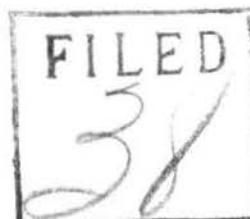


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Sheriff:

1. To charge a person with carrying concealed weapons under the statute concealment is the gravamen of the offense whether such concealment is on, or near to, person.
2. Where person is intoxicated concealment not necessary.
3. Weapon found in car with illegal liquor, general law applies.

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Mr. Sterling V. Harness,
Sheriff of Henry County,
Clinton, Missouri.



Dear Sir:-

We have your letter of June 20, 1934, in which is contained a request for an opinion as follows:

"We would like to get your opinion on the law on carrying concealed weapons, especially when a gun is found in an automobile either in the car pocket or lying in the open as on the seat or within easy reach of the person or persons in the car. Also in case where an arrest is made for drunkenness and a gun is found, how should the gun be confiscated.

"Then where illegal liquor is found in an automobile and a gun is also found in the car lying within reach, can we take the gun and file on the person for carrying concealed weapons. I am referring to pistols and revolvers in the above cases."

Section 4029, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 4029. Carrying concealed weapons.--If any person shall carry concealed upon or about his person a dangerous or deadly weapon of any kind or description, or shall go into any church or place where people have assembled for religious worship, or into any school room or place where people are assembled for educational, political, literary or social purposes, or to any election precinct on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons met for any lawful purpose other than for militia drill, or meetings called under militia law of this state, having upon or about his person, concealed or exposed, any kind of firearms, bowie knife, spring-back knife, razor, metal knucks, billy, sword cane, dirk, dagger, slungshot or other similar deadly weapons, or shall, in the presence of one or more persons, exhibit any such weapon in a rude, angry or threatening manner, or shall have any such weapon in his possession when intoxicated, or, directly or indirectly, sell

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or deliver, loan or barter to any minor any such weapon, without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding two years, or by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than fifty days nor more than one year, or by both such fine and imprisonment. Provided, that nothing contained in this section shall apply to legally qualified sheriffs, police officers and other persons whose bona fide duty is to execute process, civil or criminal, make arrests, or aid in conserving the public peace, nor to persons traveling in a continuous journey peaceably through this state."

On reading the above section, we are immediately faced with construing what is meant by the terms "upon or about his person". In this connection, the case of State vs. Conley, 280 Mo. 21, well states the law as construed by our courts. In that case, Justice Walker at page 23, uses the following language:

"Under the statute (Sec. 4496, R. S. 1909) defining this offense, the concealment, although not actually on the person, may be in such close proximity to the accused as to be within his easy reach and convenient control; and upon proof of this fact the offense is made out."

And again at page 24:

"This instruction correctly declares the law in that it contains all the essentials necessary for the jury's consideration in determining as to the guilt or innocence of appellant under the evidence. The refused instruction does not do this but attempts by its terms to limit the words 'on or about his person' to a concealment by the accused of the weapon in his wearing apparel. The fact of concealment constituting the gravamen of the offense, a construction which would limit the law as contended by appellant would defeat its purpose and render convictions in cases of this character difficult if not impossible."

The statute referred to is the same section as the one quoted earlier in this opinion.

The above case and language were cited with approval in the case of State vs. Renard, 273 S. W. 1058 and State vs. Hogan, 273 S. W. 1060.

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Since, therefore, the concealment is regarded as the gravamen of the offense, we can readily answer your first question by saying that if the gun in the automobile within easy reach of the person in question is in any way concealed, then the offense is within the statute. If said gun is lying in open view, considering the circumstances, there is no concealment and hence the situation is not within the statute. An example of how far the courts of Missouri have gone is the case of State vs. Renard, cited above, where the gun was on the floor of the automobile beside the feet of defendant. In that case, it was a dark night and this, no doubt, strengthened the element of concealment. The offense was there held within the statute.

As to your second question concerning the gun on or about an intoxicated person, a different situation arises. The statute there uses the words "or shall have any such weapon in his possession when intoxicated".

In the case of State vs. Goldsmith, 300 S. W. 677, the court at page 678, referring to the same section of Revised Statutes of Missouri, 1919, states as follows:

"Under section 3275, it is a felony, while intoxicated, to have in possession a deadly weapon. It is not necessary that the weapon be concealed."

Since concealment is not a necessary part of the offense where the offender is intoxicated, the mere possession is enough, the gun may be confiscated by the arresting officer and the offense is within the statute.

Concerning your question as to a gun found in a car also found to contain illegal liquor, we are of the opinion that the offense would be the same and subject to the same limitations as in the situation stated in your first question.

It is true that formerly there was a statute (Section 4517, Revised Statutes of Missouri, 1929) with reference to carrying deadly weapons in a conveyance with illegal liquor. That section was, however, part of Chapter 31, Revised Statutes of Missouri, 1929,

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which chapter was repealed by section 44 of the Intoxicating Liquor statute, Laws 1933-1934, Extra Session, page 92. The general law, as stated earlier in this opinion, would therefore apply.

Very truly yours,

CHARLES M. HOWELL, Jr.
Assistant Attorney-General.

APPROVED:

Attorney-General