



DPS Legal Review

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HOMICIDE BY VEHICLE

The Defendant, an escaped prisoner from Florida, was driving a white pick-up truck through Carroll County, Georgia. A "be on the lookout" or BOLO had been issued for the white pick-up truck. A Carroll County Sheriff's Deputy spotted the vehicle and activated his emergency lights. He pursued the Defendant from Carroll County into Haralson County. While pursuing the Defendant through an intersection, the Deputy collided with a vehicle, and the passenger was killed. The Defendant appealed his conviction of first degree homicide by a vehicle.

HOLDING: The Court held that the evidence was sufficient to find the Defendant guilty of first degree homicide by a vehicle. It also held that the Defendant's contention that the homicide vehicle statute was unconstitutional lacked merit. *Smith v. State*, __ S.E.2d __, 2009 WL 1957477 (Ga.).

FRESH PURSUIT ACROSS STATE LINE

The Thomasville Narcotic/Vice Squad went to the Defendant's residence after learning that he had four outstanding arrest warrants. When they arrived at the residence, they saw the Defendant drive away. They activated their blue lights and pursued him. A high-speed chase ensued. The officers pursued him across the Florida state line, and they arrested him after he crashed his vehicle and attempted to flee. The officers found narcotics and cash on his person and at the scene.

When the Defendant was prosecuted in federal court, he argued that the evidence should be suppressed because Georgia law enforcement officers lacked authority to arrest him in Florida. He also contended that, although Florida law allowed officers to arrest an individual outside of their jurisdiction when in fresh pursuit, that law was inapplicable because there was no interstate compact between Thomas County, Georgia, and Leon County, Florida. The State countered that the arrest was legal under Florida law because the officers were

in fresh pursuit and interstate compacts only become relevant when there is no fresh pursuit.

HOLDING: The federal Court held that warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the Constitution. The Court also held that States are free to regulate such arrests. However, state restrictions do not alter the Fourth Amendment's protections. It was irrelevant for purposes of the Fourth Amendment whether the Defendant's arrest violated state law because, when officers have probable cause to believe that a person has committed a crime in their presence, the Fourth Amendment permits them to make an arrest. *U.S. v. Goings*, __ F.3d __, 2009 WL 1927455 (C.A. 11 (Fla.)).

ROAD-BLOCK "TURNAROUND"

The Lowndes County Sheriff's Department set up a checkpoint at a major north-south thoroughfare in and out of the county. All drivers traveling through the checkpoint were briefly stopped and asked to produce license, insurance, and registration. A deputy sheriff assigned the canine unit saw a white car approach the checkpoint very slowly and turn off the road into a driveway approximately 200 yards from where he stood. The deputy was familiar with the area and knew that the driveway led to two residences. One was vacant and the other belonged to an elderly couple who owned a black car.

The deputy saw the driver of the white car approach the vacant residence, turn into a hayfield, and then turn off the car's headlights. The deputy drove to the white car's location and drew his weapon and flashlight as he approached the car. He saw two male occupants, with the Defendant in the driver's seat. The passenger appeared to have marijuana leaves sprinkled on the front of his shirt. The Defendant and his passenger were asked to exit the car.

After the deputy's drug dog alerted on the driver's door, the Defendant and his passenger

were handcuffed for safety. The deputy searched the car and found marijuana residue. While the deputy was reading the Defendant his rights, another officer drove up and told him that the Defendant and his passenger were possible “turnarounds.” At that point, the Defendant told the deputy that he left the road before reaching the checkpoint because he was driving without a license and he also said that he threw a firearm out of the car. A search of the area around the car revealed a firearm. The Defendant was charged with being a felon in possession of a firearm. He moved to suppress the evidence by arguing that his attempt to avoid the checkpoint did not provide probable cause or reasonable suspicion to investigate his exit from the checkpoint traffic.

HOLDING: The Court held that the Defendant was not seized at the checkpoint. He encountered police on a private drive. Thus, the Court examined the circumstances of the encounter for reasonableness. The Court held that the deputy’s experience as a law enforcement officer and his particular knowledge of the residences in the immediate vicinity of the checkpoint area created a reasonable suspicion that the occupants of the white car may have been involved in criminal activity. U.S. v. Hall, 2009 WL 2132702 (M.D. Ala.).

BREATH TEST HELD UNREASONABLE

A Houston County deputy sheriff stopped the Defendant when he observed her driving unsafely. He smelled alcohol and asked her to perform field sobriety tests. Her performance indicated intoxication. He asked her to undergo an Alco-Sensor test. She declined. The deputy placed her under arrest and read her the implied consent warning for a person over the age of 21 years. After she refused to submit to a state-administered chemical test, the deputy took her to jail and placed her in the “Intox room.” She eventually took the breath test and was charged with DUI.

She moved to suppress the test results. At the hearing, the deputy testified that after he read the implied consent warning a second time in the Intox room, the Defendant thought about it and opted to give a sample. On cross-examination, he testified that after the implied consent warning was read a second time she asked questions, including, “What happens if I blow and it’s under the limit?” He testified that he told her that, if she was under the legal limit, she could go. The Defendant testified that when

the deputy took her into the Intox room, he read the warning. He also asked her if she would take the test. She testified that she told him “(N)o, that I was under . . . legal advice not to” and that the deputy told her that if she was under the legal limit he would let her go home to her son, and “everything will be fine. . . . So then I finally blew.” She testified that she felt coerced by the Deputy’s statements about being allowed to go home to her son.

HOLDING: The Court held that the procedure used by the deputy to persuade the Defendant to rescind her refusal – telling her that she could go home to her son if she blew under the legal limit – was not fair or reasonable. A law enforcement officer may attempt to persuade an accused to rescind her refusal to submit to chemical testing as long as the procedure utilized by the officer in attempting to persuade a defendant to rescind the refusal is fair and reasonable. State v. Rowell, ___ S.E.2d ___, 2009 WL 2050227 (Ga. App.).

OPEN RECORDS REMINDERS

⊗ Requests for records that are made by prosecutors (crash reports, incident reports, videos, intox slips, etc.) do not have to come through the Open Records Unit. Pursuant to policy 13.01, section 13.01.4.H, Posts can handle these requests at the Post level.

ALS REMINDERS

⊗ When serving a DUI defendant with the computer generated 1205 form, please remember to also provide the defendant with the instruction page containing the hearing procedures. The defendant will not have the information necessary to appeal without this page.

⊗ When a motion for continuance is needed for an ALS Hearing, please remember to file the motion as soon as possible. The form for the motion is located on the MyDPS website under ALS Forms.

QUOTABLE WISDOM WORKS

“A sound head, an honest heart, and a humble spirit are the three best guides through time and to eternity.”

~ Sir Walter Scott

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