IN THE SUPREME COURT OF FLORIDA

JAMES DORELUS,

Petitioner,

vs. CASE NO. 94,174

STATE OF FLORIDA,

Respondent.

_____________________/

INITIAL BRIEF OF PETITIONER
ON THE MERITS

On Petition for Discretionary Review from
the Fourth District Court of Appeal.

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STATEMENT OF THE CASE

This cause is before the Court for review of the decision of the Fourth District Court of Appeal in State v. Dorelus, 720 So. 2d 543 (Fla. 4th DCA 1998). That court reversed a trial court order dismissing a charge of carrying a concealed firearm. Petitioner has invoked this Court's conflict jurisdiction.

The state charged James Gregory Dorelus, petitioner, and Kerby Presume with carrying a concealed firearm. R 1. Petitioner filed a sworn motion to dismiss, which stated in pertinent part:

> 1. On or about April 4, 1996, the Defendant was stopped by the Pembroke Pines Police Department.
>
> 2. That the Defendant was asked to exit the vehicle pursuant to the stop.
>
> 3. That Officer Guerra observed the butt end of a hand gun protruding from the center console of the automobile.
>
> 4. That Officer Guerra then placed the Defendant, JAMES DORELUS, and the co-defendant, KIRBY PRESUME, under arrest for loitering and prowling and carrying a concealed firearm.
>
> 5. Section 790.01 F.S., states that "whoever shall carry a concealed firearm on or about his person shall be guilty of a felony of the third degree. One of the elements that needs to be proven in the charge of carrying a concealed firearm is that the firearm was concealed." In the aforementioned case, the State is unable to prove that the firearm obtained in this case was concealed. The probable cause affidavit filed by the officers in this case states that standing outside the vehicle Officer Guerra observed the "the [sic] shiny silver butt of a gun sticking out of the console located underneath the radio." The Officers pro-

> ceeded to arrest both the Defendant, JAMES DORELUS, and the co-defendant, KIRBY PRESUME, for carrying a concealed firearm.

R 19. The motion noted that the court had already granted a motion filed by co-defendant Presume, and stated that petitioner adopted the arguments of the previous motion.

The state did not file any traverse or demurrer to petitioner's motion.[1]

The trial court conducted a very brief hearing on petitioner's motion -- the entire transcript of the hearing covers less than a page. T 3. At the hearing, the state noted that the court had already granted co-defendant Presume's motion to dismiss, and continued: "There's no traverse because there's no material facts in dispute. We are appealing the other case. I'm assuming we'll do the same for this one. The argument for this is the same as it was for Mr. Presume's case." T 3. The state made no other argument on the motion, which the trial court granted. T 3, R 25.

The supplemental record contains a transcript of the hearing on Presume's motion to dismiss. There, the court noted that the state had filed a "traverse", but noted that this document did not dispute any of the factual allegations in the motion. S 2-3. The prosecutor did not dispute the trial court's assessment of this "traverse." Specifically, the prosecutor noted that the traverse disputed only the memorandum of law portion of the motion to dismiss. S 2. The state argued only that under Ensor

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[1] As noted below, the state did file a "traverse" as to Presume's motion, R 17, but this document did not dispute any material facts respecting Presume's motion.

v. State, 403 So. 2d 349 (Fla. 1981) the court could not grant the motion, and that it needed testimony from the officer to determine how much of the gun was actually seen. S 4. It made no factual claim that the weapon was not in the ordinary sight of another person. After hearing argument, the court granted Presume's motion to dismiss. S 5.

The state appealed the two orders separately. After reversing the order as to the co-defendant, State v. Presume, 710 So. 2d 604 (Fla. 4th DCA 1998), the district court reversed the order at bar, writing:

