DISTRICT COURT OF APPEALS, FIRST DISTRICT

DCA CASE NO.: 1D12-2174
L.T. CASE No. : 16-2011-CA-008012

FLORIDA CARRY, INC., and
ALEXANDRIA LAINEZ

Plaintiffs,

v.

UNIVERSITY OF NORTH FLORIDA,
JOHN DELANEY.

Defendants.
_____/

**Appeal from the Circuit Court,
Fourth Judicial Circuit, in and for
Duval County, Florida**

APPELLANTS' REPLY BRIEF

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Citations

There is only one Volume of the record. Citations to the Record will be in the form (R-___). Citations to Appellants' Initial Brief will be in the form (AIB at ___), and to Appellees' Answer Brief will be in the form (AAB at ___).

Reply

Despite the claims of the Appellees' brief, Appellees represent neither the state, nor any sovereign. The University of North Florida, (hereinafter, "UNF"), can point to nothing in Florida law to show that it is acting on behalf of the State. This is not a case of an individual moving against the State and seeking to have a statute declared unconstitutional. Rather this is a case of an individual challenging a rule or regulation of a state agency, enacted in direct contravention and opposition to the laws of the state of Florida, and the intent of the Legislature. **Reading the statutes at issue in this case in *pari materia*, giving effect to the plain language and harmonizing all of the statutes in a way that comports with the statements of legislative intent contained within the statutes supports Appellant's interpretation.**

The Legislature clearly stated its policy and intent in Sec. 790.33.

> (a) It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and

> federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.
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> (b) It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are passed in violation of state law or under color of local or state authority.

Sec. 790.33, Fla. Stat.

As stated by the Appellees, the provisions of Sec. 790.33 must be read *in pari materia*, not just with the provisions of Chapter 790, but with all Florida statutes dealing with related subject matter as a whole. *Hopkins v. State*, 2012 WL 4009511 ___ So. 3d ___ (Fla. 2012). *Hopkins*, cited by Appellee's in their brief, concerned whether person in a juvenile detention center could be prosecuted under Sec. 784.082, as a person detained in a prison, jail, or other detention facility, who committed a battery. Hopkins sought to use the rule of lenity and argue that a juvenile detention center was not a prison, jail or other detention facility as required by the statute, apparently on the grounds that "detention facility" was not defined in the statute under which he was prosecuted. The Supreme Court however looked to the definition of "detention center or facility" contained in

chapters 984 and 985, Fla. Stat. The *Hopkins* court concluded that because the plain meaning of the term was unambiguous and reading it *in pari materia* with other related statutes, the lack of a definition or defining the term consistent with other provisions of Florida law was not a bar to the prosecution. *Hopkins*, 2012 WL 4009511 ___ So. 3d ___ (Fla. 2012).

The Appellees spend inordinate time arguing the interrelation of firearms statutes, and claim that their interpretation is the only reasonable interpretation, until it comes to the definition of the term "school district" at which point they ask the Court to ignore every other place in Florida statutory or constitutional law where the term is used. Additionally despite recognizing the interrelation of the various provisions of chapter 790, they seek to ignore Sec. 790.25 which states, "This act is supplemental and additional to existing rights to bear arms now guaranteed by law and decisions of the courts of Florida, and nothing herein shall impair or diminish any of such rights. ***This act shall supersede any law, ordinance, or regulation in conflict herewith***, (emphasis added)". Sec. 790.25(4), Fla. Stat.[1]

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[1]Appellees acknowledge that if no other statutes are read in conjunction with Sec. 790.25(5), then the Appellants must prevail, but then move on to other supposedly conflicting statutes, completely ignoring the supremacy clause contained within Sec. 790.25(4). (AAB at 9-10)

The Appellees correctly state that Sec. 790.115 recognizes schools and school property as specially protected but seek to take that protection beyond that provided for in the statute. Despite several emotional appeals to the protection of children, which to the Appellees appears to include adults over the age of 21, it is not the province of this Court to decide if the legislature went far enough in determining what schools would be off limits to firearms in vehicles.

Appellees also ignore Sec 790.06(12)(b) "A person licensed under this section shall not be prohibited from carrying or storing a firearm in a vehicle for lawful purposes", when pointing to that section as an example of the special protections afforded schools. Interestingly, Sec. 790.06(12)(b) could have plainly stated that a person so licensed shall be prohibited from carrying or storing a firearm in a vehicle on school grounds. It did not. Instead, it merely stated that the section did not modify Sec. 790.251, which the Legislature knew only applied to the employer-employee relationship.[2] *Crescent Miami Ctr., LLC v. Florida Dept. of Revenue*, 903 So. 2d 913, 918 (Fla. 2005) (The legislature is presumed to be aware of court rulings and the status of the law).

