



**Golden State
Second Amendment Council**

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SAN DIEGO PAYS \$35,000, AGREES TO FINDING OF FACTUAL INNOCENCE FOR IMPROPER “UNLOADED OPEN CARRY” ARREST

Read about it on Calguns

San Carlos CA (September 29, 2010) - The City of San Diego will pay \$35,000 to gun rights activist Samuel Wolanyk for his improper arrest. The San Diego Police Department also granted Mr. Wolanyk's petition for a Finding of Factual Innocence, admitting no reasonable cause for his arrest existed.

The lawsuit – financially supported by The Calguns Foundation, Inc., and brought by attorney Jason Davis of Davis & Associates – sought to ensure San Diego properly trains its officers to deal with law-abiding gun owners.

“We do not encourage Unloaded Open Carrying of firearms in urban areas at this time,” said Gene Hoffman, Chairman of The Calguns Foundation. “But we believe the civil rights of gun owners must be defended to the utmost.”

Nearly two years ago, “open carry” activist Wolanyk wound up looking down the barrels of two police handguns when San Diego Police officers Jody Kinsley and Troy White responded to a call of a man wearing a kilt, with a holstered gun, in San Diego's Mission Beach area. The officers immediately exited their vehicles on arrival at the location, drew their firearms, and ordered Mr. Wolanyk to the ground.

The officers quickly determined the firearm was unloaded, had no magazine in it, with no round in the chamber, and was thus in full compliance with California law. The firearm was unloaded even though Mr. Wolanyk did separately possess loaded magazines carried in an additional pouch attached to his belt (a completely lawful activity).

Until that day, these officers had never heard of the burgeoning Unloaded Open Carry movement, in which persons entitled to possess firearms exercise their right to lawfully carry unloaded, holstered handguns (though some onerous geographic limitations do apply). One other key legal restriction on open carry in California law also exists: people must give up their Fourth Amendment rights and submit to law enforcement examination of the firearm to determine if it's loaded. In Wolanyk's case, however, the officers weren't performing a loaded firearm examination; in the officers' minds, they were responding to a “man with a gun” call and acting accordingly.

After San Diego Police Sergeant David Kries arrived at the scene, Mr. Wolanyk had hoped the officers' errors would be competently rectified and he would then be free to go. But Sgt. Kries showed he too didn't understand California's complex gun laws, and arrested Mr. Wolanyk for carrying a “loaded” firearm – in direct conflict with both prior case law (*People v. Clark*) and common sense, which requires ammunition to be in a position from which it can be fired in order for a firearm to be considered loaded. Mr. Wolanyk was taken to San Diego Police headquarters, where it was determined that he violated no law. Two hours later, Wolanyk was back at Mission Beach with Officer Kinsley handing him back his firearm and ammunition. Neither an apology nor an explanation of why the Department hadn't properly trained their officers was provided.

“If they'd just apologized and said that they would look into training their officers on how to deal with law-abiding gun owners, I would not have felt compelled to file my lawsuit,” said Mr. Wolanyk. “It's really about public safety for everyone, including those lawfully carrying firearms.”

Now, not only has San Diego paid Mr. Wolanyk for their actions, but they have since supplemented their training as well.

The rise of the Unloaded Open Carry movement in San Diego and Wolanyk's arrest caught the attention of California Assemblywoman Lori Saldaña, whose proposed “fix” to police training deficiencies was instead to draft a bill taking away the ability to “UOC”. Saldaña's proposed “Open Carry” ban failed passage this legislative term, but is nearly certain to reemerge this next term.

As long as Unloaded Open Carry activities are lawful, San Diego Police Officers and other law enforcement agencies will have to respect the civil rights of these law-abiding citizens.

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