



# *DPS Legal Review*

**March 2011 Legal Services (404) 624-7423 Volume 10 No. 3**

## **DELIBERATE INDIFFERENCE**

When the Orleans Parish District Attorney's Office prosecuted the Defendant for attempted armed robbery, it failed to disclose a crime lab report. After the Defendant was convicted of robbery, he chose not to testify at his subsequent murder trial. He was also convicted of murder. A month before his scheduled execution, the lab report was discovered. A Court reviewed the report and vacated both convictions. The Defendant was found not guilty in a retrial of the murder charge.

The Defendant brought a civil rights suit against the district attorney's office alleging that failure to properly train the prosecutors caused him to be wrongly convicted, incarcerated for 18 years, and nearly executed. A jury found the district attorney's office liable for failure to train.

**HOLDING:** On appeal, the United States Supreme Court set aside the jury verdict. It held that the district attorney's office could not be held liable under §1983 for failure to train its prosecutors based on a single violation. The Court also held that "A local government's decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for §1983 purposes, but the failure to train must amount to 'deliberate indifference to the rights of persons with whom the [untrained employee] come into contact.'" Connick v. Thompson, \_\_\_ U.S. \_\_\_, 2011 WL 1119022.

## **FREE SPEECH**

Over the past 20 years, the Westboro Baptist Church ("Westboro") has picketed military funerals to communicate its belief that God hates the United States for its tolerance of homosexuality. The founder of the church and six of his members traveled to Maryland to picket the funeral of a Marine who was killed in Iraq in the line of duty. The picketing took place on public land approximately 1,000 feet from the church where the funeral was held. The picketers peacefully displayed their signs for

about 30 minutes. The signs stated: "Thank God for Dead Soldiers," "Fags Doom Nations," "America is Doomed," "Priests Rape Boys," "You're Going to Hell."

The deceased Marine's father saw the tops of the picketers' signs when driving to the funeral. He did not learn what was written on the signs until he watched the news later that night. Thereafter, he sued the pastor, members who picketed, and Westboro alleging intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy. A jury held Westboro liable for millions of dollars in compensatory and punitive damages.

**HOLDING:** On appeal, the United States Supreme Court set aside the jury verdict. It held that the First Amendment shielded Westboro from tort liability for picketing. The Court held that the Free Speech Clause of the First Amendment can serve as a defense in state tort suits. To determine whether speech is of public or private concern, the Court examined the content, form, and context of the speech. The Court held that the content of Westboro's signs addressed matters of public import on public property. Westboro did it in a peaceful manner in full compliance with the guidance of local officials. The funeral was not disrupted, and the time and place did not alter the nature of the speech.

The Court held that even protected speech is not equally permissible in all places and at all times. The Government may, in a few limited instances, regulate the location of targeted picketing under provisions deemed content neutral. After this incident, Maryland enacted a law restricting funeral picketing. Snyder v. Phelps, \_\_\_ U.S. \_\_\_, 131 S.Ct 1207 (2011).

## **ACCIDENTAL DVD DESTRUCTION**

The Defendant was the passenger in a vehicle that Cobb County Sheriff's Officers saw while on patrol. The Officers noticed that the vehicle did not have a tag and initiated a traffic stop. Although they initially investigated the

driver for DUI, he was ultimately arrested for driving with a suspended license. At that point, the Officers told the Defendant that she was free to leave. Because the officers believed she was intoxicated, they told her to call someone to pick her up.

Because she was unable to find a ride (due to the late hour), she accepted the offer of a ride from one of the Officers. That Officer, as a safety precaution, asked the Defendant for permission to check her purse for weapons. She consented, and, in plain view, the Officer saw two small bags containing cocaine and marijuana on top of the purse's other contents. She was arrested and indicted on one count each of possessing cocaine, possessing less than an ounce of marijuana, and possessing an open container of alcohol in a motor vehicle. The Defendant moved to dismiss the charges.

At the hearing, the Defendant questioned why the DVD of the traffic stop failed to contain the Officers' pursuit or her search and arrest. The Defendant claimed, after her arrest, the driver shouted that the drugs in her purse actually belonged to him. The copied DVD did not contain any of the Officers' interactions with the Defendant. The Officers said this occurred because the recording had been manually stopped when they believed their investigation had ended with the driver's arrest. When the Defendant's attorney tried to view the master DVD with the district attorney, it failed to play and was accidentally erased. The Court held that it did not believe the State intentionally destroyed the master DVD in bad faith. Holding that the master DVD *may* have contained material exculpatory evidence (which the Defendant could not secure by any other means), the Court dismissed the charges. The State appealed.

**HOLDING:** The Georgia Court of Appeals held that the record failed to support a finding that the loss of the master DVD's contents required dismissal of the charges since it did not rise to the level of constitutional materiality. The destruction of the master DVD did not, in the absence of a showing of bad faith on the part of the State, amount to a due-process violation. State v. McNeil, \_\_ S.E.2d \_\_, 2011 WL 1015316 (Ga. App.).

#### **INQUIRING MINDS**

**QUERY:** Does the new seven (7) day car registration requirement apply to car dealers?

**ANSWER: No.** Dealers are statutorily required to provide a temporary tag based on the

amended version O.C.G.A. Section 40-2-8(2)(B)(i). The change highlighted in last month's "Legal Review" captures private sales. Buyers in a private sale who lack the documentation required to register their vehicle in seven (7) days, may secure a temporary operating permit pursuant to O.C.G.A. Section 40-2-29(c). A temporary operating permit is valid through the end of the initial 30 day registration period based upon O.C.G.A. Section 40-2-21(a)(1). Click below for more details:



Informational Bulletin  
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**QUERY:** Does a violator's refusal to sign a traffic citation establish probable cause for arrest?

**ANSWER: No!** O.C.G.A. § 17-6-11 allows a traffic violator to display their license to an officer in lieu of bail. Once a valid license is displayed, O.C.G.A. § 40-13-2.1(a) requires a violator to sign the citation as an acknowledgement of their receipt and of their obligation to appear for trial. The language in O.C.G.A. § 40-13-2.1(a) requires an officer to inform a violator that: 1) signing is not an admission of guilt and 2) failing to sign constitutes reasonable cause to bring them before a judicial officer to post bond.

#### **ALS REMINDER**

⊗ When a DUI defendant enters a guilty plea to DUI prior to the ALS Hearing, the ALS proceeding still has to be resolved. When the agreement is to withdraw the ALS based on the DUI plea, **paperwork withdrawing the ALS must be filled out and submitted to the Administrative Law Judge.** If you have any questions regarding this procedure, please contact Dee or Beverly.

⊗ Once the administrative license suspension has taken effect, the suspension cannot be withdrawn by the arresting officer - unless the 1205 form was issued in error.

#### **QUOTABLE WISDOM WORKS**

*"Follow your passion; follow your heart, and the things you need will come."*

*~Elizabeth Taylor*

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