

Interesting Cases - February, 2011

Interaction between officer and D was a mere “encounter” rather than an investigative detention, because officer activated squad car’s white overhead lights rather than the red and blue lights; also the position of the squad car relative to D’s vehicle did not entirely prevent D from leaving.

Hughes v. State, 2011 WL 662325 (Tex.App.-Texarkana Feb 24, 2011) (NO. 06-10-00160-CR) “[Officer] observed [D’s] car in a parking lot of [a park] legally parked with the headlights on. As [officer] approached, the headlights of [D’s] vehicle turned off...[Officer] parked his marked police jeep at an angle to [D’s] car and turned on the vehicle’s bright overhead white lights. [Officer] then illuminated the front of [D’s] vehicle with his spotlight. [Officer] testified he did not observe any illegal activity, but testified the [the park] area has a high incidence of drug and prostitution activity...[D] argues the initial interaction between [officer and D] was an investigative detention because [officer] parked in front of [D’s] vehicle and activated his overhead [white] ‘take-down’ lights....It is important to note that the lights activated by the police officer in this case were not his overhead emergency lights which flash red and blue, but rather the overhead white safety or ‘take-down’ lights. We believe this distinction to be extremely important....The lights in this case, while the evidence established are ‘blinding,’ do not carry the same connotations as emergency lights. While under some circumstances, overhead ‘take-down’ lights could be sufficient along with other circumstances to indicate a sufficient demonstration of authority, [such was not the case here].”

After D told officers to leave his property, actions taken by eyewitness, at officer’s behest, in approaching D’s residence and peering through a window constituted a “search” for Fourth Amendment purposes. *Tijerina v. State*, 2011 WL 667884 (Tex.App.-Amarillo Feb 24, 2011) (NO. 07-09-00344-CR, 07-09-00345-CR) The eyewitness approached the residence and stood somewhere in or near the yard of the residence. By that time, D had already directed the officers to leave the property. Therefore, because the officers no longer enjoyed the implied authority to approach D’s residence, neither did the eyewitness, who was acting at the officer’s behest.

While trooper’s testimony established that DPS has a general policy to inventory vehicles following arrest, the testimony was deficient in that it related nothing about the scope of said policy and how it affects closed containers such as D’s roped blue bag. Thus, D’s motion to suppress deemed properly granted. *State v. Molder*, 2011 WL 679325 (Tex.App.-Fort Worth Feb 24, 2011) (NO. 02-09-00385-CR) “We recognize that courts have held that an officer does not need to specifically mention ‘closed containers’ to establish a policy regarding them. [citing federal case] But we hold that in this case [the trooper’s] testimony, as the sole evidence at the suppression hearing, was too barren to show any particular standardized criteria or routine concerning the scope of the inventory; the testimony is therefore insufficient for us to infer the extent of DPS’s policy regarding closed containers. Also, we conclude that we cannot infer DPS’s policy to open closed containers from the mere fact that [trooper] did so; such an inference would eviscerate the requirement described in Wells.”

Minor victim took possession of video tapes containing her nude image with intent to turn them over to police, and, thus, said evidence was not subject to suppression under criminal procedure provision forbidding the admission of evidence seized by any person or officer when that evidence has been obtained in violation of state or federal law; also, the minor victim, unlike D, had a lawful ownership interest in the images, held court. *Carlson v. State*, 2011 WL 649682 (Tex.App.-Hous. (1 Dist.) Feb 17, 2011) (NO. 01-09-01030-CR) The court observed that the minor victim filed a police report within 48 hours of retrieving the videotapes from D’s (her uncle’s) home. In addition, the minor victim had ownership interest in possessing the images, even though the images were illegal, because she did so in order to preserve her own privacy and to prevent further publication of the images by D.

State did not engage in “trickery or deception” in obtaining from juvenile inculpatory statements that he made to polygraph examiner because the juvenile signed prior to taking the polygraph exam a release that expressly authorized the polygraph examiner to disclose the results to the

probation department. *In re A.M.*, --- S.W.3d ----, 2011 WL 491018 (Tex.App.-Eastland Feb 11, 2011) (NO. 11-09-00304-CV), petition for review filed (Mar 28, 2011) In addition, the polygraph examiner explained to the juvenile that he could be required by law to release the examination results to other parties. Moreover, “[a]bsent an express or implied promise to the contrary, a probation officer is duty bound to report wrongdoing by the probationer when it comes to her attention.”

Officer’s observation of D in the act of “talking to a known cocaine addict” deemed a partial basis for RS as to D. *Miles v. State*, 2011 WL 494885 (Tex.App.-Eastland Feb 11, 2011) (NO. 11-09-00090-CR) “[Officer] testified that there had been at least two robberies in the recent past involving the convenience store where the incident occurred. He also testified that the owner of the convenience store had requested that the police provide extra patrolling in the area due to the high-crime activity. [Officer] observed [D] talking to a known cocaine addict, and he also observed [D] and the known cocaine addict acting suspiciously when he drove up. These facts provided [officer] reasonable suspicion to detain [D] for a Terry stop.”

The following deemed not sufficient to give rise to RS: D was present just outside a storage facility after its normal business hours, D failed to pass through the gate in thirty or forty seconds of observation, and the storage facility is occasionally broken into. *Sosa v. State*, 2011 WL 346215 (Tex.App.-Texarkana Feb 04, 2011) (NO. 06-10-00161-CR) “‘The fact that a car is parked in close proximity to a business that is [closed], is not, in and of itself, suspicious; instead, it is only a factor to consider in deciding whether there is reasonable suspicion.’....In addition, the time of day is deemed not sufficient....All the facts indicate is that [D] was present in front of a business late at night, after normal business hours, and that storage buildings are occasionally broken into.”

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