



DPS Legal Review

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OPEN FIELD

Law enforcement officers with the Drug Enforcement Agency (“DEA”) went to a property for a knock and talk. Two agents approached from the south on foot. Two other DEA agents drove up to the front gate. As the two on foot entered the property, they crossed over a collapsed wire woven fence. As they approached the back of the mobile home, they passed a large wooded area. About 80 yards from the mobile home, they detected the odor of raw marijuana. They also heard an air conditioning unit. This was unusual because it was winter. They saw people going from the mobile home to the barn. They also saw potting soil and pots behind the barn.

The agents approaching from the front blew the horn of their vehicle to alert those present at the residence that they wanted to conduct a knock and talk. One Defendant exited the front door of the mobile home. The agents identified themselves and asked to speak to him. That Defendant asked them to wait while he went back inside to get the key for the front gate. The agents approaching from the south saw three people flee, climb an interior fence, and head southward.

The officer detained the two Defendants, who were fleeing. Thereafter, the officers obtained a search warrant and seized marijuana, growing equipment, and other evidence. At his initial appearance, one Defendant was asked if he understood the charges. He responded in Spanish, “I was the grower.” The Defendants moved to suppress the evidence as well as their incriminating statements made incident to arrest and at the initial appearance.

HOLDING: The Court denied the motion to suppress. It held that open fields are regarded for Fourth Amendment purposes as public places. Open fields can be accessed and searched by law enforcement even though the land is secluded, fenced, and posted to keep out trespassers. The area where the agents entered

the property had no intimate activities of domestic life. Hence, the Court held that the Defendants had no legitimate expectation of privacy in this location. Officers are allowed to knock on a residence’s door or otherwise approach a residence seeking to speak to the inhabitants.

The Court also held that law enforcement officers may stop an individual when they possess reasonable suspicion of involvement in criminal conduct. In this case, the officers saw the Defendants fleeing, detected the odor of marijuana, heard the air conditioning unit running despite the cold weather, saw potting soil, saw marijuana stains on the clothes of one Defendant, and saw the other Defendant continually reach into his pocket while fleeing. The Court held that all of these observations provided reasonable suspicion to detain the Defendants. The Court held that the statements made incident to the lawful arrest were admissible. Likewise, the Court held that the statements made by the Defendant at his initial appearance were admissible because a voluntary admission is not transformed into compelled speech just because the statement is made in court. U.S. v. Ferro-Lorenzo, Slip Copy, 2010 WL 3957476 (N.D.Fla).

ROADBLOCK SECONDARY ORDER

A Lieutenant and Corporal in the Cherokee County Sheriff’s Office decided to implement a roadblock on Interstate-575 during the Memorial Day weekend in 2009. After deciding on the time and place, the Lieutenant directed the Corporal to issue a written order for the roadblock. The goal of the roadblock was “to establish . . . safety checkpoints to enhance safe travel” and its primary purpose was “to conduct a check of driver’s licenses and to identify drivers who [were] under the influence of drugs and/or alcohol.”

When the roadblock was conducted, the Lieutenant supervised and the Corporal was

present. Sheriff's deputies served as screening officers and Georgia State Patrol ("GSP") Troopers provided additional assistance. The roadblock was clearly marked as a law enforcement operation by signs, patrol cars with flashing lights, and uniformed officers. All vehicles coming through the roadblock were stopped, and the delay to the motorists was minimal. The screening officers had prior training and experience in DUI detection and field sobriety testing.

When the Defendant approached the roadblock, a screening officer detected the odor of alcohol on her breath. The Defendant also appeared to have glassy, bloodshot eyes, and her speech was slurred. The Defendant admitted that she was coming from a bar and that she had consumed a couple of beers. After she failed the field sobriety evaluations, she was placed under arrest for DUI and read the implied consent notice. Her breath test registered a .116 test result. She was charged with DUI to the extent that it was less safe for her to drive and DUI per se. Alleging that the roadblock was illegal, she moved to suppress the evidence.

HOLDING: The Court denied the motion. The Court held that, since the Lieutenant and Corporal were supervisors in the traffic unit of the Sheriff's Office, the roadblock had been authorized by supervisory officers at the programmatic level. The written order for the roadblock specified that the goal was to serve as a traffic safety checkpoint and its primary purpose was to check driver's licenses and to identify DUI drivers. The Defendant's DUI check fell within the roadblock's established purpose.

The Court disagreed with the Defendant's assertion that a secondary roadblock order issued by GSP impermissibly expanded the purpose by designating additional purposes and by allowing field officers to exercise unfettered discretion. The Court held that the Troopers merely served as field officers assisting with the roadblock under the Lieutenant's supervision and command. The additional purposes listed in the secondary order included the performance of routine traffic checks for insurance, registration, seatbelt compliance, vehicle fitness, and vehicle safety compliance. The Court held that each of those identified purposes have been held to be a legitimate primary purpose. Hence, a roadblock that serves as a highway safety checkpoint has a valid primary purpose even if the officers are looking for several different safety violations.

Rappley v. State, __S.E.2d__, 2010 WL 4106716 (Ga. App.).

INQUIRING MINDS

QUERY: What is an International Driving Permit ("I.D.P."), and who is required to carry one?

ANSWER: An I.D.P. translates information contained on a driver's license into 10 languages so that officials in foreign countries are able to interpret the license. An I.D.P. supplements a valid government-issued license - **it does not serve as a replacement for a license.** In 2008, the Georgia General Assembly amended O.C.G.A. § 40-5-21(a)(2) by requiring foreign drivers to have an I.D.P. in their possession. The requirement that foreign drivers carry an I.D.P. took effect on January 1, 2009. For further details, please review the attached document:



Foreign Drivers
2010.pdf

QUERY: When a license check shows "suspension for Super Speeder," is an officer required to provide notice?

ANSWER: No.

ALS REMINDERS

⊗ Please remember that the arresting officer is the only witness subpoenaed by the Court for an ALS Hearing. If additional witnesses are needed, **YOU will need to subpoena them.** The witness subpoena can be found on the Court's website at www.osah.ga.gov under Court Forms, subpoena. If you need any assistance regarding this process, contact Dee or Beverly in Legal Services.

⊗ If you are in training, on vacation, or otherwise unavailable for an ALS Hearing, a written motion for continuance must be filed. **The motion must be filed at least five (5) business days prior to the ALS Hearing.** The form for a continuance motion is located on the MyDPS website in the ALS Form folder under DPS Forms.

QUOTABLE WISDOM WORKS

"If you tell the truth you don't have to remember anything."
~Mark Twain

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