



# The Trooper Legal Update

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## U.S. SUPREME COURT RULES THAT VIOLATION OF KNOCK AND ANNOUNCE DOES NOT REQUIRE EXCLUSION OF EVIDENCE

The United States Supreme Court ruled that violation of the knock-and-announce rule did not require the suppression of all evidence found in the search. In *Hudson v. Michigan*, police obtained a warrant to search Hudson's home for drugs and firearms. When police arrived to execute the warrant, they announced their presence and waited "a short time – perhaps 'three to five seconds'" before opening the unlocked door of the home. Once inside, they found large quantities of drugs and a loaded gun in the chair where Hudson was sitting. Hudson was charged with unlawful drug and firearm possession. The State conceded that the entry into Hudson's home was a knock-and-announce violation. The only issue before the Supreme Court was the appropriate remedy. The Court noted that the illegal manner of entry was not the cause of obtaining the evidence because, even if the police had complied with the knock and announce rule and executed the warrant, the evidence would have been discovered. "What the knock-and-announce rule has never protected, however, is one's interest in preventing the government from seeing or taking evidence described in a warrant. Since the interests that *were* violated in this case have nothing to do with the seizure of the evidence the exclusionary rule is inapplicable." *Hudson v. Michigan*, No. 04-1360 (June 15, 2006).

## SUFFICIENT EVIDENCE & MEMORY REFRESHED

A witness reported to a 911 operator that a truck ran off the road and that she saw two men get out of the truck and walk down the road, holding each other up. A trooper responded to the accident and located two men walking hand in hand. Both were intoxicated.

Becker told the officer that the truck was his and the witness identified Becker as the driver. The passenger told the trooper that he had been driving.

Based upon the trooper's training, Becker's injuries were consistent with Becker being the driver of the damaged truck. While the men were alone in the back seat of the patrol car, the video recorded a conversation where Becker told the passenger to say he was driving because Becker did not want to spend another night in jail. Becker was convicted of DUI, habitual violator and failure to maintain lane. The Georgia Court of Appeals found that positive identification from the witness, testimony from the trooper regarding the injuries and the videotaped conversation were sufficient to sustain the convictions. Becker also claimed that the court should not have allowed evidence of a prior DUI arrest involving a one-vehicle crash because the arresting officer could not independently recall the facts surrounding the arrest. The Court found that the testimony of the arresting officer from the prior arrest along with a certified copy of the conviction was sufficient to establish a similar transaction. The Court found no error in fact that the officer used the accident report and citations to refresh his memory of the arrest. *Becker v. State*, No. A06A0083 (June 23, 2006).

## LEGAL QUICKIES

**Original Intoxilyzer Report is "Best Evidence"** – The original intoxilyzer report is the best evidence of blood-alcohol content. Under O.C.G.A. § 24-5-4(a), "[t]he best evidence which exists of a writing sought to be proved shall be produced, unless its absence shall be satisfactorily accounted for." When a document is unavailable, there must be an explanation for the inability to produce it despite exercising due diligence. Simply stating that it's not available without showing "diligence in attempting to provide the writing" is insufficient. *Lumley v. State* (A06A0506) Ga. Ct. of Appeals, June 22, 2006.

**Out of State Drivers** - Can we arrest driver with valid out of state license and vehicle registration and impound his out of state vehicle merely for failure to have minimum insurance required by State of Georgia? OCGA § 33-7-11. **NO.** Check out OCGA §33-34-4: "Motor vehicle" for purposes of this code section "...means a vehicle...required to be registered under the laws of this state..." and "...includes...without limitation a low-speed vehicle." See *Sanchez v. State*, 197 Ga App 470, (1990) in which the Court said, "Since it is uncontroverted that the car Roche was driving was an Illinois automobile not required to be registered under Georgia law, appellant Roche was not subject to arrest under O.C.G.A. § 33-34-12 (now 33-34-4) for failure to have proof of insurance for the car." Even though that was a "proof" of insurance issue the same reasoning applies to "failure to have insurance." (However in case of an accident see OCGA Title 40 Chapter 9 Article 2 in which a motorist, including one from out of state, may be required to post security for probable damages caused by such motorist.)

## ON THE CIVIL SIDE

**Sheriff's Department did not violate Constitutional rights of Deputies who appeared in pornography for pay on internet** - Sheriff fired two deputies for appearing in sexually explicit pay-per-view internet photos and videos. Deputies filed a lawsuit claiming that their First Amendment rights were violated when they were terminated. The Eleventh Circuit Court of Appeals upheld the dismissal of the lawsuit, finding that the deputies did not have off-duty employment approval and that they were not entitled to First Amendment protection because their conduct did not involve a matter of public concern and their conduct could affect the efficiency and reputation of the Sheriff's Department regarding the public. *Thaeter v. Palm Beach County Sheriff's Office*, Nos. 03-13177, 03-13197, 11<sup>th</sup> Cir. (May 26, 2006).

## ALS REMINDERS

Please remember to issue the 1205 Form in all DUI cases that qualify for issuance of a 1205 Form. The form should be issued in all DUI cases where the defendant refused to submit to the requested state administered chemical test and in all cases where the

defendant submitted to the intoxilyzer test and the results meet the statutory per se limits.

If a DUI defendant is not arrested prior to reading the implied consent notice due to the case involving a serious injury, the serious injury must be one of the injuries listed in O.C.G.A. §40-5-55(c). According to O.C.G.A. §40-5-55(c), serious injury is defined as "one or more persons suffered a fractured bone, severe burns, disfigurement, dismemberment, partial or total loss of sight or hearing, or loss of consciousness."

## OPEN RECORDS REMINDERS

Please forward Open Records Requests that need to be handled by the Open Records Unit to fax #404-624-7529 along with the appropriate supporting documents as soon as possible.

## GOT A GREAT IDEA?

We need your help! The Trooper Legal Update is getting a new name! If you have a great idea for a name which reflects the three divisions of the Department of Public Safety, please email Melissa Rodgers at [mrodgers@gsp.net](mailto:mrodgers@gsp.net). Also, if you have suggestions for topics for upcoming Updates, please send them to us. Let us hear from you!

## HUMOR WORKS

A man sat down at a bar, looked into his shirt pocket, and ordered a double scotch. A few minutes later, the man again peeked into his pocket and ordered another double. This routine was followed for some time, until after looking into his pocket, he told the bartender that he's had enough.

The bartender said, "I've got to ask you - what's with the pocket business?" The man replied, "I have my lawyer's picture in there. When he starts to look honest, I've had enough."

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: [mrodgers@gsp.net](mailto:mrodgers@gsp.net).