

Conceal Carry

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To Whom It May Concern:

It has been brought to our attention that some Illinois officers are unclear or mis-informed about Illinois law and as such, may be causing problems for law-abiding gun owners here. For example, one Illinois officer noticed a Champaign County gun owner with a loaded speed loader in the passenger compartment of his truck during a traffic stop and threatened to make an arrest for unlawful use of weapons based upon an Illinois Criminal Code book from the mid-1980's.

To summarize, current Illinois law reads:
Section 24-1 of the Criminal Code of 1961:

"(a) a person commits the offense of unlawful use of weapons when he knowingly:

(4) Carries or possesses in any vehicle or concealed on or about his person except when on his land or in his abode or fixed place of business any pistol, revolver, stun gun, taser or other firearm." 720 ILCS 5/24-1(a)(4)(West 1994).

However, the Code also provides for certain situations in which section 24-1(a)(4) does not apply. Section 24-2(i) provides:

"nothing in this Article shall prohibit, apply to, or affect the transportation, carrying, or possession of any pistol, revolver, stun gun, taser, or other firearm which is unloaded and enclosed in a case, firearm carrying box, shipping box, or other container, by the possessor of a valid Firearms Owners Identification Card." 720 ILCS 5/24-2(i)(West 1994).

We have enclosed an Appellate Court decision, *Illinois v. McDade* for your perusal. Please share this information with your officers with regard to this "unloaded and encased" exemption to unlawful use of weapons that FOID holders are entitled to. It might also be noted that this statutory exemption contains no requirement regarding the absence or location of ammunition other than the gun itself be unloaded.

We are advising our members of what we call "**Six Seconds To Safety**" which is carrying an *unloaded firearm* in a fanny pack designed for concealed carry. Inside the pack are also loaded magazines for rapid deployment should a use of lethal force situation develop. They are also told to have their FOID card in their possession at all times.

While this is far from our ideal of a concealed carry law (we would prefer a permit process and to be able to carry a loaded firearm in a proper holster), this is the best option for an Illinois citizen and a safer Illinois. Also helpful to the professional image of your department would be to have your staff who answer calls to the station either be aware of current law or for them to defer an answer to someone who does know. This will help law abiding citizens in their quest to both follow the law and provide them the ability to defend themselves should the need arise. Thank you for your help in this matter.

Sincerely,

ConcealCarry.Org

FIFTH DIVISION
FILED: 4/11/97
No. 1-96-2136
IN THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS V. RICHARD R. MCDADE
Appeal from the Circuit Court of Cook County.
No. 95 CR 35311
The Honorable JOSEPH J. URSO, Judge Presiding.

O R D E R

Following a bench trial, defendant Richard McDade was convicted of unlawful use of a weapon and sentenced to 15-months probation. On appeal, defendant argues that the trial court erred (1) in denying his motion to suppress evidence, (2) in finding him guilty of unlawful use of a firearm, and (3) in denying his motion to reconsider. Defendant's basis for each of these assertions is that he qualified for an exemption under section 24-2(I) of the Criminal Code of 1961 (720 ILCS 5/24- 2(I)(West 1994)).

At a hearing on defendant's motion to suppress evidence, the evidence established as follows. On December 6, 1995, defendant drove with his friend, Dennis Webber, from Champaign, Illinois, to Chicago. Defendant owned a shop which sold model race cars and was going to Chicago to purchase model cars. When defendant left his shop that day, he took his .380 caliber Lorcin handgun with him. Defendant unloaded the gun and placed it in a carrying case. He put the gun in the glove compartment of his car and put the magazine clip in the pocket of his coat, which he placed on the back seat. At some point while defendant was driving, he asked Webber to check the gun to make sure it was unloaded. Webber removed the gun case from the glove compartment, took the gun out of the case and verified that it was unloaded. He returned the gun to the case and the case to the glove compartment.

At approximately 2 p.m. that day, defendant and Webber were driving down Montrose Avenue in Chicago after having purchased some model cars. Chicago police officer Kevin Pietruszka observed defendant, who was driving the car, with marijuana paraphernalia in his mouth. Officer Pietruszka and his partner stopped defendant and Webber and observed a plastic bag containing a green, leafy substance which they believed to be marijuana on the front seat. The officers arrested defendant and Webber and searched the vehicle, discovering the unloaded pistol enclosed in a leather case in the glove compartment. Officer Pietruszka testified that his partner recovered the magazine clip containing seven bullets from defendant's pocket while conducting a custodial search. Defendant and Webber both testified that the officers did not discover the magazine clip during the search and that defendant voluntarily informed the officers that he had the clip. Defendant also testified that he told the officers that he had a valid firearm owner's identification (FOID) card.

The trial court denied defendant's motion to suppress evidence and the matter proceeded to trial. At trial, the parties entered by stipulation the testimony from the suppression hearing. In addition, the parties stipulated that at the time of the defendant's arrest he had a valid FOID card. The parties further stipulated that if Officer Pietruszka were called he would testify that the defendant admitted that the gun recovered from the glove compartment belonged to him.

