

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN AND  
FOR ORANGE COUNTY, FLORIDA

ANDRE L. PENN

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

Appeal from the County Court for  
Orange County, Mark D. Wixtrom,  
County Judge

Kimberly M. DeVries, Assistant Public Defender  
for Appellant

Christina J. Patterson, Assistant State Attorney  
for Appellee

Before Rom W. Powell, Walter Komanski, and Bob LeBlanc, J.J.

**FINAL ORDER AFFIRMING LOWER COURT**

Following a jury trial, appellant was adjudged guilty of and sentenced for Carrying a Concealed Weapon, from which final judgment he appeals. He contends (1) that the trial court erred in denying his motion for judgment of acquittal at the close of the state's case and at the close of all the evidence, and (1) by giving an erroneous jury instruction. We disagree and affirm.

The standard for review for an order denying a motion for judgment of acquittal is de novo. *See Evans v. State*, 32 So. 3d 188 (Fla. 1<sup>st</sup> DCA 2010).

The salient facts, distilled to their quintessence, are that when a law enforcement officer

approached appellant who had just exited his vehicle, the officer saw a sword in its scabbard lying on the floor between the open driver's door and the driver's seat.

The trial court did not err in denying appellant's motion for directed judgment of acquittal. A motion for judgment of acquittal not only admits all facts in evidence, but all inferences must be drawn in favor of the state. *Calvo v. State*, 624 So. 2d 838 (Fla. 5<sup>th</sup> DCA 1993); *Proko v. State*, 566 So. 2d 918 (Fla. 5<sup>th</sup> DCA 1990). A trial court should not grant such a motion unless, when viewed in light most favorable to the state, the evidence does not establish a prima facie case. *Id.* at 920.

There was sufficient competent evidence to submit to the jury the issues of whether the sword was a weapon, or was securely encased, or was carried concealed. *See Ensor v. State*, 403 So. 2d 349 (Fla.1984) (pistol under floor mat partially visible through front windshield and fully visible from open driver's door presented issue for jury as to whether it was concealed); *L.G. v. State*, 693 So. 2d 1020 (Fla. 3d DCA 1997) (officer saw through already open door portion of handgun protruding from under driver's seat; delinquency finding upheld); *Clark v. State*, 993 So. 2d 1136 (Fla. 5<sup>th</sup> DCA 2008) (defendant's C-4 motion to dismiss alleging 18 inch knife in sheath under front driver's seat was "securely encased" properly denied in view of state's traverse denying knife snapped in holster or otherwise carried in such a way as to be securely encased met statutory definition.)

Further, the trial court did not abuse its discretion in denying appellant's motion for new trial. The jury instruction based on *section 790.001(13), Florida Statutes* defining the word "weapon" was properly phrased and it was not error to give it.

Consequently, the final judgment of guilt of the offense of Carrying Concealed Weapon

appealed from is

**AFFIRMED.**

DONE and ORDERED at Orlando, Florida, this 22nd day of June, 2010.

/S/ \_\_\_\_\_  
Rom W. Powell, Senior Judge

/S/ \_\_\_\_\_  
Walter Komanksi, Circuit Judge

/S/ \_\_\_\_\_  
Bob LeBlanc, Circuit Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a copy hereof has been furnished to Kinberly M. DeVries, Assistant Public Defender, 435 N. Orange Ave., Orlando FL 32801, and to Christina J. Patterson, Assistant State Attorney, 415 N. Orange Ave., Orlando FL 32801, by inter-office mail, this 22<sup>nd</sup> day of June, 2010.

/S/ \_\_\_\_\_  
Judicial Assistant