



DPS Legal Review

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AUTOMOBILE EXCEPTION

Georgia State Trooper Ray Malone observed the defendant following too closely. He also saw that the defendant was not wearing a seatbelt and his car tag was expired. Trooper Malone initiated a traffic stop and asked the defendant to produce his license, insurance, and registration. The defendant was unable to produce any information except his license. As Trooper Malone spoke to the defendant through the open passenger window, he smelled the odor of burnt marijuana from inside the car. He also saw what appeared to be the remnants of marijuana in the floorboards. The defendant, who was from South Carolina, could not provide details regarding where he stayed, and the car lacked any visible luggage or evidence of a trip.

Trooper Malone asked the defendant to step out of the car while he wrote a citation. Because the defendant appeared to become increasingly agitated, Trooper Malone called for backup assistance. When asked about the marijuana odor, the defendant said that his friend may have smoked in his car the day before, but he denied that the car contained any drugs. Based upon the odor of marijuana, Trooper Malone searched the passenger compartment where he found remnants of marijuana. In the trunk, he found a plastic bag containing cocaine. The defendant admitted he knew that the cocaine was in the trunk, but he said he was forced to drive from Atlanta to South Carolina. He moved to suppress the evidence.

HOLDING: The Court held that the warrantless search of the vehicle was lawful under the automobile exception to the warrant requirement. The automobile exception allows an officer to search a car without a warrant if he or she has probable cause to believe the car contains contraband. The Court held that the objective facts known to Trooper Malone, after he lawfully stopped the car, gave him probable cause to believe that the car contained contraband. Brown v. State, ___ S.E.2d. ___, 2011 WL 2610393 (Ga.).

KNOCK AND TALK

Based upon a tip from an informant, Drug Enforcement Administration (“DEA”) agents approached the Miami home of the defendant to conduct a “knock and talk.” The residence was surrounded by a six to seven foot concrete wall with bars on top. The driveway was protected by an electronic gate controlled from inside the house by the homeowners. Without express authorization, the agents entered the curtilage of the defendant’s residence by following a civilian vehicle for which the gate had been opened.

Thereafter, the defendant executed a written consent to search which allowed the agents to search the premises. The search revealed a hydroponic marijuana laboratory, harvested and packaged marijuana, and equipment used in hydroponic grows. While this search was ongoing, other DEA agents approached the residence of the defendant’s son, also a gated residence. A DEA agent followed the son through the gate. The DEA agent’s vehicle was hit by the closing gate. The agent believed that the son had agreed to meet the agents at his home.

Once inside the gate and out of his vehicle, the agent explained his presence and purpose. Both the son and his wife signed a written consent to search their residence. The search of that residence produced two firearms, packaged marijuana, seven large jugs of hydroponic fertilizer, and a bag of soil containing a marijuana root system. The defendant, his son and daughter-in-law were arrested and charged with conspiracy to possess with intent to distribute marijuana, possession with intent to distribute, and maintaining a marijuana grow house. All three moved to suppress the evidence.

HOLDING: The motion to suppress was denied. The Court held that the agents’ entry into the curtilage of the defendant’s residence, by means of following a civilian vehicle (without express authorization), violated the Fourth Amendment. However, the Court held that improper entry onto

curtilage does not automatically require suppression of evidence.

To make this determination, courts engage in a two-step inquiry: (1) whether defendant's consent was voluntary and (2) whether defendant's consent resulted from the illegal intrusion. The Court held that the oral and written consent to search the home was not tainted by the preceding illegal action of law enforcement. The Court also held that the agents' access to the son's residence was based on a mistaken but reasonable belief that the son had agreed to meet the agents at his residence. Furthermore, the Court held that the son and his wife's consents to the search were voluntary and not coerced. U.S. v. Victores, 2011 WL 3424449 (S.D. Fla.).

UNLAWFUL PAT-DOWN

The defendant was the passenger in a vehicle that was stopped by a police officer. The officer stopped the vehicle for a window tint violation. The officer asked for and obtained the driver's consent to search the vehicle. He asked the defendant to exit the car so that he could conduct the search. When the defendant exited the vehicle, the officer asked him if he had any weapons or contraband on his person. The defendant said no, but appeared nervous and would not make eye contact with the officer. He patted the defendant down for officer safety.

The officer identified himself, and asked the defendant to identify himself. The defendant nervously attempted to locate his identification. The officer asked if he could assist him. The defendant handed the officer his wallet. The officer did not order the defendant to hand over his wallet. As the officer looked through the wallet for identification, he found a clear plastic bag containing a white powdery substance that appeared to be cocaine. The defendant moved to suppress.

HOLDING: The Court held that the officer lacked a proper basis to frisk the defendant after asking him to exit the automobile. To proceed from a stop to a frisk, an officer must reasonably suspect that the person stopped is armed and dangerous. This requirement also applies to passengers in cars that have been legally stopped. The Court held that the officer's testimony based on general policy and not on information specific to the person frisked was insufficient to establish that the officer had reasonable suspicion that the defendant was armed and dangerous or otherwise posed a threat to the officer.

Nonetheless, the Court held that the motion to suppress should be denied because the contraband was not uncovered during the unlawful pat-down. The Court held that the prior unlawful pat-down does not operate to invalidate the defendant's subsequent consent to the search of his wallet. After the pat-down, the defendant was free to leave at any time. When the defendant had trouble finding his identification, he handed his wallet to the officer after the officer offered to help. Rogue v. State, ___ S.E.2d ___, 2011 WL 3569857 (Ga. App.).

POSSESSORY INTEREST

After being arrested, the defendant denied any possessory interest in a vehicle and claimed that he lacked knowledge of the vehicle's existence. Later he moved to suppress narcotics located in the trunk of the vehicle.

HOLDING: The Court denied the motion to suppress. Disclaiming ownership or knowledge of an item extinguishes any legitimate expectation of privacy in that item. The Court held that, once the defendant disclaimed ownership or interest in the vehicle, he lacked standing to contest the search. Beauger v. State, ___ So.3d ___, 2011 WL 3300191 (Fla. App. 4 Dist.).

INQUIRING MINDS

QUERY: Can someone ride a horse or drive a horse-drawn carriage on a roadway?

ANSWER: Yes. O.C.G.A. § 40-6-4 provides that "Every person riding an animal or driving an animal drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature have no application."

ALS REMINDER

⊗ When an ALS case is continued in court, the new hearing date is immediately given by the Court at that time. A new hearing notice will not be mailed.

⊗ An attorney's contact information can be secured by accessing the state bar directory at: <http://www.gabar.org/public/directory/MemberSearch.htm>

QUOTABLE WISDOM WORKS

"Because things are the way they are, things will not stay the way they are." ~ Bertolt Brecht

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