

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 4, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2258-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NICK ALLOY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
PETER J. NAZE, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Nick Alloy appeals a judgment convicting him of carrying a concealed weapon, a handgun contained in a zipper case inside a metal

box between the bucket seats of his Jeep Wagoneer.¹ He argues that the trial court erred and denied him his constitutional right to testify in his own defense when it disallowed questions designed to show that the handgun was encased because WIS. STAT. § 167.31(2) (1997-98)² requires that a firearm be encased when it is transported in a vehicle. Because complying with § 167.31 does not provide a defense to a charge of carrying a concealed weapon, the trial court properly disallowed this irrelevant testimony.

¶2 Alloy's trial counsel asked him three questions that the trial court disallowed: whether he thought it was "acceptable conduct" to carry the pistol as he did in his car; whether he thought he was doing anything wrong; and whether he intended to arm himself by having that gun. Counsel explained to the court that she was attempting to present evidence that Alloy was merely following WIS. STAT. § 167.31 when he encased the handgun. The trial court correctly ruled that Alloy's state of mind was irrelevant. *See State v. Dundon*, 226 Wis. 2d 654, 664, 594 N.W.2d 780 (1999). WISCONSIN STAT. § 941.23 provides "any person except a peace officer who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor." While the State must show that the alloy was aware of the presence of the weapon, his motive for carrying or concealing it is not relevant.

¹ The jury acquitted Alloy on charges of attempted first-degree intentional homicide and first-degree reckless endangerment, but convicted him of false imprisonment, misdemeanor battery and two counts of carrying a concealed weapon. This appeal only challenges the conviction for carrying the concealed handgun.

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶3 Much of Alloy’s argument is based on the false assertion that he was trapped by a conflict between WIS. STAT. § 167.31 and WIS. STAT. § 941.23. A person transporting a firearm is governed by both statutes. To comply with § 167.31, the person must encase the weapon. To comply with § 941.23, he or she must place the enclosed weapon out of reach. *See State v. Asfoor*, 75 Wis. 2d 411, 433-34, 249 N.W.2d 529 (1977). A person complying with § 167.31 is not required to violate § 941.23. The encased weapon can be lawfully transported out of reach.³ The trial court properly disallowed testimony in support of the invalid defense that § 167.31 compelled Alloy to “go armed” with a concealed handgun. *See Dundon*, 226 Wis. 2d at 674.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

³ While complying with WIS. STAT. § 167.31 might provide a defense to a person who possessed a concealed weapon immediately after it was encased for purposes of transporting it, those facts are not present here. We do not address hypothetical arguments.

