



The Trooper Legal Update

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ANONYMOUS TIP IS JUSTIFICATION FOR STOP

City of Conyers police officer received a telephone call from anonymous tipster that he had witnessed a drug transaction and that a man who bought the drugs had them in his vehicle; that the buyer and a woman, both approximately 26 years old, would be traveling east toward South Carolina on Interstate 20 in a navy blue, 2002 to 2004, four-door, SUV with 22-inch chrome wheels with a specified tag number and that it would travel through Conyers in approximately 20 to 30 minutes, possibly up to an hour if the driver stopped for some reason.

Twenty five minutes later a 2002 blue SUV with 22-inch chrome wheels and bearing the license number given by the tipster passed the officer heading East on I-20. The officer followed the vehicle confirming the occupants matched the race and gender described by the tipster. The officer stopped the vehicle.

As he approached the vehicle, he smelled strong odors of both raw and burnt marijuana. A drug dog alerted on the SUV. A search of the vehicle revealed a bag containing 7.75 ounces of marijuana under the driver's seat.

The Court found that the tip in this case specifically described the vehicle in question, its occupants and how the tipster knew about the illegal drugs. The tipster accurately predicted the future behavior of where and when the occupants of the vehicle would be traveling. The information was very detailed and included information that was not available to the general public (route and time of travel).

The tip was sufficiently reliable to justify the investigatory stop of the car. *Daniels v. The State*, Georgia Court of Appeals No. A05A1820 (March 16, 2006)

MUNICIPAL COURT OF ATLANTA

All traffic citations issued in the City of Atlanta to be heard in City Court MUST indicate filing in the MUNICIPAL COURT OF ATLANTA. No other designation will be accepted by the Court for filing, according to an order from the Chief Judge of the Atlanta Municipal Court.

REASONABLE SUSPICION NEEDED TO ESCALATE CONSENSUAL ENCOUNTER TO INVESTIGATORY STOP

Officer investigated a vehicle with driver's door ajar parked in front of a closed gas station early in the morning and initially suspected a vehicle break-in. When he saw two women in the vehicle, he thought they might need assistance. The officer asked Ward (who was in the driver's seat) why she was there. She replied that she was looking for Wal-Mart. The officer determined she was lying because the route she described took her past a Wal-Mart. Ward then admitted that they were going to a game room behind the service station. The officer asked for and received identification from each woman and learned that Ward's license was valid and she had no warrants. So far so good, but THEN, while still holding Ward's license and 15 minutes into the encounter, the officer asked Ward if she minded stepping out of the vehicle. She replied that she did not mind, and stepped out of the vehicle and met the officer at the rear of the car. The officer asked if she had weapons; she answered she did not. The officer asked if she minded a pat down and she said she did not. The officer felt something in her pocket and asked if she had drugs on her person; she said she didn't. When the officer asked what was in her pocket, she said she didn't know. When the officer asked if she minded him searching inside her pocket, she said she did not mind. BINGO!. The officer found a plastic bag of Meth. Court said the search was no good. Officer still had her driver's license and she was not free to go. The officer had no particularized and objective basis for suspecting these women were involved in criminal activity. Meaningless inconsistencies in answers to police questions do not give rise to reasonable, articulable suspicion. The consent to search was the product of a wrongful detention. *Ward v. State*, Court of Appeals No. A05A2288 (Feb. 28, 2006); 2006 WL 453950 (Ga.App.)

LEGAL QUICKIES

DRIVE-OUT TAG WITH NO VALIDATION STICKER PROVIDES "REASONABLE" AND "ARTICULABLE" BASIS FOR TRAFFIC STOP

O.C.G.A. § 40-2-8(b)(2)(B)(i) and (ii) require a temporary plate which shall bear the V.I.N., year, make and model of the vehicle and the expiration date of the period within which the purchaser is required to register the vehicle.

Officer stopped vehicle when he noticed that the vehicle had a drive-out tag without a validation sticker (a security strip with a holographic security image and write resistant overlay). The court held that the officer "had a reasonable and articulable basis for the stop and that the stop was constitutionally proper." *United States v. Berry*, U.S. District Court (N.D.Ga.) No. 1:05 CR 75 WSD (Feb. 23, 2006)

AFTER MIRANDA, DEFENDANT MUST CLEARLY, UNAMBIGUOUSLY AND UNEQUIVOCALLY INVOKE RIGHT TO REMAIN SILENT

The Supreme Court has held that when a person undergoing custodial interrogation indicates in any manner his desire to remain silent, prior to or during questioning, the interrogation must cease. However, law enforcement officers are not required to terminate an interrogation unless the invocation of the right to remain silent is unambiguous.

In *United States v. Del Rio*, 11th Cir. D.C. Docket No. 99-00110-CR-1-1 (Feb. 27, 2006), Defendant was arrested on federal drug charges. After being advised of his *Miranda* rights he gave verbal and written consent to search his residence. After the search, investigators asked if he wished to cooperate with the investigation. He replied, "I'm no snitch," and "I do not believe in providing information regarding other individuals." The court held that Defendant's answer did not clearly invoke his right to remain silent. If the invocation is ambiguous or equivocal, the interrogating officer has no duty to clarify the suspect's intent and may proceed with questioning.

Defendant was advised of, and fully understood, his *Miranda* rights and nonetheless continued to speak with law enforcement. His reluctance to provide information regarding other individuals, therefore, did not require the officers to cease questioning.

ALS REMINDERS

Legal Services welcomed a new ALS Paralegal, Debi Spivey, on March 1, 2006. Debi's position is provided by the ALS grant, which is funded by the Governor's Office of Highway Safety. She will assist Dee Brophy with her ALS duties. She may be contacted at 404-624-7023.

Please remember the following:

**If you cannot attend an ALS hearing, please remember to file a Motion for Continuance. The form is located in Public Folders and Dee can answer any questions you have.

**Take a copy of your intoxilyzer 5000 permit and the original intoxilyzer test results to your ALS hearing when the case involves an intoxilyzer test or an attempted test.

**Read the implied consent card immediately upon placing the DUI defendant under arrest unless circumstances exist which prevent the implied consent from being read immediately.

**ALS calendars for the Office of State Administrative Hearings (OSAH) are now on their website at www.osah.ga.gov. Click on "My hearing" to go to the location of the calendars. Click the court date, go to the drop down box for the Judge's names, click submit and you can view the entire calendar for that particular Judge and date.

**Contact Dee or Debi if you have any ALS/DUI topics that you want discussed at upcoming ALS/DUI training.

HUMOR WORKS

Two little boys were overheard talking one day:

1st boy: "My name's Billy. What's yours?"

2nd boy: "Tommy."

1st boy: "My daddy's an accountant. What does your daddy do for a living?"

2nd boy: "My daddy's a lawyer."

1st boy: "Honest?"

2nd boy: "No, just the regular kind."

Published with approval of the Office of Colonel Bill Hitchens.

Legal Services: Melissa Rodgers, Director; Chiquita T. Johnson, Lee O'Brien, Deputy Directors; Dee Brophy, ALS Attorney. Please refer any Questions/Comments to: lobrien@gsp.net