The trial court found defendant guilty of unlawful use of a weapon under section 24-1(a)(4) of the Criminal Code of 1961 (720 ILCS 5/24-2(i)(West 1994)). The trial court specifically found that defendant was not entitled to an exemption under section 24-2(i) of the Criminal Code of 1961 (720 ILCS 5/24-2(i)(West 1994)), noting that the gun was merely in a zippered

leather case rather than some type of locked container and that the gun and ammunition both were accessible to defendant.

On appeal, defendant argues that the trial court erred in (1) denying his motion to suppress evidence, (2) finding him guilty of unlawful use of a firearm, and (3) denying his motion to reconsider. Because we find that the trial court erred in finding defendant guilty of unlawful use of a firearm, we need not address defendant's other contentions.

Section 24-1 of the Criminal Code of 1961 provides:

"(a) a person commits the offense of unlawful use of weapons when he knowingly:

(4) Carries or possesses in any vehicle or concealed on or about his person except when on his land or in his abode or fixed place of business any pistol, revolver, stun gun, taser or other firearm." 720 ILCS 5/24-1(a)(4)(West 1994).

However, the Code also provides for certain situations in which section 24-1(a)(4) does not apply. Section 24-2(i) provides:

"nothing in this Article shall prohibit, apply to, or affect the transportation, carrying, or possession of any pistol, revolver, stun gun, taser, or other firearm *** which is unloaded and enclosed in a case, firearm carrying box, shipping box, or other container, by the possessor of a valid Firearms Owners Identification Card." 720 ILCS 5/24-2(i)(West 1994).

A defendant must prove by a preponderance of the evidence that he is entitled to this statutory exemption. *People v Staples*, 88 Ill. App. 3d 400, 403 (1980).

In *People v. Bruner*, 285 Ill. App. 3d 39 (1996), the defendant was charged with unlawful use of a weapon under section 24-1(a)(4) where she was carrying an unloaded, encased pistol in her purse and she possessed a valid FOID card. The trial court granted the defendant's motion to dismiss on the ground that she was entitled to an exemption under section 24-2(i) and the State appealed. *Bruner*, 285 Ill. App. 3d at 44.

Based on *Bruner* we find that defendant was entitled to an exemption under section 24-2(i). We acknowledge that, while facts in *Bruner* do not indicate that the defendant was carrying ammunition for the gun, defendant in the instant case had a magazine containing seven bullets in his jacket pocket in the car's back seat. However, the statutory exemption contains no requirement regarding the absence of or location of ammunition. Therefore, we must find that defendant was exempt from section 24-1(a) (4).

The State, however, argues that defendant was not entitled to this exemption because Webber removed the gun from the case to ensure that it was unloaded and therefore the weapon was not encased at all times. The State relies on principles of strict statutory construction in support of its position. Specifically, the State argues that because the legislature did not indicate in section 24-2(i) that encasement of the gun may be intermittent, it presumably intended that the gun must be

encased at all times. In support of its position, the State cites several cases involving statutory construction. See *People v. Lofton*, 69 Ill. 2d 67 (1977), and *People v. Spain*, 91 Ill. App. 3d 900 (1980) (respective defendants denied an exemption to the unlawful use of a weapon statute where they did not meet all the exception's requirement); *People v. Cahill*, 37 Ill. App. 3d 361 (1976) (defendant's conviction for failure to possess firearm owner's identification card proper, even though defendant produced a valid card at trial, where the statute specifically prohibited possessing a firearm without having the card in one's possession).

The principal rule in construing statutes is to determine and achieve the legislature's true intent and meaning. *People v. Frieberg*, 147 Ill. 2d 326, 345 (1992). In order to determine legislative intent, the court may consider not only the statutory language, the reason and necessity for the law, the evil sought to be addressed and the intended purpose of the statute. *Frieberg*, 147 Ill. 2d at 345. The courts must presume that the legislature did not intend "absurdity, inconvenience or injustice." *People v. Steppen*, 105 Ill. 2d 310, 316 (1985)

The State invites us to construe section 24-1(a)(4) and section 24-2(i) in such a way that a person who is otherwise properly carrying a weapon in compliance with those sections is guilty of unauthorized use of a weapon if he momentarily removes the weapon from its case for any reason. We do not find the State's argument to be persuasive. In the instant case, Webber testified that as he and defendant "were coming just out of town, [defendant] asked me to check the pistol one more time." Webber then removed the gun from its case in the glove compartment, verified that it was unloaded and returned it to its case. It is unclear whether Webber did so as the two men were just leaving Champaign or as they were about to enter Chicago. However, it is clear that some time after Webber checked the gun, the two men returned to the car that they were stopped by the police. There was no evidence that the gun was removed from its case after defendant and Webber re-entered the car. When the police searched the car, the unloaded pistol was secured in its case in the glove compartment.

Defendant merely asked his friend to momentarily remove the gun from its case to ensure that it was unloaded. Were we to adopt the State's interpretation, we would find that the defendant violated the statute by his attempt to ensure that he was in compliance with the statute. This would be an absurd result. We do not believe that the momentary removal of the gun served to deny defendant the exemption provided by section 24-2(i) for the remainder of his trip. For the foregoing reasons, we find that the defendant proved beyond a preponderance of the evidence that he was entitled to the exemption under section 24-2(i) and reverse the judgment of the circuit court.

The judgment of the circuit court is reversed. Reversed.
HOFFMAN, J., with HOURIHANE and SOUTH, JJ., concurring.