



DPS LEGAL REVIEW

July 2018 | Volume 17 No. 7

Georgia Department of Public Safety | Legal Services Office | (404) 624-7423

ENFORCEMENT TIP

CLASSIFICATION OF "SLINGSHOT" THREE-WHEELED VEHICLES IN GEORGIA

Several DPS Members and members of the public have inquired about the classification of the three-wheeled vehicle commonly known as a Slingshot (named after the most common commercially sold model, the Polaris Slingshot) and the legal requirements for operators of such vehicles. An example of the Slingshot is pictured below:



Image courtesy of Polaris Industries, Inc.

General classification: O.C.G.A. § 40-1-1(29) defines a "motorcycle" as "every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more three wheels in contact with the ground, but excluding a tractor, all-terrain vehicle, and moped." A slingshot (1) has a seat for the use of its rider and (2) is designed to travel on not more than three wheels in contact with the ground. As such, **these vehicles are generally considered to be motorcycles for the purposes of Title 40. The major exception to this general rule is with respect to licensing.**

Licensing: Despite the general classification of a Slingshot as a motorcycle, O.C.G.A. § 40-5-23(c)

states that a person with a Class C driver's license may operate "any three-wheeled motor vehicle that is equipped with a steering wheel for directional control." As such, **the operator of any vehicle that meets this definition - including a Slingshot - may operate the vehicle with a Class C driver's license and does not require a Class M license.**

Use of helmet / other rights & duties: O.C.G.A. § 40-6-315(a) states that "[n]o person shall operate or ride upon a motorcycle unless he or she is wearing protective headgear which complies with standards established by the commissioner of public safety." The headgear standards are described in Department of Public Safety Rule 570-13-.02 and apply to all motorcycle operators. **Although Slingshot operators are exempt from the licensing requirements of other motorcycle operators, the vehicles are still considered motorcycles and thus operators are required to utilize the same protective headgear required of all other motorcycle operators. Operators must also comply with the other provisions of the Uniform Rules of the Road that apply specifically to motorcycles (e.g. O.C.G.A. §§ 40-6-310 through 40-6-316.)**

11TH CIRCUIT COURT OF APPEALS

TERRY STOP BASED UPON ARMED ROBBERY SUSPECT DESCRIPTION

A bicyclist on a Florida trail was robbed at gunpoint by two individuals who fired a gun at him. Afterwards, the victim called 911 and reported the incident, describing the attackers as "two black men on foot wearing all black clothing." He reported to the "operator that he thought he could still see his attackers down the trail under [an] overpass." The

operator forwarded the information to responding officers.

Three responding officers observed Iseal Dixon, a black male wearing black shorts and no shirt, in the area described by the victim. One of the officers, suspecting “that Dixon might have been involved in the robbery,” approached Dixon and asked him to stop so that they could talk. “Dixon stopped briefly and then continued walking away.” The officer then “grabbed Dixon’s arm and informed him that he was going to pat him down for officer safety.” Dixon again attempted to walk away, at which point he was handcuffed and patted down for weapons. Officers “discovered a loaded .380 pistol in the pocket of Dixon’s shorts” and later discovered that Dixon was a convicted felon.

The officers arrested Dixon and charged him for being a felon in possession of a firearm. During his prosecution, Dixon moved to suppress from evidence the gun officers found. Dixon argued that the officers did not have reasonable, articulable suspicion to justify stopping and questioning him as required by the Fourth Amendment. The district court denied Dixon’s motion, and Dixon appealed to the Eleventh Circuit.

The Court first explained that “a police officer ‘may conduct a brief, warrantless, investigatory stop of an individual when the officer has a reasonable, articulable suspicion that criminal activity is afoot, without violating the Fourth Amendment.’... To be permissible, ‘the totality of the circumstances must support a finding of ‘specific and articulable facts [collectively known by the officers involved in the stop] which, taken together with rational inferences from those facts, reasonably warrant’ the stop and frisk.” In this case, the Court held that “[r]ather than relying on a mere hunch or a vague description such as ‘a black male,’ **the police stopped Dixon based on discrete facts in addition to his race and sex: that he was on foot, wearing all black clothing, and near the [location identified by the victim] eight minutes after the robbery was reported, very near where the victim had last seen the perpetrators. Dixon matched all five of these descriptors. The police could reasonably infer from those five points of correspondence that Dixon**

may have been one of the armed robbers and that he may have posed a danger to the officers’ safety.”

