



The Trooper Legal Update

February/March 2005

Legal Services 404/624-7423

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Ambassador Immunity or Felony?

There are reports throughout the state of officers stopping individuals who have no driver's license but who claim to be from the "Mt. Araft Clan Embassy." They identify themselves as a native of "Yamassee." DMVS reports that this is not a "recognized legitimate government entity." The Prosecuting Attorneys Council advises that Mr. Chuck Olsen is available to assist with these prosecutions and will communicate information to the FBI. As these individuals generally show papers allegedly supporting their immunity, he advises that the suspects be charged with 16-10-20 (felony, use of false writings) and that documentation be confiscated. Other charges to consider are 40-5-20 (driving without a license), 16-9-4 (possession of false ID), & 40-5-121 (driving with suspended/cancelled license).

ALS NOTE: Just a reminder that the actual implied consent card used MUST be read into the record at the ALS Hearing.

Charging CVs: Please note the Commercial Vehicle Charge Sheet provided in the last issue has been updated. Two charges have been added to the first page. Thanks James Brummett of DMVS for your suggestion.

Attachment.

Due to the demands of the legislative session, the February & March issues of the Trooper Update were combined. We hope to resume a monthly schedule in April.

Legal Quickies:

Running TAGs: The court rejects defendant's argument that reasonable suspicion was needed before a vehicle tag registration could be checked. *Dawson*, A04A1709 (1/6/05).

Miranda & Field Sobriety: The Court of Appeals re-affirmed that Miranda warnings are not required for field sobriety testing so long as the suspect is not under arrest. If a suspect is cuffed for officer safety during these tests, it is best to let the violator know he is not under arrest and put the reasons for officer safety concerns in your report. *Loden*, A05A0536 (2/14/05).

Roadblocks: The Court also reminded us that for a roadblock to be lawful, officers must stop every car or have a pre-determined plan for allowing some cars to go past. For example: Let all cars go through once the traffic is backed up to a certain point, check every 10th car, or let cars go through while every officer is occupied with a vehicle. *Ponce*, A04A1856 (1/26/05).

Possession: Possession may be shown by circumstantial evidence. Where the driver is seen leaning toward brush/bushes near the front of a car, is acting nervous, the suspect is the only individual near the area and drugs are found in the exact area where the driver leaned, this

provides circumstantial evidence that contraband found in that area belongs to the driver. *Helton*, A04A2088 (01/12/05).

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Voluntary Confession: A promise that a suspect will have a lower bond if they cooperate was okay. Such a promise is not a basis for suppression of the suspect's otherwise admissible confession. *Pasuer*, A04A2207 (1/7/05).

Implied Consent: If a driver acts confused about whether to take the test & does not clearly consent to the test, the officer should not place the suspect in front of the machine and direct them to "just blow." Unless there is clear consent to take the test, the court will treat the driver's actions as a refusal. *Adams*, A04A2101 (12/13/04).

Trooper Highlight

Parking Violations: Trooper properly did not cite a truck that had parked in an emergency lane to assist a vehicle with possible injuries. The Court of Appeals found that a truck parked in the emergency lane completely out of the road while the driver assisted an accident victim and had not put out emergency devices did not violate 40-6-203. Trooper Johnson's decision not to charge

the truck driver was proper. *Reid*, A04A1821 (11/19/04).

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HUMOR WORKS:

"I have knowingly defended a number of guilty men. But the guilty never escape unscathed. My fees are sufficient punishment for anyone."

-- F. Lee Bailey

GISLATION UPDATE

An update on the Department's legislation:

H.B. 20 reimposing the Window Tint restrictions is still alive, passing the House with continued movement in the Senate.

H.B. 286 which would have made DUI Marijuana per se a crime again and **SB 64** that would have permitted traffic enforcement without top lights are both effectively dead for this session. In the next session, the bills that did not pass will automatically resume potential activity. Thanks to all of you for your support.

ON THE CIVIL SIDE

Police officers' use of deadly force, shooting at motorist whose vehicle lurched towards them putting officers in danger of threat of serious physical harm, was proper. Their continued shots after the vehicle passed them, however, was unreasonable because the immediate threat to their safety had ended. *Waterman v. Batton*, No. 04-1096, 2005 U.S. App. Lexis 10 (4th Cir. 2005).

Termination of officer who associated with a person she had reason to believe was engaged in criminal activity upheld and was not unduly harsh. *Cottingham v. Kelly*, 782 N.Y.S.2d 462 (N.Y. App.Div. 2004).

Deputy acted reasonably in putting his foot on an arrestee's face when he raised his head as he lay on the ground being handcuffed after disobeying orders to immediately drop his shotgun. The Court

stated: “In making an excessive force inquiry, we are not to view the matter as judges... . We must see the situation through the eyes of the officer on the scene who is hampered by incomplete information and forced to make a split-second decision between action and inaction in circumstances where inaction could prove fatal.” *Crosby v. Monroe County*, No. 03-13716, 2004 U.S. App. Lexis 26973 (11th Cir. 2004).

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