



# DPS Legal Review

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## NOTICE OF LICENSE SUSPENSION REQUIRED UNDER O.C.G.A. §40-5-57

The Defendant was convicted of driving with a suspended license in violation of O.C.G.A. §40-5-121 and speeding based upon the following stipulated facts: The Defendant was cited for speeding and driving with a suspended license. The Defendant acknowledged that she had accumulated sufficient points against her license for purposes of O.C.G.A. §40-5-57 to trigger a suspension. The state did not contend the Defendant had notice of the license suspension, and there was no evidence that the Department of Driver Services had attempted to notify the Defendant of her license suspension by mail or otherwise.

The Defendant appealed the driving with a suspended license conviction based upon lack of proper notice of the suspension. The Court reversed the conviction due to the lack of notice. The state appealed contending: 1) that O.C.G.A. §40-5-57 did not require notice of the suspension and 2) that the Defendant received notice by operation of law.

**HOLDING:** “(T)he notice contemplated by O.C.G.A. §40-5-60 applies to all suspensions provided for in this chapter, including those pursuant to O.C.G.A. §40-5-57.” Since suspensions under O.C.G.A. §40-5-57 are not excepted from the general rule, without proof by the state of actual or legal notice to the Defendant of her license suspension, the Defendant’s conviction could not be sustained.

Additionally, O.C.G.A. §40-5-57 does not provide that a suspension under the statute is by “operation of law.” The term is expressly mentioned in other Code provisions governing license suspensions. The Court held that O.C.G.A. §40-5-57 requires action by the Department in addition to the tabulation of the violation point count. Under the facts, the Defendant did not receive legal notice of her license suspension by reason of its suspension

by operation of law because O.C.G.A. §40-5-57 does not allow it. There was no evidence that the Defendant had notice of any type regarding the suspension. Thus, the evidence presented failed to show the proof of notice beyond a reasonable doubt required to support a conviction. *State v. Fuller*, \_\_ S.E.2d \_\_ (2008), 2008 WL 204637 (Ga. App.).

## LIMITATION OF OFFICER LIABILITY FOR INJURY TO A FLEEING SUSPECT

The Defendant, who led law enforcement officers on a nearly ten mile high speed chase, sustained serious injuries and was rendered a quadriplegic when he lost control of his vehicle after the Precision Intervention Technique was used by a county deputy. The Defendant sued for damages under state and federal law. The claims were dismissed in separate orders. The Defendant appealed.

**HOLDING:** The Court affirmed the dismissal of the federal claims based upon qualified immunity.<sup>1</sup> The Court affirmed the dismissal of the state law claims. The Court noted that it is unclear whether Georgia law would actually allow a fleeing suspect to recover for his own injuries.

However, that possibility appears to exist where an officer acts with an actual intent to cause injury. The phrase “actual intent to cause injury” has been defined to mean an actual intent to cause harm (not just the intent to do the act that results in the claimed injury). The definition of intent contains aspects of malice, such as a wicked or evil motive. Under the facts, the Defendant could not recover because there was no evidence that the officer acted with malice or an actual intent to cause injury.

<sup>1</sup> See *Scott v. Harris*, 127 S.Ct. 1769 (2007)(the federal claims were dismissed in a decision discussed at length in the May 2007 edition of the DPS Legal Review. On remand, the Court resolved the remaining state law claims discussed herein)

Harris v. Coweta County, Slip Copy, 2008 WL 64004 (C.A. 11 (Ga.)).

### MOTION TO SUPPRESS

When a Georgia State Trooper arrived on a crash scene, where a woman had been killed, the Defendant was lying in a fetal position next to a parked vehicle, rocking back and forth, crying, and mumbling to himself. The Trooper tried to talk him, but he was virtually incoherent. The Defendant's wife arrived on the scene, and he was transported by emergency personnel to the hospital. The Trooper spoke to his wife (while her husband was having tests performed). The Trooper showed her a form asking for her husband's consent to give blood and urine samples. She said her husband could not read.

The Defendant returned to the room, and he asked the Trooper whether the woman in the collision had died. When the Trooper said, "Yes," he became upset. The Trooper started reading the consent form, and, at that point, the Defendant became violent and had to be forcibly restrained. As his wife consoled him, the Defendant cried on her shoulder, and the Trooper finished reading the consent form to him. The Defendant (who shifted from being calm and coherent to being aggressive) did not sign the form. His wife signed the consent form for him, but she did not indicate that he understood it. The Defendant (who was indicted for homicide by vehicle in the first degree, driving under the influence of drugs (cocaine), driving on the wrong side of the road, and driving while his license was suspended) moved to suppress the results of his blood and urine tests.

**HOLDING:** The motion to suppress was granted. The state did not meet its burden of demonstrating that the consent was voluntary. Whether an apparent consent was given or was in submission to an express or implied assertion of authority is a question of fact to be determined in light of all the circumstances. Mental condition is relevant to an individual's susceptibility to police coercion. Under the facts, the Defendant's mental condition was obviously vulnerable. He could not read, had to be forcibly restrained while the consent form was initially read to him, wept on his wife's shoulder while the remainder of the form was read, and never signed the form. Even if the Defendant submitted to the withdrawal of his blood and gave a urine sample, these acts

would not demonstrate voluntary consent. State v. Stephens, \_\_ S.E.2d \_\_ (2008), 2008 WL 131699 (Ga. App.).

### OPEN RECORDS REMINDER

⊗ When attorneys or citizens make a request to view video footage at the post, the following guidelines should **always** be applied:

- 1) The case must be closed with no pending prosecution; **or**
- 2) The party making the request must secure prosecutorial approval to view it.

### ALS REMINDERS

⊗ When you testify at a hearing regarding conducting an Alco-Sensor test on a DUI defendant, please **remember to lay the proper foundation** for the admissibility of the test. This is done by establishing that you used a device that has been approved by GBI-Division of Forensic Sciences as a preliminary breath screening device. Make sure that you review the GBI approved list of Alco-Sensors and confirm that your Alco-Sensor is on the list. These elements will help establish a proper foundation.

⊗ **Remember** that you **may** testify as to whether the defendant was positive or negative for alcohol on the Alco-Sensor, **BUT** you **may not** testify as to the numerical results. (The numerical results of the test are only admissible in Court under very limited circumstances.)

⊗ A copy of the approved list of Alco-Sensors can be found in the ALS folder under public folders. To locate the ALS folder:

- Go to public folders,
- Click on DPS Forms,
- Click on Field Operations,
- Click on ALS, and
- Look for the PBT GBI Approved List.

⊗ **Remember** the number of clues being checked on each of the Standardized Field Sobriety Tests: 1) six clues on the horizontal gaze nystagmus, 2) eight clues on the walk and turn, and 3) four clues on the one leg stand.

### QUOTABLE WISDOM WORKS

"Life's most persistent and urgent question is, 'What are you doing for others?'" – Martin Luther King, Jr.

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