



DPS Legal Review

July 2011 Legal Services (404) 624-7423 Volume 10 No. 7

DRAM SHOP ACT

A driver lost control of his vehicle, crossed the center line of the road, and caused a head-on collision with a van traveling in the opposite direction. Six people died in the collision. The driver who caused the accident had a blood alcohol concentration of 0.181. Three of the crash's survivors sued Exprezit!, a convenience store, based on the Georgia Dram Shop Act ("GDSA"). The suit alleged that, four hours prior to the crash, an Exprezit! Convenience store employee sold a 12-pack of beer to the driver who caused the accident (despite the fact that he was noticeably intoxicated).

HOLDING: The Georgia Supreme Court held that the GDSA applies to grocery and convenience stores that sell alcoholic beverages in closed containers or packages intended for consumption elsewhere. "If a convenience store sells alcohol to such a customer, it is foreseeable that the customer will drive while intoxicated and injure an innocent third party." The Court also held that a plain reading of the dram shop act shows that it does not require the seller of alcoholic beverages to know when or how much alcohol a purchaser will consume before he gets behind the wheel. The Court held that the focus should be on the convenience stores' knowledge as to whether its customer was noticeably intoxicated and would be driving. Flores v. Exprezit! Stores 98 – Georgia, __ S.E.2d. __, 2011 WL 2610393 (Ga.).

INVASION OF PRIVACY

While on a public street, the violator was filmed by the television show "COPS" as she discussed the details of her traffic stop for running through several stop signs and driving without a working tag and headlights on her vehicle. The violator filed suit alleging that the broadcast publicized her "eccentric reactions and behavior in stressful situations." The broadcast disclosed that the violator was upset with her daughter, that she keeps her cell phone in a plastic bag in her purse and uses the phone with the bag on it, and that she had a trunk full of

items that she wanted to give to hurricane victims which were not accepted. The violator filed suit under Florida law for "intrusion upon seclusion" and "public disclosure of private facts."

HOLDING: The Eleventh Circuit Court of Appeals held that both claims were properly dismissed. No facts were disclosed that a reasonable juror could deem private and offensive. Likewise, the Court held that there was no meaningful support for the claim that the public street on which the recording occurred was a private place. "Florida law explicitly requires an intrusion into a private place and not merely into a private activity." The defendant voluntarily placed herself in a public place where she did not have a reasonable expectation of privacy. Spilfogel v. Fox Broadcasting Co., Slip Copy, 2011 WL 2623578 (C.A. 11 (Fla.)).

UNLAWFUL DETENTION

Two deputies stopped a car driven by the defendant after he failed to properly signal a right turn. The deputies were following the defendant because a tipster told them a Hispanic man, who drove the same type of car, "dealt methamphetamine." During the traffic stop, the deputies asked the defendant if he had any drugs or weapons on his person. He responded that he did not, and, upon request, he emptied his pockets on the trunk of his car. The deputies asked for permission to search his person, and the defendant consented. The deputies found nothing of interest and told him he was "good to go."

As the defendant was retrieving his personal items, the deputies asked him three times for permission to search his car. He refused. On the third refusal, the deputies told him they were calling a canine unit to the scene to sniff the exterior of his car. The deputies detained him until the unit arrived approximately ten minutes later. While sniffing the exterior of the car, the drug dog alerted. A search of the car revealed approximately 3 grams of methamphetamine in the steering column. The defendant moved to

suppress the evidence contending that his detention was unlawful.

HOLDING: The Court held the detention was unlawful. The State bore the burden of proving that the search of the car was lawful. To carry this burden, the State had to show it was lawful to detain the defendant until the drug dog indicated the presence of drugs. The Court held that “When an officer stops a driver to investigate a traffic violation, the officer cannot continue to detain the driver after the investigation of the traffic violation is complete unless the officer has a particularized reason to suspect that the person is engaged in some other criminal activity.” The Court held that, as a matter of law, “a traffic stop is complete ‘once the tasks related to the investigation of the traffic violation and processing of the traffic citation have been accomplished.’”

The Court also held that, to show the officers had reasonable grounds upon which to temporarily detain the defendant for the purpose of conducting an investigation, the State had to prove the officers were aware of specific and articulable facts warranting the detention. The Court held that, in this case, the deputies were given only a general description of the car and the drug dealer who drove it, and the tipster provided no details that would have allowed the deputies to verify that the information was reliable. The Court held the tip was insufficient to justify defendant’s continued detention. Likewise, the Court held that the defendant’s apparent nervousness did not create a reasonable suspicion that he was involved in other criminal activity. Nervousness (even when combined with the other circumstances that are no less incriminating than the tip the deputies in this case received) is insufficient to justify an investigative detention. Dominquez v. State, __ S.E.2d __, 2011 WL 2572096 (Ga. App.).

FORGERY

The defendant entered a bank in Newton County and tried to pass a forged check. When an officer approached him, he told the officer he had been given a moving job and was dropped off to cash the check in the event the job ran late. He gave the officer a description of the vehicle that had driven him to the bank. Law enforcement located the van and initiated a traffic stop. As the stop was being initiated, the passenger threw something out of the van. That item was later recovered and found to be a plastic bag containing an envelope with a forged check made out to the passenger in the van.

The passenger was arrested and taken to the Covington Police Department. The passenger waived his Miranda rights. He gave a statement in which he admitted that he was approached by a man who asked him if he wanted “to make some money.” The man drove him around town and introduced him to the driver of the van. The driver fed him two meals and put him up in a hotel for a night before taking him to the Newton County bank. He said the driver told him to throw the envelope out of the window when the traffic stop was initiated. The passenger was convicted of second degree forgery. He appealed contending the State failed to prove the statutory knowledge requirement since he was unaware of the contents of the envelope when he threw it out of the window.

HOLDING: The Court held that the circumstances were sufficient to conclude the passenger knowingly possessed the forged check with intent to defraud. The passenger got into the vehicle after being asked if he wanted to make some money. He accepted two meals and a night in a hotel. He threw the envelope containing the forged check out of the window as the traffic stop was initiated. The Court held that knowledge may be proven by circumstantial evidence.

INQUIRING MINDS

QUERY: With what Code section should an unlicensed driver who continues to offend be charged?

ANSWER: O.C.G.A. § 40-5-121 addresses how to handle the issue of unlicensed drivers who repeatedly offend. Note that repeated violations result in increased fines, fingerprinting requirements, and enhanced sentencing.

ALS REMINDER

⊗ If you need an additional witness for an ALS Hearing, please remember to contact Dee or Beverly to subpoena the witness. Please remember to put the necessary contact information for the additional witness in the incident report, including their full name, address, precinct/unit, and phone number.

⊗ If you need assistance at an ALS Hearing, please contact Dee before the hearing date so that she can plan to appear.

QUOTABLE WISDOM WORKS

*“Time flies like an arrow; fruit flies like a banana.”
~ Groucho Marx*

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