

From: Simonton, Patricia
Mr. Wilson,
Thank you for bringing this training issue to our attention. Below is the training material that was sent to our Corporals to provide at squad meetings for training.

Kyle Aiken
Bellevue Police Department

Sent: Tuesday, January 09, 2007 11:24 AM
To: PD_CORPORALS
Cc: Mcomber, Christopher G.
Subject: Squad Training

To all,
SQUAD TRAINING

It has recently come to our attention that a group calling itself, "Pacific Northwest Open Carry" and with a spokesman named Lonnie Wilson, has an agenda that deals with the peaceable open carrying of a handgun in a holster. He says that while doing his research to write an informational bulletin for the public and for law enforcement, he asked a number of BPD officers if it was legal to carry a handgun in public, in the open, in a holster. He says he received a variety of answers, ranging from, it is legal, to, it is a felony, to, you will be stopped and arrested for brandishing.

As a refresher, the Corporals will go over the following:

1. Washington is an "open carry" state for firearms. This means a person may carry a firearm in an exposed holster unless there is something that makes it specifically illegal. For example, carrying a weapon onto school grounds or other prohibited places or carrying a weapon by most convicted felons or anyone convicted of a domestic violence crime.
2. Unlawful carrying or display. RCW 9.41.270 occurs when the person carries or displays a weapon in a manner under circumstances at a time and place that manifests alarm for the safety of persons or with an intent to intimidate. This is something more than just walking around with an exposed firearm. If there is a dispute for example and one person, while angry, displays the weapon to scare the other person.
3. Carrying without a Concealed Weapons Permit, RCW 9.41.050, occurs when a person carries a CONCEALED pistol on his person and does not have a CWP. A person with a CWP can carry a firearm in a vehicle without having the weapon on his person.

Kyle Aiken copied some language from Court cases on what Manifests an Intent to Intimidate or alarm". There is no easy quick answer because it goes on a case by case analysis of the time, place, and circumstances. It can go by what the witness/victim's perceive. But, the main case I found for that was a 7 year old girl afraid of a closed knife threatening her Barbie dolls-not the best case. The cases where the person was just walking around have been out in public and still focused a bit on the person's actions, especially when the people notice the gun.

1.But there must still be evidence, either from Craig or the State, that supports an inference he committed unlawful display instead of second degree assault. Here, such evidence comes from at least two of the victims. Heidi Marshall testified that Craig 'showed' the rifle and that it remained in the

car. Shaynel Porter testified that as Craig drove away, the rifle was pointed at the area but not directly at the group. The critical difference between assault and unlawful display is whether Craig pointed the rifle at the group or someone in the group, or simply showed the rifle. Construing this evidence in Craig's favor, the jury could have found that he displayed the rifle in a manner that manifested an intent to intimidate or that warranted alarm for the victims' safety. And merely because all the victims were frightened does not mean that Craig necessarily committed assault. Unlawful display is defined by the way Craig used the weapon, not by the victims' responses. Thus, if he displayed the weapon only in a manner to intimidate, he committed unlawful display even if the victims were actually frightened by his conduct. Because the court should have instructed the jury on the lesser included offense of unlawful display, we reverse and remand for a new trial.

State v. Craig, 2004

2. The trial court then addressed each of these elements, finding first that the tazer fell under the statute because it was 'apparently capable' of harming the officer. The court also found as the officer testified that Crabbs had waved the tazer at him in a threatening manner, thus manifesting an intent to intimidate or warrant alarm for the officer's safety.

State v. Crabbs, 2003

3. Intimidate is defined very narrowly. "To make timid or fearful: inspire or affect with fear: frighten *** to compel to action or inaction (as by threats)". Webster's Third New International Dictionary, at 1184. The weapons proscribed by the Seattle ordinance are defined in both the Seattle Municipal Code and the Revised Code of Washington.FN2 *266 Similarly, the list of weapons proscribed by the state statute is fairly **1000 specific and when read in the context of the entire statute appries an individual of common intelligence what conduct is proscribed. State v. Carter, 89 Wash.2d 236, 570 P.2d 1218 (1977). A statute is not rendered unconstitutional if the general area of conduct against which it is directed is made plain. Seattle v. Buchanan, 90 Wash.2d 584, 594, 584 P.2d 918 (1978). ...

this case the standard of criminality is displaying a weapon in circumstances manifesting an **1001 intent to intimidate another or which warrants alarm for the safety of another.FN3 These elements are not inherently vague. The enactments proscribe use of weapons that threaten another. They are sufficiently specific to inform persons of reasonable understanding what conduct is proscribed, Seattle v. Rice, supra, and predicting their application would not be a guess. State v. Hilt, supra 99 Wash.2d at 455, 662 P.2d 52....

