



DPS Legal Review

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“MOVE-OVER” VIOLATION UPHELD

While issuing a citation to a large motor home, Georgia State Patrol Sgt. Doug Wilson parked his marked patrol car with flashing blue lights activated on the right shoulder of Georgia 400 northbound. Thereafter, he agreed to help the driver merge back onto the highway. Before accelerating and reentering the roadway, he looked in his mirror and saw the Defendant's vehicle approaching, from approximately half a mile away, in the right traffic lane adjacent to his stationary patrol car.

With lights flashing, the Sergeant slowly merged into the right lane. The Defendant nearly struck the patrol car as he changed lanes at the last possible moment without slowing down. The Sergeant activated his siren and stopped the Defendant based upon a “move-over” violation. During the stop, the Sergeant noticed the Defendant had an odor of alcohol on his breath, he was unsteady on his feet, his eyes were bloodshot, and he exhibited multiple signs of impairment when field sobriety tests were administered. The Defendant admitted drinking a beer at a bar that evening. The Defendant was arrested for DUI-less safe and a “move-over” violation.

After refusing to submit to a state-administered chemical test of his breath and blood, the Defendant moved to suppress the evidence. He challenged the legality of the stop based upon the move-over statute. He argued that the Sergeant's vehicle was moving rather than stationary when he failed to slow down or change lanes.

HOLDING: The motion to suppress was denied. The Court held that the jury could reasonably infer from the evidence that the Defendant had an opportunity to slow down or change lanes before the patrol car started to move. The Defendant nearly struck the patrol car once it began to slowly merge into the right traffic lane.

Van Auken v. State, __ S.E.2d __, 2010 WL 2652468 (Ga. App.).

WARRANT FOR “PRIVATE PAPERS”

The Defendant was involved in a rear-end crash. The officer at the scene smelled alcohol in the ambulance where the Defendant was being treated. The Defendant exhibited belligerent behavior, and the officer found evidence of alcohol consumption in the cab and bed of his truck. The officer was unable to continue his investigation at the hospital because the Defendant was receiving treatment.

Five months later, the Gwinnett Solicitor's Office served the hospital with a search warrant for the Defendant's records for the date he had been treated at the hospital following the crash. The hospital produced the records. The Defendant moved to suppress the medical records arguing they were “private papers” subject to the exemption for such found in O.C.G.A. § 17-5-21(a)(5).

HOLDING: The motion was denied. The Georgia Supreme Court held that a hospital's medical records of the medical treatment provided to a patient are not “private papers” exempted from the coverage of a search warrant. The medical records were neither the Defendant's personal property or seized from his possession. They did not constitute the “private papers” that are exempt from coverage of a search warrant in Georgia. Brogdon v. State, __ S.E.2d __, 2010 WL 2718160 (Ga.).

INABILITY TO IDENTIFY DEFENDANT

The Defendant was convicted of speeding. At trial, the Georgia State Trooper testified that he could not identify the Defendant in court as the man he stopped for driving 76 in a 45 mile per hour zone. However, the Trooper also testified that, at the time of the stop, he verified that the person he stopped for speeding was the Defendant based upon his driver's license. The Defendant argued the case should be dismissed

because the Trooper had failed to identify him as the speeder or to tender into evidence a copy of his driver's license.

HOLDING: The Court held that the State presented sufficient circumstantial evidence that the Defendant was the driver. Although the Trooper could not positively identify the Defendant driver in court, the State presented direct evidence of guilt based upon the Trooper's testimony that he had positively identified the Defendant as the speeder when he stopped him. Worsham v. State, __S.E.2d__, 2010 WL 2652474 (Ga. App.).

INSTALLATION OF GPS DEVICE

An officer of the Tallahassee, Florida Police Department, who was also cross-assigned to a DEA task force, installed a GPS data-logging device on the Defendant's vehicle. The Defendant, who was suspected of trafficking marijuana, was under surveillance. Some weeks later, while the vehicle was parked in the Defendant's driveway, the officer attempted to remove the device. As he walked toward the vehicle he smelled marijuana. A drug dog brought to the scene alerted. While the DEA was seeking a search warrant, the Defendant left his residence in the vehicle. When he was stopped for a traffic violation, the officers found marijuana. He moved to suppress the evidence. He argued the warrantless installation of the GPS device violated his Fourth Amendment rights.

HOLDING: The Court denied the motion and held that the placement of the electronic tracking device on the exterior of the Defendant's vehicle while it was parked in a public parking lot did not violate his Fourth Amendment rights. Defendant had no reasonable expectation of privacy with respect to the exterior of his vehicle. U.S. v. Smith, 2010 WL 2825488 (C.A. 11 (Fla.)).

INQUIRING MINDS

QUERY: What is the fine/sentence for violation of O.C.G.A. § 40-5-20 (driving without a valid license)?

ANSWER: Punishment shall be as required by O.C.G.A. § 40-5-121(driving while suspended or revoked.) For violations of this Chapter that are not provided for separately, the punishment shall be as for a misdemeanor as provided in O.C.G.A. § 40-5-120(4) (which makes it unlawful to use, display, refuse to surrender, or permit unlawful use of a license or identification card.)

QUERY: What are the notice requirements for a habitual violator ("HV") revocation?

ANSWER: Revocations are imposed by operation of law pursuant to O.C.G.A. § 40-5-58 and O.C.G.A. § 40-5-60. To prove a defendant had legal or constructive notice of a HV revocation, the State must prove the violator was convicted of the offense that made him a HV.

QUERY: Should a driver with a revoked license due to a medical reason be charged for driving with a revoked license when there is no indication that the driver knew (i.e., no serve date, no surrender date, driver still has license in hand and states he or she did not know)?

ANSWER: For medical revocations imposed under O.C.G.A. § 40-5-59, proof of actual notice is required. A serve date is one way to satisfy that requirement, but it is not the only option. A Trooper has the option of serving the driver with notice of the medical revocation and issuing a citation under O.C.G.A. § 40-5-20 for driving with an invalid license. Knowledge or notice is not part of the State's burden of proof for this offense.

QUERY: What are the notice requirements for Gas Drive Off, Point Accrual, Serious Violations <21, Serious School Violation, and Violating License Restrictions?

ANSWER: Gas drive off, points, serious violations <21, and license restriction violations do not require proof of actual notice as they all stem from convictions. The serious school violations do require proof of actual notice.

QUERY: Is notice required for a violator with a suspension for "Super Speeder"?

ANSWER: No, notice is not required for "Super Speeder" suspensions.

ALS REMINDERS

⚠ Once a defendant is placed under arrest for DUI, remember to immediately read the implied consent notice unless exigent circumstances exist to justify a delay in reading the notice. Examples of exigent circumstances that may justify delay in reading the implied consent notice include: safety concerns, intoxicated passengers in the vehicle, and by-standers posing a threat.

⚠ Once the administrative license suspension has taken effect, the suspension cannot be withdrawn by the arresting officer - unless the 1205 form was issued in error.

QUOTABLE WISDOM WORKS

*"Only the guy who isn't rowing has time to rock the boat."
~ Jean-Paul Sartre*

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