Dixon argued that “he did not reasonably match the victim’s description because” he was shirtless, had facial hair, and had tattoos, which the victim would have mentioned were Dixon the attacker. The Court rejected this argument, stating that “[i]t **was reasonable for the police to infer that a suspect might have discarded an article of clothing in flight and that Dixon’s facial hair and tattoos might not have been obvious in the [robbery.]**” Based on the totality of the circumstances, the Court held that officers had reasonable suspicion to stop and frisk Dixon, and therefore the gun that was found in his pocket should not be suppressed. *United States v. Dixon*, No. 17-12946, 2018 WL 3323133 (11th Cir., July 6, 2018).

CONSENT SEARCH OF HOME – FAILURE OF CO-TENANT TO OBJECT

Acting upon “an anonymous tip that a white Hispanic male was selling drugs out of a certain house in Miami Gardens,” police detective Phillip Torres conducted an investigation that was eventually “able to link Jose Morales to the man described in the tip.” In March of 2015, an officer patrolling the area of the house in question saw an improperly parked car with several people around it and contacted Detective Torres and other members of an anti-gang task force of which Torres was a part. Detective Torres arrived and saw officers speaking to the men by the car, one of whom Torres recognized to be Morales. “As Torres approached the house, a woman appeared at the front door. She peeked out to see what was going on and went back inside. Torres spoke with Morales, who told him that the woman was his girlfriend’s mother, Berta Lang, and that she lived at the house with him, his girlfriend, and their young children.”

Detective Torres then went to the front door of the house to speak with Lang. Because Lang only spoke Spanish, Torres was eventually joined by a Spanish-speaking officer. Lang confirmed “that she was the leaseholder and that her daughter, Morales, and their two small children... lived there too.” Lang also confirmed that “she had access to the entire house,

***U.S. DISTRICT COURT - MIDDLE
DISTRICT OF GEORGIA***

**EXCESSIVE USE OF FORCE - RESTRAINED
AND NON-RESISTING SUSPECT**

On August 31, 2015, Columbus police officers responded to a report of a “person slumped over the wheel of a pickup truck” at a local gas station. The officers discovered Nicholas Dyksma in the driver’s seat of the subject vehicle and attempted to make contact with him, but Dyksma fled in his truck. The Columbus officers pursued him using lights and sirens and witnessed Dyksma driving erratically. As the officers approached Harris County, they notified the Harris County Sheriff’s Office of the pursuit, and those deputies eventually took over the chase.

Harris County Deputy Tommy Pierson was eventually able to force Dyksma to a stop after Dyksma ran over a set of stop sticks and later struck Pierson’s patrol car. Deputies then approached Dyksma’s vehicle and ordered him to show his hands and get out of the truck. Dyksma was initially non-compliant and did not get out of the truck. The deputies removed Dyksma from the truck after breaking a window and tasing him, then placed him face down on the ground to restrain him. Dyksma “was groaning, and it appeared to the deputies that he was high on something.” While Dyksma was on the ground, Deputy Pierson “physically restrained [Dyksma’s] upper body by placing his right knee on [Dyksma’s] neck for approximately twenty seconds.” While Deputy Pierson restrained Dyksma’s upper body, other deputies restrained his lower body, searched and handcuffed him. Dyksma “initially screamed, then groaned for a few seconds,” but ceased struggling, resisting, or audibly groaning.

Deputy Pierson then stood, and deputies turned Dyksma onto his back to search his waistband before returning him to a face-down position. Dyksma “did not struggle or resist. His body appeared limp, and he was clearly incapacitated.” Nevertheless, Deputy Pierson “again placed his knee on [Dyksma’s] neck, pressing it to the ground for another seventeen seconds.” Deputy Pierson and another deputy “stated

including her daughter’s and Morales’ room.” The officers asked Lang if they could search the house, and Lang consented both verbally and in writing. Morales, who was still outside the house, was not asked for consent to the search and did not object to the search.

