



DPS Legal Review

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INEVITABLE DISCOVERY DOCTRINE

The defendant driver was involved in an accident in which two of the three passengers in her car, including her four-year-old son, were pronounced dead at the scene. The driver of the other vehicle died en route to the hospital. The defendant was immediately airlifted to a hospital.

Georgia State Trooper Charles Anthony Henry, who investigated the crash, did not have any contact with the defendant at the scene because of her injuries. He saw two fatalities and that the other driver was in "grim" condition. An eyewitness to the accident told him that the defendant swerved suddenly and without warning into the southbound lane of Georgia Highway 11, striking the other vehicle.

Based upon the statement from that witness and Trooper Henry's observation of the accident scene, he concluded that the defendant was at fault and impaired. He asked another officer to go to the hospital to obtain the defendant's blood and urine samples so a chemical analysis could be done.

Witnesses at the scene knew the identity of the deceased driver, but no one knew the identity of the defendant. The defendant's purse was retrieved from the wreckage and given to the trooper. He found the defendant's driver's license, and he also noticed some steel wool. Based upon his experience, Trooper Henry knew that steel wool is commonly used as a filter in smoking crack cocaine. He also found several prescription bottles in the purse.

The defendant's blood tested positive for prescription drugs and cocaine. Additionally, cocaine, cocaine metabolites and methadone were found in her urine. At trial, the defendant moved to suppress the blood and urine test results. She argued that the trooper lacked probable cause to believe that she was driving under the influence at the time the tests were ordered. In Cooper v. State, 277 Ga. 282, 587 S.E.2d 605 (2003), the Georgia Supreme Court declared a portion of O.C.G.A. § 40-5-55(a)

unconstitutional. Thus, the defendant argued that the statute could not be applied. In Cooper, the Court held that to the extent O.C.G.A. § 40-5-55(a) requires chemical testing of the operator of a motor vehicle involved in a traffic accident resulting in serious injuries or fatalities, *regardless of any determination of probable cause*, it authorizes an unreasonable search and seizure in violation of the State and Federal Constitutions.

HOLDING: Under the inevitable discovery doctrine, if the State shows by a preponderance of the evidence that illegally obtained evidence would have been discovered inevitably by lawful means, the evidence is admissible. Trooper Henry was lawfully investigating the crash at the time he requested the tests. As part of his investigation, he was trying to determine the identity of the defendant and looking for proof that the vehicle was insured.

The prescription drugs and steel wool in the defendant's purse were found in the course of the investigation. The defendant did not contend that the entry into her purse was unlawful or unauthorized. She also did not dispute that the trooper had the necessary probable cause to request the tests once he discovered the items. At the time the trooper discovered the items, the tests had not been done.

Under the facts, it was inevitable that Trooper Henry would look in the defendant's purse during the course of his investigation. The items found, along with the other information, provided sufficient *probable cause*. Where an individual has been involved in a traffic accident that results in serious injury or fatalities *and* the investigating officer has *probable cause* to believe that the individual was driving under the influence of alcohol or other drugs, the constitutional infirmities at play in Cooper are no longer present, and the ensuing search is both warranted and constitutional. Cunningham v. State, ___ S.E.2d ___, 2007 WL 949287 (Ga. App.).

IMPLIED CONSENT/OUT OF STATE DRIVER

A driver, who was stopped by a DeKalb County Police officer for speeding, admitted that he had been drinking alcohol. The officer noticed that the driver's eyes were watery, and his face was flushed. The officer also smelled a strong odor of alcohol coming from the vehicle. When asked, the driver produced a valid Pennsylvania driver's license.

After conducting a series of field sobriety tests, the officer determined that the driver was under the influence of alcohol and placed him under arrest. Immediately after the arrest, the officer prepared to read the Implied Consent Notice found at O.C.G.A. § 40-5-67.1(b)(2). The officer told the driver that what he was going to read "deals with your license to drive and your privilege to drive in Georgia, okay?" After this initial statement, the officer read verbatim the Implied Consent Notice.

Thereafter, the officer offered the driver the state administered breath test. At trial, the driver moved to exclude the results of the breath test. The driver claimed that the arresting officer had misinformed him that a refusal to consent would result in the suspension of his Pennsylvania driver's license.

HOLDING: The officer's vague and indefinite introductory statement merely drew the driver's attention to the officer's subsequent verbatim recitations of the statutory Implied Consent Notice. The notice made it clear that only a "Georgia driver's license or privilege to drive on the highways of this state" would be suspended upon refusal to take the breath test. However, when an officer directly and explicitly tells a driver that their out-of state license will be suspended for refusing to submit to the state-administered test, evidence may be suppressed. McHugh v. State, ___ S.E.2d ___, 2007 WL 1121757 (Ga. App.).

A MINOR'S USE OF ALCOHOL CREATES EXIGENCY FOR WARRANTLESS ENTRY

A police officer on routine patrol in a residential neighborhood saw 10 to 12 cars parked illegally. Rather than have them towed, he knocked on the doors of nearby houses to locate the owners. After observing a juvenile leaving one of the vehicles, he asked the defendant (who was a few doors down and appeared to be intoxicated) if the other drivers were in her house. Ultimately, the defendant admitted that juveniles were in her home and

that they had been drinking. Thereafter, the officer conducted a warrantless entry into the home. Upon entering, several minors were discovered who had been drinking. One was so violently ill that he had to be hospitalized. At trial, the defendant moved to suppress the evidence arguing that the warrantless entry was not justified by either exigent circumstances or consent.

HOLDING: The Court joined other jurisdictions in holding that the reasonable belief that minors are consuming alcohol constitutes an exigent circumstance justifying a warrantless entry into a home. Burk v. State, ___ S.E.2d ___, 2007 WL 1053405 (Ga. App.).

INQUIRING MINDS WANT TO KNOW:

Q: May troopers accept a witness fee?

A: Troopers *may not* accept a witness fee when they are required to attend court for criminal or civil cases directly related to work during their regularly assigned duty hours. See O.C.G.A. § 24-10-27.1. (Witness fee checks that are attached to a subpoena should *not* be cashed but returned to the sender.)

Q: How is the fog line statutorily defined?

A: "Although not defined in the Georgia Code, it is settled in our case law that the emergency lane is that portion of the paved highway that is separated from the roadway by the solid white side lines which mark the roadway's borders." Dawkins v. Doe, 263 Ga. App. 737, 738, 589 S.E.2d 303, 305 (2003)

ALS REMINDERS

If you need an ALS case continued, please remember to file a "Motion for a Continuance" as soon as possible. To secure a copy of the form for the "Motion for a Continuance," go to Public Folders under DPS Forms. Then click on Field Operations, and look for the "Nigel Lange – DPS – 21 Motion for a Continuance for ALS Hearing Form." If you need assistance with the motion, contact Dee Brophy.

PROVERBIAL WISDOM WORKS

Courage and perseverance have a magical talisman, before which difficulties disappear and obstacles vanish into air.

John Quincy Adams

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