The Trooper Legal Update

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NUMERICAL EVIDENCE OF BAC ADMISSIBLE

Allison Webb was convicted of DUI less safe and appealed her conviction on the ground that "the trial court erred in allowing numerical value evidence of her blood alcohol level in a less safe case." Webb was arrested on Jan. 22, 2005, after she was stopped for driving 62 miles per hour in a 45 mph zone. The deputy who stopped the car smelled a strong odor of alcohol. When Webb stepped out of the car, she was unsteady on her feet. She agreed to field sobriety testing and exhibited six out of six clues on the HGN test. She also gave a positive result on the alco-sensor. She was placed under arrest and read implied consent warnings for persons over 21. She refused the test. The deputy testified at trial that based on his training and experience, four out of six clues on the HGN would indicate a certain percentage chance that the blood alcohol level was above a .10. Webb objected to the per se alcohol testimony. The Court ruled that the crime of driving DUI less safe consists of (1) driving, (2) under the influence of alcohol, (3) to the extent that the person is less safe to drive. The Court upheld the conviction, stating the deputy's testimony of numerical evidence was admissible because its probative value was not outweighed by the possibility of undue prejudice. Webb v. State, 2006 WL 163621 (Jan. 24, 2006)

FEDERAL FIREARM CONVICTION UPHELD

In U.S. v. Middleton, 2006 WL 156872 (S.D. Ga. Jan. 19, 2006), a Dept. of Natural Resources Ranger received a tip that Gene Middleton was operating a coyote trap in Long County, Georgia. On Feb. 22, 2005, he staked out the premises and witnessed Middleton approach the trap with his son. The ranger approached him and asked for a driver's license and trapping permit which was produced by Middleton. The ranger looked in Middleton's vehicle and saw a .22 Marlin rifle between the front seats. The ranger asked Middleton who owned the gun and Middleton stated that he did. Prior to trial he stipulated to a prior felony conviction and asserted that his brother owned the gun and that his son possessed the gun on the date of the incident. In sustaining the conviction, the Court ruled that the facts of the case were analogous to a traffic stop and the ranger's questions were brief and to the point which justified a brief detention under Terry v. Ohio, 392 U.S. 1 (1968), and were not unlawful under Miranda. The Court held, "No Miranda warnings are required to legitimize a Terry stop, even though the suspect is not free to leave during the brief detention."

18 MINUTE DELAY IN READING IMPLIED CONSENT JUSTIFIED

In Naik v. State, 2006 WL 203574 (Jan. 27, 2006), Naik was stopped by a DUI task force officer because she was driving with a flat tire. When the officer approached the vehicle, he detected a strong odor of alcohol and Naik's glassy eyes. She was placed under arrest for DUI after field sobriety testing. When placed in the back of his patrol car, Naik got very upset and was crying. After placing her in the back of the patrol car, the officer became aware of her passenger. The officer spent the next 18 minutes releasing the vehicle to a wrecker, attending to the safety of the passenger, the vehicle and its contents, and the contents of Naik's purse and valuables before reading her implied consent rights. Naik consented to a breath test. In appealing her DUI conviction, Naik asserted that her State-administered breath test should be excluded because she was not timely notified of her implied consent rights as required by O.C.G.A. §40-6-392(A)(4) (which requires that notification of rights be given "at a time as close in proximity to the instant of arrest as the circumstances of the individual case might warrant."). Based on the totality of the circumstances and the officer's testimony that he did not believe he could effectively deliver implied

consent rights until the passenger was attended to, the vehicle transferred, the scene controlled and Naik was "calm enough to listen to her rights and make a reasonable decision," the Court upheld her DUI convictions. The Court ruled that "Given the concerns of the arresting officer for the safety of himself and the passenger, the security of the roadway, the protection of Naik's purse and other valuables, and Naik's fragile emotional state, his 18-minute delay in reading Naik her implied consent rights was timely under the circumstances."

LEGAL QUICKIES

Defendant Not Convicted Absent Evidence Collision Damage Exceeded $500- Sheriff's deputy noticed an abandoned vehicle in a ditch with grill damage while on patrol. Upon further inspection, the deputy observed the strong smell of alcohol and a 12 pack of beer, with six cans missing. The deputy impounded the car and tried unsuccessfully for four days to find the driver. On the fifth day the driver, Joshua Harvey contacted the officer and requested information on how to get the vehicle released. Harvey claimed that he had the accident swerving to miss a truck and did not report it because he didn't have a cell phone. He was issued a citation for failure to report an accident and failure to maintain lane. In appealing the judgment of guilt on the failure to report an accident, Harvey stated that the evidence was insufficient to sustain a conviction because there was no evidence of the extent of the damage. While O.C.G.A. §40-6-273 provides that the driver of a vehicle involved in an accident resulting in injury, death or property damage to "an apparent extent of $500 or more" shall give notice of such accident to law enforcement, the Court reasoned that there was no specific mandate that the amount of damage be certain but some evidence must be presented to estimate the cost of damage to the vehicle and to conclude that the apparent extent of the damage exceeded $500. The Court reversed Harvey's conviction because there was no evidence presented that established the cost to repair the vehicle. The Court held that Harvey "should not face criminal prosecution for a low estimation without some evidence of the nature and extent of the damage to the car." Harvey v. State, 2006 WL 226024 (Jan. 31, 2006).

DUI Conviction Does Not Require Exact Jury Charge to Be Given by Court- Retired Georgia State Trooper observed a speeding truck driver by Hatcher traveling on the shoulder of Highway 11 in Hall County. The truck passed the retired
trooper and other cars before the retired trooper alerted the State Patrol. The responding trooper pulled Hatcher's vehicle over minutes after the notification from the retiree and detected the odor of alcohol as he approached Hatcher. When asked if he had drunk any alcohol, Hatcher responded that he had consumed 3 or 4 beers. The trooper also noticed Hatcher's bloodshot eyes. Hatcher agreed to take an alco-sensor test, which was positive for alcohol. HGN and walk and turn indicated that Hatcher was "unstable." A second alco-sensor test was positive for alcohol and he was arrested for DUI. He was read the Georgia implied consent warning, but refused chemical testing. Hatcher appealed his conviction and claimed that the trial court erred in failing to instruct the jury with the specific charges that the "alco-sensor test is in the nature of a field sobriety test and thus cannot be used to establish a person's breath-alcohol content," and "a positive alco-sensor result is not enough evidence to convict." In upholding his conviction, the Court ruled that Hatcher was charged with DUI less safe and not per se, driving with a concentration of .08 grams or more. Additionally, the Court reasoned that the State did not attempt to use positive alco-sensor results to establish evidence of exact breath-alcohol content. The Court held that there was no error in the jury's instructions. The Court determined that "A trial court is not required to instruct the jury in the exact language of a requested charge, and when the principle of law is covered in another charge, that is sufficient." Hatcher v. State, 2006 WL 328489 (Feb. 14, 2006).

HUMOR WORKS

A gang of robbers broke into a lawyer's club by mistake. The old legal lions gave them a fight for their life and their money. The gang was very happy to escape. "It ain't so bad," one crook noted. "We got $25 between us." The boss screamed: "I warned you to stay clear of lawyers--we had $100 when we broke in!"

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