



DPS Legal Review

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PROBABLE CAUSE FOR ARREST AND EXCESSIVE FORCE AT TRAFFIC STOP

On July 6, 2012, a GSP Trooper initiated a traffic stop and issued the claimant a citation for speeding. The claimant informed the trooper that she needed to sign the citation with a red pen. The claimant had been a prior victim of identity theft and had “made [the] decision to sign all official, original documents with a red signature as a part of a larger plan to protect her signature and identity from future abuses.” The trooper informed the claimant that she could not use a red pen. The claimant told the trooper she needed to call her husband to ask what to do if she could not sign her signature in red ink. The trooper informed her not to use her cellphone during the traffic stop, but the claimant continued to attempt to make a call. The trooper again asked her to put her cellphone down and the claimant told the trooper she did not have a gun. The claimant refused to put her cellphone down and the trooper informed her that she was under arrest. The trooper asked her to step outside of the vehicle, but she refused to do so and reached for her purse. The trooper pulled the claimant from the vehicle, put her face down on the road, and handcuffed her.

The claimant filed a civil suit against the trooper claiming that she was falsely arrested and the trooper had used excessive force against her, causing her injuries.

HOLDING: The Court concluded the trooper was protected by qualified immunity and granted summary judgment. To receive qualified immunity, the officer “must first prove that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred.” The Court determined the trooper was acting within his discretionary authority when he was patrolling the public roads as a trooper, including when he made arrests while on patrol.

Once the Court determines that the officer was acting within his discretionary authority, the claimant must show that the constitutional rights

the officer allegedly violated were “clearly established.” For false arrest claims, the question is whether a reasonable officer in the same circumstances would have believed he had probable cause to arrest. Because in the Eleventh Circuit, probable cause to stop an offender for a traffic violation translates into probable cause to arrest the offender for that violation, the Court held that the trooper had probable cause to arrest the claimant for speeding. The Court also held that there was arguable probable cause to arrest the claimant for obstruction of justice because a reasonable officer could have concluded that she was obstructing justice when she refused to sign the citation without a red pen and when she refused to exit the vehicle once asked during the traffic stop.

The Court further held that the trooper was entitled to qualified immunity on the claim of excessive force. In assessing whether an application of force was excessive, the court considers “(1) the need for the application of force, (2) the relationship between the need and amount of force used, and (3) the extent of the injury inflicted.” The Court reasoned that the claimant’s behavior in demanding a red pen, being argumentative by refusing to sign and attempting to make a phone call, referencing a weapon, and attempting to access her purse was enough that a reasonable officer could have concluded that the trooper’s application of force was necessary to secure the defendant and ensure the trooper’s safety. *Appleby v. West*, 2014 WL 3955690 (N.D.Ga.).

LICENSE PLATE OBSTRUCTION

In November 2012, a police officer stopped the defendant’s vehicle after the officer observed “that the fourth digit [of the [defendant’s] license plate] was obstructed by the attached ball hitch.” During the traffic stop, the officer discovered drugs in plain view in the defendant’s vehicle. The defendant filed a motion to suppress the evidence contending that the trial court erred in

concluding that her license plate was obstructed, thus justifying a traffic stop.

HOLDING: The Court held the defendant's motion to suppress the evidence should be denied. O.C.G.A. § 40-2-41 provides that "every vehicle required to be registered under this chapter...shall at all times display the license plate...and the plate...shall be at all times plainly visible." The statute also provides "...It shall be the duty of the operator of any vehicle to keep the license plate legible at all times...No apparatus that obstructs or hinders the clear display and legibility of a license plate shall be attached to the rear of any motor vehicle required to be registered in the state." Based on evidence of the officer's patrol vehicle video showing the bumper hitch concealing at least one of the license plate numbers and the defendant's photographic evidence showing the fourth digit on the license plate partially obstructed by the bumper hitch, the Court reasoned the officer had a valid basis to stop the defendant's vehicle. In this case, during the traffic stop, the officer was able to read the complete license plate number and discovered the vehicle's registration was suspended and there was no valid insurance on the vehicle.

Upon the defendant's argument that O.C.G.A. § 40-2-41 applies only to items such as a plate cover that are attached to the license plate itself, the Court noted and discussed that prohibition of other items attached to the license plate had not been addressed in Georgia courts. Other states (notably, California and Wyoming) have determined that a bumper hitch that obscures part of a license plate violates a statute requiring that a plate be "plainly visible" or "legible." The Court concluded that the statute does not limit its prohibition to items attached to the license plate itself, but includes any "apparatus" that is "attached to the rear of any motor vehicle." Worlds v. State, 2014 WL 3953727 (Ga.App.).

INQUIRING MINDS

QUERY: How can a motorist be charged for traffic violations on dirt roads or roads with no clearly marked lanes?

ANSWER: Consider the relevant statutes: O.C.G.A. § 40-6-48(1) states "whenever any roadway has been divided into two or more clearly marked lanes for traffic...A vehicle shall be driven as nearly as practicable entirely within

a single lane." O.C.G.A. § 40-6-40(a) provides "[u]pon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway..." Although Georgia courts have not specifically addressed roadways such as dirt roads without clearly marked lines, there is case law guidance on what the court considers in establishing certain charges on roads without clearly marked lanes. In Stewart v. State, the Court reversed the defendant's conviction on a charge of failure to maintain lane under O.C.G.A. § 40-6-48(1) due to a lack of evidence presented to show the roadway in question was divided into lanes. 288 Ga. App. 735 (2007). Conversely, in Plemmons v. State, the Court noted the defendant's charge of failure to maintain lane under O.C.G.A. § 40-6-48(1) was changed when it was discovered that the road he was driving on at the time of the incident did not contain a striped dividing line. The State changed the charge in that case to driving on the wrong side of the road in violation of O.C.G.A. § 40-6-40(a). 755 S.E.2d 205 (2014). See also O.C.G.A. §§ 40-6-241 (driver to exercise due care), 40-6-390 (reckless driving), and 40-6-180 (too fast for conditions).

ALS REMINDERS

⚠ 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. See Department of Driver Services Rules and Regulations 375-3-3-.04(6)(b)(2).

Example: An ALS hearing is held and the license suspension is affirmed. At a later time, the DUI defendant agrees to enter a plea to the DUI and requests that the arresting officer withdraw the administrative suspension. The administrative suspension cannot be withdrawn by the arresting officer since the suspension has already taken effect. All negotiations for withdrawal of the ALS for a DUI guilty plea must take place prior to the ALS taking effect.

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