



DPS Legal Review

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CONSENT TO SEARCH A PASSENGER'S PROPERTY

On September 6, 2012, two detectives stopped a vehicle in which the defendant was a passenger. The detectives arrested the driver for driving with a suspended license. The driver consented to a search of the vehicle. One of the detectives directed the defendant, who was sitting in the passenger's seat, to exit the vehicle. During the search, one of the detectives saw a bag on the passenger-side floorboard. The detective did not know who the bag belonged to but he believed it belonged to the defendant. The detective looked inside of the bag and saw a handgun, the defendant's business cards, and a photo of the defendant and his children. The detectives performed a records check at the scene and learned that the defendant had previously been convicted of a felony. The defendant was arrested and the detectives read him his Miranda rights. The defendant confirmed that the handgun belonged to him.

The defendant was indicted on a single count of possession of a firearm by a convicted felon. The defendant moved to suppress the handgun and his admissions arguing that the detectives searched his bag without probable cause or consent. The district court held the defendant had standing to raise an objection to the search and the search was constitutional because the driver had given general consent which included the consent to search containers within the vehicle. The defendant was convicted of the charge and sentenced to 33 months of imprisonment. The defendant appealed.

HOLDING: The Court held that the defendant had standing to challenge the search of his bag and that the driver had apparent authority to consent to search of the defendant's bag. In order to claim protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched and that his expectation is reasonable. The Court reasoned that the

defendant had a subjective and objective expectation of privacy in his bag although it was in another person's vehicle. The Court distinguished the facts of this case from other case law in that the defendant's expectation of privacy was in the bag *inside* of the vehicle and not his expectation of privacy within the vehicle.

A third party has apparent authority to consent to a search if an officer could have reasonably believed the third party had authority over the area searched. On these facts, it was reasonable to believe that the driver had common authority over the defendant's bag because the ownership of the bag was not established until after the search occurred; the bag was within easy reach of the driver; and the bag was not secured in any way. United States v. Barber, 2015 WL 428173 (C.A.11 (Fla.)).

INEVITABLE DISCOVERY DURING ILLEGAL SEARCH

On October 19, 2012, an officer was on patrol and encountered a truck driven by the defendant. The officer searched the truck's license plate number on his computer and discovered that the registered owner of the truck was deceased. The truck failed to signal a turn and the officer initiated a traffic stop. The officer asked the defendant for his driver's license. The defendant responded that his license was suspended and instead provided a Florida identification card. The officer searched the defendant's license history and learned that the defendant's license had been suspended six times and was currently suspended. The officer issued a citation to the defendant for driving with a suspended license. The officer did not arrest the defendant. The officer approached the defendant's truck to determine if anyone else was inside. While peering inside the truck, the officer noticed an item wrapped in a clean white cloth. The officer removed the cloth and discovered a sawed-off shotgun. The officer arrested the defendant and conducted a detailed

inventory search of the truck. Upon further research of the truck, the officer was unable to find another registered owner. Twenty minutes after the officer inventoried the truck, the officer completed a vehicle storage receipt, requested that the truck be towed, and marked the reason as "license suspended."

The defendant was indicted on charges of possessing a firearm as a felon and knowingly possessing an unregistered firearm. The defendant moved to suppress the shotgun as fruit of an illegal search in violation of the Fourth Amendment. The district court ruled that the initial search of the truck was illegal however, that the evidence was admissible because the government had satisfied the requirement of active pursuit establishing there was a "reasonable probability" that the shotgun "would have been discovered other than by the tainted source." The defendant appealed.

HOLDING: The Court held that the shotgun discovered during the illegal search of the truck was admissible under the inevitable discovery exception to the exclusionary rule. Under the exception for "inevitable discovery," the government may introduce evidence that was obtained by an illegal search if the government can establish a "reasonable probability that the evidence in question would have been discovered by lawful means." The government must also establish that "the lawful means which made discovery inevitable were being actively pursued prior to the occurrence of the illegal conduct."

The defendant argued that the government did not satisfy the test for inevitable discovery because the officer "was not actively pursuing any lawful means [of discovery] at the time of the illegal conduct." The Court dismissed the defendant's argument in that active pursuit does not require that police have already planned the particular search that would obtain evidence. The government must establish that the police would have discovered the evidence "by virtue of ordinary investigations of evidence or leads already in their possession."

The Court concluded that the officer's investigation would have led him to the shotgun. The officer had already discovered that the registered owner of the truck was deceased; the defendant was driving with a suspended license and the truck could not be released back to him; the truck would have been impounded and the officer would have conducted an inventory

search and, subsequently, would have found the shotgun. United States v. Johnson, 2015 WL 408149 (C.A.11 (Fla.)).

INQUIRING MINDS

QUERY: Does a law enforcement officer have to wait a specific period of time to re-interrogate an accused after an initial attempt to interrogate the accused in which the accused has invoked his right to the presence of counsel?

ANSWER: Yes. Law enforcement may attempt to interrogate an accused after an initial interrogation attempt contingent upon whether the accused's counsel has been made available to him or he himself initiates further communications with law enforcement. The Supreme Court held in Edwards v. Arizona (451 U.S. 477 (1981)), that when an accused has invoked his right to the presence of counsel during custodial interrogation he is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication. However, Maryland v. Shatzer (559 U.S. 98 (2010)), provides prevailing law that the Edwards rule does not apply to subsequent interrogation attempts by a law enforcement officer if the accused has had a break in Miranda custody lasting at least 14 days. The Court reasoned that this gives the accused sufficient time to return back to their "normal life, consult with friends and counsel, and shake off any residual effects of prior custody." The Court determines Miranda custody by "whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with formal arrest."

ALS REMINDERS

📍 Fill out the 1205 form as a refusal case if a DUI defendant refuses the state administered test and then a search warrant is obtained for blood.

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