> We reverse the order granting the sworn motion to dismiss the information charging appellee with carrying a concealed firearm. Under Ensor v. State, 403 So. 2d 349, 354-55 (Fla. 1981), whether a weapon is concealed within the meaning of section 790.001, Florida Statutes (1995), is a question for the trier of fact.
>
> In the instant case, appellee and his co-defendant Presume [FN1] were stopped for a traffic infraction. An officer standing outside the vehicle observed the "shiny silver butt of a handgun sticking out of the console located underneath the radio." Whether a partially visible firearm is "concealed" is an issue of fact for the jury. See Goodman v. State, 689 So. 2d 428, 429 (Fla. 1st DCA 1997) (firearm on vehicle's floorboard behind defendant's heel) (citing Ensor, 403 So. 2d at 354-55); accord State v. Puig, 551 So. 2d 552, 553 (Fla. 3d DCA 1989)(barrel of firearm protruding below driver's seat); State v. Bethea, 409 So. 2d 1139, 1140-41 (Fla. 2d DCA 1982) (butt of gun laying on floorboard of vehicle). "[A]bsolute invisibility is not a necessary element to a finding of concealment under section 790.001." Ensor, 403 So. 2d at 354. Thus, the fact that the handgun was within the arresting officer's "open view" did not preclude a finding that it was a concealed firearm within the meaning of section 790.001(2). See State v. Strachan, 549 So. 2d 235, 236 (Fla. 3d DCA 1989); see also Lane v. State, 567 So. 2d 1014, 1015 (Fla. 3d DCA 1990).

> Appellee primarily relies on State v. Quinn, 518 So. 2d 474 (Fla. 4th DCA 1988), in which this court affirmed the dismissal of an information where a gun sticking out from under the sheet being used as a seat cover in defendant's vehicle was not a concealed firearm within the meaning of section 790.001(2). However, the Quinn court specifically found that there was no issue of fact concerning the gun's concealment because "[t]he state acknowledged that the arresting officer immediately recognized the object as a firearm from his position outside the defendant's car." Id. at 474 (emphasis added). This fact makes Quinn distinguishable from the instant case, in which the state made no such acknowledgment.
>
> Appellee has failed to meet his burden of setting forth undisputed facts which demonstrated that the handgun was situated within the "ordinary sight of another person." Ensor, 403 So. 2d at 354. Because the jury should have resolved the ultimate issue of whether the firearm was concealed, the trial court improperly dismissed the information. See State v. Pollock, 600 So. 2d 1313, 1314 (Fla. 3d DCA 1992).
>
> FN1. See State v. Presume, 710 So. 2d 604 (Fla. 4th DCA 1998). We find no impediment to the state's supplementing the record in this case with the argument made to the trial court in Presume, since the state indicated its intent to rely on the earlier proceedings in the instant case. Moreover, in the motion to dismiss, appellee himself requested the trial judge to take notice of the prior order that granted Presume's motion to dismiss the same charges. Where, as here, the parties and the trial court clearly intended to incorporate an earlier proceeding into the case being tried, that proceeding can be a part of the instant appellate record. See Hines v. State, 549 So. 2d 1094, 1094-95 (Fla. 1st DCA 1989).

State v. Dorelus, 720 So. 2d at 544.

SUMMARY OF THE ARGUMENT

A split of authority has developed in the district courts of appeal as to the power of trial court judges to grant motions to dismiss concealed weapon charges. A review of this Court's precedents shows that trial courts may grant such motions in appropriate cases. At bar, the district court erred in aligning itself with cases taking an unnecessarily restrictive view of the powers of trial court judges.

The trial court did not err in granting petitioner's motion to dismiss based on the undisputed facts. There were no disputed facts. The only question to be decided was the application of the law to the undisputed facts. A trier of fact could not have concluded that the weapon was concealed. The district court of appeal should not have overruled the trial court's ruling.

Where the constitutional right to bear arms is involved, it is important to have certainty in the application of the law, lest otherwise innocent persons be ensnared in the criminal law. To treat the commonly-occurring situation at bar as a question fact necessarily leads to uneven application of the law in this sensitive area.

ARGUMENT

WHETHER THE LOWER COURT ERRED IN OVERRULING THE ORDER DISMISSING THE CONCEALED FIREARM CHARGE.

A conflict has arisen in the district courts of appeal as to whether a trial court judge may grant a motion to dismiss a concealed weapon charge where the weapon is in an automobile. The conflict has resulted from different readings of State v. Teague, 475 So. 2d 213 (Fla.1985) and Ensor v. State, 403 So. 2d 349 (Fla. 1981). Petitioner submits that a correct reading of those cases will lead to a resolution of that conflict and to the conclusion that the district court at bar erred in overruling the decision of the trial court at bar.

