



# *DPS Legal Review*

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## **MIRANDA WARNING SUFFICIENT**

The Tampa Police sought to arrest the Defendant in connection with a robbery investigation. After entering an apartment rented by the Defendant's girlfriend, they saw him coming from a bedroom. They searched the room and discovered a loaded handgun. The Defendant was arrested for possession of a weapon by a convicted felon and taken to police headquarters. Before being questioned, he was read the following:

You have the right to remain silent. If you give up the right to remain silent, anything you say can be used against you in court. You have the right to talk to a lawyer before answering any of our questions. If you cannot afford to hire a lawyer, one will be appointed for you without cost and before any questioning. You have the right to use any of these rights at any time you want during this interview.

He acknowledged that he had been informed of his rights and that he understood them. Later, he admitted to officers that he owned the handgun found in the search. But, he moved to suppress his statements, claiming that the Miranda warnings he received were deficient in failing to adequately convey his right to the presence of an attorney during questioning.

**HOLDING:** The U.S. Supreme Court held that the warnings the Defendant received satisfied the Miranda standards. The warnings that Miranda requires do not vary. The Court held that it has never dictated the words with which the essential information has to be communicated to a suspect. To determine whether police warnings are satisfactory, Courts simply consider whether the warnings reasonably convey the suspect's rights as required by Miranda. Florida v. Powell, \_\_\_ U.S. \_\_\_, 2010 WL 605603.

## **WARRANT FOR MEDICAL RECORDS**

A Coweta County Deputy Sheriff saw the Defendant driving on I-85 in a highly erratic

manner. He was drifting from lane to lane without signaling. He followed the Defendant and tried to stop him with blue lights and siren activated. The Defendant slowed almost to a stop and then sped away. The deputy followed him and watched him weave erratically from one side of the Interstate to the other before finally stopping. Both that deputy and another deputy who arrived at the scene detected a strong odor of alcohol about the Defendant's person and saw he was unsteady on his feet. He had glassy eyes, slurred speech, and was unable to complete a field sobriety test.

After the Defendant told the officer that he was diabetic, the officer called an ambulance to the scene. The paramedic who examined him at the scene said the Defendant had a slightly high glucose level, an odor of alcohol about his person, was unsteady on his feet, and displayed signs of being under the influence of alcohol, but he did not require hospitalization.

The Defendant insisted that he was unable to complete field sobriety tests because of his diabetic condition. He refused to take a state administered breath test to determine his alcohol concentration. He told the deputy that he wanted a blood test. The deputy took him to a local hospital where he received treatment for his diabetic condition. In connection with his treatment for his diabetic condition, the hospital personnel tested his blood and urine.

Pursuant to a search warrant, the State obtained the results of those tests from the hospital. The test showed that the Defendant had an elevated blood alcohol level and cocaine metabolites in his urine. He was charged with driving under the influence of alcohol to the extent that he was a less safe driver and failing to safely maintain his vehicle within a marked traffic lane. He moved to suppress the medical records obtained by a search warrant.

**HOLDING:** The Court denied the motion. The State properly used a search warrant to obtain the medical records. The search warrant did not

authorize an overly broad general search of his records. The warrant was drafted to seek only the hospital's medical records related to the Defendant's treatment immediately after the traffic stop. Stubblefield v. State, \_\_ S.E.2d \_\_, 2010 WL 447019 (Ga. App.).

### **INVENTORY SEARCH REASONABLE**

An officer from the Cherokee County Sheriff's Department ("CCSD") responded to a single-car accident to assist another officer at the scene. Upon arrival, he saw a car halfway on the roadway that was partially obscured by a tree that was also partially blocking the roadway. The car was heavily damaged and needed to be towed from the scene. The driver had lacerations to his face and head. He was examined by fire and EMS personnel at the scene. The passenger remained with the driver.

The driver indicated that he did not have a preference regarding which wrecker service would be used. The officer contacted a wrecker service on the county's 911 rotation list. He ran the license and learned the vehicle did not have insurance. He also could not readily determine the owner. In accordance with CCSD policy, he entered the car to locate registration and insurance paperwork. He found a fully loaded magazine in the glove compartment. As he looked for the gun, he found a Cross brand pen case in the center console. CCSD policy required that he secure any valuable property. He opened the box to determine whether it contained a pen, but, instead, he found a glass tube that was darkened in color which he believed to be consistent with the ingestion of crack cocaine. The driver denied any knowledge of the pipe, but the passenger claimed it belonged to her. The passenger was charged with possession of cocaine. She moved to suppress the evidence.

**HOLDING:** The Court denied the motion. The car was partially blocking the roadway. The driver told the officer that he did not prefer a particular wrecker service. The license plate check revealed there was no insurance on the vehicle, which did not belong to the driver or the passenger. Neither driver nor passenger expressed a desire that the passenger drive the damaged car off the roadway. Both had left the scene by the time the wrecker arrived. This left the car in the custody of the police. Inventory searches have two purposes: to protect the vehicle and property in it, and to safeguard the police or other officers from claims of lost possessions. Under the circumstances, it was

reasonable for the officer to inventory the contents of the automobile to protect against claims of lost or stolen property while the vehicle was in the possession of the CCSD or its contractors. Rowland v. State, \_\_ S.E.2d \_\_, 2010 WL 481285.

### **INQUIRING MINDS**

**QUERY:** Since the law changed regarding the notice requirement for failure to appear, does the serve date for failure to appear have to be after January 1, 2010? If the suspension date is prior to 2010, can the charge of suspended license still be made without a serve date?

**ANSWER:** The serve date needs to be **after** January 1, 2010, for the amended statutory language to apply. For suspensions prior to January 1, 2010, you will still need to establish a serve date. The citation and the failure to appear BOTH need to be after January 1, 2010, to rely on the citation providing sufficient notice pursuant to the amended statute. You have two options in these cases. The first option is to serve but not cite someone whose underlying citation is prior to January 1, 2010. The second option is to charge the violator under O.C.G.A. Section 40-5-20 instead of O.C.G.A. Section 40-5-121. In that instance, all that you would have to prove under O.C.G.A. Section 40-5-20 is that the violator was driving while their license was invalid. There's no notice element to that crime and the punishment is similar.

### **ALS REMINDER**

☞ If you need an additional witness for an ALS Hearing, **YOU** must subpoena the witness. The arresting officer is the only witness that is subpoenaed by the Court. The witness subpoena can be found on the Court's website at [www.osah.ga.gov](http://www.osah.ga.gov) under Court Forms, subpoena. A copy of the witness subpoena can also be found on the My DPS website under DPS Forms, ALS Forms. If you need any assistance in this regard, please contact Dee or Beverly in Legal Services.

### **QUOTABLE WISDOM WORKS**

*"Criticism is something we can avoid easily by saying nothing, doing nothing, and being nothing."*

~Aristotle

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