



DPS Legal Review

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FLEEING/ A VIOLENT FELONY

Indiana police officers observed the defendant driving without using needed headlights. The officers activated their emergency equipment to initiate a traffic stop. When the defendant did not stop, a chase ensued. The Defendant “wove through traffic, drove on the wrong side of the road and through yards containing bystanders, passed through a fence, and struck the rear of a house. Then he fled on foot. He was found only with the aid of a police dog.” The defendant pleaded guilty to being a felon with a firearm. The defendant had previous convictions for at least three felonies. On two separate occasions, he used a firearm to commit robbery. His third conviction was for vehicle flight in violation of Indiana’s “resisting law enforcement law.”

It is a federal crime for a convicted felon to be in unlawful possession of a firearm. Ordinarily, the maximum sentence for that crime is ten (10) years of imprisonment. However, when unlawful possession occurs and the felon has three previous convictions for a violent felony or serious drug offense, the punishment is enhanced to a minimum term of 15 years. The defendant did not dispute that his two prior robbery convictions were violent felonies. He also did not dispute that his vehicle flight offense was a felony. But, he argued that he should not be subject to enhanced punishment because “vehicle flight” is not a “**violent**” felony.

HOLDING: The United States Supreme Court held that the “vehicle flight that the statute proscribes is a violent felony as the federal statute uses that term.” The defendant used a vehicle to flee after an officer ordered him to stop which was, as the Indiana statute provides, a class D felony. Sykes v. U.S., __ U.S. __, 2011 WL 2224437 (2011).

CONFRONTATION CLAUSE

The defendant was tried by a jury in New Mexico for driving while intoxicated (“DWI”). The principal evidence against him was a forensic

laboratory report certifying that his blood-alcohol concentration was well above the threshold for aggravated DWI. The defendant’s blood sample had been tested at the New Mexico Department of Health, Scientific Laboratory Division (“SLD”) by a forensic analyst who completed, signed and certified the report.

The prosecution neither called that forensic analyst to testify nor asserted that he was unavailable. The forensic analyst was placed on unpaid leave for an undisclosed reason. In lieu of the analyst who certified the report, the State called a second analyst to validate the report. The second analyst was familiar with the testing device used to analyze the defendant’s blood and with the laboratory’s testing procedures, but he had “neither participated in nor observed the test on the defendant’s blood. The defendant objected to testimony by the second analyst as a violation of the Confrontation Clause.

HOLDING: The United State Supreme Court held that the Sixth Amendment’s Confrontation Clause does not permit the prosecution to introduce a forensic laboratory report containing a testimonial certification, made in order to prove a fact at a criminal trial, through the in-court testimony of an analyst who did not sign the certification or personally perform or observe the performance of the test. An accused has a right to be confronted with the analyst who made the certification (unless the witness who made the statement is unavailable and the accused has an opportunity to confront that witness prior to trial.) Bullcoming v. N.M., __ U.S. __ (2011).

AGE AS A FACTOR FOR DETERMINING CUSTODY

Police stopped and questioned a 13-year-old seventh grader after seeing him near the site of two home break-ins. Five days later, when a digital camera matching one of the stolen items was found at the juvenile’s school and seen in his possession, an investigator went to the school. A uniformed police officer on detail to the school took the juvenile from his classroom to a

closed-door conference room. Police and school administrators questioned him for at least 30 minutes. Before questioning the juvenile, the officers: 1) did not give him Miranda warnings, 2) did not give him the opportunity to call his legal guardian, or 3) tell him he was free to leave.

He initially denied involvement, but he confessed after the officials urged him to tell the truth and told him about the prospect of juvenile detention. Thereafter, the investigator told him that he could refuse to answer questions and was free to leave. He said he understood. Nonetheless, he remained, gave the location of the stolen items, and wrote a statement (at the request of the investigator). When the school day ended, he was allowed to go home. Later, he was charged with breaking and entering and with larceny. He moved to suppress his statements and the evidence. He argued that he had been interrogated in a custodial setting without being given Miranda warnings and that his statements were involuntary.

HOLDING: The United States Supreme Court held that, "It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality" the Court held that Miranda analysis includes consideration of a juvenile's age. The Court held that, "so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test." The Court also held that to conclude a child's age is never relevant to whether a suspect has been taken into custody would be to deny children the full scope of the procedural safeguard that Miranda guarantees adults. J.D.B. v. N.C., ___ U.S. ___ (2011).

IMMIGRATION

Georgia's new illegal immigration law has been challenged. A United States District Court has issued a preliminary injunction enjoining the State of Georgia from enforcing Sections 7 and 8 of 2011 HB 87, the "Illegal Immigration Reform and Enforcement Act of 2011." The injunction was issued in the case of Georgia Latino Alliance for Human Rights ("GLAHR") v. Deal, No. 1:11-CV-1804-TWT, on Jun. 27, 2011

Section 7 of HB 87 created three new crimes: OCGA § 16-11-200 (knowingly transporting

illegal aliens), OCGA § 16-11-201 (knowingly concealing, harboring, or shielding an illegal alien) and OCGA § 16-11-202 (inducing, enticing or assisting an illegal alien to enter Georgia). Section 8 added a new OCGA § 17-5-100 that would allow a peace officer to verify that a person is lawfully in the United States, when the stop is based on probable cause. The State plans to appeal the decision.

INQUIRING MINDS

QUERY: Are there any statutory restrictions regarding use of the Georgia State Patrol emblem or name?

ANSWER: Yes. The Department of Public Safety Nomenclature Act governs the use of Georgia State Patrol terminology and emblems. Use without proper prior authorization of the terminology "Georgia State Patrol" violates O.C.G.A. § 35-2-82 and use without proper prior authorization of the Georgia State Patrol emblem violates O.C.G.A. § 35-2-83.

QUERY: Has the law changed with regard to child restraint requirements?

ANSWER: Yes. As of July 1, 2011, the age that children must be transported in passenger vehicles using child passenger restraining systems has been raised from six (6) years of age to eight (8) years of age. For more details, click on the link below:



2011 Booster Seat
Law Change.pdf

ALS REMINDER

⚠ If a Petitioner fails to enter a guilty plea pursuant to an ALS plea agreement, please contact Dee or Beverly in Legal Services so that the paperwork can be resubmitted to the ALS Judge.

⚠ If you are in training, on vacation, or otherwise unavailable for an ALS Hearing, a written motion for a continuance must be filed as soon as possible. The form for a continuance motion is located on the MyDPS website in the ALS Form folder under DPS Forms. If you have any questions regarding the motion, please contact Dee or Beverly.

QUOTABLE WISDOM WORKS

"I like dreams of the future better than the history of the past."

~ Patrick Henry

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.