DPS Legal Review

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THERE IS NO REASONABLE EXPECTATION OF PRIVACY IN AN OPEN FIELD

A Georgia State Patrol pilot was flying over Dawson County when he noticed a marijuana plant growing in a dirt spot. When he turned the helicopter around to confirm his sighting, he saw additional plants. He circled the property and watched a car leave the property, return, and leave again. The pilot radioed for support and followed the car as it left the property. He persuaded the driver of the car to return to the property. When the pilot returned, he saw an individual get out of a truck and start destroying the plants with a backhoe tractor. The pilot landed his helicopter so that a police observer on board could apprehend the tractor's operator. The operator of the tractor and owner of the property was the Defendant.

The Defendant owned a parcel of land that exceeded twelve rural acres. The land contained his residence, a workout room, a garage, a large chicken house, hundreds of chicken tepees, a dry creek bed, broken down automobiles, and a mobile home – all surrounded by a perimeter fence. There was no interior fencing within the perimeter separating the residence from where the chickens were allowed to roam and the vegetation to grow naturally. The Defendant pled guilty to manufacturing marijuana.

He filed a motion to suppress the evidence. His motion alleged that the helicopter flew in such an intrusive manner that it violated his Fourth Amendment privacy rights. The Court held that the manner in which the pilot flew was irrelevant because the Defendant had no reasonable expectation of privacy in the open field where the first marijuana plant was discovered. The Defendant appealed.

HOLDING: The Defendant could have no reasonable expectation of privacy in the entire twelve acres. The pilot first saw the marijuana in an area more than four hundred feet from the residence and significantly more than thirty feet beyond the large chicken house which represented the outermost point of the curtilage. That area was separated from both the residence and the chicken house by overgrown brush and broken-down machinery. The Defendant did not use the area for any purpose that could be considered "an intimate activity of the home." Additionally, he made no effort to shield it from aerial surveillance.

Since the Defendant had no protected right to privacy in the area where the first marijuana plant was located, once the pilot confirmed spotting the plant in the open field, law enforcement had probable cause to obtain a search warrant. The initial discovery was not tainted by the fact that the pilot circled back to confirm what he had seen. Further, the pilot was justified in landing the helicopter to prevent the Defendant from destroying the evidence.

Generally, the Fourth Amendment protects people from unreasonable searches and seizures. However, its protections only extend to places where an individual can claim a "reasonable expectation of privacy." An individual's expectation of privacy does not extend to open fields. Open fields are defined as any unoccupied or undeveloped area outside the curtilage. The curtilage is defined as the private property immediately adjacent to the home, and it is protected from unreasonable search and seizure.

To determine if an area should be viewed as the curtilage and subject to Fourth Amendment protection, Courts look at the following factors:

1.) the proximity of the area claimed to be the curtilage to the home;
2.) the nature of the uses to which the area is put;
3.) whether the area is included within an enclosure surrounding the home;
4.) the steps the resident has taken to protect the area from observation.

U.S. v. Nichols, 2007 WL 2614546 (C.A. 11 Ga.).

EQUAL ACCESS DEFENSE FAILS

Georgia State Trooper Brian Scott observed and stopped the Defendant for driving without a seat belt and failing to maintain his lane. During the stop, the trooper smelled marijuana coming from either the Defendant or the car. The Defendant, who was sweating profusely, consented to a search of the car. The trooper discovered a small bag of suspected marijuana under the floor mat on the driver's side. He arrested the Defendant and continued to search the car where he found a shoe box containing cocaine inside the trunk. The Defendant asserted that his sister owned that car, that he had taken it to a car wash to have new tires put on it, and that he knew nothing about the cocaine in the trunk.

He admitted that he had purchased and was wearing the shoes originally packaged in the cocaine-filled shoe box found in the trunk. The Defendant was found guilty of trafficking in cocaine, failure to maintain lane, and failure to wear a seat belt. He appealed and alleged that the circumstantial evidence did not connect him to the cocaine. He argued that other persons, including the car owner, had equal access to the trunk and its contents.

HOLDING: The equal access rule only applies where the sole evidence of possession of contraband found in the vehicle is the defendant's ownership or possession of the vehicle. Unless there is evidence to the contrary, the driver of an automobile is presumed to have possession and control of drugs found in the vehicle. The presumption may be rebutted by evidence that another person had equal access to the car and the contraband.

In this case, the Defendant was driving a car containing over 900 grams of cocaine. This fact raised a presumption that he possessed and controlled the drugs. The evidence showed that the Defendant did not own the vehicle and that other persons had equal access to it. However, the link between the Defendant and the cocaine was not based solely on the presumption of possession. Other factors included the fact that the trooper smelled marijuana when he approached the vehicle and discovered suspected marijuana under the Defendant's feet. The Defendant also admitted that he purchased and was wearing the shoes originally packaged in the box containing the cocaine. A search of the Defendant revealed a large sum of cash. This evidence was more than the mere presumption of possession. The Court reasonably rejected the Defendant's suggestion that the car owner or someone else, with access to the vehicle, left cocaine with a street value of at least $17,000 in a shoe box (purchased by the Defendant) in the car's trunk. McGee v. State, __ S.E. 2d __, 2007 WL 2582543 (Ga. App. 2007).

IN A REAR-END COLLISION, REAR VEHICLE PRESUMED NEGLIGENT

A trooper in Florida was rear-ended by a motorcyclist. The motorcyclist sued the trooper alleging that the trooper was negligent in the operation of his patrol car. The motorcyclist admitted speeding.

HOLDING: In Florida, there is a rebuttable presumption that the negligence of the rear driver in a rear-end collision is the sole proximate cause of the accident. Three fact patterns rebut this presumption: 1.) brake failure, 2.) affirmative testimony of a sudden and unexpected stop, and 3.) an illegally stopped vehicle. None of these elements were present in this case.

ALS REMINDER

- Please remember that when you need to have an ALS hearing continued, it is imperative that you file a **Motion for a Continuance**. This form can be found in Public Folders. Please go to DPS Forms and look for Field Operations. Then click on the ALS folder which is listed as a category under Field Operations. The Motion for Continuance Form is in the ALS folder.

OPEN RECORDS REMINDER

- Please remember that incident reports may be sold at the Post level. Do not forget to follow the redaction and cost guidelines found in Policy #13.01 and Exhibit #13.01-1.

PROVERBIAL WISDOM WORKS

"Our deepest fear is not that we are inadequate. Our deepest fear is that we are powerful beyond measure. It is our light, not our darkness that most frightens us."

Marianne Williamson

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