



DPS Legal Review

May 2015 Legal Services (404) 624-7423 Volume 14 No. 5

FIRST TIER STOP AFTER END OF VALID TRAFFIC STOP

In December 2013, an officer stopped the defendant's truck for a taillight violation. Upon approaching the defendant's truck, the officer asked him for his driver's license and discussed the reason for the stop. The officer briefly questioned the defendant and allowed him to exit the truck to observe the violation. The officer ran a check on the defendant's driver's license and no issues were noted. The officer gave the defendant a verbal warning to have the taillight fixed and returned his driver's license to him. After receiving his license, the defendant walked back to his truck and was about to enter it when the officer asked for a few more moments of the defendant's time. The defendant agreed and walked back towards the officer. The officer asked the defendant if anything illegal was in his truck. The defendant answered no. The officer asked for and received the defendant's consent to search his vehicle. During the search, the officer found a methamphetamine pipe with burnt residue inside of it. The officer asked about the pipe and the defendant admitted that he had smoked methamphetamine the day before. The defendant also admitted that he had a marijuana pipe inside of his truck. The defendant was arrested.

The defendant was charged with possession of methamphetamine, possession of drug related objects, and the taillight violation. The defendant moved to suppress the evidence arguing that after issuing the warning, the officer initiated a second detention that was not supported by an articulable suspicion of illegal activity. The trial court granted the motion. The State appealed.

HOLDING: The Court held that the valid traffic stop de-escalated to a consensual first-tier encounter not requiring articulable suspicion of illegal activity. A law enforcement officer who questions and detains a vehicle's driver and passengers outside the scope of a valid traffic stop exceeds the scope of permissible investigation unless he has reasonable suspicion of other criminal activity or unless the valid traffic stop has de-escalated into a consensual [first-tier] encounter. A consensual encounter requires the voluntary cooperation of a private citizen with noncoercive questioning by a law enforcement official. In order to determine whether a stop has de-escalated into a first-tier encounter, such that a reasonable person felt free to leave, the Court

scrutinizes three important factors: "(a) whether the driver's documents have been returned to him; (b) whether the officer informed the driver that he was free to leave; and (c) whether the driver appreciated that the traffic stop had reached an endpoint."

In this case, the officer returned the defendant's driver's license after the license check was clear; the officer gave the defendant a verbal warning about the taillight; and the defendant believed he was free to go because he was returning to his vehicle and was about to enter it when the officer asked to speak with him again. Upon reviewing these facts, the Court concluded that after the stop had ceased and the defendant was no longer detained, the encounter had de-escalated to a consensual first-tier encounter. State v. Anderson, 2015 WL 1787076 (Ga.App.).

SEARCH AND FORCE USED ON INDIVIDUAL WITH (MENTAL HEALTH) DISABILITY

A claimant sued the City and County of San Francisco and individual police officers for violations of the Fourth Amendment and the Americans with Disability Act (ADA), arising from an incident that occurred in August 2008. At that time, the claimant was living in a group home for people dealing with mental illness. She had stopped taking her medications and refused to see her psychiatrist. When she began acting erratically and threatened to kill her social worker, San Francisco dispatched police officers to help escort the claimant to a facility for temporary evaluation and treatment.

Upon arrival at the group home, two officers went with the social worker to the claimant's room, knocked on the door, announced who they were, and stated that "we want to help you." When the claimant did not respond, the officers entered the room with the social worker's key. The claimant grabbed a knife with a 5 inch blade, began approaching the officers, and yelled something along the lines of "I am going to kill you. I don't need help. Get out." The officers retreated and left the claimant in her room alone with the door closed. The officers called for backup and told the social worker to wait downstairs.