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[2] *Florida Retail Federation v. Attorney Gen. of Fl.*, 576 F. Supp. 2d 1281 (N.D. Fla. 2008), declared that all other portions of Sec. 790.251 other than those relating to the employer-employee relationship were invalid. In 2011 the legislature amended Sec 790.06 to add (12)(b). SB 234, 2011, Fla. Leg.

In the end, the continued pleas to the interrelation of the firearm statutes is nothing more than an attempt to ignore the fact that the Legislature drafted specific language for a specific result, and that the terms used throughout are unambiguous and consistent with their use elsewhere in Florida law, and to ignore the plain language of the statutes at issue.

Terms used must be given their plan and ordinary meaning unless the statute indicates otherwise.

When Appellees have to actually argue the language of the statutes their primary argument is apparently that the legislature did not understand the difference between the terms "school" and "school district" and used the terms interchangeably. The Appellees want to ignore that there are specific reasons and logic for the distinctions drawn by the Legislature. In fact, they admit the Legislature defined "schools" to encompass all schools, and banned weapons from those "schools" with the exception of weapons in vehicles. Yet, for some reason, they would have the Court believe that the Legislature misapplied the term "school district" when it allowed only school districts to draft a waiver to that exception. Sec. 790.115, Fla. Stat.

Sec. 790.251, Fla. Stat. is irrelevant to the issues before the Court.

Throughout this case, the Appellees repeatedly attempt to bring up Sec.

790.251, which has nothing to do with the case before the Court. As found by the court in *Florida Retail Federation v. Attorney Gen. of Fl.*, 576 F. Supp. 2d 1281 (N.D. Fla. 2008), Sec. 790.251 is limited in its applicability to the employer-employee relationship. All other provisions were struck down by the court. Additionally, as stated in Appellant's Initial Brief, Sec. 790.251 is a civil statute designed to protect the rights of gun owners against employer policies which prohibit firearms in personal vehicles. (AIB at 25) It grants no affirmative right to Appellees or any other person or entity other than employees with a Concealed Weapon Firearm License (CWFL). It does limit its impact by excepting certain entities including UNF. But that is all it does, exempt UNF from being sued pursuant to Sec. 790.251. It does not grant any authority for UNF or President Delaney to pass rules and regulations, especially those which might incur criminal penalty, regarding students and visitors to the UNF campus in direct violation of Sec. 790.33, Sec. 790.06, and Sec. 790.115, Fla. Stat.

As detailed above, the Appellee's reliance on *Hopkins* is misplaced. *Hopkins* actually supports Appellants' position, that the Court must look at the plain language of the statute and give the terms therein their ordinary and usual meaning, unless to do so would cause contradiction or lead to an unreasonable or absurd result. *Blinn v. Fla. Dept. of Transp.*, 781 So.2d 1103, 1107 (Fla. 1st DCA

2000). While Appellee's argue that allowing weapons in vehicles on their campus is an unreasonable result, that is precisely what the Legislature decided to allow.

The Legislature specifically considered language supporting the interpretation sought by Appellees, but rejected it in favor of the current language in Sec. 790.115.

Appellees frame the question to the Court as whether UNF is a "land owner/institution/ school reasonably within the authority recognized by Florida Statutes to enact" a written policy concerning firearms. Simply NO. First, being a landowner, institution or school has nothing to do with the right to enact written and published policies regarding firearms. The Legislature specifically reserved that authority to school districts, a defined and distinct legal entity under Florida law. Florida Constitution, Art. IX. Sec. 4, and Secs. 1001.30 and 1001.31, Fla. Stat.

Nothing in the plain language of Sec. 790.115 in any way even hints that the Legislature had any intent to extend the right to publish rules prohibiting firearms in vehicles to any entity other than school districts. UNF freely admits that it is not a school district, yet asks this Court to ignore that fact and give them authority that the Legislature intentionally withheld. (AAB at 19). As pointed out in

Appellants' Initial Brief, the Legislature specifically considered language consistent with the interpretation sought by Appellees when it amended Sec. 790.115 in 1997. The Legislature considered but declined to universally ban weapons from all school campuses including those in vehicles. Instead it authorized only school districts that privilege for the purpose of student and campus parking privileges.

