

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 10, 2012

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THIS WEEK:

• Search & Seizure

Search & Seizure

Lewis v. State, A12A1118 (8/6/2012)

Appellant was convicted of possession of cocaine with intent to distribute and obstruction of a law enforcement officer in a stipulated bench trial. Appellant contended that the trial court erred in denying his motion to suppress because narcotics investigators improperly restrained him without a sufficient basis for believing that he had drug contraband on his person. Consequently, appellant maintained that the drugs that the investigators seized from him were fruit of the poisonous tree and should have been suppressed. The Court disagreed and affirmed.

The evidence showed that narcotics investigators were patrolling a known drug area when they noticed appellant walking down the middle of the street with his back to them. Appellant turned around, saw the investigators, and continued to proceed down the street. As the investigators got closer to appellant in their patrol car, he again turned around and looked at them. Appellant then reached into his left jacket pocket, retrieved a small clear plastic bag, and placed the bag in his mouth as he continued to walk away from the investigators. Once appellant placed the baggy in his mouth, one of the investigators exited from the patrol car and approached him to conduct a field interview. Appellant refused to answer any of the investigator's questions, keeping his eyes averted and his mouth tightly closed. As the investigator continued to ask

questions, appellant began chewing on the baggy. The investigator placed him in a neck restraint to prevent him from destroying what the investigator believed was evidence of illegal narcotics. According to the investigator, the restraint maneuver was not a choke hold; rather, the maneuver involved placing his arm near appellant's jaw line to prevent him from chewing or swallowing what was in his mouth. Appellant began to struggle with the investigator in an effort to break free, and the investigator told him to stop struggling and spit out what was in his mouth. During the struggle, the second investigator realized that appellant had a razor blade in his left hand, and he approached appellant and restrained his left arm. After ultimately subduing appellant, the investigators were able to recover a clear plastic bag containing 2.0 grams of crack cocaine from his mouth.

At the hearing on his motion to suppress, appellant conceded that the investigator's attempt to field interview him was a first-tier detention, but he argued that the investigator escalated the encounter by placing him in the neck restraint and ordering him to spit out what was in his mouth. In denying the motion to suppress, the trial court treated the investigator's actions as escalating the encounter to a second-tier detention and found that the investigator had reasonable suspicion to support his actions. The Court found that the trial court erred in finding that the investigator only escalated the encounter to a second-tier detention by using the neck restraint maneuver and ordering appellant to spit out what was in his mouth. The Court noted as part of a valid second-tier detention, an officer is authorized to conduct a pat-down of a suspect's outer clothing for weapons, if there are particular

facts from which he can reasonably infer that the suspect is armed and dangerous. But a more intrusive search of a person escalates the encounter and requires a showing of probable cause. The Court stated that by placing appellant in a neck restraint and ordering him to spit out the baggy, the investigator escalated the encounter to a third-tier detention requiring a showing of probable cause. The trial court thus erred in treating the encounter as a second-tier detention requiring only a showing of reasonable suspicion.

Nevertheless, “even if the trial court’s asserted ground for denying a motion to suppress . . . is erroneous, we will affirm the ruling if it is ‘right for any reason.’” The Court found such a situation here because the uncontroverted record showed that the investigator had the requisite probable cause to support his actions. Specifically, the narcotics investigator observed appellant make a series of furtive attempts at concealing the clear plastic baggy—which the investigator, based on his experience, believed contained drug contraband—from placing the baggy in his mouth to attempting to chew it up while the investigator sought to question him. Observation of what reasonably appear to be furtive gestures is a factor which may properly be taken into account in determining whether probable cause exists. Thus, the Court pointed out if the police see a person in possession of a highly suspicious object or some object which is not identifiable but which because of other circumstances is reasonably suspected to be contraband, and then observe that person make an apparent attempt to conceal that object from police view, probable cause is then present. The Court held that while the trial court’s asserted ground for denying appellant’s motion to suppress was erroneous, the court’s ultimate conclusion that the investigator acted in a manner consistent with the Fourth Amendment was correct. The Court therefore affirmed the trial court’s order denying appellant’s motion to suppress the drugs seized from his person.