DISTRICT COURT OF APPEALS, FOURTH DISTRICT

DALE NORMAN
Appellant/ Defendant,

CASE NO.: 4D12-3525
LT: **56-2012-MM-000530**

v.

STATE OF FLORIDA
Appellee.
_____/

APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW Appellant by and through his undersigned counsel and responds to the Court's order to show cause of December 4, 2012 as to why this appeal should not be dismissed for lack of jurisdiction.

This appeal arises out of a misdemeanor case in the County Court, St. Lucie County, Nineteenth Judicial Circuit. In the order in that case (attached), the trial judge certified the questions before the trial court as a question of great public importance.

This case involves Defendant Dale Norman who according to the findings of fact below, was in possession of an openly carried firearm. Mr. Norman holds a Concealed Weapon Firearm License (CWFL) issued by the State of Florida. Norman testified in his own defense that the weapon was concealed when he left his home on the date of the offense. Mr. Norman was not charged with any other

offense, and was lawfully in possession of his firearm. It was only the manner in which it was carried for which he was charged. The prosecution of an individual whose gun became exposed while walking down the street is in contravention of the stated intent and legislative history of SB 234 (amending Sec. 790.053, Fla. Stat., 2011) and should be addressed by this Court as a question of great public importance.

Since the U.S. Supreme Court's rulings in the cases of *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008); and *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020, 3024 (2010), and the 7th Circuit's ruling in *Moore v. Madigan*, Case Nos.: 12-1269 and 17-1788, ___ F.3d ___ (7th Cir 2012)(J. Posner)(decided December 11, 2012), the appellate courts of Florida have not had an opportunity to thoroughly review the impact of those cases on the right to keep and bear arms in Florida. In light of these new rulings, their applicability to the current laws of Florida and a determination of whether Florida law is in accord with these decisions is a question of great public importance not suitable to determination by a circuit court in its appellate capacity.

Contrary to the statement in Appellee's Motion to Dismiss, the Circuit Court of the Nineteenth Judicial Circuit does not have exclusive jurisdiction over this appeal. Appellee cites to Rule 9.030(c), Fla. R. of App. P., and to Sec 26.012,

and claims that the circuit court has exclusive jurisdiction over this appeal. This is patently false.

First, Rule 9.030(c) does not state that the circuit court has "exclusive" jurisdiction over appeals from county court cases, only "that the circuit courts shall reveiw by appeal (A) final orders of lower tribunals as provided by general law". Sec. 26.012, Fla. Stat. states that:

> (1) Circuit courts shall have jurisdiction of appeals from county courts except appeals of county court orders or judgments declaring invalid a state statute or a provision of the State Constitution and **except orders or judgments of a county court which are certified by the county court to the district court of appeal to be of great public importance and which are accepted by the district court of appeal for review.**

Sec 26.012(1), Fla. Stat. The circuit courts' exclusive jurisdiction is in subsection (2) and makes no references to appeals from the county courts.

Appellee apparently failed to consider Rule 9.030(b)(4):

> (4) Discretionary Review. District courts of appeal, in their discretion, may review by appeal(A) final orders of the county court, otherwise appealable to the circuit court under these rules, that the county court has certified to be of great public importance;

9.030, Fla. R. App. P. This provision makes it clear that this Court has the discretion to reveiw the decision appealed herein. As stated previously, the trial court certified this case as involving issues of great public importance and the

reason for the certification, along with questions presented.

Appellee also claims that the Court does not have jurisdiction because Appellant failed to identify an appealable order or provide a conformed copy of the order in compliance with Rule 9.110(d), Fla. R. App. P. , and cites to the case of *Leahy v. Batmasian*, 679 So.2d 12 (Fla. 4th DCA 1996). The appellant in *Leahy* was seeking to appeal a county court final order that did not certify a question of great public importance as in the case here, and was therefore properly rejected. The same is not true here.

Also, the Appellee failed to consider the entirety of Rule 9.110(d). The rule makes clear that the requirement for a conformed copy of the order does not apply to criminal cases which this case clearly is.

> **(d) Notice of Appeal.** The notice of appeal shall be substantially in the form prescribed by rule 9.900(a). The caption shall contain the name of the lower tribunal, the name and designation of at least 1 party on each side, and the case number in the lower tribunal. The notice shall contain the name of the court to which the appeal is taken, the date of rendition, and the nature of the order to be reviewed. **Except in criminal cases**, a conformed copy of the order or orders designated in the notice of appeal shall be attached to the notice together with any order entered on a timely motion postponing rendition of the order or orders appealed.

Rule 9.110, Fla. R. App. P.(emphasis added).

Finally, even if there were some defect in the Notice of Appeal, Appellant would submit that the notice, at a minimum, apprises the State of Mr. Norman's

intent to appeal the judgment and sentence entered against him. Absent any showing of prejudice to the State, there is no reason to dismiss the appeal because of technical defects. See *Jones v. State*, 423 So. 2d 520, 521 (Fla. 5th DCA 1982) and *Puga v. Suave Shoe Corp.*, 417 So.2d 678 (Fla. 3d DCA 1982) (holding that "appellate, like other judicial proceedings, should be determined on their merits, instead of upon irrelevant technicalities").

Mr. Norman respectfully requests this Court determine that it does have jurisdiction and hear his appeal in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via e-service this _13th_ day of December 2012 on the following and emailed to the court :

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