



# *DPS Legal Review*

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## **SEIZURE**

A Georgia State Trooper was called to a crash where he located a car that had run off the road and struck a tree. But, the driver was not at the scene. A witness reported that he saw the driver walk away with blood on his right ear and on his chest. After running the car's tag, the Trooper learned that the car was registered to the Defendant and his address was about a half mile from the crash site. The Trooper went to the address but was unable to locate the exact apartment. While investigating, the Defendant's father flagged him down and said that his son had been in an accident. The trooper followed the father to his son's apartment. The father knocked on the door. When he answered, the Trooper did not enter the home or touch him, but asked him to "come out here."

The Trooper detected that the Defendant had a strong odor of alcohol, slurred speech, and blood shot, glassy eyes. He patted him down on the porch outside the apartment door and escorted him to the patrol car. He told him that he was not under arrest, but that he would have to be handcuffed in order to ride in the patrol car. He handcuffed the Defendant and returned him to the crash scene where the restraints were removed. With the Defendant's consent, the Trooper conducted a field sobriety test. Thereafter, the Trooper informed the Defendant that he was under arrest for driving under the influence of alcohol and read him the implied consent notice. The Defendant moved to suppress the evidence arguing that he was unlawfully seized by the Trooper at his home.

**HOLDING:** The Defendant was not unreasonably seized. First, the Trooper was authorized to go to the Defendant's apartment in the course of investigating the crash. Second, if a suspect complies with an officer's request to step outside the home and is arrested on the porch, the detention does not occur inside the home for purposes of Fourth Amendment analysis. Third, the Trooper did not force the Defendant to cross

the threshold since he was not brandishing a weapon or otherwise threatening the Defendant when he simply instructed him to step outside. The Trooper did not have probable cause to arrest the Defendant at the time of their initial encounter. However, the Trooper had reasonable suspicion of criminal activity sufficient to authorize a brief detention for purposes of investigation. Johnson v. State, \_\_ S.E.2d \_\_, 2009 WL 3174346 (Ga. App.).

## **CHASE LIABILITY**

The Plaintiff was stopped at a red light at a four-way intersection. As the light turned green for her, she heard loud sirens and remained stopped. She saw a Cadillac approaching the intersection by way of the cross street at a very high rate of speed while being pursued by a police car. The police car advanced toward the side of the Cadillac and allegedly purposefully rammed its side, back portion, causing it to fishtail into the Plaintiff's stationary car. The impact forced her car into a residential yard on the other side of the street. The chase ended and the suspect was apprehended. At deposition, the officer denied employing a precision immobilization technique and stated that it was neither taught nor permitted by DeKalb County. He testified that his goal was to block off the intersection. He moved for summary judgment.

**HOLDING:** Summary judgment was denied. At this stage, the Court views the evidence in the Plaintiff's favor. It held that there was sufficient evidence from which a jury might find the officer acted with reckless disregard. A jury might also find that his reckless disregard constituted a proximate cause of the Plaintiff's injuries. DeKalb County's policy provides that "Deliberate physical contact between vehicles at any time would not be justified, except as required at roadblocks(.)" Also, "it is the policy of the police department that the use of road blocks to apprehend wanted suspects will not be employed when it is apparent that innocent persons would

be endangered.” Rahmaan v. DeKalb County, \_\_\_ S.E.2d \_\_\_, 2009 WL 3430174 (Ga. App.).

### **TIP INSUFFICIENT BASIS FOR STOP**

A Defendant was pulled over by a Richmond, Virginia, police officer based upon an anonymous tip that he was driving while intoxicated. The tip described the Defendant’s car and the direction in which he was traveling in great detail. The officer, who did not personally witness the Defendant violate any traffic laws, pulled him over based solely upon the tip. The Defendant reeked of alcohol, had slurred speech, and almost fell over while attempting to exit his car. He failed the sobriety tests administered at the scene and was ultimately convicted of driving while intoxicated. He appealed the conviction.

**HOLDING:** The Virginia Supreme Court overturned the conviction holding that the officer’s failure to independently verify that the suspect was driving dangerously violated the Fourth Amendment’s prohibition on unreasonable searches and seizures. The State of Virginia appealed, but The United States Supreme Court declined to hear the appeal. The majority did not say why the appeal was declined. However, in a written dissent from the majority, Chief Justice John Roberts, joined by Justice Antonin Scalia, said that the lower court’s holding will put people in danger.

This same issue was recently considered by the Georgia Court of Appeals in Sims v. State, \_\_\_ S.E. 2d \_\_\_, 2009 WL 2620444 (Ga. App.). The Georgia Court held that whether the tip comes from a citizen or an unidentified informant, an officer is not required to wait to observe a crime. In fact, the majority of courts examining this question have upheld investigative stops of allegedly drunk or erratic drivers, even when the police did not personally witness any traffic violations before conducting the stops. Virginia v. Harris, \_\_\_ U.S. \_\_\_, 2009 WL 3348727 (U.S. Va.).

### **INQUIRING MINDS**

**QUERY:** Must foreign visitors keep their passports with them at all times?

**ANSWER:** No. No Federal or State laws or regulations require foreign visitors to have their passports with them at all times.

**QUERY:** Since a passport verifies that a visitor entered the United States legally, how can this information be lawfully ascertained when a driver is stopped without it?

**ANSWER:** Based on Rocha v. State, 250 Ga. App. 209 (2001), visitors to Georgia from a foreign country may drive up to one year on a valid driver’s license from their home country when lawfully admitted to this country. In 2008, O.C.G.A. § 40-5-21 was amended to require that, **when a foreign driver’s license is not in English, the driver must also have in their possession an International Driver’s Permit (“IDP”) which provides an English translation.** An IDP is good for one year from the date of issue. If they need but are without an IDP, they do not have a valid license. If they are given a citation, any relevant questions related to the length of their stay and the legality of their entry into the country can be assessed in connection with the bond process.

### **ALS REMINDERS**

⊗ When entering into an agreement to withdraw the ALS in exchange for a DUI plea, please use the plea agreement form in the attachment below:



Joint Motion to  
Withdraw Sworn I

When the ALS plea agreement is entered into using the attached form, but the Petitioner fails to enter the agreed upon plea, you may **sign the affidavit** on the form **and resubmit** it to the Administrative Law Judge. If this is done, the Petitioner’s driver’s license will be suspended without a re-filed request for an ALS Hearing. Further, you will not be required to reappear in court. Please direct any questions to Dee or Beverly in Legal Services at (404) 624-7023.

### **OPEN RECORDS REMINDERS**

⊗ When redacting the newly implemented incident and crash reports, please remember to always **redact the month and date of the vehicle registration** since this is identical to the owner’s month and date of birth.

### **QUOTABLE WISDOM WORKS**

*“There is no terror in your threats...; for I am arm’d so strong with honesty that they pass by me as the idle wind, which I respect not.”*

~ W. Shakespeare, *Julius Caesar*, Act IV

Published with the approval of Colonel Bill Hitchens. Legal Services: Melissa Rodgers, Director, Lee O’Brien and Jacqueline Bunn, Deputy Directors, and Dee Brophy, ALS Attorney. Send questions/comments to [jbunn@gsp.net](mailto:jbunn@gsp.net).