16-14 - Case Law Decision-Carrying a Loaded Gun on the Person

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services, (323) 890-5411

CASE LAW DECISION

CARRYING A LOADED GUN ON THE PERSON

On May 9, 2016, the California Supreme Court held in *People v. Wade* that if a person is wearing a backpack which contains a loaded handgun, he/she is carrying a loaded handgun "on the person" for purposes of Penal Code Section 25850(a).

Wade was charged with carrying a loaded handgun on his person (25850(a) PC) for wearing a backpack containing a loaded revolver while being pursued by a police officer. *Wade* appealed his conviction, relying on the ruling of *People v. Pellecer* (2013). In *Pellecer,* the defendant was leaning on a backpack that contained prohibited knives. The court determined the defendant was not carrying the weapon "on his person." *Wade* reasoned that because his revolver (loaded handgun) was inside his backpack, it was therefore not on his person.

The court declined to apply the reasoning in *Pellecer*, primarily to prevent a person from carrying a readily accessible concealed handgun. The defendant in *Pellecer* was **leaning on** his backpack which contained three knives; as opposed to defendant *Wade* who **wore** a backpack containing a revolver while fleeing from the officer. The rationale of the case ruling was that concealed knives and handguns represent varying degrees of danger. Additionally, *Pellecer* had less immediate control over the contents of the backpack than *Wade*, who was actually wearing the backpack.

The case further explains that "upon the person" includes purses, handbags, bags, and their contents when carried in the manner that defendant Wade was carrying his backpack; anything inside that backpack was also on his person. Also, consideration is given to the utility of a knife and its practical usage in certain

activities (i.e., fishing, hunting, camping, etc.) This rationale does not apply to handguns.

Information regarding the content of this newsletter may be directed to Field Operations Support Services at (323) 890-5411.

References:

Newsletter 13-09, Case Law Decision People v Pellecer – 12020(a)(4) PC (currently 21310 PC)

People v. Wade