


OREGON MUNICIPAL COURT  
LUCAS COUNTY, OHIO

City of Oregon,	)	Case No. 06CRB00524
	)	
Plaintiff	)	[Hon. Jeffery B. Keller]
	)	
vs.	)	MOTION TO CLARIFY AND
	)	RECONSIDER ORDER DENYING
Daniel A. Sayers,	)	DEFENDANT'S MOTION TO DISMISS
	)	
Defendant.	)	ANSPACH MEEKS ELLENBERGER LLP
	)	Daniel T. Ellis (0038555)
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	)	
	)	Counsel for Defendant
	)	Daniel A. Sayers
	)	
	)	

Now comes Defendant, Daniel A. Sayers, and respectfully requests that this Court clarify and reconsider his Motion to Dismiss the State's indictments. In issuing its Order on August 18, 2006 denying Defendant's Motion to Dismiss, the Court failed to address three arguments set forth by Defendant. Specifically, that R.C. 2329.12(B) violated Mr. Sayers' Miranda rights, that Mr. Sayers was forced to choose between complying with the officers' orders and complying with R.C. 2923.12(B), and that Oregon Municipal

Ordinance impermissibly bans the carry of all firearms. Additionally, this Court's analysis contained an internal inconsistency because it held that Mr. Sayers was openly carrying his firearm in violation of Oregon Municipal Ordinance 549.18 and was required to comply with the concealed carry statute, R.C 2923. The concealed carry statute does not apply to "open carry." Defendant, therefore, respectfully requests that this Court clarify and reconsider the Motion to Dismiss, taking into account the unaddressed arguments and clarifying any internal inconsistencies.

Respectfully submitted,



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#### MEMORANDUM IN SUPPORT

In its order, this Court failed to address Defendant's argument that Mr. Sayers' Miranda rights were violated when R.C. 2923.12(B) was applied in the context of a felony stop. A felony stop occurs when the police issue orders to a subject to exit his vehicle at gunpoint. *State v. Carter* (1994), 69 Ohio St.3d 57, 60, N.E.2d 355, 359. A reasonable person would believe that he was in custody during a felony stop, thus triggering his Miranda rights. *State v. Biros* (1997), 78 Ohio St.2d 426. Requiring Mr. Sayers to say anything, including informing officers that he was licensed to carry, and

was carrying a concealed firearm during the felony stop deprived him of his right to remain silent. Mr. Sayers' constitutionally protected silence was used against him when he was charged with a violation of R.C. 2923.12(B). Mr. Sayers should not have been required to choose between being charged with a first-degree misdemeanor and giving up his Miranda rights. Therefore, the charge against Mr. Sayers for violating R.C. 2923.12(B) should be dismissed.

Secondly, this Court failed to address Defendant's argument regarding conflicting obligations of complying with the lawful orders of the police officers or complying with R.C. 2923.12(B). As soon as Mr. Sayers was pulled over, he was required to follow and comply with all lawful orders given by the police. After being pulled over, Mr. Sayers was forced to exit his vehicle and lay on the ground, all at gunpoint. R.C. 2923.12(B) required Mr. Sayers to promptly inform police that he was licensed to carry and was carrying a concealed firearm when they approached him. When faced with these competing obligations, Mr. Sayers avoided the risk of being shot and followed the orders of the police. Mr. Sayers cannot be held in violation of R.C. 2329.12(B), assuming he never informed the police he had a license to carry a concealed firearm, because any failure to do so would be the sole the result of his compulsory compliance with the officers' orders. Consequently, he had an obligation to remain quiet and follow all lawful orders of the police.

This Court also failed to address Defendant's assertion that Oregon Municipal Ordinance 549.18 bans the carry of all firearms in the City of Oregon in direct conflict with Section 4, Article I of the Ohio Constitution and the Second Amendment to the United States Constitution. Section 4, Article I of the Ohio Constitution gives the

citizens of Ohio the right to bear arms for their defense and security. The Ohio Supreme Court has interpreted this provision to confer upon the people of Ohio a fundamental individual right to bear arms. *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35. The Sixth District Court of Appeals recently held a statute banning, “the carry (of) firearms of any description” banned the carry of all weapons, concealed or not. *City of Toledo v. Beatty*, (Sept. 1, 2006), Lucas County App. No. L-05-1319, unreported. Similarly, Oregon Municipal Ordinance 549.18 states, “[n]o person...shall be in possession of, carry, or have on or about his person, any pistol revolver, rifle, shotgun or any weapon by whatever name known...” Reading the *Beatty* decision, the only conclusion that can be reached is that Oregon Municipal Code 549.18 also bans the carry of all firearms, concealed or not.

The Ohio Supreme Court has held that, if an ordinance bans all firearms, it is unconstitutional under Section 4, Article I and Section 3, Article XVIII of the Ohio Constitution. *Arnold*, 67 Ohio St.3d at 49. Specifically, the court stated, “[c]learly the city would have exceeded its authority...if it had banned *all* firearms.” Banning the carry of all firearms is an unconstitutional attempt to preclude the possession of all firearms in the City of Oregon. Oregon Municipal Code 549.18 is therefore unconstitutional on its face, as it directly conflicts with the constitutions of Ohio and the United States, as well as the holding of the Ohio Supreme Court in *Arnold*, and the charges against Mr. Sayers for violating the ordinance should be dismissed.

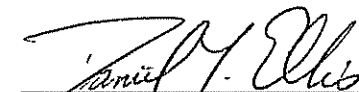
Finally, this Court’s Order contains an internal inconsistency because it holds that Mr. Sayers was not carrying a concealed weapon under Oregon Municipal Ordinance 549.18 while at the same time upholding the charge against Mr. Sayers of violating R.C.

2329.12(B) for not informing the officers that he was carrying a concealed weapon. The Court stated that a Motion to Dismiss was not the proper vehicle to decide the issue of fact pertaining to the notification by Mr. Sayers of his concealed carry license. However, since the Court held that Mr. Sayers was not carrying a concealed weapon because it was openly displayed, there can be no violation of R.C. 2329.12(B). R.C. 2329.12(B) only applies to situations in which an individual is carrying a concealed firearm.

Moreover, the fundamental purpose of R.C. 2329.12(B) is to inform police officers who approach concealed carry holders that they are carrying a concealed firearm. There is no useful purpose to inform when the police pulled Mr. Sayers over on the basis of a “man with a gun.” The police officers already knew Mr. Sayers was carrying a firearm.

Based on these arguments, Defendant respectfully requests that this Court clarify and reconsider the Motion to Dismiss and Supplemental Motion to Dismiss and find that it should be granted. In so doing, Defendant asks that the Court take into consideration all the arguments made herein.

Respectfully submitted,

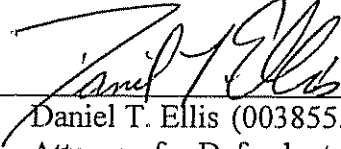
  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *Motion to Clarify and Reconsider Order Denying Defendant's Motion to Dismiss* has been served by ordinary United States Mail, postage prepaid, upon Thomas Dugan, Esq., Prosecutor, Oregon Municipal Court, 5330 Seaman Road, Oregon, OH 43616 this 21st day of September, 2006.

  
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Daniel T. Ellis (0038555)  
Attorney for Defendant