



DPS Legal Review

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COMMERCIAL BUS SEARCH VALID

The Defendant was a passenger on a bus traveling south from New York. Sgt. Tony Pilcher (hereafter "Sgt. Pilcher") of the Motor Carrier Compliance Division was working on a multi-agency detail. The detail was conducting a commercial vehicle check on Interstate 85 in and around Gwinnett County. The Motor Carrier Compliance Division can stop commercial vehicles for safety inspections without probable cause. Sgt. Pilcher pulled over the Defendant's bus to conduct a safety inspection.

Georgia State Trooper Dallas VanScoten (hereafter "TFC VanScoten") and Captain Javier Garcia (hereafter "Captain Garcia") of the Braselton Police Department met Sgt. Pilcher at a park-n-ride to assist with the inspection. Sgt. Pilcher boarded the bus and asked the driver and co-driver for documentation. Noticing that most of the passengers appeared to speak Spanish, he asked Captain Garcia (who spoke fluent Spanish) to come on board to talk to the passengers and conduct a consensual encounter.

Captain Garcia entered the bus and stood in the area where the bus driver sits so that the aisle would remain open. He was dressed in plain clothes, wore a badge on his waist, and carried a concealed gun. He addressed the passengers in Spanish and English. He advised them that he was going to talk to them about homeland security issues and transportation of illegal drugs and money. He also explained that he needed their identification to match passengers with their luggage. He explained that the passengers did not have to speak with him and that they had the right to leave the bus or to decline to show him their identification or to let him look at their bags. All of the passengers appeared to be awake and sitting up when the instructions were

given. Captain Garcia walked to the back of the bus to begin his inspection so that someone wishing to exit would not be blocked. He opened one of the overhead compartments, pulled out a bag, and asked the identity of the owner. No one responded. When he asked a second time, someone directed him to the Defendant. He approached him and asked if the bag belonged to him and if he could search it. The Defendant confirmed that the bag belonged to him and authorized the search.

When Captain Garcia opened the Defendant's bag, he discovered a large box of laundry detergent containing two bricks of suspected cocaine. The Defendant was escorted off the bus and placed under arrest. While Captain Garcia was conducting his encounter, Sgt. Pilcher was conducting a Level II safety inspection. A Level II safety inspection involves reviewing the driver's documentation and the overall operational safety of the vehicle. The inspection lasted from 11:46 p.m. until 1:05 a.m. At the conclusion of the inspection, the driver was cited for not possessing his record of duty status over the previous seven days. Prior to his trial for trafficking in cocaine, the Defendant moved to suppress the evidence.

HOLDING: The motion to suppress was denied. The bus was stopped for a bona fide, legally authorized safety inspection. The Defendant was advised: 1) that he could leave the bus at any time, 2) that he did not have to speak with the officer, and 3) that he did not have to consent to the officer's request to search his luggage. The officer addressed the passengers from the front of the bus and made a conscious decision to begin his search at the back so that the aisle would not be blocked should passengers wish to exit. None of the officers did or said anything to discourage passengers from leaving the bus. Thus, under the circumstances, no seizure occurred and a

reasonable person would have felt free to decline the officer's requests or otherwise terminate the encounter. Solano-Rodriguez v. State, __ S.E.2d __, 2009 WL 311295 (Ga. App.).

ACCUSATION SUFFICIENT

A Cobb County officer issued the Defendant a uniform traffic citation ("UTC") for driving his vehicle through a safety zone. The officer transposed the Defendant's middle and last names on the UTC. Further, the date of the Defendant's initial court appearance was not on his copy of the UTC. Thereafter, the State filed an accusation (also labeled an amendment to the UTC) signed by the county solicitor which listed the Defendant's name in the correct order and again charged him with driving his vehicle through a safety zone. The Defendant filed a motion to dismiss based upon the errors in the UTC.

HOLDING: The motion was denied. Misdemeanor traffic offenses may be prosecuted based upon the UTC or upon an accusation framed and signed by the prosecuting attorney of the court. A defendant who has not been misled to his prejudice by any imperfection in the indictment or accusation or citation cannot obtain reversal of his conviction on that ground. Even though the UTC did not contain the initial appearance date, the Defendant appeared. Further, the officer gave him a copy of the UTC which contained his driver's license number, home address, and birth date. Because the Defendant was aware of the charge against him, he was not prejudiced by the transposition of his name on the UTC or the lack of a court date. Switlick v. State, __ S.E.2d __, 2008 WL 294703 (Ga. App.).

INQUIRING MINDS

QUERY: Does an "unknown" insurance status in a NCIC check fail to raise "reasonable suspicion" that a driver is engaged in criminal conduct?

ANSWER: In State v. Dixon, 280 Ga. App. 262, 633 S.E.2d 636 (2006), the Court held that a return of "unknown" insurance status standing alone **does not** provide reasonable, articulable suspicion to initiate a traffic stop. However, in November of 2008, the Court revisited this issue in Matthews v. State, __ S.E.2d __, 2008 WL 4981089 (Ga. App.). In Matthews, the Court clarified its previous holding by stating that it

reached the result on Dixon because the officer failed to testify that an "unknown" status probably meant that the car was uninsured. The officer also failed to testify about any prior experience or training that he had with such a response from an NCIC search or why the database might produce such a response. Thus, Matthews was factually different and a different result was reached. First, the Court held that the "unknown" return was obtained during a valid traffic stop. The "unknown" return was not used to justify the initial stop. Second, the "unknown" return was related to the passenger's identity, not insurance status. Third, the police officer provided the testimony lacking in Dixon (that an unknown return happened 90% of the time in cases involving an outstanding warrant, suspension, probation, or parole).

ALS REMINDER

⚠ When speaking with a suspected DUI driver who has been involved in a wreck, please remember to ask the driver the time that the wreck occurred. If the driver admits to consuming alcoholic beverages, please confirm with the driver that the alcoholic beverages were consumed before the wreck.

⚠ Please remember that you can determine which cases are scheduled for an ALS Hearing by checking the Court's website at www.osah.ga.gov. Cases can be identified by: 1) date and Judge, 2) docket number, or 3) county. When searching the website based upon the date and Judge, click on Court Calendar, then My Court Date to select the date and Judge, and click submit. To search by docket number, you must type in the number and click submit. To search by county of arrest, you must type the Petitioner's last name and click submit.

QUOTABLE WISDOM WORKS

"I don't like that man. I must get to know him better."

Abraham Lincoln

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