



DPS Legal Review

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SEARCH INCIDENT TO ARREST

An officer from the Plant City, Florida, Police Department stopped a car for travelling with improper brake lights. The Defendant was driving with one passenger in the front seat. The officer ran a check and learned that the Defendant had a suspended license. The passenger, who owned the car, had a valid license. A radio dispatcher told the officer the Defendant was a "habitual violent felony offender."

The officer asked the Defendant to exit the car. The Defendant opened the car door and exited, but he left the door open. He was arrested for knowingly driving with a suspended license. The officer patted him down, handcuffed him, and placed him in the police car. The officer approached the driver's side of the car and looked into the car through the open door. He saw two bullets, in plain view, on the driver's seat. The officer told the passenger who was still in the car to exit. The passenger's purse was searched, but she was not patted down. The officer searched the interior of the car and found a handgun beneath the driver's seat. The Defendant admitted that the gun belonged to him and that he had taken the bullets out of his pocket.

The Defendant argued that the search of the vehicle was unlawful. The Government said that the search was lawful because officer safety was at issue, and the officer had probable cause to believe that the Defendant had committed a crime.

HOLDING: The Court held that the search was lawful. The officer knew that the Defendant was a convicted felon, and he saw the bullets on the driver's seat in plain view. These facts constituted probable cause to believe that the Defendant had violated Florida law and independently justified the vehicle search. It was illegal for a convicted felon to possess a firearm or ammunition. Probable cause can justify a vehicle search for evidence relevant to offenses

other than the offense of arrest, and the scope of the search authorized is broader. This case is different from U.S. v. Gant, __ U.S. __ (2009). In Gant, the search at issue was incident to an arrest. The Supreme Court has recognized that where a vehicle search is not permissible incident to an arrest, probable cause of criminal activity within a vehicle authorizes a search of any area of the vehicle in which the evidence might be found. U.S. v. Black, 2009 WL 2781537 (M.D. Fla.).

OBSTRUCTION

An officer took custody of a suspect being held under arrest by the police. He placed the suspect in the rear seat of his patrol car. As he was leaving the scene the Defendant appeared with a rake in his hand and stood in front of the patrol car to block its exit. The Defendant and his sister began to curse loudly at the officer. They said the officer was there illegally. The officer asked the Defendant to move away from the car and allow him to leave. The Defendant continued to block the police car and curse the officer.

When the officer exited the car to approach the Defendant, the Defendant picked up the rake and began swinging it in a threatening manner. The officer stepped back and drew his gun. He ordered the Defendant to drop the rake so he could be arrested for obstruction. The Defendant refused and started to retreat into his residence. Three other officers came to assist. One of the officers used his taser and shocked the Defendant into submission. The Defendant was indicted for one count of felony obstruction of an officer (threatening the officer with the rake) and three counts of misdemeanor obstruction of an officer (resisting arrest and refusing to comply with the three officers.) Found guilty on all counts, he appealed.

HOLDING: The felony obstruction conviction was upheld. The Defendant threatened to do violence to the officer with the rake. The three misdemeanor convictions were also upheld. The

three officers were assisting the first officer in a lawful arrest. Forcible resistance is not required to prove that an officer was hindered or obstructed in a misdemeanor obstruction case. Argument, flight, stubborn obstinance, and lying are all examples of conduct that may satisfy the obstruction element. Wilcox v. State, ___ S.E.2d ___, 2009 WL 2781316 (Ga. App.).

JOINT POSSESSION

A Georgia State Patrol Master Trooper saw a car make a drastic lane change on Interstate 75. The Trooper activated his blue lights and stopped the vehicle for the traffic violation. The Defendant was sitting in the front passenger seat of the car which was being driven by his girlfriend. The Trooper approached the passenger's side of the car and recognized the odor of raw marijuana. The Trooper asked the driver for her license and told her to step to the back of the car. The Trooper called for backup. He told the driver that the odor of raw marijuana was coming from the car. He asked if she had any marijuana in the car. She said she was unsure. He told the passenger to exit the car. A search of the trunk revealed four bags placed in the fender well behind a cardboard covering containing hydroponic marijuana. Hydroponic marijuana has a bigger bud and an odor three times stronger than regular marijuana. The driver and passenger were arrested and indicted jointly for crimes of possession of marijuana and possession of marijuana with intent to distribute. The driver denied knowing anything about the marijuana.

HOLDING: The Court held that if one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint. The state could establish the element of possession by showing that the driver and passenger were in joint constructive possession of the contraband. Although the marijuana was hidden, its presence was manifested by an odor that would have been noticed by anyone inside the vehicle.

The driver and her passenger drove to Georgia from Ohio and then almost immediately began to drive back. The driver never saw her mother which was the purpose of the trip. Instead, shortly after arriving in Georgia, she and her passenger headed back to Ohio with a large quantity of marijuana. She and the passenger controlled the car and had access to the trunk which is consistent with their joint constructive

possession of the contraband. State v. Cochran, ___ S.E.2d ___, 2009 WL 2951301 (Ga.App.).

INQUIRING MINDS

QUERY: Can Troopers issue citations for violations of the Uniform Rules of the Road (DUI, Reckless Driving, Speeding, etc.) on private property?

ANSWER: Yes, in certain instances. The DUI statute does not make a distinction as to whether a DUI occurs on private or public property. A DUI that occurs on public or private property can be prosecuted. This also applies to reckless driving and homicide by vehicle. See OCGA 40-6-3(a)(3). Charges for other violations of the Uniform Rules of the Road on private property (speeding, etc.) can also be made **IF** the private property meets the requirements of the Code (40-6-3).

QUERY: Can a nonresident from another country drive in Georgia with a valid license issued by that country?

ANSWER: Yes, if the requirements in OCGA 40-5-21(a)(2) are met. Please see the March 2008 issue of the "DPS Legal Review" under "Inquiring Minds" for additional information on this topic.

ALS REMINDERS

⊗ Remember that if a DUI defendant provides one adequate breath sample on the Intoxilyzer 5000 but refuses to provide a second sample, this is not viewed as a refusal for license suspension purposes. See O.C.G.A. 40-6-392(a)(1)(B). When filling out the 1205 form, please mark the form according to the appropriate test results and **not** as a refusal.

⊗ When testifying at an ALS Hearing on a DUI case in which the GBI crime lab prepared the blood alcohol report, **ALWAYS** submit a copy of the report into the record as evidence. See OCGA 40-5-67.1(g)(2)(D)

⊗ Remember to **ALWAYS** read the implied consent notice into the record at the ALS Hearing and testify as to how you determined which age appropriate implied consent notice should be read to the defendant.

QUOTABLE WISDOM WORKS

"Ideas are the beginning of all achievement."

~ Bruce Lee

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.