ILLINOIS PROSECUTOR SERVICES, LLC

PO Box 722, Carlinville, IL 62626
Phone: (217) 854-8041 Fax: (217) 854-5343
Website: www.ipsllconline.com
E-mail: don@ipsllconline.com

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of September – 2024

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United States v. Darrion A. Blassingame, Case No. 3:23-cr-30086-1-DWD, 2024 WL 3292765, July 3, 2024.

THE CASE: Officers walked up to a car parked in the parking lot of a local business and looked inside. They spotted what appeared to be Cannabis and Firearms. Were the Officers justified in placing the suspects under arrest, searching the parked car, and seizing the Cannabis and Firearms? Should the District Court grant Blassingame's motion to suppress evidence based upon a violation of the Fourth Amendment?

FACTS: The police dispatch received a phone call from a local business about Defendant Blassingame, who had requested assistance in repairing a tire on his vehicle. The caller indicated the vehicle's occupants were two black males wearing facemasks. The caller also indicated that the vehicle did not have valid registration. Further, the caller indicated two pistols, and a large bag were observed in the vehicle. Police officers responded to the parking lot of a local business, where Blassingame was attempting to change the tire on the rear driver-side of the vehicle. It was still daylight at the time. Co-Defendant Hardin immediately exited the passenger-side of the vehicle when an Officer drove onto the parking lot. An unknown man was assisting Blassingame in his attempt to change the tire while another unknown man was watching. The Officer asked if everyone was all right before announcing that she was informed Defendants could need assistance with the tire change. The Officer approached the area where Blassingame and the unknown man were attempting to change the tire. Blassingame allegedly indicated they were not in need of assistance.

While the Officer watched Blassingame attempt to change the tire, a second Officer approached the passenger-side of the vehicle and looked through its window. The second Officer Sergeant allegedly smelled marijuana emitting from the vehicle. He then proceeded to the front of the vehicle, where he looked through the front windshield. Through the passenger-side window or the front windshield, the second Officer allegedly observed what appeared to be a bag of marijuana and firearms in plain view. Blassingame was detained and searched, but no contraband was found on his person. He was detained before completing the tire change. Co-Defendant Hardin was detained and searched, at which time what appeared to be fentanyl and marijuana were found on his person.

Thereafter, the police officers conducted a warrantless search of the vehicle. They recovered 3 firearms, one of which was found during the search to be stolen. The police officers also recovered marijuana, methamphetamine, fentanyl, drug paraphernalia, ammunition, U.S. currency, a cutting agent, and capsules. Blassingame was found to be a felon at the time of the search. A Federal Indictment was returned against Blassingame and Hardin on various drug and weapons charges. Before the District Court Blassingame moved to suppress.

ARGUMENTS: In his Motion to Suppress, Blassingame argued this case was unusual because his vehicle was not searched after a traffic stop and the police officers did not obtain consent or a warrant for their search. He also argued the police officers lacked probable cause to search the vehicle because marijuana was legal in Illinois, the windows to the vehicle were up, and there was no indication that he could not possess a firearm. Further, in his view, the automobile exception to the warrant requirement did not apply since the vehicle was unoccupied, undrivable, and on a private parking lot when the police officers arrived during the tire change. Blassingame claimed he declined assistance from the police officers. From these arguments, Blassingame concluded the search and seizure violated the Fourth Amendment to the U.S. Constitution, requiring the suppression of the evidence.

In its Response, the People argued the police officers had a reasonable suspicion to investigate the circumstances reported by the caller from the local business, i.e., to investigate the claim that the caller observed two black males wearing facemasks in a vehicle with two pistols, a large bag, and no valid registration. Also, the People suggested the evidence was seized pursuant the plain view doctrine after Blassingame's arrest. That is, the second Officer's observation of the firearms and marijuana, which was not in a proper storage container or inaccessible, established probable cause to arrest the defendants, seize the evidence, and to search the vehicle.

Even without the call to dispatch, the People noted that Blassingame's vehicle was parked in a public place where the defendants did not have an expectation of privacy. Also, while there may be a question about whether the second Officer first viewed "the improperly packaged marijuana" and firearms in plain view from the passenger-side or the front of the vehicle, Blassingame did not dispute that the second Officer first viewed that evidence from outside of the vehicle.

