



DPS Legal Review

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PRECISION IMMOBILIZATION TECHNIQUE

Katie Sharp ("Sharp") and her passenger were killed when a Georgia State Patrol ("GSP") trooper employed a Precision Immobilization Technique ("PIT") maneuver to stop her SUV (as she and her passenger fled from South Carolina and Georgia police officers). A lawsuit was brought by Sharp's parents on behalf of her estate and her surviving child. The complaint alleged claims against the trooper and his supervisors based upon the following facts:

Sharp's vehicle was clocked speeding by two South Carolina officers on I-95 South, just north of the Georgia border. The officers attempted to pull her over, but she refused to stop. They gave chase, and the pursuit continued towards Georgia. A South Carolina officer notified a dispatcher for GSP that a pursuit was headed toward Georgia. The trooper and his supervisor, in separate cars, responded. The South Carolina officers continued their pursuit into Georgia but allowed Georgia officers to take the lead. At the time the trooper attempted the PIT maneuver, he knew that: 1) Sharp was fleeing from law enforcement officers; 2) Sharp was traveling at a high rate of speed; 3) the high speed chase had covered at least 20 miles; 4) a number of law enforcement officers were involved in the pursuit; 5) the pursuit was initiated by a request from another state; 6) the high speed chase had crossed state lines; 7) numerous law enforcement officers from multiple jurisdictions were involved in the pursuit; 8) Sharp had failed to respond to law enforcement vehicles with emergency lights and sirens activated and gave no indication of slowing down or stopping; 9) there were numerous civilian vehicles on I-95; and 10) the Sharp vehicle was being driven erratically. The Court granted Summary judgment based upon qualified immunity, and the Plaintiffs appealed.

HOLDING: On appeal, the Court held that the trooper's conduct in attempting the PIT

maneuver was reasonable. Thus, the trooper was entitled to qualified immunity. "It was Katie Sharp who intentionally placed herself, her passenger, and the public in danger by engaging in the high speed chase and fleeing from the officers which ultimately produced the choice between two evils(.). . .Therefore, no Fourth Amendment violation occurred(.)" Because the trooper's actions were objectively reasonable, the Court held that it was unnecessary to consider the supervisory liability claims. Sharp v. Fisher, Docket No. 07-13978 (11th Cir. July 2, 2008).

OPEN RECORDS "THREE DAY" RULE

The Georgia Supreme Court clarified: 1) the scope of the "three day" rule governing Open Records Act responses; and 2) the exception when the documentation sought is part of a pending investigation. The case involved a twenty year old murder investigation being conducted by the Athens-Clarke County police. The Open Records request was sent by certified mail to Athens-Clarke County and was received and signed for by someone at the agency on a Saturday. The individual actually holding the records, however, did not receive the request until five (5) days later.

HOLDING: First, the Court held that the County's letter was untimely since it did not respond to the Open Records request within three days of when the request was first received at the agency. The Open Records Act requires that records be made available for inspection within three business days of the receipt of a request. In the limited cases where records cannot be made available within three business days (due to the volume of the records requested or compliance issues), a response must be sent stating when the records will be produced or made available for review.

Second, the Court held that, although significant investigative activity had not recently occurred in the case, the investigative file remained open, and the pending investigation

exception applied. Thus, when an investigation remains open and pending, the materials that are part of the investigation (not including the initial report or complaint) remain exempt from the Open Records Act. Unified Government of Athens-Clarke County v. Athens Newspapers, LLC, __ S.E.2d __, 2008 WL 2578238 (Ga.).

DETENTION NOT PROLONGED

A GSP trooper stopped the Defendant after he clocked him traveling ten miles per hour over the speed limit. He secured the Defendant's license, registration, and proof of insurance, and he explained the reason for the stop. The trooper noticed that the Defendant appeared nervous. During the check, the Defendant remained in his car. After the document check was completed, the trooper asked the Defendant to get out of the car.

The trooper told him that he planned to give him a warning ticket. Approximately thirty to forty-five seconds after giving the warning ticket and returning the documents, the trooper asked for and received consent to search the Defendant's car. The trooper found cocaine and methamphetamine in the car. The Defendant moved to suppress the evidence, arguing that: 1) the trooper lacked probable cause to stop him since he was not traveling more than ten miles over the speed limit and 2) the search was the product of an impermissibly prolonged detention.

HOLDING: The statute that prohibits a conviction for speeding unless the speeder is traveling more than ten miles per hour above the posted speed limit is inapplicable to members of the GSP. Officers may ask questions before issuing a citation or written warning. Thus, the request for consent to search, made within seconds of issuing a warning ticket, did not unreasonably prolong the detention. Hayes v. State, __ S.E.2d __, 2008 WL 2736739 (Ga. App.).

WINDOW TINT/ SCOPE OF CONSENT

A GSP trooper stopped the Defendant's truck for a window tint violation and failure to maintain lane. He asked the Defendant questions while he gathered information and filled out the paperwork for the warning citations he planned to issue. The Defendant consented to a search of his truck within six minutes of being pulled over. The trooper found cocaine in the intake manifold of the truck. The Defendant moved to suppress the evidence, arguing that: 1) no probable cause existed for the initial traffic

stop; 2) the stop was unreasonably prolonged; and 3) the search was not voluntary and exceeded the scope of his consent.

HOLDING: The trooper knew that: 1) Georgia law prohibits excessively tinted windows; 2) he could not see inside the vehicle; and 3) he could not see the driver. This information was sufficient to lead a reasonable officer to believe that the Defendant had violated the window tint law. Both a potential window tint violation and failure to maintain lane provide probable cause for a stop. The brief stop was not unreasonably extended. The Defendant's consent, given verbally and in writing without limitations, was voluntary. The Defendant did not object to the examination of the engine, and the officers did not damage the manifold during their search. Thus, the officers did not exceed the scope of the Defendant's consent to search. U.S. v. Garcia, 2008 WL 2669130 (C.A.11 (Ga.)).

INQUIRING MINDS

QUERY: Are the vehicles used by private detectives and private security in the course of their business exempt from the window tint regulations?

ANSWER: Yes. Vehicles operated in the course of business for private detection or for private security services are exempt from window tint regulation. See O.C.G.A. §40-8-73.1(c).

ALS REMINDER

🌀 The updated GBI Approved List of alcohol sensors and the "DDS-Court-Law Enforcement Form Request" have been added to the ALS Folder. These documents are in the ALS Folder which is located under Public Folders. Go to DPS Forms, click Field Operations, and the ALS Folder will be found under Field Operations. Please use the DDS Form when requesting forms from the Department of Driver Services such as 1205 forms, 1205 supplement forms, and temporary driving permits (180 day stickers).

QUOTABLE WISDOM WORKS

"Not everything that counts can be counted, and not everything that can be counted counts."

Albert Einstein

Published with the approval of Colonel Bill Hitchens. Legal Services: Melissa Rodgers, Director, Lee O'Brien and Jacqueline Bunn, Deputy Directors, and Dee Brophy, ALS Attorney. Send questions/comments to jbunn@gsp.net.