open carry under a 1994 appeals court decision.

The reason for reservations: Because the ruling was "unpublished," it apparently cannot be cited in other cases. An attorney told *Gun Week* that such rulings carry virtually no legal weight, but did say that the defendant's attorney could petition the court to get the ruling published. If the court grants that request, then the ruling will carry weight as a precedent.

The State Court of Appeals, District II, issued the ruling June 26 in the case of *State v. Gregory Elijah Casad*. The circumstances of the case are somewhat complicated due to the defendant's history, but the language in the decision recognizes the Evergreen State's long tradition that carrying a firearm openly is "not unlawful."

According to the 11-page ruling, Casad was stopped while walking down the street in Port Angeles on Nov. 26, 2005 with two rifles wrapped in a purple towel. Port Angeles police responded and confronted Casad, who confirmed he was carrying the rifles and also disclosed that he is a convicted felon who had finished his probation.

It is illegal in Washington for felons to possess firearms. Casad told the police he was taking the guns to a pawn shop and that he felt awkward walking down the street with guns in the open, so he wrapped them in the towel.

But Casad also had drugs and drug paraphernalia in his backpack, and he was arrested.

Casad's defense successfully argued at trial that the police did not have the authority to stop Casad simply based on a 911 call from a local resident, and the evidence was suppressed. The case was dismissed but the state appealed the suppression of evidence.

The appeals court panel, with Judge Christine Quinn-Brintnall writing the unanimous opinion, upheld the trial court's dismissal of the evidence. Buried within her opinion is the notation that, "...several individuals have commented

that they would find it strange, maybe shocking, to see a man carrying a gun down the street in broad daylight. Casad's appellate counsel conceded that she would personally react with shock, but she emphasized that an individual's lack of comfort with firearms does not equate to reasonable alarm. We agree. It is not unlawful for a person to responsibly walk down the street with a visible firearm, even if this action would shock some people."

Thirteen years ago, in a case called *State v. Spencer*, the Appeals Court upheld the conviction of a man who had been arrested for walking down a neighborhood street at about 10 p.m. with a loaded AK-47 rifle slung over his shoulder. That conviction was based on a unique statute in Washington that makes it unlawful "for any person to carry, exhibit, display, or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons."

This oddball statute was passed in 1969, but while it might appear to prohibit open carry, the court in *Spencer* noted, "The prohibition is not so vague that it would prevent persons of common intelligence from ever carrying a weapon on the street. In the vast majority of situations, a person of common intelligence would be able to ascertain when the carrying of a particular weapon would reasonably warrant alarm in others..."

The issue is likely to encourage Evergreen State open carry advocates, who have been working with various police agencies in the Seattle area to educate street cops about the legality of open carry.

Washington's constitutional provision protecting the right to bear arms is one of the strongest in the country; it affirms that it is an individual right. With the exception of the one statutory provision about warranting alarm in others, there are no statutes prohibiting open carry. Because Washington passed a preemption statute more than 20 years ago, cities and counties may not pass ordinances on their own prohibiting open or concealed carry. Washingtonians have enjoyed licensed concealed carry for more than 50 years.