A. *The controlling authorities of State v. Teague and Ensor.*

In State v. Teague, an officer stopped Teague for driving without headlights at night. After Teague got out of the car, he opened the left rear door to get his license. When Teague opened the door, "the officer saw the muzzle portion of a rifle lying uncovered on the front seat of the car." The stated prosecuted Teague for possession of a concealed firearm on the theory that the car had tinted windows through which the firearm could not be seen by the "ordinary sight of another person". The trial court granted Teague's motion to dismiss, finding that the facts did

not establish a prima facie case of guilt under section 790.01(2), Florida Statutes.[2] The Second District affirmed, 452 So.2d 72, but certified the following question to this Court: "Does the carrying of a firearm by the occupant of a motor vehicle having tinted window glass which prevents the firearm from being visible within the ordinary sight of persons outside the vehicle, although the firearm is otherwise in clear view and unconcealed, constitute the offense of carrying a concealed firearm under Section 790.01(2), Florida Statutes?"

This Court answered the question in the negative. It ruled that the trial court was correct in granting the motion to suppress. Since the officer could see the gun barrel lying on the seat, the gun was not concealed. 475 So. 2d at 214.

Ensor, decided several years earlier, presented a somewhat more complicated set of facts. There, police officers stopped a car, and had its occupants (including Ensor) get out. While two officers questioned the occupants, two others examined the car. "Peering through the front windshield, one officer spotted a portion of a white object protruding from under the left side of the passenger floormat. From squatting and looking into the already-opened passenger door, the officer determined the object to be a derringer pistol. At that point, the officer entered the vehicle and retrieved the weapon." 403 So. 2d at 351.

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[2] Section 790.02 makes it a crime to carry a concealed weapon. Section 790.001(2) defines a "concealed firearm" as one that is "carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person."

When Ensor moved to suppress the gun as illegally seized, the state responded that the weapon was in "plain view" and therefore lawfully seized. Adopting a ju-jitsu style of litigation, Ensor then moved to dismiss, saying that, as the gun was in plain view, it was not a concealed firearm. The trial court granted the motion to dismiss, but the district court reversed.

On certiorari review, this Court ruled that the search was not illegal since the officer did nothing illegal in looking into the car and, once he saw the firearm, seized it lawfully under the "automobile exception" to the search warrant requirement.

As to the motion to dismiss, this Court wrote in pertinent part:

> We agree with the majority view and find that absolute invisibility is not a necessary element to a finding of concealment under section 790.001. The operative language of that section establishes a two- fold test. For a firearm to be concealed, it must be (1) on or about the person and (2) hidden from the ordinary sight of another person. The term "on or about the person" means physically on the person or readily accessible to him. This generally includes the interior of an automobile and the vehicle's glove compartment, whether or not locked. The term "ordinary sight of another person" means the casual and ordinary observation of another in the normal associations of life. Ordinary observation by a person other than a police officer does not generally include the floorboard of a vehicle, whether or not the weapon is wholly or partially visible.
>
> These statements are not intended as absolute standards. Their purpose is to make it clear that a weapon's possible visibility from a point outside the vehicle may not, as a matter of law, preclude the weapon from being a concealed weapon under section 790.001. Similarly, a weapon's location in some extreme part of the vehicle's interior may be such that the trier of fact finds the weapon to be not "about the person," and thus not concealed. In all instances, common sense must prevail. The critical question turns on whether an individual, standing near a person

> with a firearm or beside a vehicle in which a person with a firearm is seated, may by ordinary observation know the questioned object to be a firearm. The ultimate decision must rest upon the trier of fact under the circumstances of each case.
>
> In carrying out normal procedures in making an arrest, the officer in the instant case discovered the derringer pistol on the vehicle's floorboard through a legally permissive "open view." The undisputed facts reflect, however, that the officer could not identify the object until he looked through the open vehicle door and under the vehicle seat. The gun was on the floor, partially under the mat. We find that this weapon could qualify as hidden from the ordinary sight of the average person. It should be emphasized that the permissible and legal observations of a police officer in making an arrest and the observation of an average person making normal contact with an individual are clearly not the same. We hold that appellant's prosecution for possession of a concealed firearm was permissible and that the firearm was wrongfully suppressed. The jury should determine whether this weapon was concealed under these facts.

Id. 354-55.

Thus, Ensor does not hold that it is always a question for the trier of fact to decide whether a weapon is concealed. There, the weapon was on the floorboard of the car, and ordinary observation by a person other than a police officer "does not generally include the floorboard of a vehicle." Id. Further, all the officer could see at first was that there was "a white object protruding from under the left side of the passenger floormat", id. 351, and he could determine it was a gun only by squatting and looking under the seat. Id. 351, 355. This Court concluded that the gun "could qualify as hidden from the ordinary sight of the average person." Id. 355 (e.s.).

