



DPS Legal Review

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FREE AIR SNIFF DURING RECORDS CHECK DID NOT UNREASONABLY PROLONG STOP

On September 13, 2012, an officer was sitting in his police car with his drug dog and another officer. The officers were watching southbound traffic on I-75. The officer observed a vehicle make an improper lane change and saw that the driver had his finger pointed "all in the passenger's face." Based on this observation, the officer surmised that the occupants were arguing. Concerned that the driver was distracted, the officer decided to catch up with the car and observed the car make additional illegal lane changes and that the driver was still reaching over and pointing in the passenger's face. The officer initiated a traffic stop.

The officer approached the car on the passenger's side and told the driver why he pulled them over. Both the driver and the passenger denied arguing. The officer asked both for their identification. The driver handed the officer his driver's license and the car's registration information. The passenger provided his South Carolina ID card and told the officer that his current address was not the one on the card. The officer told both the driver and the passenger that he was going to issue a warning for the improper lane changes. This part of the stop took 2 ½ minutes.

Due to the improper lane changes, the officer wanted to make sure that the driver was not intoxicated even though the officer had not smelled any marijuana or seen any drugs or drug paraphernalia in the car. The officer asked the driver to exit the car and walk over to the police car. The driver did not appear impaired. The officer conducted a pat-down search of the driver and found no weapons. The officer began writing the warning citation while talking to the driver. The officer explained the warning and asked him where he was driving. The officer walked back to the driver's car to ask the passenger for his current address and where they were driving. The officer returned to his police car where the driver was standing and resumed writing the warning citation. This part of the stop took 4 ½ minutes.

It took about another minute for the officer to finish writing the warning citation bringing the stop at this point to about eight minutes. The officer radioed both the driver's and the passenger's information to the police dispatcher to run computer records checks. Seconds later, the dispatcher reported back that the driver's license was "crystal clear." The dispatcher asked the officer to repeat the passenger's information

and the check on the passenger's out-of-state ID card took longer. The officer explained to the driver that he was waiting on the return of the passenger's information and asked for consent to search the car. The driver declined. The officer asked the passenger to step out of the car and join the driver at the front of the police car. The officer asked the passenger did he have any weapons and the passenger replied that he did not.

One minute after the driver declined the search, the officer retrieved his dog and began a free air sniff around the car. Less than one minute later, the officer put the dog away and informed the driver and the passenger that the dog had alerted for the presence of drugs meaning that he had probable cause to search the vehicle. At this point, the stop had been 11 ½ minutes. About three minutes later, while the officer was conducting a search of the car, the dispatcher reported back that the passenger's information was clear. The officer continued the search and found a box with approximately 9.8 pounds of marijuana in the car's trunk. The driver and the passenger were arrested.

Both men were indicted for possession of marijuana. They moved to suppress the drug evidence contending that the traffic stop was unreasonably and thus, unconstitutionally prolonged by the records check on the passenger. The trial court granted the motion. The State appealed and the Court of Appeals affirmed the trial court's decision. The State requested review by the Supreme Court of Georgia.

HOLDING: The Court held that the computer records check of the passenger's information did not unreasonably prolong the stop and that the free air sniff during the records check was not improper. As such, the Court concluded that the courts below erred in suppressing the drug evidence.

The Court has explained in prior cases that "the mission of a traffic stop involves both 'address[ing] the traffic violation that warranted the stop, and attend[ing] to related safety concerns'...and "that ordinary inquiries related to roadway safety are permitted even though they are not directed to the specific reason for the traffic stop..." The Court reasoned that identification checks of both drivers and passengers are generally permitted as an officer safety measure during a traffic stop. The Court concluded that the officer's computer records check on the passenger in this case was an ordinary officer safety measure incident to the mission of the traffic stop; and as such,

the check could permissibly extend the stop for a reasonable amount of time. The Court then focused on whether the free air sniff that resulted in probable cause to detain the driver and the passenger and search inside of their car was done while some other task related to the mission of the traffic stop was still being conducted so that the sniff did not add any time to the stop. As the passenger's records check was determined to be an ordinary officer safety measure related to the mission of the stop, the Court concluded that the free air sniff conducted during the records check did not prolong the stop at all.

