



# *DPS Legal Review*

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## **LEFT-HAND TURN STATUTE DECLARED UNCONSTITUTIONAL**

The Defendant was driving his vehicle south on a two-lane road when he entered an intersection with a four-lane road. The four-lane road had two lanes for east-bound traffic and two lanes for west-bound traffic. He activated his left-turn signal and turned his vehicle into the outer, right-hand lane of the two lanes heading east. A Dalton police officer stopped him and charged him with making an improper turn based upon O.C.G.A. § 40-6-120(a)(2).

**HOLDING:** The Georgia Supreme Court held that O.C.G.A. § 40-6-120(a)(2) is unconstitutionally vague based upon the second sentence. The first sentence sets forth the manner in which a driver should approach making a left turn (from the extreme lane available to the driver in the direction being traveled.) The second sentence begins by stating the manner in which the left turn should be made. It provides that, except in situations when it is not practicable, the left turn should be made “to the left of the center of the intersection,” prohibiting the driver from initiating a left turn prior to the vehicle’s arrival at the center of the intersection. The second sentence also requires the left turn be made “so as to leave the intersection or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction as such vehicle on the roadway being entered.”

The Court held that a person of common intelligence could not reasonably determine that the statute prohibits the making of a left turn into the right lane of a multi-lane roadway. O.C.G.A. § 40-6-120(a)(2) was too vague to be enforced against a driver of a vehicle making a left turn into a multi-lane roadway that lacks official traffic-control devices directing the driver into which lane to turn. McNair v. State, \_\_\_ S.E.2d \_\_\_, 2009 WL 1574868 (Ga.).

## **DOUBLE JEOPARDY**

The Defendant was involved in an automobile accident on November 4, 2004, and was cited for failure to maintain lane on the date of the accident. The officer issued an additional charge of serious injury by vehicle after learning in court on December 1, 2004, that the victims had sustained serious injuries. On January 26, 2005, the Magistrate Court of Fulton County sent the charge to the grand jury. The District Attorney’s office received the charge on April 18, 2005. The Defendant pled guilty to failure to maintain lane on October 24, 2005. On November 3, 2006, an indictment was issued charging the Defendant with the additional offenses stemming from the accident. The Defendant filed a plea of double jeopardy seeking dismissal of the indictment since he had already pled guilty and been sentenced on the charge of failure to maintain lane.

**HOLDING:** The Court granted the double jeopardy plea, because O.C.G.A. § 16-1-7 prohibits multiple convictions and successive prosecutions for the same conduct. It was undisputed that both charges arose out of the same conduct and that they could be tried in the superior court. The prosecuting officer knew that the Defendant had been charged with both offenses. When the Defendant appeared in court, both charges were pending and the magistrate court judge bound over the serious injury by vehicle charge. Etienne v. State, \_\_\_ S.E. 2d \_\_\_, 2009 WL 1508113 (Ga. App.).

## **SIXTH AMENDMENT RIGHT OF CONFRONTATION**

The Boston, Massachusetts police received a tip that a Kmart employee was engaging in suspicious activity. The informant said the employee repeatedly received phone calls at work. After each call, the employee would be picked up in the front of the store by a blue sedan and returned to the store shortly

thereafter. The police set up surveillance and witnessed the sequence of events described. When the Defendant exited the sedan, an officer detained and searched him. He found four clear white plastic bags containing a substance resembling cocaine.

The officer signaled other officers to arrest the two men in the sedan, and all three were placed in a police car. During transport, the officers observed the passengers fidgeting and making furtive movements. After depositing them at the station, a search of the police car revealed a plastic bag containing 19 smaller plastic bags hidden in the partition between the front and back seats. This evidence was sent to a state laboratory for chemical analysis. One of the two men in the sedan, Luis Melendez-Diaz ("Melendez-Diaz"), was charged with distributing and trafficking in cocaine. At his trial, the prosecution introduced the bags seized from the employee and from the police car. Three certificates of analysis showing the results of the forensic analysis performed on the seized substances were admitted into evidence. The certificates were sworn to before a notary public by the analysts. Melendez-Diaz appealed his conviction, contending that the admission of the certificates violated his Sixth Amendment right to confront the witnesses against him.

**HOLDING:** The United States Supreme Court held that the affidavits were testimonial statements (making the analysts witnesses for purposes of the Sixth Amendment.) Absent a showing that the analysts were unavailable to testify at trial and that Melendez-Diaz had a prior opportunity to cross-examine them, he was entitled to be confronted with the analysts at trial. Although the state called the documents law certificates, they were affidavits - declarations of facts written down and sworn by the declarant before an officer authorized to administer oaths. Melendez-Diaz v. Massachusetts, 557 U.S. \_\_\_ (2009).

### CONDITION OF PROBATION

Henry County police responded to a call reporting a suspicious white vehicle parked with its lights off in a neighborhood cul-de-sac. The caller reported two people inside the vehicle. Arriving on the scene, the police observed a white Cadillac pulling away from the area, with one person inside. They initiated a traffic stop. The Defendant driver produced a valid Georgia driver's license. She said she was in the area to drop off her boyfriend at his parents' house. The

officers ran a check of her license and learned she was on active probation. She admitted that, as a condition of probation, she was required to submit to a search and to provide a specimen. She consented to a search, which revealed a bag containing methamphetamine. She moved to suppress the evidence at trial.

**HOLDING:** The evidence was suppressed. First, the condition of probation was not alone sufficient to justify the Defendant's detention and search. Second, the Defendant's consent to search the vehicle was tainted by the illegal stop. The police had no valid basis for initiating a stop. Adkins v. State, \_\_\_ S.E.2d \_\_\_, 2009 WL 1564814 (Ga. App.).

### OPEN RECORDS REMINDERS

⊗ The Open Records Unit has received a number of phone calls regarding the parameters for selling initial incident reports from local posts. The sale of incident reports is unrestricted to requestors upon payment of the related cost (\$0.25 per page) from any post in the state. However, requests for related records (i.e. videos, photos, ALS forms, Impound Sheets, intox slips, etc.) to the initial incident report should be forwarded to the Open Records Unit for processing. See Open Records policy, page 5, 13.01.4, E.

### ALS REMINDERS

⊗ Please remember: 1) to read the implied consent notice into the record at the ALS Hearing and 2) to testify as to how you determined which age appropriate implied consent notice should be read.

⊗ Please remember that in per se DUI cases you must establish the defendant's blood alcohol concentration level within three hours of driving. Also, if a crash is involved, gather evidence to establish approximately what time the crash occurred.

### QUOTABLE WISDOM WORKS

"Courage is contagious. When a brave man takes a stand, the spines of others are often stiffened."

~ Billy Graham

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