



The Trooper Legal Update

July 2005

Legal Services 404/624-7423

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Testing the Unconscious Requires PC/Arrest!!!

The Court of Appeals re-affirmed its cases which allow for testing the unconscious DUI suspect. However, the court clarified that in order to test the unconscious pursuant to 40-5-55 (Implied Consent), the unconscious suspect must be under arrest. The Court reiterated its previous holdings that there must be PC and arrest. *Bass*, A05A1360 (6/6/05). Arresting the suspect after the blood test results are returned is too late. The Court clarified that it is not necessary to read IC to the unconscious suspect, but there "has to be probable cause for an arrest prior to the effectiveness of the implied consent" and there has to be some evidence other than the mere smell of alcohol to establish probable cause.

MONTHLY MINDER:

Establishing Foundation for Laser

There is only one foundation requirement for Laser evidence: **"The only foundation required for the entry of such evidence is the introduction of a certified copy of the Department of Public Safety's list of approved laser speed detection devices."** A certified list may be obtained from DPS, Legal Services. You may call or email Maree Kattaron if you would like a copy. Note: The state still won the speeding case because the officer testified the vehicle was traveling at an "obvious high rate of speed...faster than the 65 miles per hour speed limit..." This testimony supported the speeding charge. "[A]n officer's estimate of speed is sufficient to support a conviction on a speeding violation." *In the Interest of J.D.S.*, A05A0593 (06/08/05).

SEARCHING VEHICLES for MARIJUANA

Three cases last month provide some clear guidelines for searching vehicles for marijuana:

Smell of Marijuana During Traffic Stop: May detain for a drug dog. The stop was based on suspected no tag. It turned out the vehicle had a tag but the tag light was out. The officer's inability to see the tag justified investigation by the officer. "Faint odor of marijuana" coming from inside the vehicle with open T-top & nervousness of driver justified detaining driver for further investigation, including obtaining drug dog for open air search. *Collins*, A05A0728 (06/09/05).

Smell of Marijuana During Traffic Stop: The Officer may search vehicle. Stop based on seatbelt violation. Officer approached truck & smelled the very strong odor of burnt marijuana coming from it. Driver was visibly nervous (shaking and breathing rapidly) & denied smoking marijuana or being around anyone else smoking marijuana. The officer conducted a search of the vehicle and found two large blocks which field tested positive for methamphetamine. "[A] trained police officer's perception of the odor of burning marijuana, provided his ability to identify that odor is placed into evidence, constitutes sufficient probable cause to support the warrantless search of a vehicle." *Williams*, A05A0542 (06/16/05).

Seeing Marijuana in an Unoccupied Locked Vehicle: Must obtain a warrant prior to searching. Officer approached a vehicle that was parked 300 yards from the road on a dirt driveway, locked & unoccupied. He saw a "baggy" that appeared to have marijuana in it. The officer opened the locked door & conducted a search. The Court held that the warrantless search was unauthorized. Because the vehicle was unoccupied, there was no indication that it was likely to be moved in the immediate future. Warrantless search not authorized under these circumstances. *Massa*, A05A0704 (06/09/05).

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Legal Quickies:

Warrant For Medical Records: Court repeats again, “[A]lthough State may not subpoena medical records from health care providers ..., they may be seized pursuant to a properly issued search warrant.” *Verlangieri*, A05A0447 (6/9/5).

Vehicular Homicide based on Reckless Driving: Suspect driver who lost control of the truck she was driving and killed a pedestrian signed a waiver of rights form and consented to a blood test. Blood was positive for prescription medication. Driver admitted she had taken numerous prescription drugs and that she knew she was too sleepy to safely drive. Court said the evidence was sufficient to establish reckless driving which could be an underlying charge supporting Vehicular Homicide in the first degree. *Walden*, A05A0003 (05/2/05).

Miranda Warnings not Required for Field Sobriety: Suspect was not “under arrest” when field sobriety was conducted. “[T]here was no evidence that the officer made ‘any statement that would cause a reasonable person to believe that he was under arrest and not [merely] temporarily detained during a [DUI] investigation....’” Thus, Miranda warnings were not required prior to conducting SFST. *Moody*, A05A0532 (06/15/05).

Arrest Based on Invalid Warrant: Where officer radioed in and operator confirmed there was an outstanding warrant, arrest of suspect was a good arrest, even though it turned out the warrant was incorrect or invalid. “Even if such information is subsequently proven to be wrong, ... [the court] will not declare an arrest to be invalid when the arresting officer reasonably relied upon information which he had no reason to think was incorrect.” *Howard*, A05A0511 (06/15/05).

Reasonable Suspicion Stop: Officers conducting surveillance in a known drug area witnessed what appeared to be drug transactions at a house, saw suspect drive to the house & interact with individuals suspected of selling drugs, approached

driver’s stopped vehicle with lights activated. Driver was extremely nervous. The officers made an investigatory “stop” requiring reasonable suspicion even though the vehicle was not moving at the time they approached the car. However, the stop/detention was justified based on the circumstances listed above. The totality of the circumstances provided reasonable articulable suspicion justifying a stop. *O’Neal*, A05A0527 (06/01/05).

ON THE CIVIL SIDE

Regulation of Tow Truck Prices

The Georgia Public Service Commission currently regulates prices for the towing and storage of vehicles improperly parked or trespassing on private property. 44-1-13. These rate limits may be viewed at www.psc.state.ga.us. (Go to section marked transportation.) You may also contact Mr. Robert “Bob” West with the PSC at 404/463-4355. If a Post has a wrecker service on their list that they believe is over charging, contact Legal Services, Ms. Terry Long, to discuss the evidence needed to substantiate removal from the list.

PC for DUI Less Safe

DUI Less Safe case easily established, even though there was no field sobriety or blood alcohol test given:

1. Erratic Driving (sudden lane changes & failure to maintain lane)
2. Strong smell of alcohol
3. Abrasive demeanor
4. Physical characteristics - unsteady on feet,

HUMOR WORKS: A doctor vacationing on the beach saw a fin emerge from the surf and promptly fainted. His wife revived him and admonished, “Darling, you’ve got to stop imagining you are seeing lawyers everywhere.”

slurred speech, glassy eyes

5. Refusal to take IC test

Together these factors easily provided enough evidence to support a DUI less safe charge.

Alewine, A05A0782 (5/31/5).

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