Appellees interpretation requires the Court to ignore words and phrases in the statutes and consider them superfluous, and seeks an interpretation that would be overly broad.

As stated in the Appellees' brief, the statutes must be read to be consistent and in harmony with one another. The Appellees ignore the rule however, that all of the words and language must be given effect and that there are no extraneous words or phrases in the statute. See *Gen. Elec. v. DeCubas*, 504 So. 2d 1276, 1278 (Fla. 1st DCA 1986). The interpretation sought by Appellees, allowing them to ban all firearms from all vehicles on UNF's campus, would also require the Court to ignore the portion of Sec. 790.115(2)(a)(3), that limits the effect of any waiver published to "student and campus parking privileges." The rule being challenged here is a blanket rule by which Appellees, according to their argument and reasoning seek to have a weapons-free campus. (AAB at 21).

In order to do so, they would also have to apply the prohibition to members of Florida Carry, who are neither necessarily students, employees, or have any other relationship with the Appellees other than a possible need to traverse the campus to pick up or drop off a student, or conduct other business for which campus parking privileges are unnecessary. Reaching such an interpretation would render the phrase "student and campus parking privileges" surplusage, and the language would have no effect.

If, on the other hand, the Court were to rule consistent with the plain language of the statute, the language makes sense. It allows school districts to pass a rule banning firearms from vehicles for student and campus parking privileges, but prevents them from applying the same rule to parents or others who are merely dropping off or picking up students. *Thompson v. State*, FLW Supp. 1805THOM; 18 Fla. L. Weekly Supp. 461a (Fla. 15th Cir.).

School districts are a distinct legal entity and the Court must give effect to the plain language and standard usage of the term.

The most absurd argument Appellees make is the idea that when using the term "school district" in 790.115, the Legislature meant something completely different from every other use of the term anywhere in the Florida statutes or Constitution, and in common usage. If the term "school district" really means any

school, why did the Legislature see a need to define the term "school" within the statute but not the term "school district"? As set forth previously, all words in the statute must be given effect. The Appellees' interpretation would render the word "district" irrelevant as used in the statute.

According to the Appellees' argument, if the Legislature uses the term "red apple," but does not set it off in quotation marks and does not define the term, but then goes on to define the term apple, then the Legislature did not really mean "red apples" but any apple regardless of color, because it did not specifically define the term "red apple."

It is the Appellees who are seeking to carve out word in ways never intended by the Legislature. They urge this Court to ignore the plain language of the statute, and to assume that Legislature really meant to say that "school district" means any of the listed school types.

The doctrine of preemption only limits the conduct of subdivisions of the state, not private actors.

The argument that the legislature cannot distinguish between public and private schools ignores basic legal principles. First, the concern and the entire language of the preemption statute, Sec. 790.33, is entirely directed at ordinance, rules or regulations by subdivisions of the state, not the actions of private

organizations. There was no need for the Legislature to say what private schools could or could not do. Private schools are not subject to Sec. 790.33. They can make any rule they wish in a private contract with their customers so long as the contract does not violate some other statute. Also, because all schools are exempt from suit for banning employees from possessing firearms in their cars under Sec. 790.251, private schools can take that action. Furthermore, such a rule at a private school is just that, a rule, not a crime. It does not make the possession of a weapon in a vehicle a crime but a rule that the private property owner can enforce without action by the state.

The true legislative history of the actual statute at issue supports Appellant's interpretation.

Just as Appellees attempt to ignore the plain language of the statutes and inconvenient terms contained therein, they also seek to ignore the true legislative history of the statute at issue in favor of floor debate on a completely separate bill drafted ten years later.[3] The Appellees' "careful search of all legislative history" that they claim reflects no discussion of the meaning of schools in relation to firearms in cars until 2008, must not have included the staff analysis on the 1997

[3]Legislative intent cannot be divined from the statement of an individual legislator. "[F]loor debates reflect at best the understanding of individual Congressmen." *Zuber v. Allen,* 396 US 168 (1969).

amendments to 790.115 creating the very statute at issue, as cited in Appellants' brief . (AIB at 36). To refresh the Court's recollection, in a related bill SB 1904, 1997, Fla. Leg., the Legislature did actually include language prohibiting firearms from all vehicles on school campuses, but in the end the Legislature rejected so restrictive a rule and instead passed the current version that we are discussing today in HR 1309, 1997, Fla. Leg. (AIB at 36).

