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*OFFICE OF THE STATE ATTORNEY TENTH JUDICIAL CIRCUIT*

**October 2017**

**INSIDE**

**FIREARMS,  
WEAPONS, AND  
PRIVATE  
CONVEYANCES**

**By: Jay Wagner**



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The Assistant State Attorneys in Felony Intake are tasked with reviewing new felony cases as to their suitability for prosecution. From time to time we see issues within cases regarding the possession of firearms within vehicles. The purpose of this article is to highlight the pertinent statutes and how the Courts have interpreted them.

As you are aware, F.S. 790.01 generally prohibits the carrying of a concealed weapon or firearm on or about one's person. Over time, however, the Legislature has carved out exceptions to the rule. One such exception is found in F.S. 790.06 which authorizes the Florida Department of Agriculture to issue concealed firearms and concealed weapons permits. F.S. 790.06(12)(b) states: "A person licensed under this section shall not be prohibited from carrying or storing a firearm in a vehicle for lawful purposes." To gain an understanding of what some of those lawful purposes might be, it is instructive to turn to F.S. 790.25.

F.S. 790.25(5) carves out an additional exception to the general rule that one cannot possess a concealed firearm. This section pertains to possession of a firearm or weapon in a private conveyance. It states: "Notwithstanding subsection (2), it is lawful and is not a violation of F.S. 790.01 for 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 is otherwise not readily accessible for immediate use." This subsection goes on to say: "This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons, including lawful self-defense as provided in s. 776.012." As you can see, the Legislature intended the statute to be interpreted in favor of one's possession of a weapon or

firearm when inside a private conveyance.

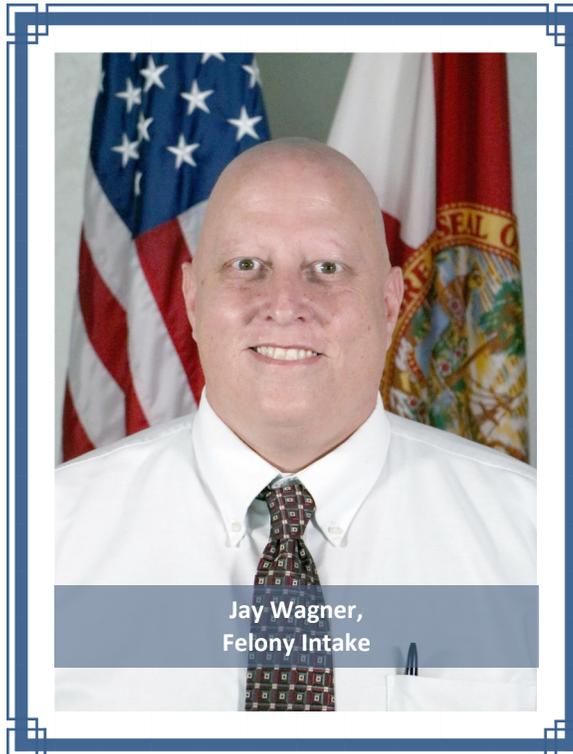
The first question then becomes, what constitutes "securely encased"? The answer may not be as easy as it seems. One has to turn to F.S. 790.001(17) to find the

definition of "securely encased." It states: "'Securely encased' means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked, in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access." We must now look at how the Courts interpret the interplay between these statutes.

In Trock v. State, 990 So.2d 1195 (Fla. 5<sup>th</sup> DCA 2008), the question presented was whether the possession of three firearms, all concealed and contained in zippered duffel bags behind the driver's seat, was unlawful. In reviewing F.S. 790.25, F.S. 790.01, and F.S. 790.001 in conjunction with each other, the

Court came to the conclusion that the carrying of the firearms in this manner was lawful and the zippered duffel bags demonstrated the firearms were securely encased. Given this holding, it is fairly safe to assume that a firearm in a zippered container within a motor vehicle is going to be found to be lawfully possessed.

