



DPS Legal Review

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EXIGENT CIRCUMSTANCES

Officers in Lexington, Kentucky, set up a controlled buy of crack cocaine outside of an apartment complex. Undercover officers watched the deal take place from an unmarked car in a nearby parking lot. They radioed uniformed officers that the suspect was moving quickly toward the breezeway of an apartment building.

The uniformed officers tried, but failed, to get there before the suspect entered one of the apartments. Though uncertain which apartment the suspect had entered, the officers smelled the odor of marijuana coming from an apartment on the left. They approached that apartment door and announced their presence. As soon as the officers started to bang on the door, they heard people moving inside of the apartment and sounds that indicated things were being moved. The noises led the officers to believe that drug-related evidence was about to be destroyed.

The officers announced that they were going to enter the apartment. After kicking in the door, they entered and found the Defendant, his girlfriend, and a guest, who was smoking marijuana. Thereafter, during a protective sweep, the officers saw marijuana and powder cocaine in plain view. In a subsequent search, they also discovered crack cocaine, cash, and drug paraphernalia.

The Defendant was charged with trafficking in marijuana, first-degree trafficking in a controlled substance, and second-degree persistent felony offender status. The Defendant moved to suppress the evidence from the warrantless search. He contended that the law enforcement officers impermissibly created an exigent circumstance by engaging in conduct that would cause a reasonable person to believe that entry was imminent and inevitable.

HOLDING: The United States Supreme Court held that the officers banged on the door and announced that the police were present. The Court held that this conduct was entirely

consistent with the Fourth Amendment. There was no evidence of a “demand” or any treat to violate the Fourth Amendment. The officers explained to the occupants that they were going to make entry **after** the exigency arose. “Occupants who choose not to stand on their constitutional rights but instead elect to attempt to destroy evidence have only themselves to blame for the warrantless exigent-circumstances search that may ensue.” Under the facts, the exigency justified the warrantless search of the apartment. Kentucky v. King, 563 U.S. __ (2011).

RENTAL VEHICLE PRIVACY

The Defendant’s friend agreed to rent a vehicle in his name for the Defendant’s use because the Defendant lacked a credit card. The Defendant used the rental car for more than a week when he was stopped by deputies. The deputies saw marijuana residue and detected the odor of fresh marijuana inside the passenger compartment of the rental car. Thereafter, the deputies conducted a warrantless search of the trunk. The Defendant moved to suppress the evidence. He contended that he had constitutional standing to contest the search despite the fact that the car had been rented by his friend.

HOLDING: The Court held that the search was valid. However, the Court held that the Defendant had a reasonable expectation of privacy in the rental vehicle based on the totality of the circumstances. In holding that the Defendant had constitutional standing to contest the search, the Court considered five factors.

First, the Defendant legally operated the car and possessed and produced a valid driver’s license. Second, the vehicle was rented by the Defendant’s friend. Third, the Defendant and his friend were more than strangers or mere acquaintances. Fourth, the friend gave the Defendant permission to drive and possess the vehicle at the time of the traffic stop. Fifth, the Defendant’s relationship with the rental car company was unknown, but the other factors

supported the existence of a reasonable expectation of privacy in the rental vehicle. U.S. v. Murray, Slip Copy, 2011 WL 1806971 (S.D. Ga.).

FREE AIR SNIFF

Two officers were parked in the median on I-20 when one of them saw the Defendant traveling in the right lane following a tractor trailer too closely and changing lanes without signaling. The officers stopped the Defendant and asked for his license and insurance. One officer asked the Defendant to step out of the vehicle, and he complied. The officer asked the Defendant questions including where he was coming from and if he had any illegal drugs in the vehicle. The Defendant said that he did not. The Defendant refused to consent to a search of the vehicle. When the other officer got his K-9 out of his patrol car and walked it around the vehicle, it alerted. The vehicle was subsequently searched, and marijuana was discovered in the trunk of the vehicle inside a cardboard box with packing tape sealing it. The Defendant moved to suppress the evidence.

HOLDING: The Georgia Court of Appeals held that the officers were permitted to use the drug sniffing dog in the absence of any suspicion of illegal activity as long as it did not unreasonably prolong an otherwise valid stop. State v. Rouse, __ S.E.2d __, 2011 WL 1734362 (Ga. App.).

BLOOD TEST

The Georgia State Patrol set up a roadblock in down-town Athens. When the Defendant was five or six cars from the roadblock, she and her passenger exited the vehicle and attempted to switch places. When a Trooper asked her about this behavior, she said that she was not insured to drive the passenger's vehicle. After the Trooper detected the odor of alcohol from both occupants of the vehicle, he administered a preliminary Alco-Sensor test. Both registered positive for alcohol.

The Defendant driver was placed under arrest and read the Georgia Implied Consent Notice. The Defendant initially refused to submit to the State-administered chemical breath test. She subsequently agreed to submit to a breath test, and she requested a blood test (before and after she completed the chemical breath test.) After she requested the chemical breath test, a Trooper told her that two hospitals in the area performed the test. The Trooper also told her that she would have to pay for the test. However, the Trooper acknowledged that he was

unfamiliar with either hospital's payment protocol. At that point, the Defendant said that she lacked money to pay for the test without her purse - which was in the passenger's vehicle and no longer at the scene. She was charged with DUI per se and DUI less safe. She moved to suppress the evidence.

HOLDING: The Georgia Court of Appeals held that the motion to suppress should be granted. The Court held that the Trooper erred by telling the Defendant that she would have to pay for the blood test without confirming the hospitals' payment policies. The Court held that, when he learned that the Defendant lacked sufficient cash for a blood test, the Trooper should have given the Defendant an opportunity to use a telephone to make other arrangements. The Court held that, under the facts, the State failed to reasonably accommodate the Defendant's request for an independent blood test. State v. Davis, __ S.E.2d __, 2011 WL 1843166 (Ga. App.)

INQUIRING MINDS

QUERY: Is it permissible to change the color of a motor vehicle's headlights?

ANSWER: No. O.C.G.A. § 40-8-34 mandates that the color of all lighting must comply with the Society of Automotive Engineers (SAE) Standard J578.

ALS REMINDER

⊗ If you receive ALS Hearing notices for two different locations for the same date, immediately contact Dee or Beverly to have them file a conflict letter with the Court on your behalf.

⊗ If you need a copy of a final decision on an ALS case that occurred after July 1, 2009, visit the OSAH website at www.osah.ga.gov to secure the final decision. You will need the docket number, the petitioner's zip code, and you will need to know if the petitioner was represented by an attorney. You may also contact either Dee or Beverly to get a final ALS decision.

QUOTABLE WISDOM WORKS

"A nation reveals itself not only by the men it produces but also by the men it honors, the men it remembers."

~ President John F. Kennedy

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