



DPS Legal Review

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A RIDING LAWMOWER NOT A MV UNDER THE THEFT STATUTE

The defendant and two associates stole a Toro riding lawnmower from outside a Home Depot in Dalton, Georgia. They loaded the lawnmower into the back of a van, took it to Athens, Tennessee, and they sold it. The police identified the defendant as one of the thieves, and he was charged with and convicted of theft of a motor vehicle and felony theft by taking. The trial court merged the theft by taking into the theft of a motor vehicle charge. The defendant appealed and argued that the riding lawnmower did not qualify as a motor vehicle under the motor vehicle theft statute, O.C.G.A. § 16-8-12(a)(5)(A).

HOLDING: A riding lawn mower is not a motor vehicle as that term is used in the motor vehicle theft statute. Under the theft by taking statute, O.C.G.A. § 16-8-2, and other general criminal theft statutes, it is a crime to steal a riding lawnmower or any other personal property. However, under O.C.G.A. § 16-8-12 the penalty provisions of the more specific statutes in the theft article apply to more limited sets of situations and items and should not be read to reach beyond what their text says.

The Supreme Court held that most prosecutors recognize that riding lawnmowers are not “motor vehicles” under O.C.G.A. § 16-8-12(a)(5)(A) and typically have not charged them as motor vehicle thefts. This was the first case in which a district attorney charged the crime as a motor vehicle theft. The broad definitions for motor vehicles found in O.C.G.A. § 40-1-1 do not apply directly to the meaning of that term in another title. Harris v. State, ___ S.E.2d ___, 2009 WL 4015643 (Ga.).

UNCONSTITUTIONAL SEARCH

A law enforcement officer saw a car swerve then stop in the middle of the road. The defendant came out of a club known for drug activity and got into the car. The car drove off,

swerved again, and ran off the road. The officer initiated a traffic stop. The officer recognized the driver as the defendant’s wife. The defendant had a history of drug offenses. The defendant’s wife initially denied picking her husband up. The officer asked if he could search the vehicle and whether there were any drugs in the vehicle. She told him that she did not believe that there were any drugs; however, she said her husband put something in his pocket. The officer did not know what was in the defendant’s pocket, but he told him to get out of the car and empty his pocket. The defendant pulled a bag of cocaine from his pocket. The defendant was arrested and convicted of possession of cocaine. He appealed arguing the search was unconstitutional.

HOLDING: Because the officer lacked the probable cause needed to arrest the defendant, the search performed incident to the arrest was unconstitutional. The officer did not observe any illegal or furtive behavior or anxiety on the part of the defendant. There was no evidence the officer received information from a reliable source that the defendant was in possession of drugs that night. The officer’s suspicion that the defendant put drugs in his pocket came from an ambiguous comment made by his wife. The officer did not know from her comment what the defendant placed in his pocket. Lawrence v. State, ___ S.E.2d ___, 2009 WL 3592585 (Ga. App.).

BOND RESTRICTIONS

The State moved to amend the conditions of the defendant’s bond imposed following a five count charge of driving under the influence of alcohol to the extent that it was less safe, driving under the influence of alcohol with an unlawful concentration of alcohol, improper driving on one-way street, impeding traffic, and disorderly conduct. The defendant had been convicted in Georgia three times for driving under the influence. The State sought to restrict her driving privileges to going to work, going to the

hospital for substance abuse treatment, going to school, or going to court proceedings. The State also requested that the defendant only operate a motor vehicle with an ignition interlock device and that she submit to DUI Court evaluation. The court granted the modifications request, and the defendant appealed.

HOLDING: The courts have inherent authority to impose conditions upon bail and may impose reasonable restrictions on a defendant's behavior. The restrictions placed on the defendant's driving privileges and the requirements that she install an ignition interlock device in her vehicle and submit to DUI Court evaluations were not punishment. In Georgia, a driver's license is not an absolute right but rather a privilege that may be revoked at any time. Strickland v. State, __S.E.2d __, 2009 WL 3790340 (Ga. App.).

DISCOVERY REQUEST PROPERLY DENIED

A DeKalb County police officer stopped the defendant for a seat belt violation. The defendant was arrested after he failed three field sobriety tests and an alco-sensor test. The officer read the defendant the implied consent warning, and the defendant agreed to take a state administered chemical test of his breath. The two test results from the Intoxilyzer 5000 revealed a blood alcohol level of 0.156 and 0.154.

Prior to trial, the defendant filed a Motion for Disclosure of Scientific Reports pursuant to O.C.G.A. § 40-6-392(a)(4) asking the State to provide any and all information related to almost every individual request. The Court held a hearing. The defendant complained that, although the State produced the breath test slip, it failed to provide the requested additional discovery which was relevant to his defense to determine the accuracy of the test and the testing equipment. The State countered that it provided the defendant with the accusation, a list of witnesses, and scientific reports and that it either did not have the additional information or was not required to produce anything further. The defendant's motion was denied. He was found guilty of driving with an unlawful blood-alcohol concentration and failing to use a safety belt. The defendant appealed arguing that the court erred in denying his motion for additional discovery.

HOLDING: The Court considered the scope of information statutorily required when the test of a person's blood alcohol concentration is

determined by an intoxilyzer. Unlike a gas chromatography test, which produces data that has to be interpreted by a chemist to determine blood alcohol level, an intoxilyzer does not produce raw data but rather prints out the actual test result showing the person's blood alcohol level. The Court held that the only discoverable information from an intoxilyzer test is the computer printout of the test result. Stetz v. State, __S.E.2d __, 2009 WL 3449727 (Ga. App.).

ALS REMINDERS

⊗ In Intoxilyzer 5000 cases, please remember to take a **copy** of your permit to operate the Intoxilyzer 5000 and the **original** Intoxilyzer test printout to the ALS Hearing. Both documents must be given to the court at the hearing.

⊗ In roadblock cases, please remember to take a **certified** copy of the Roadblock Supervisor Approval Form to the ALS Hearing.

⊗ Factors that Courts consider in assessing the validity of a roadblock include whether:

- 1) the decision to implement the roadblock is made by supervisory personnel rather than officers in the field;
- 2) the supervisory officer making the decision has a valid primary purpose for the roadblock (other than merely seeking to uncover evidence of ordinary criminal wrongdoing);
- 3) the delay to motorists is minimal;
- 4) all vehicles are stopped as opposed to random stops;
- 5) the roadblock operation is well identified as a police checkpoint; and
- 6) the screening officer's training and experience are sufficient to qualify him to initially determine which motorists should be given field tests for intoxication.

⊗ Evidence of the primary purpose of a roadblock must establish that the supervisory officer: 1) decided to implement the roadblock, 2) decided when and where to implement it, and 3) had a valid primary purpose for it.

QUOTABLE WISDOM WORKS

"Your most unhappy customers are your greatest source of learning."

~ Bill Gates

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