Review of Recent Juvenile Cases (2011)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Juvenile probation officers are considered government agents for the purposes of implementing the plain view doctrine in a search.[Beechum v. State](11-1-6)

On February 2, 2011, the San Antonio Court of Appeals held that juvenile probation officers lawfully seized marihuana pursuant to the plain-view doctrine because, while they are not law enforcement officers, they are government agents who were in a place they had a right to be and the nature of the contraband was immediately apparent.

¶ 11-1-6. Beechum v. State, No. 04-10-00276-CR, --- S.W.3d ----, 2011 WL 313803 (Tex.App.-San Antonio, 2/2/11).

Facts: San Antonio Police Officer Eric Rubio testified that on November 25, 2009, he was on patrol when he was flagged down by two individuals who identified themselves as Bexar County Juvenile Probation Officers. Officer Rubio testified one of the officers handed him a bag of marihuana, which the probation officer stated he had obtained from Beechum. The probation officers told him they were going to a residence for a probation check and noticed a car with three people inside parked in front of the residence. They parked behind the car and when they got out to approach the residence, they saw smoke and smelled marihuana coming from inside the car. As they approached the car, one of the probation officers saw Beechum holding a bag of marihuana. Officer Rubio testified the probation officer saw the bag of marihuana in "plain view." The probation officer told Officer Rubio that he asked Beechum about the marihuana, and she responded by handing the bag to him. Officer Rubio testified that after taking custody of the marihuana, he went to the car where Beechum was still sitting in the front passenger seat and arrested her.

In a single point of error, Beechum asserts the trial court erred in denying the motion to suppress the marihuana because it "was seized without a warrant and in violation of the Fourth Amendment." Beechum argues the marihuana was seized pursuant to an illegal arrest because neither the probation officers nor Officer Rubio had legal authority to arrest her. She contends the plain-view doctrine does not apply because the probation officers were not peace officers, and further argues that the record does not support the trial court's fact finding that the marihuana was in plain view.

Held: Affirmed

Opinion: The Fourth Amendment is implicated when property is seized by government agents, even though the agents are not peace officers. "Although the Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party on his own initiative, the Amendment protects against such intrusions if the private party acted as an instrument or agent of the Government." Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 614 (1989); see also O'Connor v. Ortega, 480 U.S. 709, 715 (1987) (holding "[s]earches and seizures by government employers or supervisors of the private property of their employees ...

are subject to the restraints of the Fourth Amendment"); New Jersey v.. T.L.O., 469 U.S. 325, 337 (1985) (holding that search of student by school authorities must comport with the Fourth Amendment).

The plain-view doctrine is an exception to the warrant requirement of the Fourth Amendment. Horton v. California, 496 U.S. 128, 133 (1990). In general terms, the doctrine permits the warrantless seizure of evidence or contraband if the police officer is justified in being at the location where the evidence is observed, the contraband or evidence is in plain view, and its nature as contraband or evidence is immediately apparent. See id. at 136; State v. Dobbs, 323 S.W.3d 184, 187 (Tex.Crim.App.2010). As long as the officer has not violated the Fourth Amendment to be in the physical position to view the evidence, "neither its observation nor its seizure would involve any invasion of privacy." Horton, 496 U.S. at 133. Beechum asserts the probation officers could not seize the marihuana pursuant to the plain-view doctrine because they are not peace officers. However, she does not cite any authority or provide any argument as to why the probation officers' seizure of the marihuana, which was required to be reasonable under the Fourth Amendment, was not subject to the plain-view exception to the Fourth Amendment. We hold that the plain-view doctrine is properly considered in an analysis of whether a government agent's search and seizure was reasonable under the Fourth Amendment. We therefore review the trial court's ruling that the probation officers lawfully seized the marihuana pursuant to the plain-view doctrine.

Officer Rubio testified the probation officers approached the car after seeing smoke coming from the interior and smelling the odor of marihuana. The car was parked on a public street. No Fourth Amendment right was implicated by the probation officers walking up to the car and speaking to Beechum. See Bostick, 501 U.S. at 434-35. He also testified the probation officers saw, in plain view, a bag of marihuana in Beechum's hand. Beechum contends the record does not support the trial court's finding that the marihuana was in the officers' plain view because she testified she had the marihuana hidden between her legs. However, Officer Rubio's testimony clearly supports the trial court's finding, and as the sole arbiter of the credibility of the witnesses, the court was free to believe Officer Rubio's testimony and to discredit Beechum's. See Ross, 32 S.W.3d at 855. We hold the trial court did not err in denying the motion to suppress the marihuana because it was in plain view of the government agents who were in a place they had a right to be and the nature of the contraband was immediately apparent. See Horton, 496 U.S. at 136.