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**CLERK OF SUPREME COURT
OF WISCONSIN**

In the Supreme Court of Wisconsin

State of Wisconsin,
Plaintiff-Respondent

v.

Brian Grandberry, Defendant-
Appellant-Petitioner

Appeal No. 2016AP000173 - CR

**Appeal from the Judgment of the Milwaukee
County Circuit Court, the Hon. Janet
Prostasiewicz, Presiding**

**Reply Brief of Wisconsin Carry,
Inc.,**
Amicus Curiae

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Introduction

In its first brief, *Amicus Curiae* Wisconsin Carry, Inc. (“WCI”) explained how the tension between the statute against carrying a concealed weapon (the “CCW Statute”), Wis.Stats. § 941.23, and the statute regulating transport of certain weapons in vehicles (the “Transport Restriction Statute”)¹, Wis.Stats. § 167.31, created the need for the Safe Harbor announced in *State v. Walls*, 190 Wis.2d 65, 526 N.W.2d 765 (Ct.App. 1994).

In its Response, the State argued that the Safe Harbor no longer applies because there no longer is any tension between the two statutes. WCI will show that the tension continues to exist, that the Safe Harbor has never been repealed, and that the basis for the need continues.

¹ The legislature has somewhat euphemistically titled this statute “Safe Transport,” but it clearly serves to restrict the transport of weapons.

Argument

The State appears to misapprehend WCI's discussion in its first brief the significance of the tension between the CCW Statute and the Transport Restriction Statute, both pre- and post-enactment of 2011 Act 35. In order to avoid the risk of this confusion spreading to the Court, WCI will discuss that important issue in more detail.

The Safe Harbor announced in *Walls* was necessary to resolve the conflict between the (pre-2011) two statutes. Consider the simple example of a person desiring to transport a weapon in the trunk of his car. Pre-2011, weapons had to be unloaded (or unstrung) and encased *prior to placing them in the vehicle*, in order to comply with the Transport Restriction Statute. Wis.Stats. § 167.31(2)(b) (2009). In addition, a weapon had to be displayed openly outside of a vehicle and had to be out of reach inside the vehicle in order to comply with the CCW Statute.

The act of encasing a weapon outside a vehicle for Transport Restriction Statute purposes necessarily concealed the weapon (a case by definition conceals its contents) for CCW Statute purposes. Moreover, the act of placing an encased weapon in the trunk of a car necessarily means the weapon is within reach. It was impossible to transition from openly carried outside a vehicle to encased and out of reach inside a vehicle without violating the CCW Statute.

The *Walls* court resolved this conflict by implicitly using the doctrine that the specific should control over the general. *Adams Outdoor Advertising, L.P. v. County of Dane*, 2012 WI App 28, ¶ 21, 340 Wis.2d 175, 811 N.W.2d 421. The Transport Restriction Statute is specific to weapons in vehicles, so it logically should control when there is a conflict with another, more general statute such as the CCW Statute. Thus, the *Walls* court announced that compliance with the Transport Restriction Statute would be a Safe Harbor against prosecution under the CCW Statute.

The State mistakenly argues that Act 35, and the availability of concealed weapons permits, eliminated the need for the Safe Harbor. It did not. 2011 Act 35 mitigated some, but not all, of the conflict between the two statutes (and the legislature did not say anything that would even imply an intent to repeal the Safe Harbor).

Here is a simple example of one way the Safe Harbor is still necessary. As discussed in WCI's first brief, crossbows are not covered by concealed weapons permits. That is, a person with a permit still may not lawfully conceal a crossbow². In addition, crossbows must be encased if they are cocked, in order to comply with the Transport Restriction Statute. The State concedes that an

² The CCW Statute is very broadly worded to include virtually anything that could be a weapon, so crossbows certainly must be covered.

encased crossbow is concealed. Brief of Appellee, p. 22, FN 6 (“[A]n encased crossbow is concealed....”)

A person who desires to transport a cocked crossbow must encase it prior to placing it in his trunk, in order to comply with the Transport Restriction Statute. While the person is standing outside his car, with an encased crossbow about to be placed in the trunk, *he is ostensibly violating the CCW Statute*. Only the Safe Harbor of *Walls* protects him. Moreover, while the same person is placing the encased crossbow in the trunk, the crossbow is within reach, also in apparent violation of the CCW Statute. Again, only the Safe Harbor of *Walls* protects him.

The State’s argument that the transportation of an out of reach encased crossbow is lawful is but a straw man. The fact that the State may be able to conjure up a set of facts where there is no tension does not mean there never is tension. And the fact that there *sometimes* is tension (i.e., when placing or retrieving a crossbow in a car) means that the Safe Harbor in *Walls* is still necessary.³

Consider further an example a person going deer hunting who desires to transport his rifle or shotgun in his vehicle. Under the 2011

³ The State may argue that this line of reasoning does not apply to firearms, only crossbows. The point, however, is that the Safe Harbor of *Walls* is still necessary and the people can reasonably rely on its existence. The Safe Harbor was not created to be weapon-specific.

revisions to the Transport Restriction Statute, it no longer is *required* for the hunter to encase his gun prior to placing it in the trunk of his car. Out of concerns for safety, or the good care of his gun, however, the hunter may *desire* to transport it in a case. Under the State's theory, it is a crime to do so.

As noted above, the State concedes that to encase a crossbow is to conceal it. Logically, to encase a rifle is to conceal it as well. So the hunter, standing at the rear of his car, by placing his rifle in a case, is violating the CCW Statute (according to the State). He is further violating the CCW Statute by having the rifle "within his reach" as he places the rifle in the trunk of the car.

The only way out of the absurdity that transporting an encased rifle in the trunk of a car is a crime, while transporting it openly on the dashboard of the car is not, is to acknowledge that the *Walls Safe Harbor* is alive and well. Even though the Transport Restriction Statute does not require encasing the long gun, a person is in compliance with the Transport Restriction Statute when he chooses to do so. The Safe Harbor should therefore protect him against a CCW charge.

The State assumes (incorrectly, as shown above) that the *Walls Safe Harbor* no longer is needed and thus the legislature must have intended to abrogate it with Act 35. There is nothing in the text of the

Act, however, that gives any indication the legislature intended anything of the sort. The legislature is presumed to be aware of the state of the law at the time it passes bills. *Schill v. Wisconsin Rapids School District*, 2010 WI 86, ¶ 103, 327 Wis.2d 572, 786 N.W.2d 177 (S.Ct. 2010).

The legislature was therefore aware of the *Walls* Safe Harbor, and it did not enact any provisions in Act 35 to repeal the Safe Harbor. It easily could have done so by, for example, declaring in the text of the revised CCW Statute that compliance with the Transport Restriction Statute does not constitute a safe harbor of compliance with the CCW Statute. The legislature chose not to do so, however, signaling its satisfaction with the current state of the law – the existence of the *Walls* Safe Harbor and approval of it.

Conclusion

The reasons for the construction of the *Walls* Safe Harbor remain. The legislature said nothing to repeal the Safe Harbor, so it must continue to exist. The Safe Harbor should apply to any situation where a person transports a weapon in compliance with the Transport Restriction Statute.

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Certificate of Service

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OTHER CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 1,517 words.

I certify that the text of the electronic copy of this Brief is identical to the text of the paper copy of this Brief.

I certify that this Brief was filed by sending it via U.S. Mail, Priority Mail, postage prepaid, to the Clerk of this Court on June 28, 2017.

/s/ John R. Monroe
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