DPS Legal Review

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LENGTH OF INVESTIGATORY DETENTION LEADING TO ARREST

On April 28, 2014, a Georgia State Patrol Trooper was dispatched to investigate an accident at a gas station. At 4:44 p.m., the Trooper arrived at the scene and a customer told the Trooper that the defendant was "being a little belligerent, not acting normal, and … might have had something to drink." The Trooper approached the defendant, who was pumping gas, and asked if she was involved in the accident. The Trooper determined that the defendant was not involved in the accident. During their conversation, the Trooper smelled alcohol on the defendant's breath. He also noticed that the defendant's "speech was little off" and that she had bloodshot eyes. The defendant admitted to having had one or two glasses of wine and to driving to the gas station. The Trooper asked the defendant to walk with him to his patrol car.

At 4:51 p.m., the defendant submitted to an alco-sensor test, and, after several attempts, she gave a sufficient sample which tested positive for alcohol with a numerical result of .124. The Trooper had the defendant read the result aloud. The Trooper told the defendant that she had consumed more than a glass of wine and to "hang out" in front of his patrol car. He told her that he would test her again and if the test results went down, "maybe we'll get somebody to get you a ride." From 4:54 p.m. to 5:06 p.m., the Trooper investigated the driver involved in the accident he was initially dispatched to. On his patrol car-mounted video, the defendant can be seen walking on and off the screen several times, alone and without restraints. The Trooper told her to remain in front of the patrol car.

At 5:05 p.m., the Trooper called for another trooper. Twelve minutes after the defendant's initial alco-sensor test, the Trooper returned to conduct a second test in which the numerical results were the same. The Trooper instructed the defendant to "hang out" at the patrol car and told her that "we're going to do some more testing, but first, I gotta get this taken care of, okay[?]" (in reference to the accident he was dispatched to). The defendant asked the Trooper what the legal limit was and he responded that it was 0.08.

After the completion of the second alco-sensor test at 5:07 p.m., the Trooper spoke with another trooper on his cellphone and could be heard saying "I've got two DUIs; I'll give you one of them. One alcohol. One drugs." The Trooper continued his initial investigation from 5:11 p.m. to 5:28 p.m. At 5:38 p.m., the Trooper informed the defendant that another trooper was on the way.

At 5:39 p.m., the second trooper arrived. Within three minutes of his arrival, the first trooper left with the other driver in his custody. At 5:43 p.m., the defendant appeared on the second trooper's video and field sobriety tests were completed by 5:48 p.m. The defendant was taken into custody and read her implied consent notice at 5:53 p.m. The defendant was charged with DUI less safe to drive and DUI per se.

The defendant moved to suppress from evidence the results of the State-administered breath test, the field sobriety tests, as well as any statements she made to the troopers. The trial court suppressed from evidence anything learned in the course of the investigation after 5:10 p.m. determining at that time the defendant was under arrest and no probable cause for her arrest existed at that time. The State appealed.

HOLDING: The Court held that the defendant's detention did not rise to an arrest requiring probable cause; that the length of the defendant's detention by the first trooper was not unreasonable; and that the second trooper was not required to recite Miranda warnings prior to questioning and investigating the defendant.

The Court determined that the encounter in this case escalated from first-tier to a second-tier encounter. Absent probable cause, the Court reasoned that the first trooper had an objective basis for suspecting the defendant of criminal conduct and detaining her after smelling the odor of alcohol, observing her eyes were bloodshot, her admitting to drinking, and that she had been driving.

The Court further concluded that the first trooper's statement to the second trooper that he "had two DUIs. I'll give you one", which was within hearing of the defendant, did not elevate the investigatory detention of the defendant to an arrest requiring probable cause. The test to determine whether a person has been placed under custodial arrest is whether a reasonable person in the suspect's position would have thought the detention would not be temporary. In this case, the defendant was not told she was under arrest, was not handcuffed, or placed in the first trooper's patrol car. Throughout the detention, no intent to arrest the defendant was communicated to her. The Court reasoned that from the first trooper's statements to the second trooper and the first trooper's statements to the defendant regarding further testing, a reasonable

person could conclude "that…her freedom of action was only temporarily curtailed and that a final determination of…her status was merely delayed."

