



DPS Legal Review

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PLAIN VIEW

An officer initiated a traffic stop because he heard loud music coming from the defendant's stereo, possibly in violation of a local noise ordinance. When the officer approached the vehicle, he noticed several cardboard boxes in plain view on the back seat containing numerous digital video recording discs ("DVDs") of films. The officer suspected that the materials had been illegally reproduced or pirated because: 1) the quality of the DVD packaging was poor, 2) some of the DVDs were of films still in theatrical release, and 3) there were duplicate copies of the same films.

The defendant was placed under arrest for criminal reproduction of recorded material, and a search of his vehicle resulted in the discovery of what appeared to be more pirated DVDs and music compact discs ("CDs"). After he was taken into custody, his wife was contacted by officers, and she consented to a search of their residence. Nothing was found inside the residence; however, in plain view, in a second vehicle that was parked in the driveway, the officers saw numerous DVDs and CDs. A search of the second vehicle uncovered what appeared to be more pirated materials. A jury found the defendant guilty. He appealed and argued that the search had been unlawful.

HOLDING: The stop was justified because the officer perceived that the defendant was violating a local noise ordinance. It was inconsequential that the defendant was not cited for the noise ordinance violation. The plain view doctrine extends to the observation of evidence in plain view inside of automobiles when an officer is lawfully at a place where he observes the incriminating evidence. The viewing need not be motivated by any articulable suspicion. Thus, law enforcement officers have the right to look into automobiles. The officer was authorized to search the vehicle and the trunk incident to the arrest.

Additionally, permission to search the residence was properly obtained from the

defendant's wife. Permission to search may be obtained from one who possesses common authority over or other sufficient relationship to the property sought to be inspected. Hayward v. State, __ S.E.2d __, 2007 WL 491124 (Ga. App. Feb. 16, 2007).

TRAFFIC STOP (DETENTION VERSUS A CONSENSUAL ENCOUNTER)

An Alabama trooper, who was assisting in an arrest on the interstate, noticed another vehicle crossing a solid white line and veering into the emergency lane. He asked another officer to go after the car and pull it over. The officer complied, and, shortly thereafter, the trooper followed and arrived to complete the stop. The driver was asked to step out of the vehicle because there was confusion about who owned the vehicle. While being asked questions, the driver appeared nervous, and he was fidgeting and pacing. This behavior caused the trooper to suspect that the car had been stolen.

However, a document check revealed the driver had a clean driving record and that the car was not stolen. The trooper also ran a background check from the Blue Light Operations Center (hereafter "BLOC") because the driver was from a border town in Texas that is a source of heavy narcotic activity, and he was traveling to south Florida, another source area for narcotic activity. The trooper issued a warning citation, returned all of the driver's paperwork, and told him that the stop was over.

At that point, a call from BLOC confirmed that the driver's criminal background was clean (except for a minor marijuana offense as a juvenile). The trooper then asked the driver if he had anything illegal in the car. The driver told the trooper that he could search the vehicle if he wished. After the consent to search form was explained to the driver, he signed it.

During a search of the car, the trooper discovered seven kilograms of cocaine hidden inside of the dashboard of the vehicle. The driver was arrested, and, after he was indicted,

he filed a motion to suppress the evidence. The driver argued that he had been unlawfully detained in violation of the Fourth Amendment because his continued detention was done without any reasonable suspicion of any further criminal activity. He also alleged that his prolonged detention was unconstitutional. The motion was denied. He appealed.

HOLDING: The trooper's post-citation question did not violate the Fourth Amendment. The Court addressed directly for the first time when a Terry v. Ohio, 392 U.S. 1 (1968), stop shifts from a "detention" to a "consensual encounter." The Court held that the videotape supported the trooper's version of the events by revealing that the driver had received his citation and had been handed his license and registration *prior* to being asked any questions about whether there was contraband in the car. Because all business with the driver was completed and he was free to leave, at that point, the traffic stop had converted into a "consensual encounter."

The Court clarified that this decision *does not* create a *per se* rule that, once a person's documentation has been returned to them in a traffic stop, it automatically converts into a "consensual encounter." Courts should examine the "totality of the circumstances" in each case. The range of factors to be weighed include: 1) whether there is any coerciveness on the part of the police, 2) whether the exchange is cooperative in nature, and 3) whether the defendant had everything he reasonably required to proceed on his journey. In short, the ultimate inquiry is whether "a reasonable person would feel free to terminate the encounter." U.S. v. Ramirez, ___ F.3d___, 2007 WL 268898 (11th Cir. Feb. 1, 2007).

ROADBLOCK

The defendant, who was stopped at a police roadblock, was charged by accusation with driving under the influence of alcohol and possessing an open container of alcohol while operating a motor vehicle. Arguing the roadblock was illegal, the defendant moved to suppress the evidence. In opposition to the motion, the State presented Sgt. Les Wilburn, the supervisor of all of the troopers for Post 1. He testified that under Georgia State Patrol (hereafter "GSP") policy, he has the authority to authorize roadblocks and that he authorized the roadblock in question.

Sgt. Wilburn also testified that the purpose of the roadblock was to check for driver's licenses, proof of insurance, seatbelt violations, driver impairment, and vehicle safety compliance. The GSP Supervisory Initiation of Roadblock Form was also introduced into evidence. The defendant's motion was denied. He was tried and found guilty. He appealed the denial of motion to suppress.

HOLDING: The motion to suppress was correctly denied. A police roadblock is constitutional provided that: 1) the decision to implement the roadblock was made by supervisory personnel rather than officers in the field, and 2) the supervisory officer must have a valid primary purpose for the roadblock other than merely seeking to uncover evidence of ordinary criminal wrongdoing. The State met its burden of presenting some admissible evidence, either testimonial or written, that the supervisory officer: 1) decided to implement the roadblock, 2) decided when and where to implement it, and 3) had a legitimate primary purpose for it. Wright v. State, ___ S.E.2d ___, 2007 WL 273516 (Ga. App. Feb. 1, 2007).

ALS REMINDERS

- The Motion for Continuance for an ALS Hearing can be found in Microsoft Outlook. Go to Public Folders under DPS Forms, click Field Operations, and look for the Nigel Lange - DPS – 21 Motion for Continuance for ALS Hearing Form.
- Read the implied consent notice to the defendant as soon as possible after a DUI arrest. There must be exigent circumstances to justify a delay between a DUI arrest and the reading of the implied consent notice.
- Read the implied consent notice at the ALS hearing, and advise the Court regarding how you determined the age appropriate implied consent.

PROVERBIAL WISDOM WORKS

"Always do right. This will gratify some people and astonish the rest." Mark Twain

Published with the approval of Colonel Bill Hitchens. Legal Services: Melissa Rodgers, Director, Lee O'Brien and Jacqueline Bunn, Deputy Directors, and Dee Brophy, ALS Attorney. Send questions/comments to jbunn@gsp.net.