B. *The conflict in the district courts of appeal.*

A conflict has arisen among the district courts of appeal as to whether a trial judge may grant a sworn motion to dismiss a concealed weapon charge when the weapon is in a car. One line of cases has ruled that, in light of State v. Teague, Ensor does not always bar the trial judge from passing on such motions. The other line has held that Ensor imposes a strict bar on consideration of such motions.

The Fifth District, in its en banc decision of Cope v. State, 523 So. 2d 1270 (Fla. 5th DCA) rev. denied 531 So. 2d 1355 (Fla.1988), considered both Ensor and State v. Teague in deciding that the trial court erred in denying a motion to suppress evidence obtained as a result of an arrest for possession of a concealed firearm. It wrote that the trial court should have granted the defendant's motion to dismiss the concealed firearm charge and hence should have also granted the motion to suppress. When the arresting officer looked into Cope's truck, he readily saw the butt of a handgun on the front seat.[3] The court wrote at pages 1271-72:

> We hold that a pistol with the butt and part of the frame exposed on the front seat of a truck, instantly recognizable upon casual observation as a blue steel pistol with wood-grain handle grips, cannot be termed "concealed," given the ordinary meaning of that word.

Later Fifth District cases have also treated such cases as involving questions of law which can be determined by the court. For instance, Carpenter v. State, 593 So. 2d

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[3] The dissent pointed out that the officer "saw the butt of a firearm stuck down between the seats", and that another officer testified that he saw the handle sticking up out of the crack between the seats. Id. 1272.

606 (Fla. 5th DCA 1992) held that the trial court should have granted the defense motion to dismiss a concealed firearm charge where there was a handgun in the front seat with the grip and hammer sticking up six inches above the level of the seat. The officer did not see the gun when he first looked into the car, and saw it only after Carpenter got out. Apparently her body concealed the gun while she was seated in the car. See also Taylor v. State, 552 So. 2d 1135 (Fla. 5th DCA 1989) (evidence, that pistol butt was visible in crack between front passenger seats, did not support concealed firearm conviction).

In State v. Hardy, 610 So. 2d 38 (Fla. 5th DCA 1992), the court held that, under Ensor and Cope, the facts did not justify an arrest for possession of a concealed weapon when officers saw a knife in a sheath on the floor of a car, even though it was partially concealed. The officer testified: "We were looking through the front windshield with the aid of a flashlight, and looking through the front windshield you could see the handle, the knife handle, lying on the floorboard. The sheath part was partially underneath the seat. That's the best I can describe it." Id. 39.

The Second District has generally taken the same line as the Fifth. In State v. Mitchell, 494 So. 2d 498 (Fla. 2d DCA 1986), the court found error in the denial of a motion to suppress evidence resulting from an arrest for carrying a concealed firearm. The court reasoned that, even though the officer had some trouble seeing it,

the gun was not concealed, so that the resulting arrest was illegal. It wrote in pertinent part (id., 499-500) (e.s.):

> At the suppression hearing, only Officer Michael Palmieri testified. On March 26, 1984, at about 2:00 a.m., Officer Palmieri and his partner, Officer Yost, saw defendant's car parked near a closed bar. The officers approached the car and asked defendant to roll down the window. Defendant complied and, when questioned, explained that he was waiting to pick up a female acquaintance from the bar. While speaking to defendant, Palmieri looked through the open car window. In the back seat of the car he saw six inches of the butt of a gun sticking out from behind the front passenger seat. Palmieri experienced some difficulty seeing the gun because its woodgrain color blended with the brown leather seats.
>
> Palmieri then asked defendant to step out of the car. Defendant complied, and Palmieri retrieved the gun, a loaded, semiautomatic carbine which was lying at a ninety degree angle with the barrel facing down to the floorboard. The officers arrested defendant for carrying a concealed firearm. After that, Palmieri searched the immediate area in the car where defendant had been sitting. This search, incident to defendant's arrest, yielded an unloaded two-shot derringer positioned between the driver's seat and the console. It was this derringer which was the basis of the state's charge and the defendant's conviction.
>
> ... .
>
> To be concealed, a firearm must be on or about the person and hidden from the ordinary sight of another person. § 790.001(2), Fla.Stat. (1983); Ensor v. State, 403 So. 2d 349, 354 (Fla.1981). "On or about the person" means physically on or readily accessible to the person. Ensor. "Ordinary sight of another person" means casual and ordinary observation in the normal association of life. Ensor. Thus, "[t]he critical question turns on whether an individual, standing near a person with a firearm or beside a vehicle in which a person with a firearm is seated, may by ordinary observation know the questioned object to be a firearm." Ensor, 403 So. 2d at 355.