If a weapon is displayed in a manner, under circumstances and at a time and place so that it poses a threat to another person, such a display would warrant alarm for the safety of another. Thus, narrowly construing the phrase to apply to only conduct that poses a threat to others gives the phrase a narrow and definite focus and saves it from vagueness. Cf. Bellevue v. Miller, supra 85 Wash.2d at 547, 536 P.2d 603. Such a construction is also consistent with the statute's purpose, which is to prevent someone from displaying dangerous weapons so as to reasonably intimidate members of the public. House Journal, 41st Legislature (1969), at 201.
State v. Maciolek, 1984

4. Furthermore, all weapons referenced in the statute must be displayed in a manner that 'warrants alarm' for the safety of others. The use of the word 'warrants' implies that there must be a sufficient objective basis for the alarm, or circumstances that would cause alarm in a reasonable person. State v. Spencer, 75 Wn.App. 118, 126 n. 7, 876 P.2d 939 (1994), review denied, 125 Wn.2d 1015 (1995). This case presents such circumstances, as any reasonable person would be alarmed to see a gun pointed at them by an agitated and unstable person, whether or not the safety was on. The State had to prove that Taylor's actions manifested an intent to intimidate or warranted alarm. Here, the evidence was sufficient to satisfy both prongs and to support Taylor's convictions of two counts of unlawful display of a weapon. State v. Taylor, 2003

5. M.T. contends that there is insufficient evidence to prove that he displayed the weapon in a manner manifesting an intent to intimidate S.V. He asserts that a closed pocketknife held in the air cannot demonstrate an intent to intimidate and that had he intended to intimidate S.V., he could have brandished the knife with the blade exposed.

But M.T.'s actual intent is not the relevant inquiry under the unlawful display statute. Indeed, there is no necessary nexus between the defendant's actual intent and the victim's reasonable apprehension.FN11 Here, S.V. testified that M.T. approached her, displayed a closed pocketknife, and then held it up in the air. Moreover, S.V. said that she had previously witnessed M.T. pierce his own hand with the knife. Given the knowledge of M.T.'s apparent self-mutilation, a trier of fact could infer that a reasonable person would be intimidated by M.T.'s display of the knife, even though the knife was closed.

State v. M.T. 1999

6. As the Superior Court found, the statute only prohibits the carrying or displaying of weapons when objective circumstances would warrant alarm in a reasonable person.FN4 Thus, the restriction applies only in a limited number of situations. Furthermore, the prohibition is not so vague that it would prevent persons of common intelligence from ever carrying a weapon on the street. In the vast majority of situations, a person of common intelligence would be able to ascertain when the carrying*124 of a particular weapon would reasonably warrant alarm in others. Although some areas of uncertainty may exist, these potential "grey areas" of the statute are small and do not render it unconstitutional. Cf. Maciolek, 101 Wash.2d at 265, 676 P.2d 996 (possible areas of disagreement do not render statute unconstitutionally vague).FN5

FN4. These circumstances may include, as in the present case, the fact that the weapon is being carried in a residential neighborhood, the time of day, the urban environment, the manner in which the weapon is carried, the size and type of weapon, and the fact that the weapon has a clip visibly attached.

FN5. In this regard, we note that the present case, in which the defendant was carrying a visibly loaded AK-47 rifle in an assaultive manner at night in a residential area, does not fall anywhere near a potential "grey area" in the statute.

State v. Spencer 1994

6. Under RCW 9A.41.270 it is illegal to carry and display a weapon "in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons." FN9 (Emphasis added.) Mitchell was openly carrying a semi-automatic weapon while walking down a street in an urban, residential area at night. When ordered to stop and raise his hands, he tossed his weapon into nearby shrubbery. Openly carrying such a weapon at that time and place was sufficient to warrant reasonable suspicion that this statute was being violated.

State v. Mitchell, 1995

Corporal Patricia Simonton
Personnel Services Unit
Bellevue Police Department
(425)452-6942 Desk
(425)766-0238 Cell