



# DPS Legal Review

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## ASKING FOR CONSENT TO SEARCH DID NOT UNLAWFULLY EXPAND SCOPE/DURATION OF STOP

Defendant's vehicle was stopped for "driving too closely behind another" and "malfunctioning brake lights." Officer detected "heavy odor of air freshener in the interior" of the car.

After the officer began writing citation for the traffic violations and during the process, the officer asked the driver for permission to search and driver agreed. One of rear seats was not fastened properly. The officer removed it and found two kilograms of cocaine and another kilogram of cocaine elsewhere in the car. The Georgia Supreme Court upheld the trial court's denial of defendant's motion to suppress. The Court said, "The Fourth Amendment is not violated when, during the course of a valid traffic stop, an officer questions the driver or occupants of a vehicle and requests consent to conduct a search." The Court quoted the U.S. Supreme Court, "...mere police questioning does not constitute a seizure....[Unless] the detention was prolonged by the questioning, there [is] no additional seizure within the meaning of the Fourth Amendment." *Muehler v. Mena*, 544 U.S. 93, (2005).

"Once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977). Ordering defendant from the car was an extension of the constitutionally valid detention resulting from the traffic stop. Here, the questioning took place during defendant's otherwise lawful detention for commission of the traffic violation in the officer's presence and **did not prolong the stop**. There was no evidence that the officer coerced or tricked defendant into agreeing to a search. *Salmeron v. The State*, No S05G1394 (July 13, 2006).

## "UNKNOWN" INSURANCE STATUS ON NCIC IS NOT ENOUGH FOR TRAFFIC STOP

While on routine patrol, an officer ran an NCIC check on the car in front of him. The NCIC check revealed "unknown" insurance status. The officer did not witness any traffic violations. The officer stopped the car. When he noticed that there was a passenger, the officer called for backup. The driver provided a license and proof of insurance. The officer smelled a strong odor of burning marijuana and the driver admitted to smoking marijuana earlier. When the backup officer spoke with the passenger, the backup officer pulled cocaine from the console area between the front seats and found marijuana on the ground next to the passenger. The officer who initiated the stop never saw the cocaine until the backup officer retrieved it.

The Georgia Court of Appeals ruled that relying only on an "unknown" response from a database does not show "specific articulable facts sufficient to raise a reasonable suspicion that [the driver] was engaged in criminal conduct." Under the circumstances, the officer was not authorized to stop the car. The subsequent search was tainted and the results were properly suppressed. After considering the totality of the circumstances, an investigative stop must be justified by an "objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *State v. Dixson*, No. A06A0592 (July 5, 2006).

## LEGAL QUICKIES

**Date and time information may be critical** - Issues arise when computer printouts do not reflect the actual time and/or date of the recorded event. Insure that your equipment (weight scales and video cameras) is updated with correct date/time groups after power surges or outages.

### **Almost Hitting Officer = Reckless**

**Driving** - O.C.G.A. § 40-6-390(a) provides that "any person who drives any vehicle in reckless disregard for the safety of persons or property commits the offense of reckless driving." Ga. Court of Appeals found that "almost hitting a police officer who was standing on the side of the highway" established reckless disregard required by the Code section. *Graves v. State*, No. A06A1001 (July 11, 2006).

### **Citations for failure to respond and insurance cancellations: HB 1253 -**

HB 1253 deleted subparagraph (b)(1) of Code Section 40-5-121, the requirement that an officer verify a service date of notice of suspension and place that date on a citation for driving with a suspended license *in the cases of suspension for (1) failure to respond under Code Section 40-5-56 (i.e. failed to respond to a citation to appear before a court of competent jurisdiction in this state or in any other state for a traffic violation other than a parking violation) or (2) an insurance cancellation.* The current subparagraph (b) (2) becomes just plain old (b). Cite the person under 40-5-121 for driving at a time when his privilege to do so is suspended, disqualified, or revoked. Of course, Habitual Violators are still charged under 40-5-58. Thanks for the question from several of you.

### **ALS REMINDERS**

Take your implied consent card to the ALS hearing, explain to the court how you determined the age appropriate implied consent to read to the defendant, and then READ the card into the record.

Take a copy of your intoxilyzer 5000 permit and the ORIGINAL intoxilyzer test results to your ALS hearing when the case involves an intoxilyzer test or an attempted test on the intoxilyzer. The two documents must be GIVEN to the Court during the hearing.

If your case involves a roadblock, take a CERTIFIED copy of the Supervisor Roadblock form to the ALS hearing. The certification sticker must be the original sticker, not a copy of the sticker. After testifying about the form, it must be given to the Court.

If the case involves an alco sensor test, you must lay the foundation for the alco sensor prior to testifying that the test results were positive for alcohol. You must testify that your alco sensor is a device that has been approved by the GBI Division of

Forensic Sciences as a preliminary breath screening device. If you need a copy of the GBI DOFS approved list of alco sensors, call Legal Services.

Put any statements made by the defendant during the investigation of the case in your report.

If you enter into a plea agreement for the ALS case, please notify the appropriate DUI prosecutor.

### **OPEN RECORDS REMINDERS**

When forwarding an Open Records request to ORU, please include all related documents and information at that time. They need to be sent to ORU as soon as possible via fax and receipt should be verified.

### **THANKS !**

We appreciate the great suggestions for renaming the Legal Update. Special thanks to SFC Lewis Young for suggesting the name which was selected! If you have any suggestions for topics, please let us know.

### **HUMOR WORKS**

In the middle of the night, in the middle of nowhere, two cars both veer over the white line in the center of the road. They collide and a fair amount of damage is done, although neither occupant is hurt. It is impossible to assess blame for the accident. Both the drivers get out of their car. One is a doctor and the other is a lawyer. The lawyer calls the police on his car phone and goes over to talk to the doctor.

It's cold and damp, and both men are quite shaken up at the accident. The lawyer offers the doctor a drink of brandy from his hip flask. "Why, thank you," the doctor accepts. He takes a few drinks and hands it back to the lawyer, who puts it away. "Aren't you also going to have a drink?" the doctor asks.

"Yes. After the police get here." replies the lawyer.

**Published with approval of Colonel Bill Hitchens.** Legal Services: Melissa Rodgers, Director; Lee O'Brien, Chiquita T. Johnson, Deputy Directors; Dee Brophy, ALS Administrator. Send Questions or Comments to: [mroddgers@gsp.net](mailto:mroddgers@gsp.net).