



# The Trooper Legal Update

January 2006      Legal Services 404/624-7423      Volume 6, No. 1

## WHEN IS A REQUEST FOR AN INDEPENDENT TEST UNREASONABLE?

Defendant was arrested for DUI, advised of the implied consent warnings, a breath test was requested, and defendant complied with that request. After explaining the breath test results to defendant and determining that he did not have any questions or comments, the trooper left the jail. While enroute to an accident scene with injuries, the trooper was notified that defendant wanted to be taken to a certain location for an independent test to be performed by his personal physician. The location requested by defendant would require that the trooper drive over 40 miles to a location outside of his territory. The trooper responded that the defendant needed to pick somewhere closer inside the trooper's territory and to call him back if defendant wanted to go to another location. The trooper was not contacted and defendant did not receive an independent test. The Court held that defendant did not make a timely or sufficient request for the independent test. The Court further stated that the trooper was justified in not abandoning the serious call given the lack of law enforcement resources and the issue of whether or not defendant could even obtain the independent test in the form requested.

A law enforcement officer is justified in refusing to accommodate defendant's request if the request is unreasonable. The court will look at the totality of the circumstances in deciding this issue. The following factors may be considered by the court: "(1) availability of or access to funds to pay for the requested test; (2) a protracted delay in the giving of the test if the officer complies with the accused's requests; (3) availability of police time and other resources; (4) location of the requested facilities; and (5) opportunity and ability of the accused to make arrangements personally for the testing."

Before a duty arises to transport a defendant to the independent test and before there is a breach of that duty, the defendant must show the following: (1) arrangements were made with a qualified person of defendant's choosing, (2) the test would be performed if defendant came to the hospital, (3) defendant informed the personnel at the jail where he was under arrest, and (4) the personnel holding defendant either refused or failed to take defendant to the hospital. Smith v. State 2005 WL 3455420 (Dec. 19, 2005)

## LOCAL TRUCK ROUTE? SAYS WHO?

A county road may be designated as a "local truck route" which allows a vehicle traveling these designated roadways to operate at state route weight limits, but must be approved as such by the Commissioner of the Georgia DOT *after* the county passes a resolution so designating it. An official map of the "county road system" is required to be maintained by the county and map and documents of such are required to be kept by the County Clerk for public inspection (this includes local truck routes). Of course, all state roads (as opposed to county roads) are designated as such by Georgia DOT.

## WARRANTLESS SEARCH OF VEHICLE JUSTIFIED WHEN OFFICER HAS PROBABLE CAUSE TO BELIEVE VEHICLE CONTAINS CONTRABAND

Police were contacted by a concerned citizen about suspected drug activity in parking lot of apartment complex. An officer dispatched to the complex personally observed the scene that had been described by the concerned citizen. The defendant fled after being seen huddled around the trunk of a car that contained five kilograms of cocaine and officer saw other people who were possibly involved in the drug deal flee the scene. Based upon those facts, police officer had probable cause to believe that defendant's vehicle contained contraband and was justified in conducting a warrantless search of the vehicle. Scott v. State, 2006WL13244 (Jan. 4, 2006).

## ALS REMINDERS

1. Please do not explain the implied consent card to the DUI defendant. If the defendant has any questions regarding the suspension of the drivers license, do not answer the questions. Frequently, the defendant will ask what will happen to my license if I do or do not take the requested test. Please do not answer this question or any other question regarding implied consent. You may choose to reread the entire implied consent card or allow the defendant to read the card.
2. Thank you for sending the ALS monthly reports to legal services by the 10<sup>th</sup> of each month. It is necessary that we have the reports by that date so that we can comply with our monthly report deadline.
3. Please remember to serve the 1205 form and 1205 supplement form in all applicable DUI cases so that we are in compliance with our ALS grant objectives.
4. Please remember to attend the ALS hearings so that we are in compliance with our ALS grant objectives
5. If you have any particular topics that you would like to see covered at the next ALS/DUI training, please contact Dee Brophy in Legal Services, 404-624-7424.

## ON THE CIVIL SIDE

Deputy Sheriff was sued for violating Plaintiff's constitutional rights by arresting Plaintiff and seizing his property in violation of the 4<sup>th</sup> Amendment. Deputy arrested Plaintiff for obstruction because his tractor-trailer was parked on a private road when he had a confrontation with the Deputy. Concerned that the vehicle was a road hazard, the Deputy ordered Plaintiff to move the vehicle and ultimately had the vehicle towed after Plaintiff laid in the back of the trailer and refused to move. Deputy was entitled to qualified immunity because a reasonable officer would have believed that he had probable cause to arrest Plaintiff for obstruction. Whitner v. Moore, 200WL3501867 (Dec. 23, 2005). See O.C.G.A. 32-1-3(24) for definition of "public road" for purposes of Title 32.

## LEGAL QUICKIES

### Digital Photos

O.C.G.A. §24-4-48 sets out the requirements for admission of photographs. In a case in which the trial **court admitted digital photos under the same standard as other photos**, the Georgia Supreme Court stated, "We are aware of **no** authority ... for the proposition that the procedure for admitting pictures should be any different when they were taken by a digital camera." Almond v. The State, 274 Ga. 348 (2001).

Same rules apply for digital photos as with other photos. In other words, "PICTURES is PICTURES is PICTURES."

### Profane or Lewd Stickers on Motor Vehicles

O.C.G.A. § 40-1-4 prohibits "affixing or attaching to any part of such motor vehicle any sticker, decal, emblem, or other device containing profane or lewd words describing sexual acts, excretory functions, or parts of the human body." Therefore, the display of a sticker on the back window of a motor vehicle which says "F\_\_K METH" is unlawful, right? WRONG! Yep, back in 1991, the Georgia Supreme Court said that law is UNCONSTITUTIONAL in the case of Cunningham v. State, 260 Ga. 827 (1991).

**Just in Case You Wanted to Know...** COCKFIGHTING is prosecuted under O.C.G.A. § 16-12-4, Cruelty to Animals. It's a misdemeanor for the first offense with increasing punishment for subsequent offenses. Aggravated cruelty to animals is a felony. DOGFIGHTING is a felony prosecuted under O.C.G.A. § 16-12-37. Dogfighting is in the GAMBLING section of the code.

## HUMOR WORKS

And if you just generally don't like LAWYERS, remember: *IT'S JUST 90% OF 'EM THAT GIVE THE REST OF US A BAD NAME!!*

Published with approval of the Office of Colonel Bill Hitchens.  
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