



DPS LEGAL REVIEW

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CLARIFICATION - APPLICATION OF WINDOW TINT LAW TO RENTAL VEHICLES

The November 2018 DPS Legal Review included a summary of *Burkes v. State*, 2018 WL 5291973 (Ga. Ct. App., Oct. 25, 2018). In that case, an officer performed a traffic stop based on a window tint violation. The Georgia Court of Appeals stated in its decision that "the officer learned during the stop that the vehicle was a rental vehicle, and he concluded that the vehicle was thus exempt from the statute's tint limits." This conclusion does not appear to be accurate; O.C.G.A. § 40-8-73.1(c) lists the general exceptions to the window tint restrictions in O.C.G.A. § 40-8-73.1(b). **Rental vehicles are not listed as being exempt, and thus are not exempt based solely upon their classification as rental vehicles.** However, because individual circumstances vary, review O.C.G.A. § 40-8-73.1(c) as needed to determine whether specific exemptions apply in individual circumstances.

11TH CIRCUIT COURT OF APPEALS

SEIZURE OF WEAPON IN HOME DURING EXECUTION OF ARREST WARRANT

On the morning of October 17, 2016, deputies with the Manatee County, Florida Sheriff's Office, attempted to serve an arrest warrant on a murder suspect at the suspect's residence. The officers encountered Daniel Kendricks, who was not the suspect, in the garage of the residence. Kendricks explained that he did not believe the suspect was present, but that the deputies were welcome to look for him. Once inside the garage, a deputy observed a handgun in plain sight on the table. The deputy seized the weapon and disarmed it by ejecting the magazine and a round from the chamber. "At the time of the seizure of the gun, Kendricks was standing unsecured between" two deputies. While the seizing deputy "was unloading the gun, its serial number was exposed to view, and he called into the police system to determine whether the gun had been stolen." While calling the information in, "Kendricks engaged in a conversation with the [deputy] and told him he had been to prison."

Kendricks was subsequently arrested and charged with being a felon in possession of a firearm. Kendricks later moved to suppress the seizure of the firearm, arguing that the seizure was not justifiable under the Fourth Amendment. The U.S. District Court for the Middle District of Florida denied Kendricks' motion, and he was later convicted. Kendricks appealed his

conviction to the Eleventh Circuit, arguing in part that his motion to suppress should have been granted.

The Eleventh Circuit first explained that while "[a] warrantless search or seizure is presumptively unreasonable... [u]nder the exigent-circumstances exception, the warrantless seizure of a firearm has been deemed reasonable where there is a real concern for the officers' safety." In this case, the Court explained, **exigent circumstances existed when the gun was seized because "police were still searching for the [murder] suspect and Kendricks was unsecured in the garage." Moreover, exigent circumstances continued to exist even after the gun was disarmed because Kendricks remained in close proximity to deputies and the gun.**

Kendricks, however, argued that even if the initial seizure was constitutional, the deputy's reporting the weapon's serial number was an unconstitutional extension of the initial seizure. In making this argument, Kendricks relied upon a U.S. Supreme Court case, *Arizona v. Hicks*, in which an officer lawfully entered an apartment and observed stereo equipment in plain view. That officer - without exigent circumstances - moved the components to reveal concealed serial numbers and determined the equipment was stolen. The Supreme Court explained that although the initial observation of the stereo equipment was lawful, the officer's action of moving the components constituted a search "unrelated to the objectives of the authorized intrusion" which constituted a "'new invasion' of the defendant's privacy."

The Eleventh Circuit, however, explained that the deputy's observation of the serial number in this case was different from the *Hicks* case. The Court explained that, in this case, the deputy observed the serial number of the firearm *during the course of* a lawful seizure, and therefore he did not invade any additional privacy interest of Kendricks by calling the serial number in. That is, **the deputy's invasion of Kendricks' privacy by seizing and manipulating the firearm was justified by exigent circumstances, and his observation of the firearm's serial number was not a separate intrusion into Kendricks' privacy. As such, there was no separate search in calling in the serial number, and Kendricks' motion to suppress on those grounds was properly denied.** *United States v. Kendricks*, No. 18-10590, 2018 WL 6584243 (Dec. 13, 2018, 11th Cir.).

U.S. DISTRICT COURT - NORTHERN DISTRICT OF GEORGIA

SEARCH OF VEHICLE ABANDONED BY SUSPECT FOLLOWING POLICE PURSUIT

On December 2, 2016, the Cobb County Police Department Patrol Division received a request for assistance from a surveillance team made up of FBI Special Agents and two members of the Conyers Criminal Investigation Division. The surveillance team had obtained arrest warrants for Lenard Gibbs relating to several robberies. While surveilling Gibbs' residence, the team then observed Gibbs enter a vehicle with his girlfriend, Stacy Redwine. The vehicle in question was owned by Redwine. The surveillance team requested that Cobb County Police initiate a felony stop of the vehicle. Officer Moore of the Cobb County Police Department attempted to initiate a felony stop of the vehicle, and was eventually required to perform a PIT maneuver to disable the vehicle.

After the vehicle stopped, Gibbs fled on foot, leaving behind both the vehicle and Redwine. Officers searched the vehicle on the basis that Gibbs had abandoned it and therefore had no legitimate expectation of privacy in the contents. They discovered evidence in the vehicle that prosecutors later sought to

introduce in Gibbs' criminal case. Gibbs moved to suppress the evidence found in the car. He argued in part that he had not abandoned the car when he fled because he left it in the possession of its lawful owner, Redwine, and therefore he still had a legitimate privacy interest in the contents of the vehicle.

The U.S. District Court for the Northern District of Georgia, however, rejected this argument. The Court first explained that it is well-established that, in general, "when defendants flee on foot after the stop of a vehicle, they abandon their privacy interest in that vehicle." Gibbs' argument that he had not abandoned the vehicle because he left it with Redwine was unpersuasive because, as the Court explained, **"the Fourth Amendment protects people, not places." In this case, "Redwine, by remaining in the vehicle, maintained her expectation of privacy," but Gibbs, by fleeing abandoned his interest.** As such, the evidence found in the car was admissible against Gibbs. *United States v. Gibbs*, No. 1:17-CR-207, 2018 WL 6331341 (N.D. Ga., Dec. 4, 2018).

ALS REMINDER

1205 Form - Issue a **1205 Form** to a DUI defendant in the following situations: 1) Defendant refuses to submit to the state administered chemical test, or 2) Defendant submits to the state administered breath test and the breath test results meet the per se statutory requirements (0.08 grams or more if 21 years of age or over; 0.02 grams or more for a person under 21 years of age; 0.04 grams or more if operating a commercial motor vehicle). (See O.C.G.A. § 40-5-67.1)

1205 S Form - When a DUI defendant submits to a state administered blood test pursuant to a request under the implied consent law, complete the 1205-S form when the results are received from the crime lab if the results meet the per se statutory requirements for alcohol (0.08 grams or more if 21 years of age or over; 0.02 grams or more for a person under 21 years of age; 0.04 grams or more if operating a commercial motor vehicle). Send the completed 1205-S form to the Department of Driver Services (DDS) and DDS will notify the DUI driver regarding the license suspension form.

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