



DPS Legal Review

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DUI CHECKPOINT

While working as a screening officer on a roadblock, Georgia State Trooper Charles Parker saw the Defendant driving a white van. The van turned right towards the checkpoint, then made an immediate left into the second entrance of a gas station parking lot, just south of the checkpoint. Trooper Parker approached the Defendant as she exited her vehicle to determine if she was going to the gas station or attempting to avoid the roadblock. He told the Defendant that he was conducting a license check and asked to see her license. She produced her license, and, as they talked, Trooper Parker detected the odor of alcohol on the Defendant's breath. When asked, the Defendant told the Trooper that she had three glasses of wine, one just recently at her home.

Trooper Parker performed the horizontal gaze nystagmus test. She displayed six clues. The Defendant's breath test was positive for alcohol. Because she said she recently consumed a glass of wine, Trooper Parker waited 20 more minutes to administer the breath test again. The second test also was positive for alcohol. Trooper Parker placed the Defendant under arrest for driving under the influence. After reading Georgia's implied consent warning, Trooper Parker walked the Defendant to the alcohol testing trailer to administer another breath test using the Intoxilyzer 5000. The lowest test result showed a blood alcohol level of .106. The Defendant moved to suppress the evidence, arguing that her detention was illegal. She testified that she had gone to the gas station to get milk, not to avoid the checkpoint.

HOLDING: Denying the motion, the Court held that Trooper Parker was authorized to approach the Defendant and ask to examine her driver's license. Once he smelled alcohol on the Defendant's breath, Trooper Parker had the required articulable suspicion to investigate further. Bacallo v. State, __ S.E. 2d __, 2011 WL 32549 (Ga. App.).

FELONY OBSTRUCTION

A Monroe County Sheriff's Deputy responded to a domestic disturbance call. Once at the home, he saw the Defendant on the front step. He told the Defendant that he needed to check on the Defendant's teenage daughter. The Defendant allowed the Deputy to enter the residence. The Deputy observed the daughter in tears lying on her mother's lap on a sofa.

The Defendant told the Deputy that his wife and daughter were fine and urged the Deputy to leave. The Deputy remained and insisted that he needed to find out what had happened. The Defendant took a fighting stance, nose to nose with the Deputy. When the Deputy attempted to hand-cuff the Defendant, a struggle ensued, and the Deputy pepper-sprayed the Defendant, threw him to the ground, and handcuffed him. The Defendant continued to struggle as the Deputy placed him in the patrol car. He spat in the Deputy's face twice. After the Deputy left the Defendant in the patrol car to interview the wife and daughter, he kicked out the back window of the patrol vehicle and ran into the woods.

He was later charged with felony obstruction of an officer and escape. Upon conviction, he appealed arguing that the evidence was only sufficient to support a conviction for misdemeanor obstruction since he did not actually act with, or offer to do, violence to the Deputy.

HOLDING: The Court held that the felony obstruction statute does not require that the accused actually do violence to the officer, but it allows a conviction if the accused offers to do violence. The Court held that the Defendant's interference with the Deputy's attempts to interview the mother and daughter, ordering the Deputy to leave, approaching the Deputy so that their noses were almost touching, taking up a fighting stance, forcing the Deputy to wrestle him to the ground in order to handcuff him, and spitting on the Deputy as he was placed in the patrol car, all authorized his felony obstruction

conviction. Andrews v. State, ___ S.E.2d ___, 2011 WL 149500 (Ga. App.).

MOTION TO SUPPRESS GRANTED

An officer stopped the Defendant based on knowledge that the Defendant lacked a driver's license five years earlier. The Defendant's vehicle was searched, and he was charged in an indictment based upon evidence obtained during the search. He moved to suppress.

HOLDING: The evidence was suppressed. The Court held that knowledge based on five-year-old information was too remote to justify the stop or the resulting search of the vehicle. U.S. v. Guice, Slip Copy, 2011 WL 117235 (M.D. Ala.).

MOTION TO SUPPRESS DENIED

An officer stopped the Defendant based on a tip from another officer. That officer said a confidential informant had purchased drugs in a controlled buy from someone in a white Lincoln Navigator that was heading towards Atlanta on I-85. Thereafter, the Defendant was stopped in a white Lincoln Navigator while driving over the speed limit and crossing lanes without a turn signal. He was given a citation and consented to a search of the vehicle. No drugs were found, but the Defendant admitted he had \$4,000.00 in his pocket. The money was seized. He moved to suppress the evidence.

HOLDING: The evidence was admitted. The Court held that the officer's actions were objectively reasonable and that articulable suspicion that illegal activity had occurred or was occurring justified the seizure. A substantial portion of the money was marked currency used by the confidential informant in his purchase. U.S. v. Williams, Slip Copy, 2011 WL 124508 (M.D. Ala.).

INQUIRING MINDS

QUERY: What should you do if you are served with a lawsuit regarding actions that occurred during the course and scope of your employment?

ANSWER: **First**, complete a Request for Representation form (Policy Manual Exhibit 8.03-1). **Second**, **IMMEDIATELY** fax a copy of that request along with a copy of the documents to **Legal Services at (404) 624-7788**. **Third**, mail or hand-deliver **all original documents** received **directly** to Legal Services **no later than the next business day after receipt**. **Fourth**, forward a copy of the documents through your chain of command. See DPS Policy No. 8.03.3(B).

QUERY: Is notice required for failure to appear license suspensions?

ANSWER: Notice is **not required** for suspensions **after January 1, 2010**. **BUT**, notice is **required** for failure to appear suspensions issued **prior to January 1, 2010**.

On January 1, 2010, O.C.G.A. §40-5-56 took effect which includes language stating that failure to appear and respond to a citation results in the suspension of the violator's driver's license or nonresident driving privilege. It also provides that the language reflected on a uniform traffic citation "shall be sufficient notice(.)"

QUERY: Can a suspect be charged with felony obstruction based upon profanity without any threat of violence?

ANSWER: **No**. **Felony obstruction** under OCGA § 16-10-24(b) **contains the element of violence**. However, a misdemeanor obstruction offense based upon OCGA § 16-10-24(a) does not contain the element of violence. Misdemeanor obstruction of an officer does not require proof of forcible resistance or threat of violence. Stryker v. State, 297 Ga. App. 493, 677 S.E.2d 680 (2009). The Court has held that "argument, flight, stubborn obstinance, and lying" are all examples of conduct that may support a conviction for **misdemeanor obstruction**. See Wilcox v. State, 300 Ga. App. 25, 684 S.E.2d 108 (2009).

ALS REMINDER

⊗ Please remember to check the OSAH website at www.osah.ga.gov for a list of all of your upcoming ALS cases. Find the list of scheduled ALS cases by selecting the court date and the judge on the OSAH website. Contact Dee or Beverly with any questions regarding ALS or the website.

⊗ Should you receive a failure to appear regarding an ALS case without receiving a hearing notice on the case, please contact Dee or Beverly as soon as possible.

QUOTABLE WISDOM WORKS

"All human nature vigorously resists grace because grace changes us and the change is painful."
~Flannery O'Connor

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.