



# *DPS Legal Review*

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## **FIREARMS**

A Boynton Beach, Florida, officer stopped a Nissan Sentra after observing an occupant of the vehicle throw something from the window on the driver's side. He approached the vehicle with his gun drawn because it was late at night and he saw the occupants of the vehicle reaching down and around. He asked the driver for his identification. The driver did not have his driver's license so the officer asked him to exit the vehicle.

When the driver opened his door, the officer noticed a pair of gloves, a flashlight, and a pair of goggles with an attached face mask on the floorboard. The officer frisked the driver, but he did not find any weapons. He told the driver that he had been stopped for littering. The driver denied throwing anything from the vehicle and suggested that one of the passengers had thrown the item. The rear seat passenger denied throwing anything. When the officer frisked him, he found a pair of gloves that the passenger claimed he used for work.

The front seat passenger admitted that he was carrying a pocket knife. The officer frisked him and found another knife, a pair of gloves, a flashlight, and a cell phone wrapped in plastic. When the front seat passenger exited the vehicle, the officer saw an open Taco Bell bag on the floorboard of the front passenger seat that contained two duct-taped balls with a green string attached. The officer suspected these items to be improvised explosive devices. He asked the front passenger to exit the vehicle, frisked him, and found a pair of gloves and a waterproofed cell phone.

Suspecting that the four men were involved in a burglary, the officer conducted an investigation into the potential burglary and homemade explosive devices. The front seat passenger later admitted that he made the bombs while the driver of the vehicle watched. Both the driver and the

front seat passenger were indicted on charges related to the explosive devices. They moved to suppress the physical evidence and their statements obtained during the stop. They also challenged the constitutionality of the National Firearms Act.

**HOLDING:** The Court held that the National Firearms Act is constitutional. The evidence was sufficient to support the finding that the devices were destructive. The physical evidence obtained during the traffic stop was properly admitted. The officer had probable cause, based on the littering violation, to stop the vehicle. During a lawful traffic stop, officers also may take steps that are reasonably necessary to protect their personal safety including requiring the driver and passengers to exit the vehicle as a matter of course.

The officer reasonably suspected that illegal activity had occurred or was occurring based on his observation of gloves, goggles, a face mask, and a flashlight in plain view on the floorboard of the vehicle. His suspicions were heightened by the fact that it was about 2:30 a.m., none of the occupants of the vehicle were carrying identification, all of the occupants had gloves, and three were carrying waterproofed cell phones. The statements made during the traffic stop fall within the public safety exception. This exception allows officers to question a suspect without providing Miranda warnings when necessary to protect either themselves or the general public. The officer's questions were designed to determine the threat the bombs presented to the officer and the nearby public. United States v. Spuerke, 2009 WL 1424042 (C.A.11 (Fla.)).

## **DEFECTIVE ACCUSATION**

On February 24, 2006, Jane Marie Knapp ("Knapp") was issued a traffic citation charging her with driving under the influence of alcohol ("DUI"). On April 26, 2006, a one-count DUI accusation referencing the number of the traffic

citation was preferred in the Probate Court of Meriwether County. The accusation was styled "State of Georgia v. Jane Marie Knapp." Although it alleged that a DUI offense occurred on February 24, 2006, in Meriwether County, the body of the accusation identified as the defendant an individual named "Billy Thomas Jones."

Knapp's attorney filed a waiver of formal arraignment and entry of a plea of not guilty on her behalf. Her attorney also served a packet of demands and motions on the prosecutor. The packet contained a motion to quash the accusation on various grounds including that it did "not charge this defendant with any crime against the laws of Georgia." He also filed a motion to quash based upon improper venue. She was convicted of DUI. She appealed.

**HOLDING:** The Court held that the accusation was fatally defective because it alleged that someone other than the defendant committed the crime charged. The surname of the defendant must be alleged in the charging part of the accusation. The omission of the surname is fatal to the accusation or indictment. Knapp v. State, \_\_ S.E. 2d \_\_, 2009 WL 1272083 (Ga. App.).

### **INQUIRING MINDS**

**QUERY:** Can a private citizen operate a disposed of former law enforcement vehicle (whose lettering and colored lights have been removed as required by O.C.G.A. § 40-8-91-(d)) that retains the exterior paint coloring mandated by O.C.G.A. § 40-8-91(b)(1)?

**ANSWER:** Yes. There does not appear to be a statutory requirement that the paint color be changed when a citizen acquires a "disposed of" law enforcement vehicle whose lights and lettering have been removed. However, O.C.G.A. § 40-8-91(c) makes it unlawful for a private citizen "to paint, mark, or equip any motor vehicle in the same manner prescribed by this Code section or by the commissioner for law enforcement vehicle."

### **ALS REMINDERS**

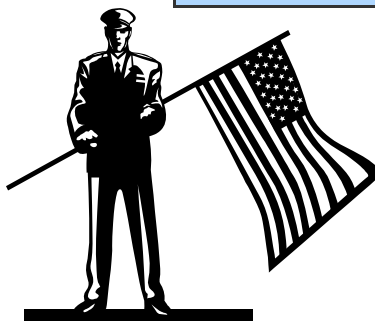
☸ In roadblock cases, please remember to take a **certified** copy of the Roadblock Supervisor Approval Form to the ALS Hearing. The factors that the court will consider in determining the validity of the roadblock include: 1) the decision to implement the roadblock, including where and when, is made by

supervisory personnel rather than officers in the field; 2) the supervisory officer making the decision has a valid primary purpose for the roadblock (i.e.: checking drivers' licenses, checking insurance, checking seatbelt usage, and checking for impaired drivers as opposed to seeking to uncover evidence of ordinary criminal wrongdoing; 3) all vehicles are stopped as opposed to random stops; 4) the delay to motorists is minimal; 5) the roadblock operation is well identified as a police checkpoint, (examples: law enforcement vehicles, flashing blue lights, officers in uniform wearing reflective vests, and orange cones); and 6) the screening officer's training and experience are sufficient to qualify him to initially determine which motorists should be given field tests for intoxication.

☸ In DUI cases involving the Intoxilyzer 5000 - take a **copy** of your Intoxilyzer permit **and** the **original** Intoxilyzer test printout to the ALS Hearing. The Intoxilyzer permit needs to be the permit that was valid at the time of the Intoxilyzer 5000 test. Please make a copy of the permit prior to arriving in Court.

☸ When filling out the 1205 Form and 1205 Supplement Form, please indicate your State Patrol Post number in the blank on the form that refers to "Arresting Officer's Precinct, Zone, Or Post Assignment." This enables OSAH to identify the matter as a Georgia State Patrol case.

### **QUOTABLE WISDOM WORKS**



"True heroism is remarkably sober, very undramatic. It is not the urge to surpass all others at whatever cost, but the urge to serve others at whatever cost."

~ Arthur Ashe

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