The Court further analyzed that "...the overall duration of the traffic stop must always be reasonable in light of all of the circumstances." In this case, the entire initial seizure, from stopping the vehicle to the dog alert, took 11 ½ minutes and the Court concluded that the officer completed all of his mission-related steps of the traffic stop in a reasonably diligent manner. State v. Allen, 2015 WL 6629769 (Ga.).

911 CALL SUFFICIENT FOR REASONABLE ARTICULABLE SUSPICION

An anonymous person called 911 to report that he had observed a black GMC Sonoma truck driving southbound on Peachtree Parkway in Peachtree City in an erratic fashion. The caller reported that the truck was accelerating up to speeds of 60 miles per hour, slowing down, and weaving from side to side on the roadway. The caller reported that the truck appeared to have a male driver and a female passenger. The caller was on the call for almost five minutes and reported the events as they were happening including identifying cross streets and a middle school that the truck was passing. About four minutes into the call the caller reported that the truck was approaching a cross street called "Crosstown" and that he saw an officer making a U-turn.

An officer received the dispatcher's alert to lookout for a southbound black Chevrolet Sonoma that was traveling southbound on Peachtree Parkway coming in her direction and that the truck was speeding. No other details from the 911 call were provided to the officer. Within minutes, the officer saw the truck driven by the defendant, the officer followed briefly to verify the type of truck, and initiated a traffic stop. The officer did not personally witness any traffic violation. The officer could smell an odor of alcohol coming from the defendant's person. The officer asked the defendant if he had anything to drink and the defendant responded "no." The defendant agreed to perform field sobriety tests and to provide a roadside sample of his breath which tested positive for alcohol. Based on the results of both tests, the officer arrested the defendant for driving under the influence to the degree that he was less safe.

The defendant moved to suppress the evidence contending that the dispatcher relayed only part of the information from the 911 caller to the officer and that

the information known to the officer was insufficient to perform a traffic stop. The trial court denied the defendant's motion and he was convicted of driving under the influence. The defendant appealed.

HOLDING: The Court held that the anonymous 911 call was sufficiently reliable and the information reported provided the officer with reasonable articulable suspicion required to conduct a traffic stop of the defendant's vehicle. In determining whether the officer had articulable suspicion to stop the vehicle, the information known to the officer and the dispatcher is to be considered. "Probable cause [and articulable suspicion] may rest upon the collective knowledge of the police where there is some degree of communication between them, rather than solely on the information possessed by the officer who actually makes the arrest." The officer's knowledge is based on the totality of the circumstances.

"The use of anonymous tips as part of the basis for reasonable suspicion depends on whether there are sufficient indicia of reliability to those tips." The Court highlighted that the caller's live reporting of the Sonoma made the caller an eyewitness; that the caller provided live updates of the Sonoma's location; and the lack of true anonymity due to modern technology and regulation provided sufficient indicia of reliability to determine whether the officer had reasonable articulable suspicion to stop the defendant. The Court further reasoned that the information in the 911 call raised a reasonable inference of drunk driving and provided enough descriptive information of the vehicle for the officer to stop the defendant. Thus, the officer had reasonable articulable suspicion to conduct the traffic stop. Blanks v. State, 2015 WL 6685311 (Ga.App.).

DPS UPDATE

Per Major Waldrop, the use of any DDS issued 1205 Form without the revision date of January 2012 should be discontinued. All out of date forms should be destroyed. If DDS 1205 Forms are needed, contact Tona Harrell at tharrell@dds.ga.gov or 678-413-8773 (fax).

ALS REMINDERS

⊗ If your case involves a roadblock, please remember to bring a certified copy of the roadblock supervisor approval form and the final report form with you to the ALS Hearing. The certification sticker on the forms must be the original sticker and not a copy of the sticker. Both documents must be provided to the court at the hearing.

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.