TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-850-6544

Web Site: www.texindbar.org

Vol. 18, No. 41 -- October 25, 2010

Case Name: The State of Texas v. Matthew Ryan Dobbs

- OFFENSE: Theft (State's Appeal)
- COUNTY: Collin
- COURT OF APPEALS: Dallas 2009
- C/A CITATION: Unpublished
- C/A RESULT: Trial Court Affirmed
- CCA. CASE No. PD-0873-09 DATE OF OPINION: October 20, 2010
- DISPOSITION: Court of Appeals Reversed
- OPINION: Price, J. VOTE: 7-2-0
- TRIAL COURT: 401st D/C; Hon. Mark Rusch
- LAWYERS: Stephanie Duecker (Defense); Andrea Westerfeld (State)

Ed Note: (Background Facts) In the course of executing a search warrant for narcotics at police officers came upon two sets of golf clubs out in the middle of the floor of one of the bedrooms. The clubs looked brand new. In a closet of the same room, the officers discovered brand new golf shirts with a Los Rios Country Club logo embroidered on them. It was uncontested that the officers lacked probable cause to believe that these items were connected to any crime, but they were suspicious. The officers contacted dispatch to inquire whether there had been any reports of recent burglaries, especially of a country club. They were informed by a burglary detective that the Los Rios Country Club had reported the theft of golf merchandise. The officers then made contact with the country club to confirm the report and obtain a description of the stolen property, then, after receiving information, seized the golf clubs and golf shirts. Appellee was later charged with theft.

31.01 Search & Seizure / Warranted Searches / Unnamed Items in Plain View: Appellee filed a pre-trial motion to suppress these items as the product of an unlawful search and seizure. He argued that, because the police officers did not have probable cause to seize the items at the moment they discovered them in plain view in the bedroom, it had not been "immediately apparent" to them that the items constituted stolen goods. Relying on White v. State, 729 S.W.2d 737 (Tex.Cr.App. 1987), Appellee maintained that police may not lawfully seize items in plain view if they must conduct some "further investigation" to develop probable cause to believe the items constitute contraband. The trial court agreed with Appellee that White was controlling, and granted the motion to suppress. The State appealed, but the Court of Appeals also held that White controlled, and affirmed the trial court's ruling. In its PDR, the State argued that White overextends the legitimate scope of Fourth Amendment protection.

Holding: We granted the State's petition for discretionary review to re-examine our holding in White. We now hold that, so long as probable cause to believe that items found in plain view constitute contraband arises while police are still lawfully on the premises, and any further investigation into the nature of those items does not entail an additional and unjustified search of, or unduly prolonged police presence on, the premises, the seizure of those items is permissible under the Fourth Amendment. We disavow White to the extent that it is inconsistent with our present holding.

Concurring / Dissenting Opinions: Judge Womack and Judge Hervey concurred in the result, without note.