



DPS Legal Review

October 2006 Legal Services 404/624-7423 Volume 5 No. 10

OFFICER'S ACTIONS IN HIGH SPEED PURSUIT DID NOT CONSTITUTE ACTUAL MALICE

A county officer was engaged in a high speed chase which ended when the suspect struck a car, killing the driver of the car and injuring three passengers. The officer's vehicle was not involved in the crash. During the chase, the officer violated several of his department's policies. There was some evidence that the officer bumped the fleeing car in violation of his department's policy. The Court ruled that the officer's decision to engage in the high speed pursuit was a discretionary act and that the officer did not act with actual malice. The Court held that "actual malice" requires deliberate intention to do wrong. The officer was entitled to summary judgment on his claim of official immunity from liability. Phillips v. Hanse, 2006WL2933831 (October 16, 2006).

PROBABLE CAUSE FOR DUI

Defendant's vehicle was observed by a State Trooper making an abrupt lane change resulting in her car going out of control. Defendant had an accident but the accident was not witnessed by the Trooper due to him traveling in an opposite direction from defendant. Upon investigating the accident, factors were observed about defendant that led to her arrest for DUI. Defendant had a strong odor of alcohol on her breath, flushed face, positive alco-sensor result, her mood was described as tired and drowsy, and she was emotional, crying and had watery eyes and she admitted drinking. The Court held that this was sufficient probable cause to arrest defendant for driving under the influence. The Court stated that the odor of alcohol on a driver's breath or a positive alco-sensor result alone does not mean that the driver is less safe to drive. However, the presence of alcohol **along with** observations regarding the suspect's physical appearance, demeanor or behavior can establish impairment. "When there is evidence that the defendant has been drinking, the manner of his driving may be considered on the question of whether

he has been affected by alcohol to the extent that he is less safe to drive." Slayton v. State, 2006 WL 2708952 (Sept. 22, 2006).

DUI ALCOHOL OR DUI DRUGS

Defendant was arrested for DUI alcohol and was read the implied consent notice. Defendant agreed to submit to the requested breath test. Upon the officer determining that the Intoxilyzer 5000 was inoperable, defendant was reread the implied consent notice and a blood test was requested. Defendant submitted to the blood test and the results came back positive for cocaine but negative for alcohol. Defendant argued that he was arrested for DUI alcohol, not drugs, and that he did not consent for his blood to be tested for drugs. Therefore, according to defendant, he was "deprived of making an informed choice of his right to refuse testing." The Court stated that defendant was advised of the implied consent notice which stated that the test was to determine if he was under the influence of alcohol or drugs. The officer was not required to "notify the defendant that he is accused of violating a specific provision of OCGA 40-6-391 at the time of the arrest." The exact nature of the violation may not be known until defendant is tested. Provided the State complies with the implied consent notice, a defendant cannot complain that testing for alcohol and drugs violates his Constitutional Rights. Meiklejohn v State, 2006 WL 2796490 (Oct. 2, 2006).

LEGAL QUICKIES

SEAT BELT STOP DID NOT PRECLUDE CONSENSUAL SEARCH OF VEHICLE – Driver stopped for failing to wear seat belt was "unusually nervous" and didn't make eye contact with officer. Officer asked whether there was anything in her car that the officer needed to know about for his personal safety and the driver responded no. Driver agreed to the officer's request to search her car. The officer found methamphetamine in plain view in the driver's open purse. Court held that the portion of the seat

belt law which states that noncompliance with the requirements of the Code section is not probable cause for violation of any other Code section did not preclude an officer from conducting a reasonable inquiry to ensure officer safety and did not preclude the officer from conducting a search pursuant to the driver's consent. Blitch v. State, 2006WL2931824 (October 16, 2006).

PRIVATE PROPERTY – Chapter 6 of Title 40, “Rules of the Road,” applies to the operation of vehicles on the highways of this state, which includes all public roads and streets. However, **O.C.G.A. § 40-6-3** specifies certain exceptions, which means the Rules of the Road **apply to many private** areas and may be enforced by law enforcement officers; specifically, “a vehicle operated at shopping centers or parking lots or similar areas which although privately owned are customarily used by the public as through streets or connector streets.” In addition, the Rules of the Road apply where specifically referred to in the Code section and to the specific offenses of Reckless Driving, DUI, and Homicide by Vehicle. Code sections 40-6-270, 271, and 272 apply on the highways, *in all parking areas, and in all areas which are customarily open to the public and within 200 feet of all such highways, parking areas, and areas customarily open to the public.* Law enforcement officers are specifically authorized to write an accident report regarding any motor vehicle accident occurring on private property. Read the entire Code section 40-6-3 for more specifics.

PURPOSE OF ROADBLOCK – Plaintiff filed a civil suit as the result of a highway roadblock. Plaintiff was stopped at a roadblock being conducted by a sheriff's office as part of a “Click-It-or-Ticket” campaign. Law enforcement officials from GDC (with canines) and DNR assisted with the roadblock. Plaintiff was arrested after a canine alerted on his vehicle and marijuana was found in the vehicle. With respect to the roadblock, the Court noted that a roadblock established to check to see if motorists are wearing seatbelts is proper. In this case, each of the officers testified that checking for seatbelt use was the primary purpose of the roadblock. The fact that the officers were also checking for other evidence of illegal activity did not change the primary purpose, as an on-duty police officer is always checking for evidence of illegal activity. The Court found that the stop of Plaintiff's vehicle was not unlawful and was made pursuant to a valid highway roadblock. Scruggs v. Lee, et al., 2006 WL2850427 (September 30, 2006).

ALS REMINDERS

1. Remember to provide the court with a copy of your permit to operate the Intoxilyzer 5000 and the original intoxilyzer test results on cases involving an intoxilyzer test or an attempt to take the intoxilyzer test.
2. Remember to read the implied consent card at the ALS hearing & tell the court how you determined the age appropriate implied consent to read.
3. The defendant must be under arrest for DUI prior to reading the implied consent card unless the case involves a wreck with a serious injury or fatality.
4. Don't forget to file a Motion for Continuance if a continuance is needed on an ALS case. File the motion as soon as possible. The motion can be located in Public Folders under DPS Forms (go to Field Operations and look for Nigel Lange – DPS 21 Motion for Continuance for ALS Hearing Form).
5. On roadblock cases, remember to take the Roadblock Supervisor Form certified to the ALS hearing and give the form to the Judge. Remember to testify to all roadblock factors and introduce the document as a business record.
6. Remember, you can check to see what cases are scheduled for an ALS hearing on a certain date by going to OSAH's website at www.osah.ga.gov. Click on “My Hearing,” select the court date, the Judge, and then submit. You will be able to view the entire court calendar for that particular date.

HUMOR WORKS

A physician, an engineer and a lawyer were arguing about whose profession was the oldest. The surgeon announced, "Remember how God removed a rib from Adam to create Eve? Obviously, medicine is the oldest profession." The engineer replied, "But before that, God created the heavens and the earth from chaos, in less than a week. You have to admit that was a remarkable feat of engineering, and that makes engineering an older profession than medicine." The lawyer smirked, and said, "Who do you think created the chaos?"

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