



WISCONSIN SUPREME COURT
THURSDAY, FEBRUARY 23, 2006
1:30 p.m.

04AP2989-CR

State v. Scott K. Fisher

This is a certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison). The Court of Appeals may certify cases that cannot be decided by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case originated in Jackson County Circuit Court, Judge John A. Damon presiding.

This is a 'concealed carry' case. The Supreme Court will decide if the law¹ that prohibits carrying concealed weapons may be enforced against a business owner who kept a loaded gun in the console of his vehicle for security while making night deposits.

This is the third time in recent years that the state Supreme Court has weighed the constitutionality of applying the law that prohibits carrying concealed weapons in light of the 1998 state constitutional amendment that guarantees the people's right to bear arms.

In State v. Cole,² the Court concluded that a man who was discovered with two guns in a car during a routine traffic stop could be convicted of violating the concealed carry law because his generalized assertion of feeling unsafe in a neighborhood where he had been brutally beaten was not sufficient to warrant carrying a gun for personal safety.

In State v. Hamdan,³ the Court concluded that a grocery store owner, who was carrying a gun in his pocket while in the store, could not be prosecuted for carrying a concealed weapon because he had a legitimate security interest at his place of business. The Court emphasized that a person's expectation of personal security is greatest on his or her own property.

This current case presents the court with elements from both previous cases: a business owner carrying a loaded gun in his vehicle. Scott Fisher owned and operated the Cozy Corner Tavern in Black River Falls. At bar time, he would transport the night's receipts – a substantial amount of cash – to the bank or to his home. He testified that this required travel through a high-crime neighborhood.

That Fisher packed a loaded pistol in the center console of his truck came to light after the truck was stolen and he notified police that the pistol was in it. Soon after the theft, the truck thief was killed in a knife fight and the truck and loaded pistol were returned to Fisher. After Fisher had a subsequent encounter with a law enforcement officer and disclosed that he still had the loaded gun in his truck, he was charged with carrying a concealed weapon.

The circuit court dismissed the complaint after Fisher argued that his constitutional right to protect himself outweighed the State's interest in enforcing the statute. The Court of Appeals certified the State's appeal to the Supreme Court, which will decide whether Fisher can be prosecuted for violating the concealed carry statute.

¹ Wis. Stat. § 941.23

² 2003 WI 112, 264 Wis. 2d 520, 665 N.W.2d 328

³ 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785