The officers were concerned that the claimant would gather more weapons one of them had seen in the room and would attempt to flee through a window, so they chose not to wait for backup. They never considered whether the claimant's disability should be accommodated. They decided that the larger officer should push the door open while the other officer used

pepper spray. With their pistols drawn, the officers moved in. The claimant had the knife in her hand, yelled for the officers to leave, and may have said that she was going to kill them. She did not drop the knife when sprayed in her face with pepper spray. One officer shot her twice at close range, and when she did not collapse, the other officer fired multiple shots before the claimant finally fell. A third arriving officer kicked the knife out of the claimant's hand.

The claimant survived and was prosecuted for assault with a deadly weapon, assault on a peace officer with a deadly weapon, and making criminal threats. She then filed a lawsuit against the City claiming that the officers had violated her Fourth Amendment rights and had failed to consider police practices designed to minimize the risk of violence when dealing with the mentally ill.

HOLDING: The Supreme Court of the United States held that the officers were entitled to qualified immunity and not personally liable for the claimant's injuries. Notably, the Supreme Court chose not to decide whether the ADA applies to arrests and whether the City was therefore deliberately indifferent to the claimant's mental illness.

The Court reasoned that it was not unconstitutional for the officers to enter the claimant's room the first time as "law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." The Court also reasoned that the officers' second entry was part of a single, continuous search and the officers did not have to justify the continuing emergency for that second entry. In addition, the officers knew that the claimant had a weapon and had threatened to use it to kill three people and that a delay could make the situation more dangerous. The Fourth Amendment's standard is reasonableness, and the Court determined that the officers' use of potentially deadly force was reasonable based upon the facts that the claimant continued to approach the officers even after an attempt to subdue her with pepper spray.

The Supreme Court grappled with the question of whether the officers' failure to accommodate the claimant's mental illness violated clearly established law. Public officials are immune from a lawsuit under Section 1983 unless they have "violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." In other words, at the time of the incident, did the officers have clear constitutional guidance that any reasonable officers in their shoes would have understood, which directed them to have wait for back up to encounter the mentally ill person instead of opening the door and confronting her the second time? The Court reviewed prior case law and concluded that the officers had no such fair notice and were therefore entitled to qualified immunity.

San Francisco v. Sheehan, 2015 WL 2340839 (U.S.).

LEGITIMATE PRIMARY PURPOSE FOR ROADBLOCK

On July 4, 2011, defendant was stopped at a police checkpoint and was arrested for DUI. After being convicted of DUI at a bench trial, defendant filed an appeal contending that the trial court erred by denying her motion to suppress evidence. Defendant argued that the checkpoint at which she was stopped was unlawful because the State did not prove that the police department's overall checkpoint program had a legitimate primary purpose. Testimony was presented that the primary purpose of this checkpoint was to check driver's licenses and to identify drivers that were DUI.

HOLDING: The Court of Appeals held that the trial court erred by denying the motion to suppress. The Court stated that the primary purpose of an agency's checkpoint program must be examined at the programmatic level to determine that the agency had an appropriate primary purpose for the checkpoint other than ordinary criminal wrongdoing. The State presented evidence that this particular checkpoint had a lawful purpose but that was not enough to establish the appropriate primary purpose requirement. No testimony or written evidence was admitted regarding the police department's checkpoint policy or program as a whole. Armentrout v. State, 2015 WL 2261726 (Ga. App.).

RECENT LEGISLATION CHANGES

Effective May 5, 2015, a "juvenile" is a person under the age of 17. See O.C.G.A. §15-11-630 (a). Traffic offense citations and criminal charges against persons under age 17 should be written for the jurisdiction of Juvenile Court, unless for a "delinquent act" or serious charge set forth in O.C.G.A. §15-11-630(c). Charges against a juvenile (under 17) for a delinquent act should be written for Superior Court. See subsection (c) for the "delinquent acts" that shall not be handled as juvenile traffic offenses.

ALS REMINDERS

⚠ Two Administrative Law Judges have ruled that the recent Williams v. State case, which requires establishing "actual consent" in a DUI case, does not apply in ALS Hearings. To read the Administrative Judges decisions, go to the OSAH website at www.osah.ga.gov and click on the link "Administrative Law Report."

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