

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
22ND JUDICIAL CIRCUIT - STATE OF MISSOURI

FILED
JAN 28 2015

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

STATE OF MISSOURI,)
)
Plaintiff,)
) Cause Number 1422-CR03947
)
) Division Number 1
ANDRE MARQUIS PEARSON,)
)
Defendant.)

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

The Court called Defendant's case for a guilty plea hearing on Monday, January 26, 2015. Defendant Andre Pearson appeared in person and with his attorney, Eric Barnhart. The State appeared by Assistant Circuit Attorney Aaron Levinson.

The Court called Defendant's Motion to Dismiss for hearing. The parties presented arguments for and against the motion. The Court questioned Andre Pearson on the record. The Court then took the case under submission.

Based on the arguments and authorities presented at the hearing, the Court denies Defendant's Motion to Dismiss based on the following:

FACTUAL BACKGROUND

1. On January 22, 2015, Defendant filed his Motion to Dismiss the information which the State of Missouri had filed against him, on December 8, 2014, charging him with one count of unlawful use of a weapon by carrying a concealed weapon, pursuant to Section 571.030.1(1) of the Revised Statutes of Missouri. In this motion, Defendant argued that the Court should dismiss the State's charge because the voters of Missouri had, on August 4, 2014, voted to amend Article 1, Section 23, of the Missouri Constitution to provide that:

(T)he right of every citizen to keep and bear arms . . . in defense of his home, person, family, and property, or when lawfully summoned in aid of a civil power, shall not be questioned.

The rights guaranteed by this section shall be unalienable. Any restriction on these rights shall be subject to strict scrutiny and the state of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement.

Nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of convicted violent felons or those adjudicated by a court to be a danger to self or others as a result of mental disorder or mental infirmity.

Previously, Article I, Section 23, had provided that:

(T)he right of every citizen to keep and bear arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons.

2. Defendant argues that the amendment to Article I, Section 23, raises the Missouri Constitution's protection of citizens' right to bear arms and that a reading of the plain language of the amendment leaves no doubt that Missouri's current law prohibiting people from carrying concealed weapons limits this right and so must be declared unconstitutional.

3. The State agrees that the voters of Missouri have amended Article I, Section 23, and that the new amendment became effective on September 4, 2014, and so applies to this case.

4. However, the State also notes that the Schedule for the current Missouri Constitution, in Section 5, provides that ". . .(A)ll informations which shall have been filed . . . shall continue to be as valid as if this constitution had not been adopted" and argues that this provision means the workings of the existing criminal justice system should not be interrupted unless and until the Missouri General Assembly amends or repeals the criminal statute on which the information is based.

5. The State also notes that the Missouri General Assembly amended Section 571.030 RSMo on September 10, 2014, six days after the voters' amendment of Article I, Section 23, went into effect. The amendment to Section 571.030 RSMo changed the age at which a person could carry a weapon in a vehicle in Missouri from age 21 to age 19 but otherwise left Section 571.030 RSMo as is. The State argues that this action shows that the General Assembly did not think that the prohibition against carrying a concealed weapon had been invalidated by the voters' amendment to Section 23 of Article I and so the statute did not need to be repealed.

6. Section 571.030.1 of the Revised Statutes of Missouri provides in part that:

A person commits the crime of unlawful use of weapons if he or she knowingly:

(1) Carries concealed upon or about his or her person a knife, a firearm, a blackjack or any other weapon readily capable of lethal use;

Section 571.030.4 of the same statute provides that:

4. Subdivision (1) of subsection 1 of this section shall not apply to any person who has a valid concealed carry permit issued pursuant to sections 571.101 to 571.121, a valid concealed carry endorsement issued before August 28, 2013, or a valid permit or endorsement to carry concealed firearms issued by another state or political subdivision of another state.

7. The State's information alleges that, on October 19, 2014, at about 12:50 pm., Andre Pearson was carrying a concealed weapon on his person, namely, a .22 caliber loaded semi-automatic handgun, at 599 North 10th Street on the north side of downtown St. Louis.

8. Andre Pearson advised the Court at the hearing on January 26, 2015, that he currently had no felony convictions on his record.

DISCUSSION OF APPLICABLE LEGAL PRINCIPLES

1. The new Article I, Section 23, of Missouri's Constitution provides "(t)hat the right of every citizen to keep and bear arms . . . in defense of his . . . person . . . shall not be questioned (and) (t)he rights guaranteed by this section shall be unalienable."

A reading of the plain meaning of these words raises a question about the validity of a law prohibiting the carrying of a concealed weapon.

2. The State argues that, if this plain meaning of the amendment requires that Section 571.030.1(1) RSMo be questioned, then the constitutional amendment itself provides that it should be examined under the principle of "strict scrutiny". The State asks the Court to read the whole amendment together rather than to read the amendment as separate and distinct parts.

3. Strict scrutiny of statutes which bear on fundamental constitutional rights requires a two-part analysis. First, the government must show a compelling interest in restricting the right in question. Second, the restriction must be narrowly tailored to meet the compelling interest. Weinschenk v. State, 203 S.W.3d 201, 211 (Mo banc 2006).

4. The State's compelling interest in having a law regulating the concealed carrying of a weapon is to promote public safety and to prevent crime. In fact, this is one of the fundamental reasons for government's existence at all levels. As indicated in the State's Suggestions in Opposition, numerous studies have shown a direct link between the carrying of concealed weapons and the commission of crimes.

5. The provisions of Section 571.030.1 RSMo are narrowly tailored to meet the State's interest in preventing crime. The law prohibits carrying a concealed weapon only in certain circumstances. Sections 571.030.2, 571.030.3 and 571.030.4 RSMo all set out exceptions to the

prohibition on carrying a concealed weapon. Section 571.030.4 RSMo provides a procedure for people to obtain a permit specifically to carry a concealed weapon. Residents throughout the State of Missouri rely on this statutory provision to obtain conceal carry permits.

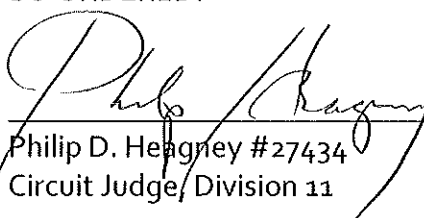
6. At the same time that it recommended the amendment to Article I, Section 23, to Missouri's voters, the General Assembly amended Section 571.030 RSMo. The General Assembly had the opportunity to delete Section 571.030.1(1) RSMo concerning the prohibition on carrying concealed weapons but it took no action to do this. This decision on the part of the General Assembly confirms the Court's determination that Section 571.030.1(1) RSMo meets constitutional requirements and should remain in effect.

ORDERS

Based on the facts and conclusions cited above, the Court rules as follows on Defendant's Motion to Dismiss:

1. Defendant's Motion to Dismiss is denied. And
2. The Court sets this case for a guilty plea hearing in Division 11 on February 17, 2015, at 9:00 am.

SO ORDERED:


Philip D. Heagney #27434
Circuit Judge, Division 11

January 28, 2015

Cc: Aaron Levinson, Assistant Circuit Attorney
Eric Barnhart, Attorney for Defendant