

STATE OF WISCONSIN

CIRCUIT COURT

MENOMINEE COUNTY

STATE OF WISCONSIN,

FILED
MENOMINEE COUNTY

vs.

DEC 30 2016

Case number: 16CF1

JARROD W. KUEHN

PAMELA FRECHETTE
CLERK OF COURTS

ORDER ON MOTION TO DISMISS

The defendant filed a motion to dismiss this charge of Possession of Firearm on School Premises, in violation of Wis. Stat. section 948.605(2)(a), because of the exemption under the statute, which states that the rule does not apply if the firearm is not loaded, and "encased."

This issue was previously decided by Judge Kussel, who denied the motion; and subsequently, the defendant filed a request for judge substitution and a motion for reconsideration of the motion to dismiss. The state argues that now the court does not have jurisdiction to reconsider the motion because it's already been decided, that judge substitution is judge shopping, and that the prior order dismissing the motion constitutes res judicata. This court hereby rejects each of those arguments. This matter has been assigned to this court through the lawful process of substitution, and the court can always modify prior orders at the trial court level while the case is pending. Further, the order denying the motion to dismiss does not constitute res judicata because it's not a final order.

Turning now to the substantive argument in this case, the exemption requires that the firearm be unloaded, that it be "encased" and that no part of the firearm be exposed. There is no dispute that the firearm was unloaded and that no part of the firearm was exposed. Further, there is no dispute that the center console in which it was located was latched or fastened. Therefore, the last question for the court is whether the center console constitutes a "case" within the statutory definition.

"Encased" is defined in Wis. Stat. section 167.31(1)(b), as "enclosed in a case that is completely zipped, snapped, buckled, tied or otherwise fastened with no part of the firearm exposed. "

It is interesting to note that prior to 2011, the definition of "encased" under section 167.31(1)(b), meant "enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied or otherwise fastened with no part of the firearm exposed." The legislature amended the statute to delete the language, "that is expressly made for the purpose of containing a firearm." 2011 Wis.SB 93. The legislative intent was to broaden the types of "cases" that could be used for firearms, and renders obsolete the DNR regulation definition of encase, (which

is largely moot anyway because of the legalization of carrying an uncased weapon in one's vehicle).

Therefore, the court is satisfied that the center console of the defendant's car is a "case," under that word's plain meaning, which is a "box or receptacle for holding something." Accordingly, the court grants the motion for reconsideration and hereby dismisses the charge.

Dated this 28 day of December, 2016.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Ann N. Knox-Bauer', written over a horizontal line.

Ann N. Knox-Bauer
Specific Assignment Judge
Menominee County, WI