



DPS Legal Review

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DUI/ Vehicular Homicide

Georgia State Trooper Scott Jeter responded to the report of a pedestrian being struck. Upon arrival at the scene, the Trooper found the Defendant's vehicle partially resting on the concrete curb. The pedestrian was on the ground nearby, unconscious. The Defendant told the Trooper that the pedestrian ran into the side of his truck. The Trooper noticed that the Defendant had a strong smell of alcohol, his speech appeared slurred, and he mumbled.

The Defendant admitted consuming a couple of beers and submitted to the alcosensor test (which revealed the presence of alcohol). The Trooper concluded that the Defendant was under the influence of alcohol to the extent that it was less safe for him to drive. He placed the Defendant under arrest for DUI. The Defendant's blood test showed his blood alcohol level was .118. While in the emergency room, the pedestrian died from his injuries (a broken neck, leg, and pelvis, broken ribs, bleeding in his brain, stomach, and chest, and a contusion of his heart).

At trial, the Defendant's two previous DUI convictions were introduced into evidence. The crime scene investigator testified there was no evidence that the Defendant took any evasive action. His investigation suggested that the Defendant ran a red light before striking the pedestrian. A jury found the Defendant guilty of first degree vehicular homicide. He appealed. He argued that there was insufficient evidence to prove that he caused the pedestrian's death. He contended that the evidence showed that the pedestrian "caused his own death when he jumped into traffic."

HOLDING: The jury might have concluded that the Defendant was not at fault, but there was sufficient evidence to support a fault-based finding. Brown v. State, __ Ga. App. __, 2008 WL 1914951 (Ga.App.).

SOURCE CODE/ NOT DISCOVERABLE

During a routine license check, the Defendant smelled of alcohol, slurred his words, and performed poorly on a field sobriety test. He was placed under arrest for driving while intoxicated. He submitted to a breath test on the Intoxilyzer 5000. The test result showed a positive result for an alcohol content above the per se limit. He filed a motion for discovery of the "source code" used to program the Intoxilyzer 5000.¹

HOLDING: The Court held that the driver was not entitled to the Intoxilyzer 5000 source code because the state did not possess or control it. Before discovery will be ordered, the Defendant must make an initial showing that the requested evidence is within the possession, custody or control of the state. Hills v. State, __ S.E.2d __, 2008 WL 2054733 (Ga. App.).

DUI/ Suppression

The Defendant was pulled over as a suspect in a hit and run accident. He displayed obvious signs of intoxication, and a crack pipe fell out of his glove compartment as he was searching to produce his insurance card. The arresting officer told him he was being charged with hit-and-run and possession of illegal drug paraphernalia. He was placed under arrest, and read the statutory implied consent warning. Later he was charged with reckless driving, two drug offenses, and two counts of DUI.

Although he consented to drug and alcohol testing, he moved to suppress the unfavorable results at trial. The Court decided whether the evidence should be suppressed under these facts. The officer had probable cause to arrest the Defendant for DUI, he read the implied consent rights to the Defendant, but he arrested him for a non-DUI offense.

HOLDING: The evidence should not be suppressed. The Court held that the arresting officer had probable cause to arrest the

¹ Source codes are the computer instructions followed by a computing device in processing information.

Defendant for violating the DUI statute. The officer then arrested him and read him the statutory implied consent warning. The coincidence of probable cause to arrest him for a violation of the DUI statute and his actual arrest meant that he was, as a matter of law, arrested for an offense arising out of acts alleged to have been committed in violation of the DUI statute. State v. Underwood, ___ S.E.2d ___, 2008 WL 2077324 (Ga.).

Civil Rights/ Excessive Force

The Plaintiff, an owner and caretaker of an apartment complex in Trenton, Georgia, brought a civil rights action against officers alleging they used excessive force in arresting him. He also alleged that their supervisor failed to adequately train and supervise them and that he was deprived of medical treatment. The allegations stem from the following facts:

The Dade County Sheriff's Department responded to a domestic violence call at the Plaintiff's apartment complex. A male claimed that a female had assaulted him. A deputy arrested the female, handcuffed her, and placed her in the back of his patrol car. He returned to the apartment to interview the male. Shortly thereafter, another deputy arrived to assist. That deputy was asked to take the suspect's parents outside and make sure no one else entered the apartment.

Then a Georgia State Trooper arrived to assist, as a courtesy. The Trooper assessed the situation, determined that it was under control, and returned to his car which was parked outside of the apartments. Thereafter, a third deputy arrived, and the Trooper told him that everything was under control. The Plaintiff arrived, exited his vehicle and approached the officers. He asked the officers who was in charge. He also asked whether the police cars that were blocking the entrance to the apartment complex could be moved. The deputy told him to leave the scene. The Plaintiff refused, and, after a scuffle, the Plaintiff was arrested and charged with obstruction. The Defendants moved to dismiss the case based upon qualified immunity.

HOLDING: The Court held that the Defendants were not entitled to qualified immunity. The Plaintiff refused to leave an area that was entirely beyond the zone of the police operation. For speech to rise to the level of obstruction, it must be reasonably interpreted to be a threat of violence to the officer. In the

absence of probable cause, the officer was not justified in using any force against the Plaintiff. The Plaintiff's version of the facts demonstrates a beating that falls within the core of what the Fourth Amendment prohibits: a severe beating of a restrained, non-resisting suspect. Reese v. Herbert, ___ F.3d ___, 2008 WL 2066521 (C.A. 11 (Ga.)).

INQUIRING MINDS

QUERY: Should a GCIC expungement request form be completed and processed by someone at a Post?

ANSWER: No. Personnel from the Posts should forward expungement requests to Legal. Only Part 1 should be completed at the Post. Applicants have the burden of providing a copy of the Court's disposition, criminal history, citations, and any other items required by the form. It is mandatory that Part 2 of the form be completed and executed by someone at Headquarters before securing prosecutor approval. The expungement form can be found at "MyDPS" under DPS Forms.

ALS REMINDERS

⚙️ **A 1205 Form** should be **issued** in the following cases:

1) When a defendant **refuses** the State administered chemical test, please issue a 1205 Form. In refusal cases, the 1205 form is issued in DUI drug cases as well as DUI alcohol cases.

2) When the Intoxilyzer 5000 Test is administered and the results are as follows, please issue a 1205 form:

- a. .08 grams or > if 21 years of age or over;
- b. .02 grams or > for a person under 21 years of age; or
- c. .04 grams or > if operating a commercial motor vehicle.

⚙️ **A 1205 Form** must be **submitted to DDS** within ten (10) days of a DUI arrest.

⚙️ **Continuance of ALS Hearings** – If you need to continue an ALS Hearing, please file a motion for a continuance as soon as possible.

QUOTABLE WISDOM WORKS

"A better world shall emerge based on faith and understanding." – Gen. Douglas MacArthur

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