



The Trooper Legal Update

May 2006 Legal Services 404/624-7423 Volume 5 No. 5

INFORMANT + DRUG DEAL + DRUG DOG = PROBABLE CAUSE

Informant set up drug deal to buy methamphetamine from Kilgore and Bowden. Walters drove Bowden's silver Mercedes to the "sale" site and parked. Bowden and Kilgore arrived at the site together in a Ford Taurus. From the Mercedes, Walters gave a hand signal, and then Kilgore left the Taurus, got into the informant's vehicle and completed a drug deal. When Kilgore was headed back to the Taurus to rejoin Bowden, police made the bust and Bowden drove off in the Taurus. Police chased Bowden and arrested him with methamphetamine in his pocket.

A uniformed officer approached the silver Mercedes and asked Walters for identification. Walters had neither driver's license nor other identification so detention of the automobile was proper. This is a "first-tier" "police-citizen" encounter and required no reasonable suspicion or probable cause. A detective walked over and asked Walters for permission to search the vehicle which Walters initially gave but then immediately withdrew, saying the vehicle belonged to Bowden. Officer called for canine unit, which arrived in minutes and alerted to drugs at the Mercedes' doors. The Mercedes was then searched and methamphetamine was found.

Because these circumstances authorized the officer to conduct an investigative detention of Walters and the vehicle, the bringing of the drug dog to the scene during the brief detention was proper. When the dog alerted to the vehicle as containing drugs, the subsequent warrantless search of the vehicle was justified. The alert of a trained narcotics dog, standing alone, is sufficient to provide probable cause for the search of a vehicle. If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment (to the U.S. Constitution) permits police to search the vehicle without more. *Bowden v. State*, Ga. Ct. of Appeals, May 3, 2006.

PLAIN VIEW DOCTRINE

Coweta County Deputies responded to a call to investigate an "out of control party" or a "drunk and disorderly person" at a local motel. Upon arrival, the deputies approached a vehicle backed into a parking space with two occupants, one male and one female. The initial approach to the parked vehicle was to inquire what was going on and if assistance was needed. This was a "first-tier" encounter requiring neither reasonable suspicion nor involving fourth amendment protection as it did not constitute a stop nor a seizure.

The occupants appeared nervous and one deputy, while talking to the male in the passenger seat, noticed an open purse on the passenger floorboard containing plastic sandwich bags, a digital scale and a large pill bottle wrapped in electrical tape. Based on his experience, the deputy recognized these items as indicators of the presence of illegal narcotics. In Georgia, the plain view doctrine extends to the observation of evidence in plain view inside automobiles when the officer was lawfully at the place where the incriminating evidence was observed. Based on the time of night, the occupants' nervousness and the deputy's experience that the items were commonly used in the sale of illegal narcotics, the deputy had a reasonable belief that a crime had been or was being committed. Therefore, the deputy was authorized to briefly detain the occupant and conduct a pat-down search for weapons. It was not unreasonable for officers to anticipate that those who are suspected of involvement in the drug trade might be armed. When the deputy felt what his experience told him was a methamphetamine pipe, the officer was authorized to seize it as evidence even though the pat-down was for weapons.

The female seated in the driver's position consented to a vehicle search. Over an ounce of methamphetamine was found in the tape-covered pill bottle. The consent search of the vehicle was reasonable. *Chapman v. State* (A06A0934) Ga. Ct. of Appeals, May 4, 2006.

MOPEDS

Does a moped require a license? Yes, when on the "public roads and highways," but any type of license will do, including any instructional permit. The driver must be at least 15. No license is required for "electric assisted bicycle." See O.C.G.A. §40-6-351 (Driver's license or permit required for certain operators) and refer to Definitions in §40-1-1 and check out license requirements in §40-5. Thanks to Cpl. Ed Odom, Post 10 Americus for the question.

ALS REMINDERS

If you need to obtain 1205 forms, contact Tammy Morgan with Department of Driver Services. The request for the forms should be faxed on Department letterhead to Ms. Morgan at 678-413-8489 (fax). Indicate in the request the number of 1205 forms that are needed. (There are 100 forms to a pack). Also, indicate a street address (as opposed to a post office box) for delivery because the forms will be sent by UPS. If you need to contact Ms. Morgan, her telephone number is 678-413-8519.

ALS/DUI training will begin soon. If you have any topics or issues that you would like to see covered at the training, please contact Dee or Debi in Legal Services at 404-624-7023.

OPEN RECORDS REMINDERS

When sending duplicate tapes to Headquarters, please be sure to clearly mark the tape with the crash or incident number, the trooper's name and badge number and the word, "DUPLICATE." The duplicate should be mailed to Headquarters within five days of the request. See DPS Policy 12.03.

When forwarding a request to Headquarters for the Open Records Unit to handle, please forward all responsive documents.

If you need assistance from the Open Records Unit, you may contact Lanie Thomas, Shana Brown or Kim Cole at (404) 624 7591. The fax number is (404) 624 7529.

LEGAL QUICKIES

Left Turns - O.C.G.A. §40-6-21 provides the rules for left turns at intersections regulated by traffic lights. *Corley v. Harris*, 171 Ga. App. 688 (1984). When a vehicle enters an intersection on a Circular Green Light (as opposed to a Green Arrow) to make a left turn, he must yield to oncoming traffic. One having lawfully entered an intersection to turn left has the right of way to complete his turn after oncoming traffic has ceased or has stopped for the subsequent red light; and cross traffic must also yield to him to allow him to complete his turn. A vehicle may not enter the intersection when facing a Red Light, except after stopping to make a right turn (assuming no prohibition) and such vehicle entering must yield to other traffic lawfully in the intersection. Question courtesy of Cpl. James L. Davenport, Post 3 Cartersville

Pawn Shops- Who may inspect a Pawn Shop's records and goods? O.C.G.A. §40-12-137 (a)(4) provides the answer. It is a misdemeanor for a Pawnbroker to refuse to allow POST certified police officers or federal officers to inspect his permanent record book or goods in his possession during ordinary business hours *or* any reasonable time. Question courtesy of TFC Chad Woods, Post 35 Jekyll Island.

HUMOR WORKS

An Erie, PA policeman had a perfect spot to watch for speeders, but wasn't getting many. Then he discovered the problem. A twelve year old boy was standing up the road with a hand painted sign, which read "RADAR TRAP AHEAD". The officer then found a young accomplice down the road with a sign reading "TIPS" and a bucket full of money. (And we used to just sell lemonade!)

Published with approval of the
Office of Colonel Bill Hitchens.
Legal Services: Melissa Rodgers,
Director; Lee O'Brien, Chiquita T.
Johnson, Deputy Directors; Dee
Brophy, ALS Administrator. Please
refer any Questions/Comments to:
lobrien@gsp.net