> Officer Palmieri observed the carbine through a legally permissive "open view." Ensor, 403 So. 2d 352-3, 355. Yet, unlike the officers in Ensor, he recognized the butt of the carbine as being a part of a firearm without changing his position or bending down to look under a car seat to find it. Id. at 355. Moreover, the carbine was not partially covered by a mat. Id. Thus, it did not qualify as hidden from the ordinary sight of the average person. Therefore, it was not a concealed firearm.
>
> Since the carbine was not concealed, it did not furnish the officers a basis to arrest defendant. ... .

Similarly, in Gibson v. State, 576 So. 2d 899 (Fla. 2d DCA 1991), the court wrote (e.s.):

> Gibson was a passenger in a vehicle which was stopped following a traffic violation. The officer executing the stop approached the vehicle and shined his flashlight into its interior. Although the officer's testimony is conflicting, it appears that he detected the handle of a large knife. Gibson exited the vehicle pursuant to the officer's request whereupon the officer conducted a pat-down. The pat-down produced a five-inch pipe which tested positive for cocaine. Gibson was arrested and charged with carrying a concealed weapon, possession of cocaine and possession of drug paraphernalia.
>
> Gibson moved to dismiss the concealed weapon charge. The trial court correctly granted his motion, determining that the machete was not concealed. Based upon the officer's testimony, the trial court was justified in concluding that he knew the item was a large knife when he saw it on the floorboard. The machete was not, therefore, concealed. Cope v. State, 523 So. 2d 1270 (Fla. 5th DCA), rev. denied, 531 So. 2d 1355 (Fla. 1988). ...

Compare State v. Bethea, 409 So. 2d 1139 (Fla. 2d DCA 1982) (question of fact as to whether pistol lying on floor of truck was concealed; state filed demurrer saying

pistol could not be seen at all without opening door and only small portion was observable with door open).

The First and Third Districts, on the other hand, have generally held that there is a question of fact as to whether such a weapon is concealed. In Goodman v. State, 689 So. 2d 428 (Fla. 1st DCA 1997), the court found no error in denying a motion to dismiss where the firearm lay on the floorboard near the defendant's foot, but specifically noted conflict with Gibson, writing at page 429:

> Appellant argues that Gibson v. State, 576 So. 2d 899 (Fla. 2d DCA 1991), is substantively indistinguishable, and requires that we reverse. In Gibson, the weapon was a machete. Id. Otherwise, the relevant facts in Gibson appear to be indistinguishable from those here. In Gibson, the court affirmed the trial court's dismissal. However, Gibson does not cite Ensor. Moreover, it would appear that Gibson affirmed the dismissal on the ground that "the trial court was justified in concluding that [the officer] knew the item was a large knife when he saw it on the floor-board" (id.) and that, therefore, the machete was not concealed. It seems to us that this is precisely the kind of issue which Ensor says must be resolved by the trier of fact and which, therefore, should not have been resolved by the trial court pursuant to a rule 3.190 (c)(4) motion to dismiss. Accordingly, we acknowledge apparent conflict with Gibson.

Likewise, State v. Strachan, 549 So. 2d 235 (Fla. 3d DCA 1989), held that, under Ensor, the trial court erred in granting a motion to dismiss where the officer saw a firearm on the floorboard after Strachan got out of the vehicle. Cf. State v. Puig, 551 So. 2d 552 (Fla. 3d DCA 1989) (error, under Ensor, to grant a motion to suppress where the officer saw the barrel of a rifle protruding from under the driver's seat while looking at the VIN on the dashboard of vehicle).

Petitioner submits that the cases applying a strict bar on consideration of motions to dismiss has misread Ensor as discussed in the preceding section of his argument. Ensor, when read with State v. Teague, does not impose a strict bar preventing trial courts from determining, as a matter of law, whether a weapon is concealed in a car. At bar, the district court erred in aligning itself with cases taking an unnecessarily restrictive view of the powers of trial court judges.

