

“Georgia Court of Appeals Reverses Conviction for Constitutional Reasons”

CASE NAME: State v Dryer (Opinion No. A13A0875; August 21, 2013)

FACTS:

At around 11:00 p.m. on April 4, 2010, a Douglasville, Georgia police officer was patrolling a local parking lot when he noticed a vehicle backed into a parking space near the lowest part of the lot. At this point the business had been closed for at least two hours and there were no other vehicles in the parking lot. As he approached, the vehicle pulled out of the parking lot. At this point, the officer activated his blue lights and the vehicle immediately stopped.

In response to questioning, the defendant, Dryer, answered some basic questions. During the conversation the officer smelled the odor of burnt marijuana and noticed that Dryer appeared nervous. Dryer refused consent to search the vehicle.

While waiting for the arrival of the K-9 unit, Dryer admitted that he smoked some marijuana and that there was some marijuana still in his vehicle. Subsequently, the drug dog alerted to the presence of illegal drugs and the officer searched the defendant’s vehicle and recovered nearly two and a half ounces of marijuana packed in 22 separate small bags.

PROCEDURAL HISTORY:

Prior to the trial of the case, Dryer filed a motion to suppress the drug evidence found during the search of his vehicle. At the conclusion of this hearing, the court denied Dryer’s motion to suppress. The trial judge specifically concluded that the officer’s encounter with Dryer was lawfully escalated into a second tier encounter after the officer smelled the burnt marijuana. The jury convicted Dryer of possession of more than one ounce of marijuana. This appeal followed.

ISSUE:

Did the trial court err in denying Dryer’s motion to suppress in that the requisite amount of reasonable and articulable suspicion of criminal activity was present to search the vehicle?

HOLDING:

Yes, the trial court erred in denying the defendant’s motion to suppress. In reversing the trial court’s decision the Georgia Court of Appeals specifically noted the following: it is well established that in a first tier encounter police officers may approach and question citizens as long as the officers do not detain the citizens or create the impression that the citizen is not free to leave. As long as a reasonable person would feel that they are free to disregard the police inquires and go on about their business the encounter is consensual and no constitutional violations have occurred. On the facts before us in the case at bar, the officer created the impression that the defendant could not leave when he activated his blue lights as Dryer was attempting to drive out of the parking lot. Accordingly, this type of encounter constitutionally requires reasonable suspicion of activity. Here, the officer did not come upon the scene where the parked vehicles lights were already illuminated. Instead, after first observing the defendant’s vehicle, the officer decided to approach and investigate. When Dryer attempted to leave he was immediately stopped when the officer activated his blue lights. Given the facts of this case, there is no plausible argument that the defendant would have felt free to ignore the police officer and continue driving away.

The officer in the case at bar did not have “a particularized suspicion of criminal activity.” There was no evidence in the record that the defendant committed any type of traffic violation, that he was parked in a high crime area or that any crimes had recently been committed in or near the parking lot where the defendant was parked.

Accordingly, the Georgia Court of Appeals reversed the denial of Dryer’s motion and his conviction was overturned.