



DPS Legal Review

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NO VIOLATION OF DRIVER PRIVACY PROTECTION ACT

Ten women were arrested for prostitution in a sting operation in Montgomery, Alabama. One suspect lied and identified herself as the Plaintiff. She provided the Plaintiff's address and date of birth when the police asked her for identifying information. (The suspect had been friends with the Plaintiff for a number of years.)

The officer processing the suspects was required to attach a copy of a photograph of each person arrested to her paperwork submission. Since no prior booking photograph was available under the Plaintiff's name, the officer accessed the Law Enforcement Tactical System to obtain a photograph using the name and birth date provided by the suspect. The Montgomery Police Department distributed a press release to various media outlets that discussed the sting and attached photographs of each suspect. The Plaintiff's photograph was included. She brought suit alleging violation of the Driver's Privacy Protection Act ("DPPA").

HOLDING: The press release was permissible law enforcement conduct. The DPPA regulates the disclosure of personal information contained in the records of state motor vehicle departments. In response to mounting public safety concerns over stalkers' and other criminals' ability to access personal information maintained in state department of motor vehicle records, Congress enacted the DPPA to regulate the disclosure of such information. In this case, the officer's actions did not violate the DPPA because she was carrying out a law enforcement function. Allegations regarding the press release fail because use of the media to disseminate information to the public also serves a law enforcement purpose. McQuirter v. City of Montgomery, Slip Copy, 2008 WL 401360 (M.D. Ala.).

911 CALL ADMISSIBLE

The Gwinnett County 911 Dispatch received a call from a man stating that he was

following an SUV that was being driven erratically. The caller remained on the line with 911 Dispatch and continually provided updates on the location of the SUV until police officers arrived on the scene. During the course of the 16-minute recording, the caller repeatedly updated 911 Dispatch regarding the location of the SUV and intermittently reported erratic driving, mentioning several times that the SUV was traveling at least 85-90 miles per hour, swerving between lanes, and inexplicably slowing down or almost stopping on the interstate.

When the Defendant exited the interstate, the caller reported that he was going to get in front of him to stop him before an accident occurred. The caller audibly exited his car and told the Defendant that he needed to stop driving. The caller reported that the Defendant drove off. The Defendant was stopped when the police arrived at the scene. Although the caller did not testify at the trial, the 911 tape was admitted, and the Defendant was convicted of driving under the influence of alcohol to the extent that he was a less-safe driver. He appealed. He contended that the Court erred by admitting the 911 call because: 1) it was a testimonial statement that violated the Confrontation Clause, and 2) it was inadmissible hearsay that did not qualify under the *res gestae*¹ exception to the hearsay rule.

HOLDING: The call was properly admitted. Determining whether a 911 call is admissible is made on a case-by-case basis. When the primary purpose of the call is to establish evidentiary facts, the call bears testimony against the accused and implicates concerns of the Confrontation Clause. However, when the primary purpose is to avert a crime in progress or to seek assistance in a situation involving immediate danger, the statements made during

¹ A spontaneous declaration made by a person immediately after an event and before the mind has an opportunity to conjure a falsehood

the call are not testimonial and may be admitted.

Under the facts, the primary purpose of the call was to prevent immediate harm to the public, not to establish evidentiary facts against the Defendant. The caller repeatedly said that he believed the driver was going to cause an accident or was going to hurt someone. The caller's statements about the driver being drunk were an attempt to convey to 911 Dispatch the urgency of the situation and to emphasize the need for immediate police assistance.

In Georgia, the *res gestae* exception to the hearsay rule is frequently used to admit recordings of 911 calls that are made during the commission of a crime. Under the facts, the call was made during the commission of the alleged crime. The caller had no opportunity to deliberate about his statement or to be influenced by others. The caller had personal knowledge of the facts because he was witnessing the Defendant's erratic driving as he described it. There was nothing to suggest that the caller was merely relaying information that he heard from others. Key v. State, __ S.E.2d __, 2008 WL 204628 (Ga. App.).

INDICTMENT SUFFICIENT

A Georgia trooper saw the three Defendants and four other individuals speeding on motorcycles on the interstate. The trooper activated his blue lights and siren and began to pursue the motorcycles. Three of the drivers slowed down and heeded the trooper. However, the Defendants and a fourth driver accelerated and attempted to elude the trooper. The trooper opted to follow the fleeing motorcycles. They reached speeds in excess of 115 miles per hour during the pursuit.

Eventually, the motorcycles exited the interstate and the fourth driver fled in a different direction from the Defendants. The trooper continued to pursue the Defendants. Their speed reached 120 miles per hour in areas where the posted speed was 45 and 55 miles per hour. Twice during the chase, the Defendants crossed over double yellow barrier lines in no passing zones in order to pass other vehicles. When it started to rain, the Defendants slowed to speeds of 85 to 90 miles per hour. The pursuit ended when the trooper and additional law enforcement officers successfully blocked the road. The Defendants were convicted of improper passing. Alleging

that the accusation failed to set out all of the essential elements of that crime, they appealed.

HOLDING: The accusation was not fatally defective. The test for determining the sufficiency of an indictment or accusation is not whether the accusation could have been made more definite but whether it: 1) contains the elements of the offense intended to be charged, and 2) sufficiently apprises the defendant of what he must be prepared to meet. If the accused can admit all of the charges and still be innocent of having committed any offense, the indictment or accusation or citation is defective. In this case, the accusation informed the Defendants of the charges against them and protected them against another prosecution for the same offense. They could not admit that they passed in an area defined by markings as a no-passing zone contrary to the law of this state without being guilty of the crime charged. Hayes-Turner v. State, __ S.E.2d __ (2008), 2008 WL 413388 (Ga. App.).

CLARIFYING INQUIRING MINDS

Click on the [link below](#) to review a DDS Bulletin listing the violations requiring proof of notice based on State v. Fuller, __ S.E.2d __ (2008), 2008 WL 204637 (Ga. App.)²:



DDS Bulletin -
Fuller v. State (Fe

ALS REMINDERS

⚙ In a DUI case (where the defendant attempted to take or took the Intoxilyzer test), **always** provide a copy of your Intoxilyzer permit and the original Intoxilyzer test printout to the Judge at the ALS hearing.

QUOTABLE WISDOM WORKS

“Be courteous to all, but intimate with few, and let those few be well tried before you give them your confidence.” – George Washington

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² The Fuller decision (summarized on page 1 of last month's "DPS Legal Review") held that the State bears the burden of proving notice where driving while suspended is charged.