



# DPS Legal Review

suppress the evidence arguing that the DUI

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## **THIRD PARTY CONSENT TO ENTER RESIDENCE**

In the early morning hours of June 14, 2013, an officer responded to a 911 call reporting a single-car accident in which the vehicle had left the scene. The officer arrived and saw that a telephone pole had been struck and “flipped.” The officer noticed a trail of oil and other vehicular fluid leading away from the pole. The officer spoke with the caller who provided that his neighbor, the defendant, had been driving a truck that hit the pole. The officer followed the trail of fluid to a truck parked in the defendant’s driveway. The truck was emitting smoke and showed “extensive damage.”

The officer knocked on the door of the home and spoke with the defendant’s mother. The officer told her that the defendant’s truck had been in a “bad accident just up the road.” The defendant’s mother told the officer that the defendant was inside of the home but that she did not think he was involved in the accident. The officer asked her if she would mind if they checked on him to make sure that he was ok. The defendant’s mother agreed. The officer proceeded to the basement of the home and found the defendant who was bleeding from the head. The defendant and his mother accompanied the officer outside to view the truck. The officer called a Georgia State Patrol trooper to investigate the accident and an ambulance to evaluate the defendant’s head injury. The officer noticed that the defendant smelled strongly of alcohol, had bloodshot eyes, and was unsteady on his feet.

After 30 minutes, the trooper arrived. After a brief investigation, the defendant was arrested for DUI. The defendant consented to chemical testing of his blood. The test results showed a blood alcohol content of 0.209 grams. The defendant was also later cited for multiple traffic offenses.

The defendant was found guilty of DUI and other traffic offenses. The defendant moved to

evidence against him resulted from the officer’s

illegal entry into his home. The trial court denied the motion. The defendant appealed.

**HOLDING:** The Court held that the trial court’s determination that the defendant’s mother consented to the officer’s warrantless entry into the defendant’s residence after a motor vehicle accident was not erroneous; thus, the officer’s entry was not an unconstitutional search. “A warrantless entry into and search of a residence may be authorized by the consent of a person possessing common authority over the premises, but the state bears the burden of proving that such consent was voluntary under the totality of the circumstances.”

In this case, the defendant’s mother testified that upon knocking on the door, the officer immediately asked her to come outside to view the truck which she did. She further testified that she told the officer that the defendant was downstairs and that she would summon him if the officer waited in the doorway. She stated that the officer followed her downstairs without her permission and she did not realize he was behind her until she reached the basement staircase. She testified that the officer promptly handcuffed the defendant and took him outside. The defendant’s mother depended on the defendant totally to provide transportation and other care for her. The Court concluded that the lower court did not err in evaluating the credibility of the witnesses. The lower court credited the officer’s testimony over the defendant’s mother and concluded that she had given the officer consent to enter. The lower court reasoned that the defendant’s mother heavily depended upon him and wanted him to avoid a DUI conviction whereas the officer had no motive to lie. Spoone v. State, 2016 WL 734081 (Ga.App.).

**PROBABLE CAUSE FOR TRAFFIC STOP  
RESULTING IN ARREST OF  
PASSENGER**

On November 21, 2013, around 2:00 a.m., an officer on routine patrol observed what appeared to be a Ford pickup truck moving slowly down a street in what he knew to be a high-crime and high-drug area. The officer turned his patrol car around and attempted to locate the truck. The officer found the truck stopped at an intersection with the defendant standing at the passenger-side door looking into the window. The defendant looked at the officer and “opened the door and jumped in the passenger seat, and the truck took off really quick.” The officer believed the defendant was alarmed by the officer’s presence and decided to leave the scene. The officer concluded that he had probably observed a drug deal and followed the truck. The truck took, in the officer’s opinion, a circuitous route that he believed was intended to lose him. The truck stopped at a red light, used its turn signal, and made a right-hand turn. The truck made a wide turn out into the left lane instead of turning into the right lane. The officer initiated a traffic stop. The truck did not stop immediately but instead traveled two blocks and pulled into a parking lot once the officer turned on his siren. The officer spoke with the driver and asked him for his driver’s license. The driver answered that he did not have one because it was suspended. The officer confirmed that the driver’s license was suspended and that he had two warrants for his arrest. The officer arrested and handcuffed the driver.

During his interaction with the driver, the officer noticed that the defendant had a hood over his face and did not look at the officer. The driver and the defendant provided conflicting answers as to how they knew each other. Another officer arrived on scene, checked the defendant’s information, and learned from the iLeads alert database that the defendant was known to carry a firearm and commit violent crimes. The officer asked the defendant to step out of the vehicle and the defendant complied. The officer observed a white substance that he suspected to be drugs on the defendant’s seat. The substance was identified as cocaine. The defendant was arrested and was searched. The search produced a loaded nine-millimeter Smith & Wesson semiautomatic handgun. A subsequent search of the defendant produced a bag containing crack cocaine, powder cocaine, marijuana, and oxycodone.

The defendant was convicted for possession of a firearm in furtherance of a drug trafficking crime and carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. §924(c)(1). The trial court denied the defendant’s motion to suppress the evidence. The defendant appealed contending that the arresting officer lacked reasonable suspicion or probable cause to stop the truck in which he was riding as a passenger and thus, the evidence subsequently collected against the defendant should have been excluded.

**HOLDING:** The Court affirmed the denial of the defendant’s motion to suppress the evidence. The Court held that the traffic stop was supported by probable cause. “An officer has probable cause to stop a vehicle where he observes that vehicle violate a traffic law.” Under O.C.G.A. §40-6-120(1), the driver of a vehicle intending to turn at an intersection shall do as follows: “...[b]oth the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.” Based upon video evidence and the officer’s testimony, the driver of the truck made a wide right turn into the left lane thus, violating the law in which the officer had probable cause to initiate a traffic stop.

The Court went further to note that the State had a strong argument that the officer had reasonable suspicion to justify conducting a traffic stop even disregarding the traffic violation. The Court briefly analyzed that based on the totality of the circumstances prior to stopping the truck such as: (1) observing the truck moving slowly down the street at 2:00 a.m. in a high-crime and high-drug area; (2) that the truck was stopped on the side of the road with the defendant standing beside it; (3) the defendant jumped into the truck after seeing the officer; (4) the truck drove off quickly; (5) the truck took a circuitous route; and (6) the truck failed to stop immediately, the officer would have reasonable suspicion of illegal activity to justify the traffic stop. United States v. Wingfield, 2016 WL 1105373 (11th Cir.).

### **ALS REMINDERS**

⚠ When entering into an agreement to withdraw the ALS for a DUI plea agreement, please use the ALS 1205 withdrawal form that is located in the ALS Folder under DPS Forms.

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