ISSUE: Could the Cannabis and Firearms be used against the defendants in this case?

CONCLUSIONS AND REASONING: First, the District Court noted that under the plain view doctrine, police officers may search and seize evidence without a warrant if they (1) are lawfully present at the place of the search and seizure, (2) the evidence is actually in plain view, and (3) the incriminating nature of the evidence is immediately apparent to the police officers. As to the first element, police officers may "see what may be seen 'from a public vantage point where [they have] a right to be.' " In other words, evidence that a person knowingly exposes to the public is not protected by the Fourth Amendment. Also, in the same vein, police officers may approach "any part of private property that is otherwise open to visitors." When doing so, police officers may look through windows, doors, and other openings that are protected by the Fourth Amendment. Finally, as to the third element, the incriminating nature of evidence is immediately apparent if there is probable cause to believe the evidence is contraband or is linked to criminal activity. The reasoning for the plain view doctrine, as an exception to the warrant requirement, is grounded in the notion that neither a police officer's observation nor seizure of evidence that is in plain view constitutes an invasion of privacy.

In this case, the District Court concluded that it was lawful for the police officers to be present on the parking lot near Blassingame's vehicle, where, importantly, he did not have a reasonable expectation of privacy. The police officers were responding to a caller from a local business who reported seeing two pistols and a large bag in a vehicle without valid registration. Therefore, regardless of whether the parking lot was public or private property, the police officers could enter the parking lot to investigate the circumstances of that call. Further, once the police officers were legally at their vantage point on the parking lot, they were not required to shield their eyes to what was in plain view in Blassingame's vehicle. The second Officer could approach the vehicle and look through its windows to observe what was exposed for the broader public to see, namely, the bag of marijuana and firearms. Again, it was a large bag and firearms, contained in a vehicle without valid registration, that the caller from the local business reported viewing. And, notably, it is quite likely that the second Officer observed the marijuana and firearms in a substantially similar manner as the caller from the local business, who, at the time, was merely a member of the general public who had occasion to interact with Blassingame near the vehicle. The Court noted that under these circumstances, no special weight was accorded to the Officer's status as a police officer. Also, it made no difference whether the Officer viewed the evidence through the passenger-side window or the front windshield, as his observations were undisputedly made from outside of the vehicle when the evidence was in plain view. Finally, the incriminating nature of the evidence was immediately apparent to the Officer. The Court held that while marijuana is generally legal in Illinois, it was immediately apparent that the bag of marijuana was not permissibly possessed on the Illinois roadways. The marijuana was obviously within the area of a motor vehicle, including within the passenger area, upon the highway in Illinois without being inaccessible and confined to "a secured, sealed or resealable, odor-proof, child-resistant cannabis container." See 625 ILCS 5/11-502.15(b), (c). Therefore, at a minimum, the Officer had probable cause to believe it was linked to criminal activity, i.e., to a Class A misdemeanor for the knowing violation of § 11-502.15(b) and (c).

Additionally, the Court noted that a similar analysis could apply to the firearms that the Officer observed in plain view. For example, in Illinois, it is unlawful to knowingly carry or possess a pistol, revolver, stun gun, taser, or other firearm in a vehicle unless the weapon is broken down in a nonfunctioning state, not immediately accessible, unloaded and enclosed in a case or specified box or container by a person with a valid Firearm Owner's Identification Card, or carried or possessed in accordance with the Firearm Concealed Carry Act by a person with a valid license under that Act. See 720 ILCS 5/24-1(a)(4). With a concealed carry license, a person may "carry a loaded or unloaded concealed firearm, fully concealed or partially concealed, on or about his or her person," and "keep or carry a loaded or unloaded concealed firearm on or about his or her person within a vehicle." 430 ILCS 66/10(c) However, "concealed firearm" means "a loaded or unloaded handgun carried on or about a person completely or mostly concealed from view of the public or on or about a person within a vehicle." And, except as otherwise provided, a licensee who violates the Firearm Concealed Carry Act is guilty of a Class A or Class B misdemeanor. Here, it appears indisputable that the firearms, observed in Blassingame's vehicle were not properly concealed within the meaning of these statutory provisions.

