



DPS Legal Review

March 2015 Legal Services (404) 624-7423 Volume 14 No. 3

IMPLIED CONSENT / ACTUAL CONSENT

On September 22, 2012, defendant was arrested for DUI and failure to maintain lane. The officer read the implied consent notice and requested blood and urine tests. The officer told defendant that it was a "yes or no question." Defendant responded "yes" and no further conversation regarding the consent for testing took place. The officer did not ask if defendant was "willing to freely and voluntarily give a test." Blood and urine samples were provided by defendant. The case was an "ordinary DUI," there "were no exigent circumstances," and a search warrant was not obtained.

Defendant filed a motion to suppress the blood test and argued that obtaining the test without a search warrant violated his rights under the Fourth Amendment. Defendant argued that the implied consent statute is unconstitutional as applied in his case because consent obtained under the statute does not amount to voluntary consent for Fourth Amendment purposes. Defendant was convicted of DUI drugs at a bench trial and appealed the conviction.

HOLDING: The Georgia Supreme Court vacated the judgments of the state court and remanded the case to the trial court to address whether defendant "gave actual consent to the procuring and testing of his blood, which would require the determination of the voluntariness of the consent under the totality of the circumstances." Williams v. State, 2015 WL 1393406 (Ga.).

PROBABLE CAUSE FOR BLOOD TEST AND STANDARD OF REVIEW

On the morning of June 27, 2011, the defendant was involved in a fatal vehicle accident. Officers responded to the scene and observed that the defendant appeared to be sleepy, had "glassy eyes with some redness," and "may have been unsteady on his feet." Officers did not conduct field sobriety tests to

ascertain whether the defendant was under the influence of alcohol or drugs. The defendant was arrested for running a red light and vehicular homicide in the second degree. Once the defendant was arrested, the officers searched the defendant and found "some tightly packaged pills, which they could not immediately identify." After an officer read the implied consent warning and asked the defendant to submit to a blood test, the defendant consented.

The defendant was indicted on several charges in connection with the accident. The defendant moved to suppress the results of the blood test, claiming that the officers did not have probable cause to believe that he had been driving under the influence.

HOLDING: The Georgia Supreme Court concluded that the officers had probable cause to believe the defendant had been driving under the influence of drugs. Probable cause means "facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense". The Court reasoned the officers had probable cause to believe that the defendant had been driving under the influence of drugs because the defendant had driven through a red light and caused a fatal accident, the officers observed the defendant's appearance and behavior at the scene of the accident and because of the number of unknown pills that the defendant had on his person. Hughes v. State, 2015 WL 1135824 (Ga.).

REASONABLENESS OF IMPOUNDMENT AND SUBSEQUENT SEARCH

On September 18, 2013, at approximately 10:00 p.m., an officer observed a vehicle the defendant was driving turn out of an apartment complex and travel more than 300 feet in the center turn lane. While following the vehicle, the officer ran a computer check on the license plate

and determined that the car was not insured. The officer confirmed with dispatch that the vehicle did not have valid insurance and initiated a traffic stop. The officer informed the defendant of the computer check showing that the vehicle was not covered by insurance. The defendant presented to the officer a binder with paperwork that showed the insurance took effect on August 14, 2013 and provided coverage for 30 days. The 30 days had already expired. The defendant produced an insurance card with a policy for a separate vehicle and advised that it reflected “the policy number under which the vehicle [that he was driving] should be covered.” The officer contacted the after-hours number for the insurance company to verify the vehicle’s coverage and was told by the operator that the policy for that particular vehicle could not be located.

The officer called for a wrecker to tow the vehicle and began an inventory search at the front of the vehicle. When the officer leaned down to activate the trunk latch, the defendant fled on foot. The officer pursued the defendant and returned to the vehicle. The officer discovered in the trunk “in plain view” a plastic grocery bag containing marijuana, \$2,275 in small denomination bills, bags, and rolling paper. The defendant was arrested and charged with possession of marijuana with the intent to distribute, obstruction of a police officer, driving without proof of insurance, and improper use of the center lane.

The defendant moved to suppress the evidence arguing that the traffic stop, impoundment, and inventory search of his car were unlawful.

HOLDING: The Court did not suppress the evidence. The defendant argued that the officer had no lawful reason to impound his vehicle because he was able to provide documentation showing proof of coverage. During the suppression hearing, the defendant’s insurance agent testified that the defendant’s insurance binder had expired and would not show valid proof of coverage 30 days after issuance. The Court relied on such testimony in reasoning that the officer had a lawful reason to impound the defendant’s vehicle.

In determining whether the impoundment of the defendant’s vehicle was proper, the Court relied on the doctrine of necessity which is whether the impoundment was reasonably necessary under the circumstances. The test

does not consider whether it was *absolutely* necessary to impound the vehicle. In this case, the defendant’s vehicle was parked on the side of a major road at night and was without proof of insurance thus, towing the vehicle was the only viable option for removing it from the roadway.

The Court briefly noted the inventory search was proper as the law enforcement agency’s policy required an inventory search of all vehicles prior to towing. Davis v. State, 2015 WL 822679 (Ga.App.).

INQUIRING MINDS

QUERY: Can a law enforcement officer initiate a traffic stop to check the validity of a temporary tag/license plate?

ANSWER: O.C.G.A. §40-2-8(a) provides a vehicle must be registered within 30 days. O.C.G.A. §40-2-8(b)(2)(B)(i) and (ii) provides for the requirements for temporary plates. Investigative stops of vehicles must be justified by specific, articulable suspicion of criminal activity. Relevant case law provides law enforcement officers may not stop a car with a dealer (drive-out) tag solely to ascertain whether the driver is complying with vehicle registration laws. The courts have upheld the legality of stops in which the tag appeared “weathered” or did not comply with the requirements of O.C.G.A. §40-2-8(b)(2)(B)(i) and (ii).

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. All negotiations for withdrawal of the ALS for a DUI guilty plea must take place prior to the administrative suspension taking effect. See Department of Driver Services Rules and Regulations 375-3-3-.04(6)(b)(2).

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.

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 calloway@gsp.net.