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in partnership with

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Outside your jurisdiction

Last hope for jurisdiction – inevitable discovery – and why it pays to radio quickly. This just in from the Appeals Court . . . *Comm. v. Lahey*, Docket No. 10-P-568 (October 12, 2011).

- **Facts.** Norton police officer Jeffrey Zaccardi escorted an ambulance to a hospital in Attleboro. While still in Attleboro, he saw Steven Lahey traveling on Route 123. Lahey's car was moving at an excessive speed and passing vehicles in a no-passing zone. Officer Zaccardi had to swerve off the road to avoid a head-on collision!

Zaccardi activated lights and siren and began to pursue Lahey. He radioed the Norton police dispatcher and directed him to notify Attleboro dispatch for immediate assistance.¹ Zaccardi was able to overtake Lahey, who pulled over. The officer immediately asked for Lahey's keys and license, which he provided. Attleboro police arrived less than one minute later. Lahey was arrested for his 7th OUI and Operating to Endanger!

- **No legal rule seemed to justify this Norton officer's decision to stop this incredibly dangerous driver in Attleboro.** Let's look at the rejected theories:
 - ***Fresh pursuit*** (The entire incident occurred in Attleboro).
 - ***Transferred authority*** (Attleboro police did not request Zaccardi's assistance).
 - ***Mutual aid*** (Attleboro and Norton did not have a mutual aid agreement).
 - ***Special officer status*** (Attleboro had not deputized Zaccardi as a special police officer).
 - ***Citizen's arrest*** (Requires a felony -- Zaccardi could only suspect Lahey of first offense OUI, which is a misdemeanor).
 - ***Community caretaker*** (There is currently no case law that permits a police officer to act as a community caretaker outside of his jurisdiction).

¹ Norton's radios are not interoperable with Attleboro, so the officer had to communicate indirectly.

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- **But wait . . . The court upheld this stop based on the doctrine of inevitable discovery.** “Inevitable discovery” is invoked when the police did not act in “bad faith” and would have, with “practical certainty,” obtained the evidence lawfully -- in spite of their initial mistake.

Applying the “inevitable discovery” test to these facts, the court decided that Zaccardi acted with the utmost good faith. He was trying to prevent a grave accident. And he intervened with great restraint – only stopping the vehicle, undertaking no arrest or investigation, immediately turning over Lahey’s keys and license to responding Attleboro officers, and leaving the scene after his debriefing.

Even without Zaccardi’s vehicle stop, Attleboro police would have “inevitably” found Lahey and pulled him over legitimately in their town. After all, Zaccardi had provided Attleboro with a description of the vehicle, including its license plate, and officers arrived within one minute of the dispatch. This established with “practical certainty” that Lahey would have been discovered and arrested by the Attleboro police, whether or not Zaccardi had pulled his car over.

- **Here endeth the lesson . . . As soon as you see a dangerous vehicle you want to stop outside your jurisdiction, radio dispatch or call 911.** That way, even if your lack of jurisdiction becomes an issue in court, you may use the inevitable discovery doctrine to shield your stop – since officers from the responding municipality would have pulled the vehicle over anyway (based on your information) if you hadn’t gotten there first.

Question of the month

How should cops deal with licenses that we confiscate following OUI arrests?² Well, first of all, it is great that officers understand that they should be confiscating the defendant’s license following a breathalyzer/blood test refusal or a test failure in the first place.³

Once they have that license in their possession, the Registry of Motor Vehicles directs that they destroy the license and discard it.⁴ Several well-placed cuts with a scissors (like you do with your expired credit cards) should do the trick. It is improper for officers to retain the license in a desk drawer or as a souvenir, or to send it to the Registry. Simply destroy it and move on to your next case!

Hope this helps you on the street . . .

John Sofis Scheft

² Thanks to Officer Aaron O. Butler of the Springfield Police Department!

³ For helpful charts, see Law Enforcement Dimensions’ Motor Vehicle Manual, Chapter 10.

⁴ Neil Scannel, Esq., Counsel to the Registrar, provided this information.