RESULT: The District Court found the plain view doctrine applied in this case, allowing the use of the Cannabis and firearms as evidence at trial.

QUIZ QUESTIONS FOR THE MONTH OF SEPTEMBER – 2024

United States v. Darrion A. Blassingame, Case No. 3:23-cr-30086-1-DWD, 2024 WL 3292765, July 3, 2024.

1. As a general rule, warrantless searches are considered to be unreasonable under the Fourth Amendment.

   a. True.

   b. False.

2. The Plain View Doctrine is an exception to the warrant requirement of the Fourth Amendment. In this case, the Court listed three elements that are required before the Plain View Doctrine can be invoked. Which one of the follow is **not** one of the Plain View Doctrine elements listed by the Court?

   a. The suspect has a past history of criminal activity.

   b. The evidence is actually in plain view.

   c. The incriminating nature of the evidence is immediately apparent to the police officers.

   d. The Officers are lawfully present at the place of the search and seizure.

3. In this case, the car in question was legally parked in the private parking lot of a local store. Did the Officers have the authority to make a warrantless entry onto the parking lot to approach the parked car?

   a. Yes.

   b. No.

4. Inside the suspect car the Officers spotted firearms. The defendant argued that this fact alone did not justify the search of the vehicle because the Officers did not know whether the defendant possessed a concealed carry permit before they seized the firearms. Did the Illinois Concealed Carry Act apply to the facts in this case?

   a. Yes.

   b. No.

QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF SEPTEMBER – 2024

United States v. Darrion A. Blassingame, Case No. 3:23-cr-30086-1-DWD, 2024 WL 3292765, July 3, 2024.

1. As a general rule, warrantless searches are considered to be unreasonable under the Fourth Amendment.

   a. True. As the Court concluded in this case, "Police officers generally cannot perform a search without a warrant that is supported by probable cause. Lange v. California, 141 S. Ct. 2011, 2021. Indeed, warrantless searches are per se unreasonable under the Fourth Amendment. U.S. v. Salazar, 69 F.4th 474, 477 (7th Cir. 2023)

2. The Plain View Doctrine is an exception to the warrant requirements of the Fourth Amendment. In this case, the Court listed three elements that are required before the Plain View Doctrine can be invoked. Which one of the follow is not one of the Plain View Doctrine elements listed by the Court?

   a. The suspect has a past history of criminal activity.

3. In this case, the car in question was legally parked in the private parking lot of a local store. Did the Officers have the authority to make a warrantless entry onto the parking lot to approach the parked car?

   a. Yes. As this Court held, "In this case, it was lawful for the police officers to be present on the parking lot near Blassingame's vehicle, where, importantly, he did not have a reasonable expectation of privacy. See Kosyla v. City of Des Plaines, 256 Fed. App'x 823, 825 (7th Cir. 2007) (finding the plaintiff did not have a reasonable expectation of privacy in a parking lot, which was a common area shared with other tenants). Here, the officers were responding to a caller from a local business who reported seeing two pistols and a large bag in a vehicle without valid registration. Therefore, regardless of whether the parking lot was public or private property, the police officers could enter the parking lot to investigate the circumstances of that call.

4. Inside the suspect car the Officers spotted firearms. The defendant argued that this fact alone did not justify the search of the vehicle because the Officers did not know whether the defendant possessed a concealed carry permit before they seized the firearms. Did the Illinois Concealed Carry Act apply to the facts in this case?

   b. No. According to this Court, "With a concealed carry license, a person may "carry a loaded or unloaded concealed firearm, fully concealed or partially concealed, on or about his or her person," and "keep or carry a loaded or unloaded concealed firearm on or about his or her person within a vehicle." 430 ILCS 66/10(c) However, "concealed firearm" means "a loaded or unloaded handgun carried on or about a person completely or mostly concealed from view of the public or on or about a person within a vehicle." Here, it appears indisputable that the firearms observed in the suspect vehicle were not properly concealed within the meaning of these statutory provisions. See 430 ILCS 66/5, 10(c).