



# *DPS Legal Review*

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## **MOTION TO SUPPRESS GRANTED**

A Police Officer saw the defendant stop his car to talk to a woman who was walking in a high crime area. When the defendant drove off quickly, the Officer turned his patrol car around. Suspecting the woman was engaged in prostitution, the Officer stopped to ask her if she knew the man in the car, and she confirmed that she did not know him. The Officer drove into a nearby apartment complex where he saw the defendant pull his car into a parking space.

The Officer pulled behind the defendant's car, got out, and asked him for his identification. The defendant said his identification was in his apartment, but he gave the Officer his name and birth date. After learning the defendant had an outstanding probation arrest warrant, the Officer asked him to exit the car, placed him in handcuffs, and then placed him in the custody of a second Officer. The Officer searched the defendant's car and found cocaine in the center console. Prior to trial, the defendant moved to suppress the drug evidence, arguing the search of his car was an improper search-incident-to-arrest.

**HOLDING:** The Georgia Supreme Court held that suppression was appropriate. The exceptions to the warrant requirement ensure that police may constitutionally search a vehicle when circumstances present "genuine safety or evidentiary concerns during the arrest of a vehicle's recent occupant." The Court held that the State's evidence "failed to show such concerns were present." Further, the Officer's testimony failed to establish the defendant's location in relation to the car at the time of the search or to provide the Court with any other information from which it could make a determination that the center console was within the defendant's arm's reach. Boykins v. State, \_\_\_ S.E.2d \_\_\_, 2011 WL 5313893 (Ga.).

## **DUI/IMPLIED CONSENT**

A GSP Trooper was sitting at an intersection in Houston County when he saw the defendant's

van traveling at what appeared to be a speed greater than the posted speed limit. He watched the van approach a red light at another intersection, slam on brakes, and skid past the stop bar. When the van came to a stop, it was mostly in the left-hand lane but partially in the right-hand lane.

The Trooper followed the van through the intersection when the light turned green and initiated a traffic stop based upon his concern about the defendant's reaction time at the red light. He approached the van and asked the defendant to exit. While talking to the defendant, he noticed an odor of alcoholic beverage. He also observed that her eyes were red, she was unsteady on her feet, and her speech was slurred. The Trooper performed the horizontal gaze nystagmus evaluation ("HGN"). He observed six out of six clues. When he asked the defendant to perform the one-leg-stand test, he observed that she was swaying and could not hold her foot up for more than about three seconds without having to put it down. He did not administer the walk-and-turn test due to wind and limited space, but he administered the alco-sensor test which produced a numerical reading of .208.

The Trooper placed the defendant under arrest for DUI and failure to maintain lane. He handcuffed her and put her in the back of the patrol car. He also read her the implied consent warning after he placed her under arrest. The defendant moved to suppress the chemical test, arguing the Trooper lacked probable cause to arrest her for DUI.

**HOLDING:** The Court denied the motion. The Court held that the defendant's conclusory argument regarding the HGN test failed to support the exclusion of the test results. The defendant's arguments concerning the proper administration of the one-leg-stand test (when she was in high heels) goes to the weight of the evidence and not to its admissibility. The Court

held the Trooper's statement to the defendant that he would take her to jail if she failed to properly perform the tests "troubling" because it was possible to interpret these statements as a threat of criminal sanction for failing to properly perform the test. Nevertheless, the Court held that the Trooper was not required to read a Miranda warning under the circumstances. The Trooper gave the defendant an option – perform the test properly or go to jail. A reasonable person in the defendant's position would have believed that she was not yet under arrest and that her detention might remain temporary. Rowell v. State, \_\_ S.E.2d \_\_, 2011 WL 5529853 (Ga.App.).

### IMPLIED CONSENT

The defendant lost control of his car and flipped over, hitting a tree. The emergency personnel who took him by helicopter to the hospital told a GSP Trooper at the scene that the defendant smelled of alcohol. Assuming the defendant's condition was serious, the Trooper drove to the hospital. The hospital personnel told him that the defendant was conscious.

When the Trooper entered the defendant's room, he was on a spine board with a stabilizing collar on his neck and tubes attached to his body. His eyes were closed, and he was silent. Smelling alcohol on the defendant's breath and in the room, the Trooper identified himself and tried to get the defendant to respond. The Trooper learned the defendant was taking narcotics for back pain. The Trooper told the defendant he was going to charge him with DUI and read him the implied consent notice. The defendant opened his eyes at one point, but otherwise remained silent.

A blood sample showed a blood alcohol level of .157, nearly twice the legal limit. Hospital staff told the Trooper that the defendant would be admitted for an undetermined amount of time. The Trooper said that he would obtain a warrant for the defendant's arrest. An arrest warrant was issued the same day, and he was eventually arrested. The defendant argued that the implied consent notice was ineffective because he was not under arrest at the time it was given.

**HOLDING:** The Court held that the implied consent notice was adequate. It was undisputed that, at the time of his encounter with the Trooper, the defendant was secured to a board in a hospital room with tubes attached to his body. A reasonable person in this situation could not believe he was free to leave after the Trooper

told him he was charging him with DUI. Buford v. State, \_\_ S.E.2d \_\_, 2011 WL 5248205 (Ga.App.).

### INTERNATIONAL LICENSE REQUIRED

The defendant was convicted of speeding and driving without a driver's license. At the time, he had a non-translated Mexican license. He appealed, contending the licensing statute's requirement that immigrants possess a valid Georgia driver's license was unconstitutional based upon a treaty. The treaty establishes certain foreign drivers' rights to drive in signatory countries without obtaining a local license.

**HOLDING:** The Court held that the defendant did not have standing to challenge the statute because he lacked the international driving license authorized by the treaty. Georgia law mandates an international license for drivers with non-English licenses. It was undisputed that the defendant lacked an international license. Medina v. State, \_\_ S.E.2d \_\_, 2011 WL 5248205 (Ga.App.).

### INQUIRING MINDS

**QUERY:** Do Facebook users have a reasonable expectation of privacy?

**ANSWER:** No. In at least three cases in Pennsylvania, the Court has held that when a party in a civil case posts information on his or her Facebook page, and that information contradicts statements made in discovery or testimony, that party's Facebook page falls within the scope of discovery.

**QUERY:** Does a driver's attempt to avoid a roadblock provide reasonable cause to pursue?

**ANSWER:** Yes. The Court has held that abnormal or unusual actions taken to avoid a roadblock may give an officer a reasonable suspicion of criminal activity even when the evasive action is not illegal. State v. Hester, 268 Ga. App. 501, 602 S.E. 2d 271 (2004).

### ALS REMINDER

⊗ Please remember that 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

*"It is the province of knowledge to speak, and it is the privilege of wisdom to listen."*

~ Oliver Wendell Holmes

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