



DPS Legal Review

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CURTILAGE

A Sarasota County Sheriff's Deputy tried to serve John Coffin with an Order of Temporary Injunction. His home was located close to the sidewalk with an attached street-facing garage to the right of the front door with shrubs in between. When the Deputy approached the home, he noticed that the garage door and the front bay window's curtain were open which allowed him to see inside the garage and the home. Wearing his uniform, the Deputy rang the doorbell. When Mrs. Coffin answered the door, he told her that he had important papers for her husband. She said that her husband was in the bathroom. The Deputy said that he would wait. Mrs. Coffin shut and locked the door.

The Deputy waited a few minutes and walked down the sidewalk to the bay window where he could see Mrs. Coffin. He waved the paperwork over his head to get her attention. She screamed at him to get off her property or she would call the police. The Deputy went back to the driveway and called for backup. The Deputy saw Mr. Coffin through the front bay window. After his backup arrived, she knocked on the door but received no answer.

While the Deputies were standing about five feet from the garage, Mrs. Coffin pushed an automatic button to shut the door. As the door was closing, a Deputy stepped into the garage and broke the electronic-eye safety beam which caused the door to remain open. Both Deputies entered the garage with one knocking on the door leading from the garage to the house. Mrs. Coffin opened the interior door, stepped into the garage and yelled at the Deputies to leave her property. She said that her husband was not at home. They told her that she was going to jail and tried to handcuff her.

Before they succeeded, Mr. Coffin came into the garage and hit one of the Deputies. A struggle ensued in which Mr. Coffin tried to pull his wife inside the house as the Deputies tried to

keep her in the garage and arrest her. Ultimately, Mrs. Coffin was charged with misdemeanor obstruction of justice and Mr. Coffin was charged with several felonies.¹ They sued the Deputies alleging that the warrantless entry into the garage and the arrest of Mrs. Coffin violated the Fourth Amendment.

HOLDING: The Court held that the Deputies were entitled to qualified immunity since their warrantless entry into the garage did not violate clearly established Fourth Amendment rights. The Fourth Amendment protects the right of individuals to be secure in their homes from unreasonable searches and seizures. The Court held that a garage enjoys the protections of the home only if it constitutes curtilage. The general rule is that the curtilage includes all outbuildings used in connection with a residence, such as garages, sheds, and barns connected with and in close vicinity of the residence.

Four factors assist Courts in defining the extent of a home's curtilage: 1) proximity of the area claimed to be curtilage to the home, 2) whether the area is included within an enclosure surrounding the home, 3) the nature of the uses to which the area is put, and 4) the steps taken by the resident to protect the area from observation by passers-by. The Court held that, because the garage door was open when the Deputies arrived and Mr. and Mrs. Coffin did not take steps to protect the interior of the garage from observation, the garage did not enjoy Fourth Amendment protections. There was no evidence in this case that the garage was being used for intimate purposes when the Deputies arrived. The Court held that it could not find a prior case putting the Deputies on sufficient notice that a garage with an open door would

¹ Subsequently, the charge against Mrs. Coffin was dismissed. Mr. Coffin pled no contest to depriving an officer of means of protection or communication, and the remaining charges against him were dropped.

constitute curtilage. Coffin v. Brandau, ___ F. 3rd. ___, 2010 WL 625014 (C.A. 11 (Fla.)).

UNLAWFUL SEARCH

An Officer on routine patrol saw the Defendant driving alone. He noticed that the Defendant appeared to turn away so that his face could not be seen. The Defendant moved across two lanes of traffic and turned into the parking lot of an assisted living home. When the Defendant exited the parking lot, the Officer followed him and noticed that half of his rear tail light was out. The Officer activated his lights and pulled the Defendant over. When the Officer approached the Defendant's car, he noticed the Defendant leaning back on the seat with his legs extended in a locked position as he zipped up his shorts. The Defendant sat back down on the seat, but his right foot was shaking uncontrollably. The Officer suspected that the Defendant was trying to conceal contraband.

The Officer issued the Defendant a warning ticket for the tail light and asked whether he had any illegal substances or stolen property in the vehicle. The Defendant said no, but he refused to consent to a search. The Officer called for a canine unit. The dog arrived and alerted on the driver's door and on the back rear panel of the vehicle. The Defendant was told to step out of the vehicle so a search could be conducted. No contraband was found. The Officer conducted a pat-down search of the Defendant. The Defendant dropped his shorts, but he refused to consent to a body cavity search. The Officer took the Defendant into custody to apply for a search warrant for his person based upon information about the Defendant's prior criminal history, what he witnessed prior to the stop, the fact that the Defendant would not consent to a body cavity search, and the fact the drug dog alerted. While being held at the station awaiting the warrant, the Defendant dropped a fecal-covered bag containing crack cocaine from the leg of his shorts. The Defendant moved to suppress the evidence.

HOLDING: The evidence was suppressed because the Officer lacked probable cause to arrest the Defendant. The circumstances did not combine to show probable cause. The Court held that, even if the Defendant consented to a search of his person, consent to search does not normally encompass a body cavity search. The Defendant's refusal to allow a more invasive search did not give the Officer probable cause to

arrest. State v. Crumpton, ___ S.E.2d ___, 2010 WL 716310 (Ga. App.).

INQUIRING MINDS

QUERY: Has the law changed regarding the time-frame within which arrested felons must be brought before a judicial officer?

ANSWER: No. Pursuant to a warrant arrested persons must be brought before a judicial officer within 72 hours. O.C.G.A. § 17-4-26 provides:

Every law enforcement officer arresting under a warrant shall exercise reasonable diligence in bringing the person arrested before the judicial officer authorized to examine, commit, or receive bail and in any event to present the person arrested before a committing judicial officer within 72 hours after arrest. The accused shall be notified as to when and where the commitment hearing is to be held. An arrested person who is not notified before the hearing of the time and place of the commitment hearing shall be released.

Without a warrant, the suspect must be brought before a judicial officer within 48 hours. O.C.G.A. § 17-4-62 provides:

In every case of an arrest without a warrant, the person arresting shall, without delay, convey the offender before the most convenient judicial officer authorized to receive an affidavit and issue a warrant as provided for in Code Section 17-4-40. No such imprisonment shall be legal beyond a reasonable time allowed for this purpose; and any person who is not brought before such judicial officer within 48 hours of arrest shall be released.

Every effort should be made to meet the statutorily required deadlines.

ALS REMINDER

⊗ When serving a DUI defendant with a 1205 form, please remember that the form must be personally served on the defendant. When serving a computer generated 1205 form, remember to provide the defendant with the instruction page containing the hearing procedures to ensure the defendant has the information regarding the appeal process.

⊗ When a motion for continuance is needed for an ALS Hearing, remember to file the motion as soon as possible. The form for the motion is located on the MyDPS website under ALS Forms.

QUOTABLE WISDOM WORKS

"In the Spring, I have counted 136 different kinds of weather inside of 24 hours."

~Mark Twain.

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