



DPS Legal Review

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NO CONSTITUTIONAL RIGHT TO REFUSE CHEMICAL TESTING

The Defendant driver's vehicle left a Carroll County roadway and struck a tree. The driver was arrested at the scene for driving under the influence ("DUI") of alcohol to the extent it was less safe for him to drive. The Defendant was over the age of 21 and in his personal vehicle, but he held a Georgia commercial driver's license ("CDL"). The arresting Trooper read him the statutory implied consent notice applicable to individuals over the age of 21. The Defendant refused to submit to chemical testing of his bodily substances.

Later, he was served with an administrative license suspension form. After a hearing, an administrative law judge sustained the decision to disqualify the Defendant from driving a commercial motor vehicle for life because of his refusal to submit to state-administered chemical testing and his prior conviction for driving under the influence. The Defendant appealed and argued that the Trooper's failure to make him aware of the actual consequences of his refusal to submit to chemical testing violated his right to due process.

HOLDING: As long as the arresting officer informs the driver that he could lose his driver's license for refusing to submit to chemical testing, due process does not require the arresting officer to inform the driver of *all* of the consequences of refusing to submit. The ability to refuse to submit to chemical testing is not a constitutional right but one of legislative grace. Chancellor v. Dozier, __ S.E.2d __, 2008 WL 622924 (Ga.).

ARREST BASED UPON REFUSAL TO SIGN CITATION WAS IMPROPER

A Sheriff's deputy stopped the Defendant for failure to maintain lane. The Defendant produced an Illinois driver's license. The deputy asked him how long he had lived in Georgia. The Defendant responded that he had moved to the state in January of 2004. The deputy ran a check on the vehicle and license

and issued a citation for failure to obtain a Georgia driver's license within thirty days of becoming a Georgia resident. The Defendant refused to sign the citation. He contended that he was never advised that he was required to obtain a Georgia driver's license.

The deputy did not advise the Defendant that signing the citation would not be an admission of guilt. He also failed to tell the Defendant that his refusal to sign would result in a requirement that he go before a judicial officer to post a bond. Instead, the deputy merely tried to persuade the Defendant to sign the citation. When he refused, he was arrested. During a search of the Defendant's vehicle, subsequent to the arrest, three bags of marijuana were discovered, and he was charged with possession. He moved to suppress the evidence arguing that his arrest was illegal.

HOLDING: The motion to suppress was granted. After electing to issue a citation, the deputy *could not* make a custodial arrest based solely upon the Defendant's refusal to sign the citation. The language in O.C.G.A. § 40-13-2.1(a) makes it clear that once an officer issues a citation, he is obligated to follow the procedures and requirements set forth in the statute. To allow an officer to change his mind and effectuate an arrest based upon refusal to sign would allow law enforcement officers to circumvent the requirements of the statute by arresting anyone who refuses to sign a traffic citation without informing them that: 1) signing is not an admission of guilt and 2) failing to sign constitutes a reasonable cause to bring them before a judicial officer to post bond. State v. Torres, __ S.E.2d __, 2008 WL 711695 (Ga. App.).

IMPLIED CONSENT/ DELAYED FATALITY

The Defendant was involved in a collision while driving a motor vehicle. The investigating officer detected an odor of alcohol on the Defendant and in his vehicle. The officer performed an alco-sensor test which registered

positive for the presence of ethyl alcohol. The officer's investigation led him to conclude that the Defendant caused the accident by failing to obey a stop sign.

Neither the Defendant nor his passenger appeared to have serious injuries, but both were taken to the hospital. An officer at the hospital read the implied consent warning to the Defendant and secured his consent to draw blood for chemical testing. The Defendant was not under arrest at that time. Ten days after the accident, the Defendant's passenger died. The Defendant moved to suppress the test results. The Court denied the motion. The Defendant appealed.

HOLDING: The evidence was suppressed. The Georgia Supreme Court held that the State may request that a driver, who has not yet been arrested, submit to a chemical test of the driver's bodily substances if a law enforcement officer has probable cause to believe the driver was DUI and the driver was involved in a traffic accident resulting in serious injury or fatality. In this case, the chemical testing was requested at a point when the Defendant had not been arrested and there was no evidence of serious injury or fatality. Where there has been no traffic accident resulting in serious injury or fatality and the law enforcement officer has probable cause to believe the driver was DUI, the driver must be arrested *before* the implied consent warning is read in order for the refusal to submit to testing to be used against the driver at trial. Snyder v. State, ___ S.E.2d ___, 2008 WL 480099 (Ga.).

IMPLIED CONSENT/ NOTICE IS MANDATORY

The Defendant was involved in a two-car collision in which two people were killed and several others were injured. A Trooper arrived on the scene and spoke to the Defendant. He did not see any visible signs of impairment. The Defendant sustained a head injury in the collision, and he was taken to the hospital for treatment and released a few hours later.

As the Defendant's wife was preparing to drive him away from the hospital, the Trooper approached their parked car in the parking lot. Without advising him verbally of any of his rights, the Trooper asked the Defendant if he would be willing to give a blood test. The Defendant agreed and signed a written consent form that did not advise him of any rights. The test results showed the presence of marijuana,

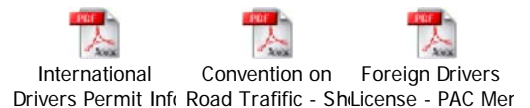
and he was subsequently charged with various counts of homicide by vehicle, serious injury by vehicle, driving under the influence of drugs, and reckless driving. He moved to suppress the test results arguing that he had not been advised of his implied consent rights.

HOLDING: The evidence was suppressed. In all cases in which police officers request a chemical test of a person's blood, urine, or other bodily substances in connection with the operation of a motor vehicle, for the purposes of determining DUI, they must give the notice required by the implied consent statute. State v. Morgan, ___ S.E.2d ___, 2008 WL 46681 (Ga. App.).

INQUIRING MINDS

QUERY: Are "international driver's licenses" valid in Georgia?

ANSWER: No. There is no such thing as an "international driver's license." However, there is a treaty (the UN Convention on Road Traffic) which allows citizens of signatory states to drive on their home country's license for up to 1 year in the new country.¹ In addition, if the driver's license is in a language other than English, it is advisable that the individual obtain an International Driving Permit which merely translates the home country's license into English. Foreign drivers should carry both documents with them while driving. Click on the links below for further details and samples of valid documents:



ALS REMINDERS

Remember to include all of the necessary information in your incident report. List all of the witnesses along with their addresses and any statements made by the defendant in your report.

QUOTABLE WISDOM WORKS

"Pleasure in the job puts perfection in the work."
– Aristotle

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¹ If the driver becomes a Georgia resident as defined by state law then they must obtain a Georgia license within 30 days, and they will have to completely surrender their foreign license.

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