JOHN R. MONROE
ATTORNEY AT LAW

March 15, 2011

Mr. J. Jayson Phillips, Esq.
Talley, Richardson & Cable, P.A.
367 West Memorial Drive
Dallas, GA 30132

RE: Carrying Firearms on the Silver Comet Trail

Dear Mr. Phillips:

I am writing you on behalf of my client, GeorgiaCarry.Org, Inc. ("GCO"). GCO is a non-profit corporation whose primary mission is to foster the rights of its members to keep and bear arms.

I have been made aware of a recent email exchange between a GCO member (Robert Massie) and you, regarding an incident where a Paulding deputy stopped Mr. Massie on the Silver Comet Trail. During the encounter, the deputy demanded Mr. Massie's Georgia weapons carry license ("GWL") and his driver's license. In response to Mr. Massie's complaint about his detention, you stated that the deputy had "articulable suspicion to reasonably detain you to verify that you had [a GWL] on your person…."

I disagree with your conclusion and therefore ask you to reconsider it and advise your clients appropriately. Your reference to O.C.G.A. § 16-11-126(h)(1) might be causing some confusion. That statute makes it a crime to carry a weapon without a valid GWL. It does not, as you suggest, make it a crime to carry a weapon unless the carrier has in his possession a GWL. While the two descriptions might seem interchangeable, they have very different criminal procedure implications. Your construction implies that it generally is a crime to carry a weapon, but that there is an exception for GWL holders. That is, your construction implies that possession of a GWL is an affirmative defense to a prosecution of carrying a weapon.

The actual construction of the statute makes clear that the lack of a license is an element of the crime that must be proven by the state. See, for example, *Head v. State*, 235 Ga. 677 (1975), in which the Supreme Court of Georgia reversed a conviction for carrying a pistol without a license when the state had introduced no evidence that the defendant did not have a license. The Court emphasized that lack of a license is an element of the crime.

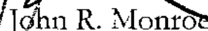
Because the lack of a license is an element of the crime, an officer may not stop a person seen carrying a firearm just to see if the person has a GWL. Compare this situation to *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) ("[W]e hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed…, stopping an automobile and detaining the driver in order to check his driver's license and the

registration of the automobile are unreasonable under the Fourth Amendment."). See also *Florida v. J.L.*, 529 U.S. 266 (2000) (holding that there is no firearms exception to the Fourth Amendment). If an officer may not stop a motorist to see if the motorist has a license, and there is no firearms exception to the Fourth Amendment, and if the lack of a GWL is an element of the crime and not an affirmative defense, it stands to reason that an officer may not stop an armed citizen just to see if the citizen has a GWL.

I am mindful that you also cited to the GWL licensing statute, O.C.G.A. § 16-11-129, for the proposition that a person with a GWL must carry the GWL on his person when carrying a weapon. There is, however, no penalty for failure to do so. Even if there were, the deputy had no reason to believe either that Mr. Massie has no GWL or was failing to carry it on his person.

I urge you to reconsider your conclusions and advise your clients to cease such practices. Please call or email me at john.monroe1@earthlink.net if you have any questions.

Sincerely,



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