



DPS Legal Review

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IMMUNITY DENIED

Several DeKalb County Police Officers responded to a 911 call reporting a stolen motor vehicle from an apartment complex. The complainant told officers his car, a Monte Carlo, had been stolen. Another resident of the apartment complex told the Officers that the car had not been stolen. Instead, she said the Monte Carlo had been involved in a hit-and-run accident with her car. She also said the driver and passengers of the Monte Carlo were friends and relatives of the complainant, and she directed them to the apartment where one of the suspects lived.

One Officer recognized the identified suspect as someone wanted for questioning in a shooting and for assaulting a police officer. This Officer said that the suspect was known to be armed. When the Officers went to knock on the front door, the suspect exited out of the back door and pointed an object that the Officers believed was a gun. The Officers ordered the suspect to stop and drop the object, but he ran. One Officer fired four times. Another fired two rounds. As the suspect ran into a wooded area adjacent to the apartment complex, the Officer who fired two rounds pursued on foot and intermittently fired at the suspect who ran and jumped over a fence. After the Officer gave up the chase, the suspect's body was found on the other side of the fence with eight gunshot wounds (of which two were fatal). No weapon was found.

After the incident, departmental investigations were simultaneously conducted by the Internal Affairs and the Major Felony units. One of the Officers who gave statements in connection with both investigations was indicted for murder. He moved to suppress statements he made in the course of the departmental investigations. He argued that he felt compelled to cooperate with each investigation for fear of losing his job based upon departmental policy. The policy prohibited refusal to answer questions in an internal

departmental investigation. The Officer also sought immunity from prosecution under O.C.G.A. § 16-3-24.2 which provides immunity for use of deadly force in self defense or in the defense of others.

HOLDING: The Georgia Supreme Court held that the Officer's statements made in the departmental investigation were not voluntary and should be suppressed. The Officer's subjective belief he would be punished if he did not cooperate with the investigations was objectively reasonable. However, the Officer did not meet his burden of showing he was justified in using deadly force. Thus, immunity was denied. State v. Thompson, __S.E.2d__, 2010 WL 4394265 (Ga.).

EVIDENCE SUPPRESSED

An Officer on patrol saw a sedan parked at the edge of an empty parking lot at a truck stop plaza. The Officer pulled his marked patrol car behind the car occupied by a passenger and driver. Neither occupant noticed the Officer. The driver looked up, noticed the patrol car, put his car into gear, and drove on. The Officer immediately activated his emergency lights and executed a traffic stop.

After the car stopped, the Officer spoke to the occupants. He noticed the smell of alcohol coming from the driver. The Officer obtained consent to search the car. During the search, the Officer found crushed oxycodone in the car's glove box. The driver and passenger were charged with Violation of the Georgia Controlled Substance Act. Both moved to suppress the evidence.

HOLDING: The Court suppressed the oxycodone. The Court held it was discovered pursuant to consent that was the product of an unauthorized traffic stop. The smell of alcohol on the driver did not authorize further investigation or detention because it was observed during the unauthorized traffic stop. The Officer testified that the car seemed out of

place in the empty truck plaza parking lot, but he had no other reason to suspect any criminal activity. Because the Officer had no specific and articulable facts supporting a suspicion of criminal activity, the Court held the stop was unauthorized. Graves v. State, __ S.E.2d __, 2010 WL 4595594 (Ga. App.).

PAT-DOWN/ /CONTRABAND

A Corporal for the Twiggs County Sheriff's Department was patrolling when he saw a vehicle that appeared to have illegally tinted windows. He stopped the vehicle and made contact with the driver through the passenger side window. He told the driver the basis for the stop. The Corporal immediately detected the odor of burning marijuana. He asked the driver to exit the vehicle and move to the rear. He handcuffed the driver for safety. The driver told the Corporal that he had smoked marijuana in the vehicle and that a handgun was in the glove box. The Corporal called for backup assistance.

When backup arrived, the two passengers were asked to exit. Both were patted down for weapons. When the Corporal did a pat-down on the Defendant, he felt a bulge in his watch pocket. He suspected that the bulge was marijuana. When he reached in the pocket, he found a bag containing marijuana. The Defendant was arrested and charged. He moved to suppress the evidence.

HOLDING: The Court denied the motion to suppress. The Court held that The Defendant was the passenger in a vehicle in which the driver said a weapon was located and from which the scent of marijuana emanated. The Court held that the Corporal did not exceed the permissible scope of the pat-down by removing something from the Defendant's pocket. During a lawful pat-down search, an officer who feels an object (whose contours or mass make it immediately identifiable as contraband) may seize the item under the plain feel doctrine. Ramsey v. State, __ S.E. __, 2010 WL 4367131 (Ga. App.).

PAT-DOWN/ OFFICER SAFETY

An Officer working off-duty security at an apartment complex saw the Defendant and two other men walk by his marked police car. The uniformed Officer got out of his car and asked the Defendant if he lived there. The complex had been the scene of drug activity, pedestrian robberies, homicides, and home invasions. The Defendant said he lived in the complex, but he refused to give a specific address. The

Defendant acted nervous and began to fidget with his hands. When the Defendant refused to comply after several requests, the Officer deemed it necessary to conduct a pat-down for officer safety. As soon as the Officer touched the Defendant's pocket, he turned and almost hit the Officer in the face with his elbow. After a brief struggle, the Officer subdued the Defendant, arrested him and charged him with obstruction and battery. After he was convicted, he appealed and argued his detention was illegal.

HOLDING: The U.S. Supreme Court has identified three tiers of police-citizen encounters: (1) communication between police and citizens involving no coercion or detention, (2) brief seizures supported by reasonable suspicion, and (3) full-scale arrest supported by probable cause. A citizen is free to walk or run away from an officer in a first-tier encounter. However, a person who chooses to stop and talk to the officer may, by menacing conduct during that first-tier encounter, give rise to reasonable suspicion that he or she poses a threat. The Court held that the Officer reasonably believed that the Defendant posed a threat to his personal safety. The Court held that a second-tier frisk did not constitute an illegal detention based on these facts. Santos v. State, __ S.E.2d __, 2010 WL 448542 (Ga. App.).

INQUIRING MINDS

QUERY: Where is the published list of the Commissioner's approved motorcycle headgear?

ANSWER: In Dowis v. State, 243 Ga. App. 354, 533 S.E.2d 34 (2000), the Court held that the Commissioner must publish a list if he approves or disapproves headgear (or eye protective devices). Since the Commissioner has neither approved nor disapproved any devices, **no published list exists**. The Commissioner has issued regulations establishing standards and specifications in the Rules and Regulations published on the Secretary of State website: <http://rules.sos.state.ga.us/cgi-bin/page.cgi?q>

QUOTABLE WISDOM WORKS

“When in Rome, do as you done in Milledgeville.”
~Flannery O'Connor

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