In assessing the length of the detention, the Court emphasized that there is "[n]o bright line or rigid time limitation is imposed, and the need to consider the law enforcement purposes to be served by the stop as well as the time reasonably needed to effectuate those purposes is to be emphasized." The defendant was detained for almost an hour from the first trooper directing her to the front of his patrol car to the end of the second trooper's investigation. The Court focused on the 30 minute delay from the first trooper speaking with the second trooper to the second trooper's arrival and concluded that this delay or the total detention did not ripen into a custodial arrest. The Court explained that it was reasonable for the first trooper to call in the second trooper for the defendant's investigation while he handled the initial call and that the length of the defendant's detention was not so long as to be beyond the scope of a permissible investigatory detention.

Finally, the Court concluded that the defendant was not arrested until the second trooper had completed field sobriety tests thus, a recitation of her Miranda rights were not implicated until that time. State v. Holt, 2015 WL 7219323 (Ga.App.).

REASONABLENESS OF REQUEST FOR INDEPENDENT CHEMICAL TEST

On December 26, 2013 at 10:18 a.m., an officer with the Lawrenceville Police Department performed a traffic stop after seeing the defendant driving erratically and in violation of the law. The officer observed obvious signs that the defendant was intoxicated. The officer had the defendant perform field sobriety tests and the defendant was subsequently arrested for driving under the influence of alcohol. The officer read the defendant the implied consent notice. The defendant agreed to take the State's breath test. The officer transported the defendant to the police department for the test. After the breath test, the defendant stated that he wanted a urine test but was unsure of where to obtain one and asked the officer for a recommendation. The officer told the defendant that he could not make such a recommendation and, at the defendant's request, provided him with two telephone books and allowed him to use the telephone.

The defendant called his mother and asked the officer if he could be transported to Northside Hospital in Forsyth County. The defendant did not give a reason for choosing the location. The officer believed the location was too far away and that the request was unreasonable given the facilities that were in Gwinnett County. The officer contacted the on-duty magistrate court judge and asked for his opinion. The judge told the officer that given the number of facilities available in the county it would be unreasonable to leave the county. The officer was also a supervisor and did not want to travel too far to take him away from his duties. The officer told the defendant the judge's opinion and the defendant asked to be transported to Emory Johns Creek Hospital. The officer also believed that location was unreasonable. The defendant then asked to be taken to the Gwinnett Medical Center in Duluth because he was familiar with the hospital. The officer agreed and the defendant was taken there for the test.

The defendant moved to suppress the State's alcohol breath test results. The trial court denied the motion and the defendant appealed.

HOLDING: The Court held that the defendant was able to exercise his right to have an independent chemical test of his blood by a qualified person of his own choosing even though the officer refused to take him to two hospitals outside of the county.

O.C.G.A. §40-6-392(a)(3) provides that a person accused of driving under the influence of alcohol has the right to obtain, in addition to any test administered by the State, "chemical test or tests" by "a qualified person of his own choosing." However, if the suspect's choice is unreasonable, a law enforcement officer is justified in refusing to accommodate the request. The Court determined that the officer's refusal to take the defendant to a hospital outside of the county was justified. The Court considers several factors in making this determination including: "(1) availability of or access to funds or resources to pay for the requested test; (2) a protracted delay in giving of the test if the officer complies with the accused's request; (3) availability of police time and other resources; (4) location of [the] requested facilities…; [and] (5) opportunity and ability of accused to make arrangements personally for the testing." In this case, the officer was able to show that there were facilities available within the county; he was a supervisor that did not want to travel too far to take time away from his duties; the requested facilities were outside of the county; and he obtained the opinion of a magistrate judge. Brown v. State, 2015 WL 7042836 (Ga.App.).

ALS REMINDERS

- If a Petitioner enters into an agreement at the ALS hearing whereby the Petitioner agrees to plead guilty to DUI in exchange for withdrawal of the ALS proceeding and then fails to abide by the ALS plea agreement by requesting a trial, take a copy of the agreement with you to the trial. If you need a copy, the agreement can be obtained from the OSAH website at www.osah.ga.gov or by contacting Dee or Monique.

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.