C. *The case at bar.*

At bar, the state filed no traverse or demurrer disputing petitioner's allegations that the state could not prove that the firearm obtained in this case was concealed and the officer standing outside the car saw the shiny silver butt of a gun sticking out of the console located underneath the radio. The officer saw this when petitioner got out of the car. The state told the judge: "There's no traverse because there's no material facts in dispute." T 3.

The state's only argument to the trial court was to refer to its argument in the co-defendant's case. It did not make any claim that the officer had any difficulty in discerning the object was a firearm. It did not allege that it was not in the ordinary sight of another person. It did not make any claim, it made no argument, it did not suggest that it could show that it was not immediately discernible as a gun. T 3. At the hearing on the co-defendant's motion, the state argued only that under Ensor the court could not grant the motion, and that it needed testimony from the officer. S 4.

Under the undisputed facts, it would be readily apparent to the casual observer that the shiny handle of a gun was protruding from the console. The officer did not have to examine the matter more closely or squat and peer under the seat to see what the object was, as occurred in Ensor. See State v. Mitchell. This case is much closer to State v. Teague. As in that case, there is no showing of any attempt at concealment of the gun. The trial court did not abuse its discretion in granting the motion to suppress.

D. *Consideration of policy issues.*

Policy considerations dictate that there should be a clear rule as to when a weapon is concealed. In this regard, petitioner submits that this Court should take into consideration Justice Boyd's dissent in Ensor, 403 So. 2d at 355:

> I agree with the trial court that since the weapon could be seen by anyone looking through the windows or doors of the automobile it was not a concealed weapon.
>
> The majority opinion tries earnestly to define a vague statute and explains how several appellate courts have disagreed in construing the statute in almost identical circumstances. I think instead of trying to save the statute by stating our own views of what the law should provide we should firmly urge the legislature to define what acts and circumstances constitute carrying a concealed weapon.
>
> What the public generally knows, courts can notice judicially. The rising increase of violent crimes in which pistols are used should demonstrate the urgent need for laws clearly stating who may carry weapons that are concealed, and under what circumstances, and what constitutes concealment.

> Ambiguities in criminal laws must be construed against the state. Since Florida appellate courts would likely disagree on whether the petitioner's possession of the derringer under his car seat was a violation of law I would reverse the district court and direct it to affirm the trial court's dismissal of the criminal charge.

Although not free from controversy, the right to bear arms is securely enshrined in Article 1, Section 8 of our Constitution. Likewise, the rule that criminal statutes be strictly construed in favor of the defendant, is of constitutional dimensions. Dunn v. United States, 442 U.S. 100, 112, 99 S.Ct. 2190, 60 L.Ed.2d 743 (1979).[4] This rule of construction applies to concealed firearm statutes. Watson v. Stone, 148 Fla. 516, 518-19, 4 So. 2d 700, 701 (1941).

Untold numbers of working people carry knives in their trucks and cars. Great numbers of persons carry firearms in their cars for personal protection. It defies common sense to say that these otherwise law-abiding people may be criminals depending on the vagaries of different juries' interpretation of the law in similar factual situations, or that they can be exonerated only after exposure to the expense and hardship of criminal prosecution. It is one thing to hold, as in Ensor, that a jury may find a criminal act in the hiding of a derringer under the floormat of a car, so that

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[4] In Dunn, the Court wrote that the rule "is rooted in fundamental principles of due process which mandate that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited. [Cit.] Thus, to ensure that a legislature speaks with special clarity when marking the boundaries of criminal conduct, courts must decline to impose punishment for actions that are not '"plainly and unmistakably"' proscribed. [Cit.]"

it can be discerned only by squatting and peering into the open door. It is quite another, however, to say that a trial judge cannot dismiss an ill-brought prosecution where the shiny handle of a gun is plainly protruding from the console of a car.

The people of this state should be able to go to their lawyers to ask under what circumstances they may carry weapons for their safety, and the lawyers should be able to give straight answers. Leaving such questions in the shadowy realm of questions of fact does not serve public policy.

The trial court did not abuse its discretion in granting the motion to dismiss.

CONCLUSION

The trial court did not abuse its discretion in granting the motion to dismiss. The district court erred in overturning the trial court's order. This Court should quash the decision of the district court and remand with instructions to reinstate the order dismissing the concealed firearm charge.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Lara J. Edelstein, Assistant Attorney General, Department of Legal Affairs, Suite 300, 1655 Palm Beach Lakes Boulevard, West Palm Beach Florida by courier January 25, 1999.

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Of Counsel