

LITIGATING THE CCW JURY TRIAL

Amanda Parent

Milwaukee Trial

CLIENT HAS NO PERMIT AND NO RECORD?

- DA won't offer a ticket or DPA?
- Take it to trial!



LEARNING OBJECTIVES

- Learn to identify pretrial issues applicable to CCW cases.
- Gain knowledge of the different defenses to a CCW charge.
- Know what information to look for to bolster your theory of defense.

CCW CASES VARY BY COUNTY

- Differences between counties?
- Does your county offer tickets or DPAs?
- Are CCWs charged?
- Jurors?

ELEMENTS

- The defendant went armed with a dangerous weapon
- The defendant was aware of the presence of the weapon
- The weapon was concealed

PRETRIAL

- *Hamdan* Constitutional Challenge
 - Unconstitutional as Applied and JI 1335A
- JI 1335A
- Revoked or Suspended License Due Process Challenge
- *Walls* Instruction

HAMDAN CONSTITUTIONAL CHALLENGE

- *State v. Hamdan*, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785
- Two prongs;
 - Interest in carrying a concealed weapon to facilitate the exercise of his/her right to bear arms substantially outweighs the State's interest in enforcing the CCW statute
 - Show that concealment was the only reasonable means for him/her to exercise her right to bear arms

HAMDAN AND JI 1335A

- JI 1335A adds fourth element;
 - “the defendant went armed with the weapon for an unlawful purpose”
- Need to show elements of *Hamdan*
- *“If the trial court finds that the defendant has satisfied both requirements, the state must, still at the pretrial stage, assert and show probable cause to believe that the defendant had an unlawful purpose at the time he or she carried the concealed weapon. If supported by evidence at trial the issue of unlawful purpose is to be submitted to the jury. Hamdan, ~86-88.”*

JI 1335B

- Adds fourth element;
 - The defendant did not have a permit or not a peace officer
- If there's any basis for the instruction, ask for it!
 - More work for the State
 - More good info gets in about client

DUE PROCESS CHALLENGE

- If client's permit was suspended or revoked, they have a due process right to be informed
 - DOJ would have to show provided client with information
 - Potential issue- burden is on client to keep DOJ up to date on current address

WALLS INSTRUCTION

- *State v. Walls*, 190 Wis.2d 65, 71-71, 526 N.W.2d 765 (Ct. App 1994)
- A person is guilty of carrying a concealed weapon in an automobile where:
 - (1) the weapon is located inside a vehicle and is within the defendant's reach;
 - (2) the defendant is aware of the presence of the weapon; and
 - (3) the weapon is concealed, or hidden from ordinary view - meaning it is indiscernible from ordinary observation of a person located outside and within the immediate vicinity of the vehicle.

WALLS INSTRUCTION

- Meaning of "Concealed"
 - "Concealed" means hidden from ordinary observation – meaning it is indiscernible from ordinary observation of a person located outside and within the immediate vicinity of the vehicle. The weapon does not have to be completely hidden.



JURY (DE)SELECTION

- Ideal juror
 - Gun owners
 - Indifferent to guns
 - Permit holders vs. non-permit holders?
 - What is the defense?
- What to touch on?
 - Will vary based on defense



TRIAL DEFENSES

- Out of reach
- Did not know gun was there
- Gun was not concealed
 - Out in the open
 - Announcement/Senses defense
 - Open carry
- Expired/revoked/pending permit (mistake)

NOT WITHIN REACH

- 1st element
- Location of gun?
- Lack of investigation/documentation?
 - Body cam?
 - Photos?
- Accessibility?
 - Locked glove box?
 - Passenger in car?

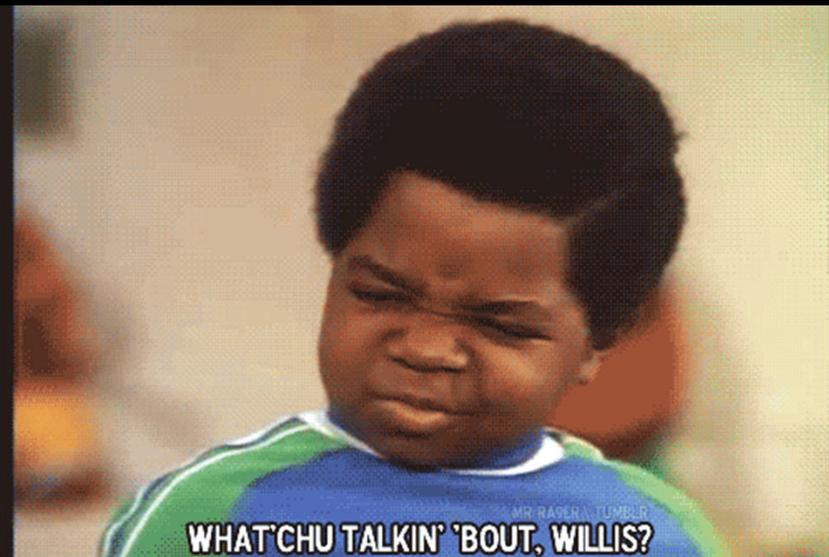


NOT WITHIN REACH- WHAT TO GET FROM THE COP

- Body Camera SOP
- Ability to take photographs
- Height of client
 - Measurements?
 - Where seat was?
- How gun was recovered

