



# *DPS Legal Review*

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## **INDEPENDENT CHEMICAL TEST**

TFC Nathan Truitt saw the Defendant speeding. He initiated a traffic stop. As he approached the Defendant's vehicle, TFC Truitt saw it swerve into the central turning lane and then back into the previous lane. After he pulled the Defendant over, he approached the driver's side door where he detected the odor of alcoholic beverages.

He asked the Defendant to step to the rear of the car. The Defendant admitted that he had two mixed drinks containing vodka and a vodka shot earlier. As the Defendant spoke, he swayed from side to side. The Defendant's alcohol sensor test was positive for alcohol. TFC Truitt performed horizontal gaze nystagmus ("HGN") on the Defendant. The Defendant's eyes were glassy, and his pupils were dilated. During the HGN, he exhibited signs of intoxication, and throughout the investigation his speech was slurred. He was arrested for driving under the influence.

Once under arrest, he repeatedly asked TFC Truitt if he could blow again. TFC Truitt told him that he would give him that opportunity. He read the Defendant the Georgia Implied Consent Notice for drivers over the age of 21. The Defendant's reply when asked if he would consent to a state-administered chemical test of his breath was, "(Y)es, sir." The Defendant also asked TFC Truitt if he would have an opportunity to blow again. TFC Truitt told him that he would be given that opportunity at the jail. The Intoxilyzer 5000 test the Defendant took at the Spaulding County Sheriff's Office showed a blood alcohol content of .100 grams. The Defendant moved to suppress this evidence alleging he had invoked his right to an independent test by asking if he would have an opportunity to blow again.

**HOLDING:** The motion to suppress was denied. The Court held that TFC Truitt should not have reasonably understood the Defendant's request to "blow again" as a request for an independent

chemical test. The Defendant admitted that he did not know there was a difference between an independent test and the State's test. He was satisfied when TFC Truitt told him he could "blow down at the station." The Defendant admitted that he wanted another test because he believed the test results would go down. Waterman v. State, \_\_ S.E.2d \_\_, 2009 WL 2414175 (Ga.).

## **HIJACKING AND ASSAULT**

The victim was sitting in his car talking on his cell phone. The suspect (a black male wearing brown coveralls, glasses, and a black skull cap) approached the driver's side, tapped on the window, and pointed a gun at the victim. The victim tried unsuccessfully to lock the door of the car. The suspect opened the door, put the gun to the victim's forehead, and told him to get out and then to get back into the car. As the two wrestled inside the car, the victim's arm hit the car horn, and he called for help. His family came outside and saw the commotion. The suspect fled on foot across the street, and the victim's family called the police.

A witness, in the vicinity of the occurrence, nearly struck a man who darted out in front of her car. The man was wearing brown coveralls and a black stocking cap over his head. The man ran across the street and entered the passenger side of a Mitsubishi Mirage parked in a driveway. The driver of the Mitsubishi was wearing a dark-colored ski mask. The witness called 911 to report the incident when she noticed the Mitsubishi Mirage following her car.

Later, SFC Frank Pfirman stopped the Mitsubishi Mirage. One suspect wearing brown coveralls was in the front passenger seat. The other suspect was driving. Both were wearing black skull caps. After getting the information about the hijacking and a description of the suspect's vehicle and occupants, a Newton County Sheriff's Deputy realized he was in close proximity to the vehicle that GSP was pursuing. The Deputy joined the pursuit until TFC Pfirman stopped the car. When the Deputy conducted a

pat-down search of the suspect wearing the brown coveralls, a gun fell from the suspect's pant leg to the ground. During a pat-down search of the driver, SFC Pfirman found marijuana in driver's pocket. The driver argued that there was insufficient to support his conviction for hijacking a motor vehicle, aggravated assault, and possession of a firearm during the commission of a felony because he was not a party to the crimes.

**HOLDING:** The Court held that a defendant is a party to a crime "if he intentionally aids or abets the commission of the crime, or advises, encourages, hires, counsels, or procures another to commit it." The Court also held, "Mere presence at the scene is not sufficient to convict one of being a party to a crime, but criminal intent may be inferred from conduct before, during, and after the commission of a crime." The State presented testimony that the driver and co-conspirator planned to steal a car to use in future robberies because they did not want to commit the crimes in the co-conspirator's mother's car.

The State also presented evidence that the two suspects previously watched convenience stores to observe the delivery routines of store personnel leaving with money bags in preparation for future robberies. The State's evidence was sufficient to establish the existence of a conspiracy to commit an unlawful act. Likewise, the victim's testimony that the co-conspirator pointed a gun at his head while attempting to gain control of his vehicle was sufficient to prove the other charges. Johnson v. State, \_\_ S.E.2d \_\_, 2009 WL 2488390 (Ga. App.).

#### **NO RIGHT TO PRIVACY IN STOLEN VEHICLE**

The Defendant was travelling in a stolen van when stopped by a Laurens County Sheriff's Deputy. The van had been reported stolen from another state, and the vehicle identification number of the van came up in the NCIC/GCIC as stolen. When contacted by authorities, the General Manager of the car dealership that reported the van as stolen confirmed that he did not know the Defendant by name or facial recognition, and the Defendant did not have permission to be in possession of the van. The Defendant was charged with bank robbery and interstate transportation of a stolen motor vehicle. He moved to suppress all evidence obtained as a result of a search incident to his arrest along with any statements made following the arrest.

**HOLDING:** The Court held that the Defendant's presence in the van was wrongful, and his expectation of privacy is not one that is legitimately recognized as reasonable. The Court held that the Defendant could not establish that he had a legitimate, protected privacy interest in the stolen van. Thus, he had no right to challenge the search. "A burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate.'" U.S. v. Smith, 2009 WL 2 (M.D. Ala.).

#### **INQUIRING MINDS**

**QUERY:** Should troopers forward requests for legal guidance or representation directly to the Attorney General's Office?

**ANSWER:** No. **ALL** requests for legal guidance or representation should be sent to the Legal Services Office at Headquarters.

#### **ALS REMINDERS**

⊗ Please remember that a conflict letter from a Petitioner's attorney **does not** mean that the ALS Hearing is automatically continued. You must appear for the ALS Hearing unless the Court continues the case. If you have questions regarding whether a continuance has been granted, contact Dee or Beverly.

⊗ If you withdraw an ALS case based upon a plea agreement and the Petitioner does not comply with the agreement, please notify Dee or Beverly so that the ALS case can be refiled.

⊗ Please remember that you can check the OSAH website ([www.osah.ga.gov](http://www.osah.ga.gov)) to determine which ALS cases you have scheduled, continued, closed, etc.

⊗ When you receive discovery motions on a DUI case and a prosecutor is not involved in the case, please contact legal services for assistance in preparing your response to the motions. Please notify legal services immediately upon receiving the motions to ensure the deadlines for responding are met in a timely manner.

#### **QUOTABLE WISDOM WORKS**

*"It is amazing what you can accomplish if you do not care who gets the credit."*

*~ President Harry Truman*

Published with the approval of Colonel Bill Hitchens. Legal Services: Melissa Rodgers, Director, Lee O'Brien and Jacqueline Bunn, Deputy Directors, and Dee Brophy, ALS Attorney. Send questions/comments to [jbunn@gsp.net](mailto:jbunn@gsp.net).