The staff analysis for the 1997 passage of Sec. 790.115(2)(a)(3) is very clear. The entire bill relates only to K-12 education. Appellee claims that despite this fact, the one provision in the bill at issue here is the only provision in the bill which applies to post-secondary schools. As stated in the final staff analysis the language of Sec 790.115 was:

> A. PRESENT SITUATION
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> **10. Possessing or Discharging Weapons or Firearms on School Property**
> Section 790.115, F.S., specifies that a person who possesses or exhibits in a careless or threatening manner, any sword, sword cane, firearm, electric weapon or device, destructive device, or other weapon on or near a school or school bus, during school hours or activities, commits a third-degree felony. For the purposes of the section, "school" is defined as any preschool, elementary, middle/junior high, or secondary school, vocational school, or public/nonpublic postsecondary school. Under certain conditions, the possession of firearms, however, is permitted. A person may carry a firearm in the following instances: in a case to a preapproved firearms program, class, or function; in a case to a vocational school having a firearms training range; or in a vehicle pursuant to s. 790.25(5), F.S.

> Subsection 790.25(5), F.S., permits a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or otherwise not readily accessible for immediate use.
>
> Section 790.001, F.S., defines "weapon" as any dirk, metallic knuckles, slingshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife.
>
> Section 230.23, F.S., requires that **school boards** adopt a code of student conduct for elementary and secondary schools which includes notice that the possession of a firearm, knife, a weapon, or any item which can be used as a weapon by a student is grounds for disciplinary action and may result in criminal prosecution.
>
> B: EFFECT OF PROPOSED CHANGES
>
> The bill provides that **school districts** may adopt written and published policies that prohibit, for purposes of student and campus parking privileges, the carrying of a firearm in a vehicle pursuant to s. 790.115(2)(a)3. and s. 790.25(5), F.S. (emphasis added).

(Staff Analysis, Bill Research and Economic Impact Statement, Florida House of Representatives April 21, 1997 CS/HB 1309, 1143, 847, 697, 1391, and 203). Again, the staff analysis is consistent with Appellants' interpretation and the plain language of the statute-- only school districts may adopt and publish a policy waiving the effect of the exemption firearms in vehicles. Nowhere does the staff analysis indicate any intent to apply the term school district to mean all schools as urged by Appellees.

The provision allowing school districts to publish a waiver for student and campus parking privileges is limited to a small subset of students and does not include Appellant Lainez or any other student of UNF.

The Appellees finally get the point of the bill and the exception provision, when they state that under the Appellants' interpretation, the exception only applies to a very small subset of students, those who are of driving age and attend public high schools. (AAB at 21-22). The Appellees argue that the Legislature could not possibly have meant to target only this small subset of students and must have meant it to apply to all students at all schools.[4] This argument is made without any supporting legal or factual basis. In truth, the exception was considered necessary by the Legislature because of Sec. 790.25(5), which would allow 18 year old students still enrolled in high school to keep a gun in their vehicle, unless provision was made for a school district to publish a written waiver and to comply with statutes in Chapter 230 requiring a student code of conduct by "school boards", which under Florida law, govern school districts, not post-secondary schools like UNF. (Staff Analysis, Bill Research and Economic Impact Statement, Florida House of Representatives April 21, 1997 CS/HB 1309, 1143,

[4]The subset is actually smaller than is suggested by Appellee because only students who were 18 had the right to a firearm in their vehicle before enactment of the current language.

847, 697, 1391, and 203).

Conclusion

The Appellees' argument relies on ignoring every rule of statutory construction applicable to the statutes at issue in this case. It relies on ignoring the actual staff analysis of the statute at issue in favor of floor debate 10 years later on a completely different bill regarding a completely different statute. It ignores the consistent use of specific terminology, "school district" throughout the Florida Constitution and statutes. It relies on an emotional plea, that schools should be a gun-free zone, and certainly the Legislature did not intend to bar a school from controlling what a student has in their private vehicle.

There is absolutely nothing in the legislative history or the unambiguous plain language of the statute to support Appellees' position. The lower tribunal should be directed to find in Plaintiffs' favor, issue the requested injunction, and conduct a hearing to award statutory and actual damages.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 7th day of December, 2012 by E filing or U.S. Mail, to the following:

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CERTIFICATE OF COMPLIANCE

I hereby certifying that this brief complies with the font requirements of Rule 9.210 Fla. R. App. P.

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