



# DPS Legal Review

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## REASONABLE DETENTION AT A TRAFFIC STOP

A State Patrol officer initiated a traffic stop after observing the defendant in a car with Michigan plates traveling 10-12 miles below the speed limit and “go over the white fog line, which would be failure to maintain a lane.” The officer stopped the defendant because he was concerned that the defendant might be intoxicated or fatigued from driving for a long period of time. The officer asked for the defendant’s driver’s license and registration and then asked how much sleep he had and whether he was too fatigued to drive. The defendant informed the officer that he lived in Augusta and produced a Georgia driver’s license and a rental car agreement.

Based upon his experience, the officer did not believe the defendant was intoxicated but was concerned about whether he was too tired to be driving. The officer asked the defendant to step out of the car so the officer could assess his level of alertness. The officer testified that he made his assessment by asking the defendant questions and “just listened to him answer my questions and how long it took him to process what I was saying.” The officer decided the defendant was not too fatigued to be driving and returned the defendant’s driver’s license and warned him about his failure to maintain lane.

The officer testified the defendant was not free to leave at that point as the officer noticed “pretty close into the traffic stop” that the car had been rented in a female’s name for a 24-hour period and that the defendant was not listed as an additional driver. The defendant produced no proof at any time that he was authorized to have the car. The officer did not return the rental agreement because he believed “[t]here was an issue whether he could drive the car off because he wasn’t an authorized driver.”

The officer testified that he “became very suspicious [that] ‘the defendant’ was trafficking in drugs pretty early into the traffic stop.” Shortly after stopping the defendant, the officer called his partner to come out to the scene. The officer’s partner arrived with a canine dog within two minutes. The officer did not conclude the traffic portion of the stop until his partner arrived.

Based upon the defendant’s vague reasons for driving to and from Atlanta in one day, his failure to put on a coat lying on the front seat despite the cold temperature and the fact he was wearing a short-sleeved shirt, his inability to identify the person he had visited for one day in Atlanta, and his extreme nervousness, the officer told the defendant that he thought he was trafficking in drugs and asked to search the car. The defendant declined to give consent and the other officer did a free air search around the outside of the car. The canine gave a “positive alert.” The officers searched the vehicle and found 250 grams of cocaine hidden underneath the coat lying on the front seat of the car and placed the defendant under arrest. The traffic stop lasted “five to seven minutes.”

The defendant filed a motion to suppress the evidence which the trial court denied. The defendant was convicted of trafficking in cocaine. The defendant appealed contending that the officer’s continued detention of him after the traffic portion of the stop had concluded was not supported by a reasonable articulable suspicion of criminal activity.

**HOLDING:** The Court held that prolongation of the search to review the rental car agreement and for the canine to conduct an open air search of the exterior of the car did not render the search unlawful. The Court’s analysis of the detention was a question of whether the officer’s conduct in prolonging the stop was reasonable given the objective facts known to the officer and the circumstances under which he was working. During the traffic stop, while the officer concluded his investigation of the defendant’s failure to maintain lane, the defendant was not free to leave as the officer had not concluded his investigation of the defendant’s rental car agreement nor had he returned the agreement to the defendant. The Court noted that examination of rental agreements and any ensuing investigation are considered part of the traffic stop. As such, the traffic stop was ongoing at the time the free-air canine search was performed. The Court concluded that the free-air canine search did not unreasonably prolong the traffic stop that lasted a total of five to seven minutes. Williams v. State, 2014 WL 6092248 (Ga.App.).

## PROPER ADMISSIBILITY OF STATE ADMINISTERED BLOOD TEST

An ambulance took the defendant to a hospital for medical treatment after an officer responded to the scene of his motorcycle wreck. The officer arrived at the hospital and based on his observations of the defendant at the scene, including an alco-sensor test, the officer administered an implied consent warning and requested that the defendant submit to a blood test. The defendant consented. At the officer's direction, the defendant's blood was drawn by a registered nurse at the hospital. The officer did not retain the sample for testing or request that the sample be sent to the State crime lab. The defendant's blood sample was tested at the hospital and the result entered into the defendant's medical record. Subsequently, the officer obtained a search warrant for the defendant's medical record.

The defendant was indicted for allegedly driving under the influence of alcohol. The defendant filed a motion to suppress the result of the blood test. The trial court granted the defendant's motion to suppress the blood test. The state appealed.

**HOLDING:** The Court held that the blood test performed by the hospital was a State-administered test required to conform to statute governing admissibility of State-administered blood alcohol tests to be admissible and that the test was not admissible under the inevitable discovery doctrine.

Under O.C.G.A. §40-6-392(a)(1)(A) "...evidence of the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath, or other bodily substance shall be admissible. Where such a chemical test is made, the following provisions shall apply: (1) (A) Chemical analysis of the person's blood, urine, breath, or other bodily substance, to be considered valid under this Code section, shall have been performed according to methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation on a machine which was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order and by an individual possessing a valid permit issued by the Division of Forensic Sciences for this purpose. The Division of Forensic Sciences of the Georgia Bureau of Investigation shall approve satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct analyses and to issue permits, along with requirements for properly operating and maintaining any testing instruments, and to issue certificates certifying that instruments have met those requirements, which certificates and permits shall be subject to termination or revocation at the discretion of the Division of Forensic Sciences."

The Court reasoned that tests requested by an officer are characterized as "State-administered." The State conceded that the hospital's analysis of the defendant's blood sample did not comply with the statutory requirements but argued that it was still otherwise admissible under the inevitable discovery doctrine. The doctrine allows admission of evidence that was discovered as a result of police error or misconduct if the State establishes by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means without reference to the police error or conduct.

The Court reasoned that since the blood test did not meet the statutory requirements that this constituted police error. The officer's lawful request for a search warrant did not cure the improper testing procedure and thus, the inevitable discovery doctrine would not apply. State v. Padgett, 2014 WL 6433483 (Ga.App.).

## INQUIRING MINDS

**QUERY:** Which court(s) has jurisdiction of traffic violation(s) committed by a motor vehicle operator under the age of 18?

**ANSWER:** Under O.C.G.A. §15-11-10, "the juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action: (1) concerning any child who: (E) is alleged to have committed a juvenile traffic offense as defined in O.C.G.A. §15-11-630. As such, any child (under the age of 18 years O.C.G.A. §15-11-2) who is cited for a traffic violation should be sent to juvenile court except for serious offenses which are considered delinquent acts as enumerated in O.C.G.A. §15-11-630(b).

## ALS REMINDERS

🔗 The ALS 1205 withdrawal form has been updated and is in the ALS Folder under DPS Forms. Please use the updated form when entering into an ALS plea agreement.

## QUOTABLE WISDOM WORKS

"As we express our gratitude, we must never forget that the highest appreciation is not to utter words, but to live by them."

~ John F. Kennedy

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