



# DPS Legal Review

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## ARREST AND FIELD SOBRIETY TESTS

Defendant was operating a vehicle on Interstate 75 while weaving in and out of his lane of travel. A deputy stopped the vehicle driven by defendant and asked him to step out of the vehicle. Defendant was unsteady on his feet, smelled of alcohol, and refused to submit to the alco-sensor test. The deputy testified that he explained to defendant that he was going to arrest him for DUI and asked him to turn around and put his hands behind his back. According to the video tape, the deputy instructed defendant to turn around and put his hands behind his back, but he did not tell defendant he was under arrest for DUI. Defendant then asked if he had to give the breath sample and upon the deputy informing him that he did, the defendant provided a breath sample on the alco-sensor which registered positive for alcohol. The deputy then had another officer administer a second alco-sensor test which was also positive. The deputy then advised defendant he was arresting him for DUI, handcuffed him, and read the implied consent notice requesting a blood test. Defendant refused the blood test.

The State appealed the trial court's suppression of the two alco-sensor test results. On appeal, the Court determined that defendant was under arrest for DUI at the time that he submitted to the two alco-sensor tests even though he was not expressly informed that he was being arrested for DUI. The test for determining whether a person is formally arrested "is whether a reasonable person in the suspect's position would have thought the detention would not be temporary." It is not whether the officer had probable cause to arrest or the subjective belief or intent of the officer that determines whether an arrest has occurred. Alco-sensor and other field sobriety tests given to a person under custodial arrest are inadmissible unless the tests are preceded by a Miranda warning. Since a Miranda warning was not given and the defendant was

misinformed that he had to perform the test, the two alco-sensor test results were properly suppressed by the trial court. State v. Norris, 2006 WL 2382827 (Aug. 18, 2006)

## GOLF CART IS A VEHICLE/ DRIVER SUBJECT TO DUI LAWS

A Peachtree City police officer was questioning several young men about an incident. The mother of one of the young men drove up on her golf cart to inquire about what was happening. The officer smelled alcohol and she admitted that she had been drinking. After consenting to voluntary field sobriety tests, she was arrested. The breath-alcohol test indicted a BAC of 0.09. The driver was convicted of DUI and driving with a suspended license. The driver claimed that her golf cart was governed by the Off-Road Vehicle Act and that the DUI statute did not apply. The Court held that the DUI statute applies to "any moving vehicle" and that a golf cart is clearly a "vehicle" (O.C.G.A. 40-1-1[75]) and a "motor vehicle" (O.C.G.A. 40-1-1[33]). Even if a golf cart were an "off-road vehicle," the DUI statute would still apply. Additionally, the DUI statute applies on streets, highways or private property. Simmons v. State, No. A06A1517 (Aug. 23, 2006).

## "HELL NO, I'M DRUNK"

After a 911 caller reported that a "woman who appeared to be drunk was trying to drive her vehicle over curb" at the Waffle House parking lot, the officer responded to the location and discovered the defendant's car stuck on a curb. The defendant was later found lying across the back seat of another person's car. The defendant smelled strongly of alcohol and when the officer questioned her, she admitted to being drunk and to running her car over the curb. In response to the officer's request that she perform field sobriety tests, defendant responded, "Hell no, I'm drunk." Defendant was found guilty of DUI less safe. On appeal, the Court stated "It is not

necessary for the officer to actually see the suspect driving for there to be probable cause to make a DUI arrest.” Driving a car while intoxicated can be established through circumstantial evidence (i.e. defendant’s admission to being drunk and attempting to move her vehicle, open beer containers in the vehicle, etc.). The officer also testified to the contents of the 911 call. On appeal, the Court stated that the officer could explain that he was responding to a 911 dispatch, but the exact words of the 911 call were improper hearsay. Moore v. State, A06A1556 (Aug. 15, 2006).

## LEGAL QUICKIES

**AUTHORITY OF CAMPUS POLICE OFFICER TO MAKE TRAFFIC STOP** - Driver was struck by another vehicle when he attempted to turn left. A Cobb County officer was on a motorcycle directly behind the driver when he attempted to make the turn. After the collision, a Kennesaw State University police officer arrived on the scene to investigate and issued citations to both drivers. One of the drivers appealed his conviction of failure to obey a traffic control device and claimed that the Kennesaw State University police officer that ticketed him did not have authority to enforce traffic laws on Georgia’s public roads. The Court of Appeals upheld the conviction and stated that “Campus policemen of the State university system ‘have the power to make arrests for offenses committed upon any property under the jurisdiction of the board of regents and for offenses committed upon any public or private property within 500 yards of any property under the jurisdiction of the board.’ And ‘[o]fficers of the Georgia State Patrol and any other officer of this state … having authority to arrest for a criminal offense of the grade of misdemeanor shall have authority to prefer charges and bring offenders to trial under this article.’” Hawkins v. State, 2006 WL 2455162 (Aug. 24, 2006).

**HELMET LAW** - OCGA 40-6-315 requires riders to wear protective headgear and requires DPS “to issue and enforce regulations establishing standards and specifications for the approval” of such headgear and allows DPS to approve or disapprove protective devices. DPS has neither approved nor disapproved any protective devices and has not published any lists of such devices. The courts have held that DPS is *not required* to approve or disapprove such protective devices and therefore is not required to publish such lists. Dowis v. State, 243 Ga. App. 354 (2000), Abate of Ga., Inc. v. Georgia, 264 F.3d 1315 (11th Cir.

2001), cert. denied, 536 U.S. 924, 122 S. Ct. 2592, 153 L. Ed. 2d 781 (2002). There is no first amendment right to ride a motorcycle wearing a baseball cap, a bandana, or bareheaded and the Georgia law is **not** unconstitutionally vague. ABATE of Ga., Inc. v. Georgia, 137 F. Supp. 2d 1349 (N.D. Ga. 2001), aff’d, 264 F.3d 1315 (11th Cir. 2001). In Dowis, the Court also stated it is *absolutely clear* that a cloth bandana does **not** comply with standards established by the Board of Public Safety. If you need additional information, call Lee O’Brien in Legal Services

## ALS REMINDER

If you need a continuance for an ALS Hearing, you will need to file a Motion for Continuance. The Motion should be filed as soon as you determine that you need to request a continuance. If possible, avoid filing a continuance request the day before the hearing is scheduled. The Motion for Continuance can be located in Public Folders (follow these steps below): (1) select Open Public Forms Folder, (2) select DPS Forms Folder, (3) select Field Operations Folder, (4) select Nigel Lange – DPS-21 Motion for Continuance Form for ALS Hearing Form – Fillable, (5) open fillable DPS-21 motioncontinuanceform.dot, (6) transfer the information from your ALS Hearing Notice to the Motion for Continuance Form, i.e., Petitioner name, docket number, agency reference number, attorney, hearing date, time, location, etc., (7) fax a copy to Judge’s Assistant, and (8) fax a copy to Attorney or Petitioner if not represented by an Attorney.

## HUMOR WORKS

A man who had been caught embezzling millions from his employer went to a lawyer seeking defense. He didn’t want to go to jail, but his lawyer told him, "Don’t worry. You’ll never have to go to jail with all that money." And the lawyer was right. When the man was sent to prison, he didn’t have a dime.

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Office of Colonel Bill Hitchens.  
Legal Services: Melissa Rodgers,  
Director; Lee O’Brien, Chiquita T.  
Johnson, Deputy Directors. Dee  
Brophy, ALS Attorney. Please refer  
any Questions/Comments to:  
cjohnson@gsp.net