



DPS Legal Review

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ADMISSIBILITY OF FIELD SOBRIETY TESTS

On January 31, 2013, a detective initiated a traffic stop after observing the defendant's vehicle weave, cross the center line multiple times, strike the right curb, and travel partly off of the roadway. The detective called for backup, approached the vehicle, and spoke to the defendant. He detected the odor of alcohol emanating from the defendant's breath. The detective returned to his vehicle to wait for the second officer. At approximately 12:45 p.m. the second officer arrived. When he spoke with the defendant, he detected the odor of alcohol coming from the defendant and noticed that his eyes were bloodshot and watery, he mumbled, and that his speech was slurred. When asked whether he had been drinking, the defendant replied that he was coming from a business meeting and had consumed two glasses of wine and two beers with the last one being consumed at 11:00 p.m. The defendant complied with the officer's request to exit his vehicle and approach the police car. The defendant walked unsteadily as he approached the police car.

The defendant refused the officer's request to submit to an alcosensor evaluation, but agreed to submit to field sobriety tests. The defendant exhibited six out of six indicators of impairment and the existence of VGN during his HGN and VGN testing. The officer believed that the defendant was impaired and administered the "walk and turn" and "one leg stand" field sobriety tests. The officer observed five out of eight indicators of impairment during the walk and turn test and four out of four indicators during the one leg stand test. During the night of the traffic stop, it was drizzling and very windy. The officer conceded such conditions could affect the dexterity and balance tests but he did not believe the conditions were dangerous and he considered the totality of the circumstances when evaluating the defendant's performance.

The defendant was charged with driving under the influence of alcohol to the extent that it was less safe for him to drive ("DUI less safe") and failure to maintain his lane. The trial court suppressed the results of the HGN, VGN, "walk and turn," and "one leg stand" tests because they were not properly administered by National Highway Transportation Security Administration standards. The State appealed.

HOLDING: The Court of Appeals reversed the trial court's decision. The Court provided that although it is well settled that HGN and VGN tests constitute scientific procedures, field sobriety tests, such as the "walk and turn" and "one leg stand" tests, *do not* constitute scientific procedure. These tests demonstrate a suspect's dexterity and ability to follow directions. Thus, "these two tests and any testimony concerning their administration are not subject to the standard ... for determining whether a scientific procedure is admissible." The Court concluded that the proper administration of the walk and turn and one leg stand dexterity tests go to the weight of the evidence and not to its admissibility. State v. Smith, 2014 WL 5900665 (Ga.App.).

DETENTION AFTER THE END OF TRAFFIC STOP

On July 7, 2008, around 4:00 p.m., a Georgia State Patrol sergeant with the Criminal Interdiction Unit was patrolling eastbound lanes of Interstate 20 in Morgan County when he observed a Toyota Camry being driven with the "tag bracket ... covering up the expiration and name of [the] state." The officer initiated a traffic stop of the vehicle in which the defendant was the sole occupant. The officer asked the defendant to exit the vehicle so he could show him the tag obstruction. While they talked, the defendant informed the officer that he did not own the vehicle and that it belonged to his mother-in-law. The officer asked for the defendant's license, registration, and insurance and observed that the defendant appeared

"extremely nervous" by exhibiting a tick of rubbing his head and that the underling of his eye was trembling.

The defendant told the officer he had traveled to Atlanta to visit a cousin and that he had been in Atlanta for three days. The officer did not see any luggage in the vehicle and asked the defendant about that. The defendant told the officer he had left his clothes in Atlanta because he was thinking about returning to Atlanta the next weekend. The defendant also told the officer that he worked in South Carolina.

Based upon his 15 years of law enforcement experience and experience in the interdiction program, the officer disbelieved the defendant's itinerary and was suspicious that the defendant was making a "turnaround trip." The officer returned to his vehicle, called a K-9 handler, and ran a check on the defendant's driver's license and tag registration. The officer returned the defendant's items and wrote him a warning for his improper tag display. The officer affirmed that the traffic stop was over at that point.

The officer continued to detain the defendant and told him that he suspected the defendant was lying about his itinerary, that he had driven to Atlanta that morning, and that he had drugs in the vehicle. The officer asked for permission to search the defendant's vehicle which the defendant refused to give. The officer told the defendant that a K-9 was in en route and within moments the K-9 unit arrived. The K-9 officer deployed the dog around the defendant's vehicle and the dog gave a positive alert. During the alert, the defendant told the initial officer that he had cocaine in the vehicle. The officer searched the vehicle and located approximately 55 grams of cocaine, a loaded pistol, and digital scales. The defendant was arrested.

The defendant filed a motion to suppress the evidence arguing that the arresting officer violated his Fourth Amendment rights by impermissibly detaining and questioning him after the officer had returned his documents, given him a warning, and that the traffic stop was over at that point. The motion to suppress was denied. The defendant was convicted for trafficking in cocaine, possession of a firearm during the commission of a crime, and possession of a firearm by a convicted felon. The defendant appealed.

HOLDING: The Court held the motion to suppress the evidence should not have been denied. "To justify additional questioning of a

driver and the search of his vehicle following a routine traffic stop, an officer must have reasonable suspicion of criminal conduct." To determine whether a reasonable suspicion exists, the courts must look at the totality of the circumstances. The State bears the burden of proving the lawfulness of the search and must show that it was lawful to detain the defendant until the time the drug dog indicated the presence of drugs. The Court concluded the State did not meet its burden. The fact that the officer observed that the defendant was extremely nervous, was driving a borrowed vehicle, and was traveling out of state with no luggage did not provide "a particularized and objective basis for suspecting [a driver] was, or was about to be, engaged in criminal activity." The Court also reasoned that the officer's experience and knowledge that Interstate 20 was a major drug corridor, law-abiding citizens travel the route and there was no testimony that the defendant's destination was a known drug source. Based upon the totality of the circumstances, the Court held the evidence seized in the ensuing search of the defendant's vehicle should have been suppressed by the trial court and the defendant's conviction must be reversed. Matthews v. State, 2014 WL 6536851 (Ga.App.).

ALS REMINDERS

⚠ If you have an ALS Hearing scheduled and you are in training, on vacation, or otherwise unavailable for the ALS Hearing, a written motion for continuance must be filed with the OSAH Judge. The form for a continuance motion is located on the MyDPS website in the ALS Folder under DPS Forms. Fill out the continuance form and send it to the Administrative Judge and the Petitioner's Attorney. If the Petitioner is not represented by an attorney, mail a copy of the continuance form to the Petitioner.

The ALS calendars are on the OSAH website at www.osah.ga.gov.

Published with the approval of Colonel Mark W. McDonough. Legal Services: Melissa Rodgers, Director, Joan Crumpler, Deputy Director, Christina Calloway, Legal Officer, and Dee Brophy, ALS Attorney. Send questions/comments to ccalloway@gsp.net.