



The Trooper Legal Update

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COURT AFFIRMS ENFORCEMENT TOOLS – NO PROBABLE CAUSE OR REASONABLE SUSPICION

NEEDED: “[P]olice officers may approach a citizen, ask for identification, ask him to roll down a window or step out of a car, and freely question him without any articulable suspicion, as long as the officers do not detain the citizen or create the impression that the citizen may not leave.” To the extent that *Smith*, 137 Ga. App. 101 stated otherwise, that case was overruled. Approaching a parked car and asking someone to roll down their window now clearly does not require reasonable suspicion. *Akins*, A03A2452 (3/11/4). Asking an occupant to step out of the car when they are acting nervous and give conflicting stories is also clearly permitted. *Id.*

In a second case, the Georgia Court of Appeals re-affirmed that no reasonable suspicion is needed to ask an occupant of a vehicle to consent to a pat-down search. As long as the vehicle is properly stopped and the request does not significantly prolong the stop, an officer may ask an occupant of a vehicle to consent to a pat-down search and may request that they consent to removing contents in their pockets. No reasonable suspicion is required. *Gooch*, A04A0792 (3/19/4). [Note: If the suspect refuses to consent, then you must have officer safety concerns to justify the involuntary pat-down.]

MONTHLY MINDER:

Under O.C.G.A. § 40-5-67 officers are authorized to take the driver’s license of any person charged with violating O.C.G.A. § 40-6-391. This same code section states that after taking the license, the officer is required to issue a 30 day temporary driving permit for a refusal or violation of 40-5-67.1 or a 180 day temporary permit where the test results indicate a violation of 40-6-391 but the results are less than the level needed for an administrative suspension. **All the provisions found in O.C.G.A. § 40-5-67 apply to “nonresidents.”** Thus, an officer is authorized to seize the out-of-state license of a DUI offender.

Legal Quickies:

“Tag Applied For” A vehicle may be stopped where there is a hand-written piece of paper stating “Tag Applied For” in place of a statutorily authorized tag. Good stop. *Gooch*, A04A0792 (3/19/4).

High Crime Area: Officers may testify that, based on their knowledge and experience, an incident took place in a “High Crime Area.” *Griffin*, A04A0135 (3/3/4).

20 Minute Rule: A second breath test conducted less than 20 minutes following an invalid sample, although contrary to the GBI Operator’s Manual, does not invalidate a DUI. Good conviction. Deviations from the operator’s manual do not affect the admissibility of the evidence. *Palmaka*, A03A1899 (3/26/4).

Relying on Dispatcher: A dispatcher’s report of a citizen call describing vehicle, giving tag #, and reporting that the vehicle was “all over the roadway,” provided a good basis for a stop. The officer does not have to observe a violation but may rely on the dispatcher’s report. *Gomez*, A03A2347 (3/22/4).

Aggressive Driving: Driver intentionally pulling in front of another vehicle and slamming on the brakes for no apparent reason supports an aggressive driving charge. (40-6-397). *A. M. A.*, A04A0724 (3/15/4).

HUMOR WORKS:

What do you get when you cross a lawyer with a librarian?
...All the information you need, but you can’t understand a word of it.

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