



DPS Legal Review

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RIGHT TO COUNSEL AND INTOXILYZER INSPECTION CERTIFICATES

Defendant was arrested for driving under the influence. The arresting officer read defendant the implied consent warning and requested a breath test. Defendant wanted to call an attorney before he made a decision as to whether to submit to the state administered breath test. The officer explained to defendant that he could not contact an attorney prior to taking the test. Defendant took the requested breath test.

The Supreme Court decided two issues involving defendant's case. The Supreme Court held that an individual is not entitled to consult with an attorney before deciding whether to submit to a breath test. The defendant must be advised of the implied consent rights. With respect to a defendant consulting with a lawyer, "there is very little that a lawyer could add that would substantially affect the fairness of the trial." In deciding whether to take a breath test, the decision "is not essentially a lawyer's decision."

In addition, defendant alleged that the intoxilyzer inspection certificate was inadmissible because it was testimonial hearsay. Defendant claimed the certificate was made by a person he had not had an opportunity to cross examine. The Supreme Court held that the inspection certificate was not testimonial hearsay and was admissible.

"An inspection certificate is a record made and promulgated in the regular course of business." "It is not made in an investigatory or adversarial setting; nor is it generated in anticipation of the prosecution of a particular defendant." Therefore, the certificate of inspection is not considered testimonial hearsay. Rackoff v. State, S06G0357, November 20, 2006.

SEATBELT VIOLATION SUFFICIENT

Deputy Sheriff observed Defendant driving without wearing a seat belt. As the Deputy approached Defendant's vehicle, he "immediately smelled an overwhelming odor of marijuana coming out of the vehicle." He also noticed small pieces of green marijuana on Defendant's clothing.

The Deputy searched and found cocaine and ecstasy. He also found marijuana in Defendant's pocket. Defendant was convicted of trafficking cocaine, possession of "Ecstasy" with the intent to distribute, and possession of marijuana. The Court denied Defendant's Motion to Suppress in which he contended the evidence seized was a result of an unlawful stop and search of his vehicle.

Defendant claimed that the seat belt violation was not properly used to justify the traffic stop because it was "clearly pretextual." The Court held "violations of the mandatory seat belt statute are sufficient to authorize a traffic stop" and cited O.C.C.A.

§ 40-8-76.1(e)(3),(f). Defendant also claimed that he was wearing his seat belt but the trial court found the testimony of a 17-year-veteran of the Coweta County Sheriff's Department to be more credible than the self-serving testimony of defendant. The Court concluded that the stop was not pretextual.

Defendant claimed that no probable cause existed to search his vehicle and no exception to the warrant requirement was implicated. The odor of burning marijuana constitutes sufficient probable cause to support the warrantless search of a vehicle, provided that the Deputy's ability to identify that odor is placed into evidence. The Deputy testified to his training and experience, which qualified him to detect the odor of marijuana. The trial court properly denied Defendant's motion to suppress. *Soilberry v. State*, 2006WL3072038 (October 31, 2006).

LEGAL QUICKIES

DRIVING WITH SUSPENDED REGISTRATION - While O.C.G.A. § 40-2-8 deals with the operation of unregistered vehicle or vehicle without current license plate, revalidation decal, or county decal, etc., O.C.G.A. § 40-6-15 specifically provides for the offense of "Knowingly driving motor vehicle on *suspended, canceled, or revoked* registration" and provides for specific, gradually increasing, misdemeanor punishment. This offense was not included in the traffic codes summary (the **BLUE** trifold). You may want to pencil in a note under the "Registration and Licensing..." section: *Suspended Registration 40-6-15*.

ALS REMINDERS

1. If the DUI case involves standardized field sobriety tests, please remember to testify to which tests were administered, describe each test, and testify as to the clues that you observed on each of the tests.

2. If you enter into a plea agreement on an ALS case, please remember to check the appropriate box on the ALS withdrawal form.

HUMOR WORKS

A lawyer from New York City runs a stop sign and gets pulled over by a Georgia Trooper. Being from New York, he thinks that he is smarter than the Trooper because he is sure that he has a better education. He decides to prove this to himself and have some fun at the Trooper's expense...

Trooper: "License and registration, please."

Lawyer: "What for?"

Trooper: "You didn't come to a complete stop at the stop sign."

Lawyer: "I slowed down, and no one was coming."

Trooper: "You still didn't come to a complete stop. License and registration, please."

Lawyer: "What's the difference?"

Trooper: "The difference is, you have to come to a complete stop, that's the law. License and registration, please!"

Lawyer: "If you can show me the difference between slow down and stop, I'll give you my license and registration and you give me the ticket, if not you let me go and no ticket."

Trooper: "All right then Sir, exit your vehicle please."

At this point, the Trooper takes out his nightstick and starts beating the hell out of the lawyer and says, "Do you want me to stop, or just slow down?"

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