



The Trooper Legal Update

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Legal Services 404/624-7423

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This issue of the Trooper Legal Update is dedicated to retiring Colonel George A. Ellis. Thank you for your service & dedication to this Department & the citizens of Georgia.

ARE YOU A SAINT?

GSP in conjunction with the Atlanta HIDTA created an intelligence source for Georgia: The Statewide Analytical Interdiction & Narcotics Team -SAINT. SAINT is headed for its third year of operation. Under supervision of TFC Scott Ogle, SAINT receives & disseminates intelligence data relating to ongoing state/federal drug investigations throughout the U.S. One primary goal of SAINT is to provide real time information during a patrol stop. SAINT is responsible for providing information leading to many drug arrests growing from initial traffic stops. For more information or to join SAINT, contact **TFC Ogle at 404/624-7767** or sogle@gsp.net.

A NEW KIND OF ROADBLOCK:

The GA Court of Appeals held that a roadblock may be held "for the purpose of questioning residents about a recent murder in the area." Thus, a check point simply to ask if members of the public had any information about a crime committed by someone else is a legitimate primary purpose of a roadblock. Look at this case closely & consult with an attorney, if possible, before establishing such a roadblock.

Strickland, A04A0526 (10/27/04).

GA Retirees Do Not Qualify for a Nationwide Carry Permit. Chris Brasher with the State Attorney General's office has determined that, due to a lack of state-wide standards for weapons qualification, no Georgia law enforcement retirees are qualified under 18 USC 926C & they may not qualify for a nationwide carry permit. Therefore, GSP will not be issuing identification cards to retirees for this purpose. This does not affect a certified retiree's ability to carry in Georgia or, where applicable, the ability to carry in states that have a reciprocal agreement with GA. [Also, actively employed law enforcement still qualify for nationwide carry privileges under 18 USC 926B.]

MONTHLY MINDERS:

Display of License Plates: 40-2-41 requires a license plate to be clearly displayed. The law is violated when the plate is covered by any material unless the material is colorless & transparent. "No apparatus that obstructs or hinders the clear display & legibility of a license plate shall be attached to the rear of any motor vehicle required to be registered in the state."

Implied Consent: Read it **at the time of arrest** if at all possible! Generally, this will mean as soon as you cuff 'em & put them in the car. Any delay will be used against you. Activity to secure the scene, or insure officer safety, may be a basis for delay but you will be called on to justify why you did not read it immediately. *Brown, 265 Ga. App. 129 (2004).* Even if the suspect does not understand it - **even if they do not speak English** - go ahead and read it immediately. And never ever try to explain it! All attempts to explain will be used against you.

HELP YOUR PROSECUTOR

Include names of **ALL** witnesses, including other officers assisting. Assisting officers can save a case in court. Include as much ID info as possible on your witnesses: addresses, DOB, License #, SS# -- A name/address alone is often not enough to locate a witness. ALWAYS clearly identify the person drawing the blood. These individuals are critical to a case and often cannot be located.

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HUMOR WORKS: Two lawyers were hunting when they came upon some tracks. The first declared these are deer tracks. The other insisted they were elk tracks. They were still arguing when the train hit them.

Trooper Highlight

ROADBLOCKS & DUI LESS SAFE:

Great job Sgt. J. Tony Hightower & TFC L. Brandon Dawson of Post 24, Newnan, in establishing elements of a roadblock in *Overton*, A04A1604 (11/1/04). Their testimony withstood grilling cross-examination & established the mandatory 5 factors: **1)** the roadblock was set for a lawful purpose by a supervisor; **2)** all vehicles were stopped (except when all officers were investigating suspects); **3)** delay to motorists was minimal; **4)** the roadblock was well identified (marked cars and uniforms were all they needed); & **5)** screening officers were sufficiently trained/qualified to make initial decisions regarding sobriety. The court also re-affirmed a suspect does not have to commit an unsafe act to prove DUI less safe. Trooper Dawson testified that based on his experience/training he thought the driver was less safe. He observed bloodshot eyes, a strong odor of alcohol and conducted an alco sensor test. This was enough to establish DUI less safe. The court said it was irrelevant that Trooper Dawson was not aware of an unsafe driving act being committed. It was also irrelevant that the Trooper chose not to conduct other field sobriety tests and did not witness the suspect unsteady on his feet. The officer could testify, based on his training & experience, that it was his opinion the driver was less safe. Way to stick to your guns Trooper Dawson.

Probable Cause of DUI: The court re-affirms for probable cause “an officer need only have knowledge or reasonably trustworthy information that the suspect was [DUI].” **1) Smell of alcohol + 2) suspect admits drinking + 3) glossy eyes = Enough for Probable Cause to Arrest!** Even without any field sobriety tests, the court finds these facts are sufficient for an experienced officer to make an arrest. *Frederick*, A04A1937 (11/9/4).

Legal Quickies:

Blue Lights on Vehicle Provide PC for Stop:

An officer pulled over a suspect because of blue lights under the hood. No problem found with the stop. *Trammel*, A04A1872 (11/9/04). Blue lights on personal vehicles violate the law. Even if the lights are not flashing - if the lights can potentially flash/revolve, there is a potential violation and a good basis for the stop. 40-8-90.

Requesting Consent to Search DURING Stop Does not Require Suspicion or PC:

To request consent to search after a stop is concluded, the officer must have reasonable suspicion or the officer must establish the driver was free to go. But asking for consent to search during a stop does not require any additional basis. Here a stop was made for failure to stop & failure to give turn signal. The officer was waiting for his dispatcher to verify the validity of the driver's license. During this time, he asked the driver if he had any weapons, drugs or open containers. Then he asked for & received consent to search. This request was made quickly and did not extend the stop. No reasonable suspicion was needed to make the request. *Mauerberger*, A04A2346 (11/10/04).

Officer Does Not have to See Driver Driving for DUI Charge: Finding suspect passed out behind the wheel with engine running is sufficient circumstantial evidence to establish that they were driving. *Stephens*, A04A1607 (10/22/04).

Driving with a Suspended Registration:

40-6-15 provides a charge for **knowingly** driving with a suspended registration. [Registration is automatically suspended for failure to have insurance.] If the driver is the owner, there is a presumption that they knew based on a notice sent from DMVS. DMVS can give you a copy of the notice they mailed which is presumed received as a matter of law. This presumed notice is outlined in 40-2-137(b)(1). If the driver is not the owner, there may be difficulty establishing that they “knew” the registration is suspended. Thanks TFC Terry Thrift for your question & thanks to DMVS Dir. of Legal Services Jennifer Ammons for your assistance.

HAPPY HOLIDAYS from Legal Services.
We thank you for your gift of service. You help to provide us all with hope of Peace On Earth.

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