

# **First NYC Test Case and Concealed Knife Precipitates a Constitutional Challenge**

**Knife Rights News Slice eBlast - October 18, 2010**

New York Update - First Test Case

There's not a lot I can say publicly at this point. Our legal team has been quite busy. We now have our first test case! Knife Rights is proud to come to the aid of an honest citizen accused of unlawfully possessing a Gerber folding pocketknife. The Gerber is alleged by DA Vance to be a gravity knife and the charge carries a potential one year in jail. We will have a good deal more to say on this in the near future. Stay tuned...

If you are a retailer or individual who finds yourself targeted for the sale or possession of so-called illegal knives (one-hand opening and assisted opening knives) in New York, we urge you to immediately contact Knife Rights at: [nycity@KnifeRights.org](mailto:nycity@KnifeRights.org) or toll-free: 1-866-889-6268. You have a constitutional right to seek help and counsel.

Defending our rights does take money, it is as simple as that. We need your continued support. Please help us stop this insanity. Make a Contribution to our fight against the DA's assault on our pocket knives:  
<http://bit.ly/Scvp9>

## **A Knife Carried Concealed Precipitates a Constitutional Challenge**

As we keep reminding gun owners and Second Amendment advocates, it's our Second Amendment too. Knife Rights is the Second Front in Defense of our Second Amendment™. It seems that some in the state of Wisconsin have been taking note. This past July, as we previously reported, the Jackson County District Attorney declared he wouldn't enforce the state's statutes banning Switchblades because the statute was rendered unconstitutional by the U.S. Supreme Court's rulings in *District of Columbia v. Heller* and *McDonald v. City of Chicago*: <http://bit.ly/d7Euzz>.

Now, in case involving a knife, a Circuit Court Judge in Clark County says Wisconsin's ban on carrying concealed weapons is unconstitutional. It's a local victory at this point, but it may be setting the scene for a larger decision upstream in the legal process. Judge Jon M. Counsell dismissed a case brought by the state against Joshua D. Schultz for carrying a knife covered by his shirt.

Schultz was charged with carrying a concealed weapon, a knife carried in the waistband of his pants which was covered by his shirt. The State alleged that was in conflict with Wisconsin Statutes (941.23). Schultz' attorneys, however, countered the statute was unconstitutional "on its face, and because the statute is overbroad, abridges his privileges or immunities as a United States citizen, and violates his due process rights as granted by the Second and Fourteenth Amendments."

The Court, citing the recent decisions in *District of Columbia v. Heller* and *McDonald v. City of Chicago*, found the law to be, as the defendant charged, too-limiting and broad in its scope. Citing an uncertainty in the level of scrutiny which should be applied to the regulation derived from the Supreme Court cases, the Wisconsin Circuit Court applied strict scrutiny to the analysis. Strict scrutiny, the Court said, was a reasonable level of evaluation, since the law "absolutely prohibits the carrying of concealed weapons for all persons in Wisconsin, except 'peace officers.'" (Wisconsin is one of just two states which completely bans concealed carry of any weapon except by law enforcement.)

Applying an absolute standard to an absolute law, the Court reasoned the statute took away the rights guaranteed in Heller and McDonald as an "individual and fundamental right" by failing the three tests of strict scrutiny:

- 1) justification by a compelling governmental interest;
- 2) narrow tailoring (language) to achieve that interest;
- 3) be the least restrictive means for achieving that interest.

While the court said the blanket prohibition's goal was protecting the State's "police power to protect the health, safety and welfare of its citizens" it followed an exceptionally restrictive scheme, failing the other tests of strict scrutiny.

In fact, Judge Counsell's decision cited earlier decisions, and found Statute 941.23 to be so restrictive as to prohibit an individual gun or knife owner from storing his weapons out of plain sight in a gun cabinet, closet or drawer of his own home, a businessman from storing his goods out of sight in a "rough neighborhood", loggers, hikers, cross country skiers and "other outdoor persons" from keeping his weapon out of sight, but available, in the event of a wolf, bear or other wild animal attack, or prohibiting judges, prosecutors, defense attorneys, court staff and child support agency workers (and many others) that have received legitimate death threats from carrying a concealed weapon.

Judge Counsell's well researched and very well-written decision can be found here: <http://bit.ly/aDIJrh>

With the decision, it appears the stage may be set for a more broad challenge to the statute and Knife Rights will certainly be keeping a close eye on developments.

Join or Renew your Knife Rights membership today! <http://bit.ly/2QEVMP>

Follow Knife Rights on Twitter and receive the latest updates and notices as soon as they occur:  
<http://twitter.com/KnifeRights>

Doug Ritter  
Chairman / Executive Director Knife Rights, Inc.  
Knife Rights Foundation, Inc.  
[www.KnifeRights.org](http://www.KnifeRights.org)  
Email: [dritter@KnifeRights.org](mailto:dritter@KnifeRights.org)  
[twitter.com/KnifeRights](http://twitter.com/KnifeRights)