

SUPREME COURT OF OREGON

State v. Perry, 336 Or. 49

77 P.3d 313 (2003) · No. S48330 · Decided October 9, 2003

SUMMARY

The Supreme Court of Oregon held that the “place of business” exception to Oregon’s concealed-firearm licensing requirement applies only to a business owner, not to a nonowner employee working at the business. The court rejected the defendant’s constitutional challenges under the Oregon and United States constitutional rights to bear arms and equal-protection provisions. The court affirmed the Court of Appeals and the circuit court judgment.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Balmer, J.; Carson, Chief Justice; Gillette, Justice; Durham, Justice; Riggs, Justice; Balmer, Justice
JURISDICTION	Oregon
DECIDED	October 9, 2003
DOCKET	S48330
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant was convicted after a bench trial of unlawful possession of a firearm. The Oregon Court of Appeals affirmed, and the Oregon Supreme Court allowed defendant's petition for review and affirmed.
STANDARD OF REVIEW	The court independently construed ORS 166.250 to determine legislative intent and reviewed the constitutional challenges to the statute. Statutory arguments were considered before constitutional arguments.
PRECEDENTIAL VALUE	published precedential Oregon Supreme Court opinion
PARTIES	Morgan Joel Perry v. State of Oregon

TOPICS

- statutory interpretation
- legislative intent
- second amendment
- equal protection
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the ORS 166.250(2)(b) place-of-business exception to the concealed-firearm licensing requirement applies to a nonowner employee carrying a handgun at the business where the employee works.
2. Whether excluding nonowner employees from the place-of-business exception violates the right to bear arms under Article I, section 27, of the Oregon Constitution or the Second Amendment to the United States Constitution.
3. Whether distinguishing between business owners and nonowner employees violates Article I, section 20, of the Oregon Constitution or the Equal Protection Clause of the Fourteenth Amendment.

HOLDINGS

1. The place-of-business exception applies only to the owner of a business, not to a nonowner employee carrying a concealed handgun at the place where the employee works.
2. Because defendant did not challenge the constitutionality of the general licensing requirement and the place-of-business exception provides greater freedom to possess firearms, excluding a nonowner employee from that exception did not violate the right to bear arms under either the Oregon or United States Constitution.
3. The distinction between business owners and nonowner employees for purposes of the place-of-business exception is rational and does not violate Article I, section 20, of the Oregon Constitution or the Fourteenth Amendment's Equal Protection Clause.

KEY QUOTATIONS

“For the reasons set out above, we hold that the “place of business” exception in ORS 166.250(2)(b) applies to only the owner of a business.” (336 Or. at 318)

FACTUAL BACKGROUND

Perry worked as an employee at Elias Grocery, a Portland convenience store owned by Karamanos. The owner worked part-time and entrusted employees with authority to operate the business when he was absent. While Perry was working alone on January 11, 1998, police responded to a firearm report, obtained a handgun from him, and learned that he lacked a license to carry it.

PROCEDURAL HISTORY

Perry was charged under ORS 166.250 after police found him carrying a concealed handgun without a license while he was working alone at a convenience store. The circuit court rejected his argument that the statutory place-of-business exception applied to him because he was an employee rather than the business owner and entered a conviction. The Court of Appeals affirmed, and the Supreme Court granted review and affirmed both decisions.

DISPOSITION

affirmed

CASES CITED

- State v. Stevens, 319 Or. 573, 579, 879 P.2d 162 (1994)
- State v. Perry, 165 Or. App. 342, 996 P.2d 995 (2000)
- PGE v. Bureau of Labor and Industries, 317 Or. 606, 610, 859 P.2d 1143 (1993)
- Vannatta v. Keisling, 324 Or. 514, 530, 931 P.2d 770 (1997)
- Tipperman v. Tsiatsos, 327 Or. 539, 964 P.2d 1015 (1998)
- Gaston v. Parsons, 318 Or. 247, 253, 864 P.2d 1319 (1994)
- Goodyear Tire & Rubber Co. v. Tualatin Tire & Auto, 322 Or. 406, 908 P.2d 300 (1995)