During the ensuing search, officers found two handguns and ammunition in a closet in Morales’ bedroom. Morales, a convicted felon, later admitted that the handguns belonged to him. He was arrested and charged as a felon in possession of firearms. Morales later moved to suppress the handguns from evidence, arguing among other things that the search violated his Fourth Amendment rights because he was a “physically present co-occupant” of the home “who was intentionally denied an opportunity to refuse entry to the officers and to refuse their request to search.” The district court, however, denied Morales’ motion, and he appealed to the Eleventh Circuit.

The Eleventh Circuit explained that “[w]hen a shared dwelling is involved, co-occupants can generally give valid consent to a search if that person has ‘joint access or control’ over the area.” However, “the consent of one co-occupant to search can’t trump the express objection of another physically present co-occupant.” Furthermore, **a co-tenant who is nearby but not involved in the discussion regarding consent to search cannot object to the search on the basis of an argument that they did not provide consent unless there is “evidence that the police... removed the potentially objecting tenant... for the sake of avoiding a possible objection.”**

In this case, the Court held that **Morales was nearby but “not involved in the conversation between the officers and Lang,” and there was no evidence that the officers had removed Morales to avoid his objection. Moreover, there was no evidence that Morales had in fact made any objection.** As such, Lang’s consent was sufficiently valid to justify the search, and Morales’ motion to suppress was properly denied. *U.S. v. Morales*, No. 16-16507, 893 F.3d 1360 (11th Cir., June 29, 2018).

that [Dyksma] was making sounds during this time and was not having trouble breathing.” Nevertheless, the deputies then requested EMS to attend to Dyksma.

While waiting for EMS to arrive, deputies discovered that Dyksma’s vital signs were worsening, and it became apparent Dyksma was no longer breathing. Deputies uncuffed Dyksma and began chest compressions until EMS arrived. EMS and doctors were not able to revive Dyksma. A GBI pathologist concluded that “compression of the neck and torso” was one of several possible factors in Dyksma’s death.

Dyksma’s estate later filed suit against Deputy Pierson for excessive use of force and the other responding deputies for failing to intervene during that use of force. The defendant officers moved for summary judgment, arguing that they had not violated Dyksma’s constitutional rights, and that even if they had, the deputies were entitled to qualified immunity because those rights were not clearly established.

With respect to Deputy Pierson’s use of force, the U.S. District Court for the Middle District of Georgia ruled “that the first twenty seconds of neck compressions were done while the deputies were trying to handcuff [Dyksma] and conduct a safety check... A reasonable argument can be made that it was necessary to secure and restrain [Dyksma] under the circumstances. But when Pierson stood up after those twenty seconds, [Dyksma] was clearly handcuffed, restrained, and incapacitated. After that break, Pierson made the conscious decision to jam his knee back onto [Dyksma’s] neck—an act that was unnecessary since [Dyksma] was clearly handcuffed, restrained, and incapacitated.” The Court further explained that the unlawfulness of such force under the circumstances was clearly established at the time the conduct occurred, and thus Deputy Pierson was not entitled to summary judgment with respect to that use of force. In short, the Court explained, **“an officer cannot use his knee and body weight to press to the ground the neck of an incapacitated, handcuffed, non-resisting arrestee.”** Nevertheless, the Court also concluded that the other responding deputies were entitled to summary judgment with respect to Dyksma’s claim that they failed to intervene. **“[G]iven the limited duration of the**

force by Pierson and the unforeseeability of Pierson’s reapplication of his knee to Nicholas’s neck, the other deputies did not violate clearly established law by failing to intervene under the specific circumstances presented.” *Dyksma v. Pierson*, No. 4:17-CV-41, 2018 WL 3430684 (M.D. Ga., July 16, 2018).

ALS REMINDERS

A conflict letter from a Petitioner’s attorney does not mean that the ALS Hearing is automatically continued. It is possible that the attorney may resolve the conflict and appear for the ALS Hearing. You must appear for the ALS hearing unless the Court has continued the case.

Published with the approval of
Colonel Mark W. McDonough.

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