



FILED

OCT 06 2006

OREGON MUNICIPAL COURT

IN THE MUNICIPAL COURT OF OREGON, LUCAS COUNTY, OHIO

City of Oregon/State of Ohio,

Plaintiff,

v.

Daniel A. Sayers,

Defendant.

* * * * *

Case No.: 06CRB00524

ORDER

* * *

This matter comes before the court on *Defendant's Motion to Clarify and Reconsider Order Denying Defendant's Motion to Dismiss*, filed September 22, 2006; *Plaintiff's Response to Defendant's Motion to Clarify and Reconsider Defendant's Motion to Dismiss*, filed September 27, 2006; and the *Defendant's Reply to Plaintiff's Response to Motion to Reconsider*, filed September 29, 2006

Based upon a request from the Defendant's counsel to clarify the court's decision, the court offers the following response to defense counsel's allegation that the court did not address three issues: (1) Of Miranda and Sayers' obligation to answer questions about his carrying a concealed weapon, (2) Of the constitutionality of the O.M.C. §549.18, and (3) Of the distinction between carrying a weapon "openly" or "concealed".

First, defense counsel has raised the issue of the Defendant's obligation to make an incriminating statement to law enforcement when stopped by police. Counsel maintains that Daniel Sayers, by telling police that he had a carry concealed permit when stopped by police, was violating his Miranda right against self incrimination.



The Supreme Court, in addressing Defendant's issue looks to the decision of *New York v. Quarles*, 467 U.S.649 (1984). The Court recognized that:

... great danger to the public and that there are situations in which the need for answers to questions regarding public safety out-weighs the need for the prophylactic Miranda warnings.

Consequently, the Court adopted a public-safety exception to the Miranda rule:

Police may justifiably fail to inform a suspect of his Miranda right in order to ask questions necessary to ensure their own safety or the safety of the public.

The Court went on to say in allowing a public safety exception to the Miranda rule:

The need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment privileges against self-incrimination.
New York v. Quarles, 467 U.S.649 (1984)

In the case at bar, there appears to be some debate about whether Sayers made a statement at all about his having a carry concealed permit. The police allege that he did not tell them about his permit. Sayers maintains that he did tell them, but they did not hear him.

Quarles creates a public policy exception that, had Sayers made a statement that he was a carry permit holder, his statement would not be covered under Miranda. Further, this court does not see how Sayers' statement, "I have a right to carry a concealed weapon," would be self-incriminating.

Therefore, this Court finds that the Defendant, Daniel Sayers, did not have the right to remain silent and was required to identify that he was a carry concealed permit holder as required by the *Quarles* decision.

Second, defense counsel contends that the court did not address the constitutionality of O.M.C. §549.18. The court now directs your attention to the conclusion section on page seven (7), of the court's decision in which the court made the following observations:



"The Court must give deference to the policy considerations that the elected city council has weighed in enacting OMC §549.18."

Therefore, this Court finds that the §549.18 is presumed valid and grants deference to its constitutionality.

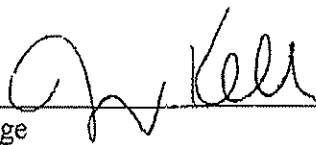
Lastly, defense counsel contends that the court did not address the distinction between carrying a weapon "openly" or "concealed." The court would suggest that defendant's counsel refer to pages four, five and six (4-6), of the Court's order dated August 18, 2006. In the analysis contained on those pages the court defines carrying "openly" and well as "concealed" and then applies those definition to the facts at hand.

Therefore, this Court fines that the Defendant, Daniel Sayers, was in fact carrying his weapons "openly" and was therefore in direct violation of the O M.C. §549.18.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the Defendant's Motion to Reconsider Order Denying Defendant's Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

10/6/06
Date


Judge