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OLR BACKGROUNDER: REQUIREMENT TO SHOW GUN PERMIT

GUN PERMIT: SHOW v. CARRY
"The court cannot interpret 'carry' to mean 'show' without violating the 'principle of narrow construction of criminal statutes in favor of the accused.'"

This session, the legislature is considering whether to address the issue raised in this case.

ISSUE

Is a person carrying a handgun legally required to show his or her gun permit to a police officer upon request?

SUMMARY

The court says no. The case involved Scott Lazurek, who had his gun permit revoked and was charged with interfering with police when he refused to comply with the officer's request to show his permit. With exceptions (not pertinent here), anyone carrying a handgun in Connecticut must have a permit and carry the permit on his or her person when carrying the firearm.

According to a Superior Court ruling, issued on May 13, 2015, "[t]he statute is clear. It requires only that a person 'carry' the permit. It does not say 'show'" (*Department of Emergency Services and Public Protection Commissioner v. Board of Firearms Permit Examiners*, et al. No. HHB CV 14-6026730S (2015)).

But the court also concluded that Lazurek's failure to show his permit when requested to do so by the police violated the law that prohibits interference with a police officer.

CASE FACTS

On June 2, 2013, Lazurek and Timothy Jones were walking on a public boardwalk in West Haven, each openly carrying a handgun, when two West Haven police officers asked them to show their gun permits. Jones complied; Lazurek said he had a permit, but he refused to show it. The police arrested him for interfering with a police officer. An inventory of his property at the police station revealed that he had a valid gun permit.

Phone (860) 240-8400
http://www.cga.ct.gov/olr
olr@cga.ct.gov

Connecticut General Assembly
Office of Legislative Research
Stephanie A. D'Ambrose, Director

Room 5300
Legislative Office Building
Hartford, CT 06106-1591

On June 27, 2013, the Department of Emergency Services and Public Protection (DESPP) commissioner revoked Lazurek's permit on grounds that he was an unsuitable person to hold a permit. The criminal charges were dismissed in July 2013.

Lazurek appealed the revocation to the Board of Firearms Permit Examiners, which reinstated the permit, and the commissioner appealed to the Superior Court.

PERTINENT LAWS

By law (with some exceptions not pertinent here), a person must have a permit to carry handguns in Connecticut. The permittee must carry the permit on his or her person when carrying a handgun (CGS § 29-35).

The law enumerates 10 categories of people who are automatically ineligible to hold a gun permit. It additionally requires the permitting official to find that the applicant does not intend to carry the firearm for an unlawful purpose and is a suitable person to hold a permit. But it does not define the term "suitable" (CGS § 29-28(b)).

The commissioner may revoke or suspend a gun permit for cause and must revoke it (1) if the permittee is convicted of a felony or any of several specified misdemeanors or (2) upon the occurrence of any event that would have made an applicant ineligible for a permit (CGS § 29-32(b)).

Anyone aggrieved by a permit revocation or limitation may appeal to the Firearms Board, which must inquire into and determine the facts de novo. Unless the board finds that the revocation or limitation was for just and proper cause, it must order the permit to be issued, renewed, or restored, or the limitation removed or modified, as applicable (CGS § 29–32b(b)). The board's decision may be appealed to the Superior Court.

DESPP'S ARGUMENTS

The commissioner argued that Lazurek was an unsuitable person because he (1) violated the law by failing to show his permit when requested (CGS § 29-35(b)), (2) violated the law that prohibits interference with a police officer (CGS § 53a-167a), and (3) expressed his intent to violate these laws in the future in the same circumstances. According to the commissioner, "although the [permit] statute does not expressly require a permit holder to show a permit when the police make such a request, the statutory requirement that a person carry his permit on his person serves no purpose if the court does not construe the statute to require showing the permit" (id. at pp. 6-7).

The commissioner also cited the legislative history of the permit statute, which she said showed that the legislature that enacted the bill "heard police testimony expressing frustration about their ability to enforce the underlying law that prohibits carrying a pistol without a permit" (id. at p. 7).

RULING

The court said the permit statute is "absolutely clear. It requires only that a person 'carry' the permit. It does not say 'show.' The court cannot interpret 'carry' to mean 'show' without violating the 'principle of narrow construction of criminal statutes in favor of the accused'" (id. at p. 7). It said that even if the legislature meant to require a permittee to show his or her permit upon police request, the court must rely on what the legislature said, not what it meant to say. Thus, the court concluded that Lazurek's failure to show his permit was not a violation.

Interference with Police

The commissioner argued that Lazurek's conduct amounted to interference with a police officer under CGS § 53a-167a, which provides in part that "a person is guilty of interfering with an officer when such person obstructs, resists, hinders or endangers any peace officer. . .in performance of such peace officer's. . .duties" (id. at p. 8)

The court said that given the statute's broad construction and the case facts, Lazurek violated the statute. It said that in the absence of seeing the actual permit, the police would have to resort to more inconvenient and time-consuming measures to determine if Lazurek had a permit. "Thus, Lasurek's failure to show his permit clearly 'hampered' police investigation and 'obstructed' or 'hindered' the police in their duties" (id. at p. 9).

The court disagreed with Lazurek's claim that the police were not acting in the performance of their duties when they asked for his permit and conducted a *Terry* stop without reasonable suspicion. It said that although the police did not have reasonable suspicion of criminal activity, they did not make a *Terry* stop. Further, according to the court, because the police did no more than "ask Lazurek for his permit, and did not exercise or threaten any show of force, no fourth amendment seizure or stop occurred" (id. at p. 10).

The court also disagreed with Lasurek's assertion that the police were acting outside the performance of their duties when they asked him for the permit. It said the Appellate Court has recognized that "depending on the specific circumstances, a person who openly carries a pistol conceivably may be subject to arrest for violating several statutes, . . . even if [the law] does not prohibit a permit holder from

carrying a pistol openly" (citing *Peruta v. Commissioner of Public Safety,* 128 Conn. App. 777, 794 cert. denied, 302 Conn. 919, 28 A. 3d 339(2011).

As to whether Lazurek intended to violate the law in the future, the court cited his conflicting testimony before the board. It said the court does not decide questions of credibility and cannot retry the case. "In the present case," the court said:

> there was testimony to support a finding by the board that Lazurek, who had no prior arrest record and had produced his permit in past situations, made an imprudent mistake but that he had learned his lesson and was not likely to offend again. From that testimony, the board could have reasonably concluded that Lazurek was a suitable person (id. at p. 15).

The court concluded that the board reasonably could have found Lazurek to be a suitable person under CGS § 29-28. It upheld the board's decision and dismissed the commissioner's appeal.

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