NOT AWARE OF PRESENCE OF THE GUN

- Not their gun
 - Probably only applicable to gun in car cases
 - Not their car?
- Location in car?
- Statements by client?
- Real owner of the gun?
 - Willing to testify?
- Lack of physical evidence



NOT AWARE OF THE PRESENCE OF THE GUN: WHAT TO GET FROM THE COP

- Location- not out in open
- Lack of statement
 - Demeanor?
- Lack on investigation
 - Speak with owner of car? Owner of gun?
 - Etrace report
- Additional resources
 - State crime lab
 - DNA testing
 - Finger print testing

NATIONAL TRACING CENTER

Phone:(800) 788-7133 Fax:(800) 578-7223

Print Date: December 01, 2018



FIREARMS TRACE SUMMARY

Trace Number: T20180098883 Request Date: March 24, 2018 Completion Date: March 27, 2018

FIREARM INFORMATION

MILWAUKEE POLICE DEPARTMENT
PO BOX 531
MILWAUKEE, WI 53201
PHONE: (414) 935-7380 Ext:

Manufacturer: TAURUS
Model: PT709 SLIM
Caliber: 9
Serial Number: TJX25780
Type: PISTOL
Country: BRAZIL
Importer: TAURUS INTERNATIONAL
MANUFA...

Badge No: 2765
Investigation No: 180750117

Obliterated:
Identifying Marks:
NIBIN:
Gang Name:

RECOVERY INFORMATION

Recovery Date: 03/16/2018
Time to Crime: 2 days

4427 N GREEN BAY AV
MILWAUKEE, WI 53209

PURCHASER INFORMATION

Purchase Date: 03/14/2018

Possessor:
DOB:
POB: UNITED STATES

MILWAUKEE, WI 53225

DOB: 11/25/1996
POB: MILWAUKEE, WI UNITED STATES
Race: BLACK Height: 5 ft 9 in
Sex: Male Weight: 250 lbs
ID 1: WI STATE CARD ID:
ID 2: SOCIAL SECURITY:

DEALER INFORMATION

FFL: 33915155

MILLS FLEET FARM
N96 W18200 COUNTY LINE RD
GERMANTOWN, WI 53022-0000

Phone: (262) 255-1420 Ship-To-Date: 03/01/2018
Ext:

Contact the local ATF office for additional information.

ADMINISTRATIVE INFORMATION

INVENTORY #: 18009953
SAFE/EVIDENCE: evidence
STOLEN INCIDENT #:
HOMICIDE #:

SUMMARY OF RESULTS

HIS FIREARM WAS TRACED TO A PURCHASER. FOR ANY QUESTIONS, PLEASE CONTACT ATF NATIONAL RACING CENTER, FIREARMS TRACING BRANCH AT 1-800-788-7133.

Additional Remarks:

The information in this report must be validated prior to use in any criminal proceedings.

NOT CONCEALED- OUT IN THE OPEN

- Plain view argument
 - Listen to body camera footage to hear if cops say anything about the gun
 - Location in the car
 - Not a place where we try to “conceal” something
 - Purse example

NOT CONCEALED: ANNOUNCEMENT/SENSES DEFENSE

- When client immediately tells officer they have a gun and where it is, it is not longer concealed
- The sooner the announcement the better
 - The more delayed the announcement, the weaker the defense (but still can be used for a hail mary)
- Concealed= “hidden from ordinary observation”
 - Says nothing about sight
 - Perspective argument
 - Observe world with all of our senses
 - Examples- the “cookies defense”
- How can something be hidden when you tell someone exactly where it is?



NOT CONCEALED: OPEN CARRY

- Most applicable when client has gun on person
 - Best if in holster
- Jury is not instructed on open carry- need to get in through cop/client
- Nothing in instructions/CCW law that say you can't open carry in a car
- Safest to keep on person

NOT CONCEALED: WHAT TO GET FROM THE COP

- Cooperation of client
- Interacting with armed citizens
 - Client did exactly what should have been done in that type of situation
- Retrieving the gun- knew exactly where to go
- Cop open carries
- Noticed gun quickly
- Reason for search- used other senses

PERMIT ISSUE/MISTAKE

- Client had a revoked or expired permit or submitted an application but did not yet receive the permit
 - Mistake- JI 770
 - Would likely need 1335A
 - Closer to expiration or revocation the better



PERMIT/MISTAKE: WHAT TO GET FROM THE COP

- Statement by client
- Client showed permit
- Demeanor of client
- Don't know if client knew revoked
 - DOJ notification?

SHOULD CLIENT TESTIFY?

- Client doesn't have a record and/or is likeable?
 - YES!
 - Give the jury a reason to acquit
- Depends on the defense
 - Out of reach and aware of presence
 - At first thought, need client
 - But what evidence can state show?
 - Not concealed
 - Not necessary, but can help
 - Permit/Mistake
 - Probably need client



QUESTIONS?



AMANDA PARENT

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