One might think that possession of a firearm in a box, not locked or fastened in some other manner (and contained within in a motor vehicle), would not fall within the exception to the rule. In Gemmill v. State, 657 So.2d 900 (Fla. 4<sup>th</sup> DCA 1995), however, the Court found differently. In that case, a search warrant was served upon the vehicle in which Gemmill had been previously operating. An officer removed a cardboard box that was wedged between the driver's and passenger's seats. Inside the box was a small caliber pistol that was covered by a bag. As a result of the discovery, Gemmill



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was charged with carrying a concealed firearm. For the Court, the important part of this case was the box had a lid. The officer would have had to open the lid in order to discover the firearm that was inside. The Court held, therefore, that "... Gimmell's gun, was securely encased as it was contained in a closed box which required a lid or cover to be opened for access." See Gimmell v. State, 657 So.2d 900, 902 (Fla. 4<sup>th</sup> DCA 1995). Because of the necessity to open the lid, the Court reasoned the firearm was securely encased.

In another case that seems to follow a similar line of reasoning as to the issue of secure encasement, the Court in Urquiola v. State, 590 So.2d 497 (Fla. 3<sup>rd</sup> DCA 1991) held that the carrying of a firearm in a pouch with a flap (that folded over the top) was a lawful means of carrying the firearm in a motor vehicle. The important factor in that decision was it would have taken Urquiola an additional step or movement to open the flap. The Court reasoned "The gun in the instant case could not have been put to use by the defendant without opening the lid of the pouch." See Urquiola v. State, 590 So. 2d 497, 498

(Fla. 3<sup>rd</sup> DCA 1991). Some of you may have heard of an unofficial "two-step" rule. Perhaps this case is where that phrase came from.

The other portion of F.S. 790.25(5) that you should be aware of is the portion of the statute that concerns whether the weapon or firearm is "...otherwise not readily accessible for immediate use." Again, one must turn to F.S. 790.001 to find the definition of that phrase. F.S. 790.001(17) states: "'Readily accessible for immediate use' means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person." As you can imagine, the decision as to whether a firearm is readily accessible for immediate use is going to depend heavily upon the facts of each case on a case-by-case basis.

In State v. Weyant, 990 So.2d 675 (Fla. 2<sup>nd</sup> DCA 2008),

the Court held a firearm wedged between the front seats was not readily accessible for immediate use. The key to the Second District Court of Appeal was the fact that the firearm was not loaded and the ammunition was inside the closed center console of the vehicle. The Court cited the Florida Supreme Court case of Ridley v. State, 621 So. 2d 409, 409 (Fla. 1993), stating: "When an unsecured firearm located inside a vehicle is not loaded, a court must consider the location and accessibility of both the firearm and the ammunition in determining whether the firearm is readily accessible." See State v. Weyant, 990 So.2d 675, 677 (Fla. 2<sup>nd</sup> DCA 2008). Change the facts to the ammunition being found upon the passenger's seat and perhaps there is a different outcome.

Keep in mind that each case is different.

In conclusion, I hope the above provides some clarity to the issue of guns, weapons, and private conveyances. I included a discussion of the above cases to illustrate how the Courts have come to interpret the statutes regarding concealed firearms, concealed, weapons, and private conveyances in accordance

with the directive of the Legislature that the statutes be given a liberal interpretation as to the lawful use and possession of weapons. Chapter 790 of the Florida Statutes and its contents can be confusing given the interplay of statutes that do not necessarily direct the reader to other sections that must be considered when interpreting the statute at hand. As you can see, it is extremely important that you, as the case filing agent, be as detailed as possible as to how the weapon/firearm was stored (if at all), where the weapon/firearm was in proximity to the occupant(s) of the vehicle, whether ammunition for the weapon/firearm was present, and where the ammunition was found. Documenting these facts will greatly assist the attorneys who are ultimately assigned to review and prosecute your case.





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