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RECENT DEVELOPMENT

BLUE V. PRINCE GEORGE'S CNTY.: THE SUPERVISORY EMPLOYEE EXCEPTION TO THE HANDGUN LAW IS LIMITED TO THE ENCLOSED PREMISES OF THE BUSINESS IN WHICH THE EMPLOYEE WORKS.

By: Brittany Fabiano

The Court of Appeals of Maryland held that the supervisory employee exception to the handgun law does not include an open parking lot adjacent to a business establishment. *Blue v. Prince George's Cnty.*, 434 Md. 681, 76 A.3d 1129 (2013). Legislative history and the statutory language made it apparent that the exception was not intended to extend beyond the “enclosed premises in which the employee works.” *Id.* at 698, 76 A.3d at 1138-39.

On the night of June 17, 2008, while working as head of security at a strip club in Capitol Heights, Maryland, Roguell Blue (“Blue”) confronted two individuals in the parking lot adjacent to the club whom he believed were engaged in “illicit sexual activity.” One of the individuals ran when Blue ordered them out of the car. After the man fled, Blue called the police to report the incident, but the police were already en route in response to alleged gunshots. When the police arrived, they noticed Blue was carrying a handgun and asked to see his permit. Blue produced a laminated copy of the supervisory employee exception and informed the officers that he was required to carry a handgun to ensure the safety of the club, which included the adjacent parking lot. Nevertheless, he was arrested and charged with carrying a handgun without a permit in public, a violation of MD. CODE ANN., CRIM. LAW § 4-203(a)(1). The State entered a *nolle prosequi*, disposing of the charges against Blue.

On September 14, 2009, Blue filed a complaint against Prince George’s County and three police officers in the Circuit Court for Prince George’s County alleging false arrest, false imprisonment, malicious prosecution, and a violation of MD. CONST. art. 24. During trial, Blue argued he was a supervisory employee under MD. CODE ANN., CRIM. LAW § 4-203(b)(7) (“Section 4-203(b)(7)”); therefore, the officers did not have probable cause to arrest him. At the end of the trial, the court granted the defendants’ motion for judgment on the malicious prosecution claim and sent the remaining claims to the jury. The jury entered a judgment in favor of Blue.

Both Blue and the county appealed to the Court of Special Appeals of Maryland. The intermediate appellate court upheld the trial court’s dismissal of the malicious prosecution claim and reversed the judgment granted by the jury. The court stated the police had probable cause to arrest Blue because he was not “within the confines of the business establishment” in which he was employed. The Court of Appeals of Maryland granted Blue’s petition for writ of certiorari to determine if Section 4-203(b)(7) extends to a parking lot adjacent to a nightclub.

The Court of Appeals of Maryland began by noting that the case turned on the legislative intent behind the phrase “within the confines of the business establishment” in Section 4-203(b)(7). *Blue*, 434 Md. at 689, 76 A.3d at 1133. To determine the legislative intent of the phrase, the court stated it must examine the plain meaning of the statutory text, the legislative history of the statute, and the consequences of any alternative readings of the text. *Id.*

The phrase “within the confines of the business establishment” is not defined within the statute. *Blue*, 434 Md. at 690, 76 A.3d at 1134. Turning to common dictionary definitions for guidance, the court determined the plain meaning of the terms “within,” “confines,” “business,” and “establishment” placed emphasis on an interior space as opposed to an entire area. *Id.* at 690-91, 76 A.3d at 1134. The court read the phrase at issue narrowly to mean “the interior space of a commercial enterprise, where one may find its furnishings and staff, enclosed by walls or similar bounds.” *Id.*

The legislative history of Section 4-203(b)(7) provided the court with further guidance to determine the General Assembly’s intent. *Blue*, 434 Md. at 692, 76 A.3d at 1135. The State first attempted to regulate the possession of handguns in 1886 by prohibiting any individual who was not a “conservator of the peace” from wearing or carrying a handgun. *Id.* Eight years later, the General Assembly amended the provision to include an exception for individuals carrying a weapon as a reasonable means of self-defense. *Id.* at 692-93, 76 A.3d at 1135. In 1972, after a significant rise in deaths and injuries caused by handguns, emergency legislation requiring a permit to carry a handgun was proposed as an attempt to reduce the number of handguns on the streets. *Id.* at 693, 76 A.3d at 1135.

The newly proposed legislation contained an exception allowing property owners and lessors to carry a handgun without a permit “within the confines of any dwelling, business establishment, or real estate owned or leased.” *Blue*, 434 Md. at 693, 76 A.3d at 1135 (quoting S.B. 205 (Md. 1972), § 3; H.B. 277 (Md. 1972), § 3). Some legislators, however, found the initial exception pertaining solely to owners and lessors was insufficient to properly protect a residence or place of business. *Blue*, 434 Md. at 694, 76 A.3d at 1135-36. Ultimately, owners’ and lessors’ rights to carry handguns without a permit on their property were extended to allow supervisory employees to carry a handgun without a permit as well. *Id.* at 695, 76 A.3d at 1136. The rights of a supervisory employee to carry a handgun were limited specifically to “the confines of the business establishment.” *Id.* The court previously had confirmed that this exception was to provide a means of self-defense in one’s home or place of business; the purpose was not to provide for transportation of the weapon. *Id.* at 695-96, 76 A.3d at 1137 (citing *Montgomery Cnty. v. Atl. Guns, Inc.*, 302 Md. 540, 545, 489 A.2d 1114 (1985)).

Blue argued that the court’s interpretation of Section 4-203(b)(7) defied “logic and common sense,” requiring him to drop his handgun at the door

before investigating any disturbances in the parking lot and potentially allowing disruptive persons to flee or cause him harm. *Blue*, 434 Md. at 696, 76 A.3d at 1137. The court rejected this argument, stating that this is exactly the limitation intended under Section 4-203(b)(7). *Id.* The supervisory employee exception in the handgun law was not intended to allow private citizens without valid permits to act as law enforcement officers. *Id.* at 697, 76 A.3d at 1137-38. After examining the legislative history, the court determined that the purpose of Section 4-203(b)(7) was for a supervisory employee to defend himself, other employees, and patrons inside the business establishment. *Id.* at 697, 76 A.3d at 1138. Once a person engaging in illicit activities has fled the establishment, there is no longer a need to protect the establishment. *Id.*

The dissent asserted that the majority's interpretation of the statutory language was too narrow. *Blue*, 434 Md. at 699, 76 A.3d at 1139 (Greene, J., dissenting). After examining the legislative intent, the dissent concluded that the majority erroneously dismissed Blue's more logical interpretation. *Id.* at 704, 76 A.3d at 1142 (Greene, J., dissenting). The dissent noted that "[h]ad the legislature intended for a supervisory employee's right to carry a handgun to stop at the entryway of a building, it would have and could have said so." *Id.* at 703-04, 76 A.3d at 1141-42 (Greene, J., dissenting).

In *Blue*, the Court of Appeals of Maryland narrowly interpreted Section 4-203(b)(7) to limit the supervisory employee exception to the interior space of the building in which an employee works. This ruling reinforces the legislature's attempt to control the widespread possession of handguns by necessitating that individuals maintain a permit in order to carry a handgun on the streets. As a result, individuals under the supervisory employee exception should note that a permit is still required to carry a handgun in an area beyond the four walls of the business establishment.