



The Trooper Legal Update

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Demanding I.D.

The U. S. Supreme Court upheld a Nevada Officer's right to demand that a suspect give the officer his name. *Hiibel v. Humboldt Cnty*, Case No. 03-5554 (3/22/04). What are the implications in Georgia? Here is a brief summary. An individual may be charged with obstruction (OCGA 16-10-24) for failure to provide their name when:

- They are a **SUSPECT**. That is, the officer has reasonable suspicion the person has committed or is about to commit a crime. *Bailey*, 190 Ga.Ap. 683 (1989).
- They are a **WITNESS**. The officer has good reasons to believe the person's identification is important to leading to credible evidence in an investigation. *Clark*, 243 Ga.Ap. 362 (2000). See also *Hudson*, 135 Ga.Ap. 739 (1975).
- They fail to provide their name during **BOOKING**. *Carter*, 188 Ga.Ap. 464 (1988). See also *Edwards*, 220 Ga.Ap. 74 (1996).

Generally, if the individual is not a suspect or material witness, then there is no basis for obstruction charges for failure to provide their name. *Holt*, 227 Ga.Ap. 46 (1997). For example, a **PASSENGER** who is not a suspect or witness necessary for an accident investigation may be asked their name, but the name cannot be ordered/compelled. *Williams*, 264 Ga.Ap. 199 (2003). Other related charges include: OCGA 40-5-29, a driver's failure to show driver's license; OCGA 16-10-25, giving a false name; and, OCGA 16-11-36, failure to provide their name gives support for a loitering/prowling charge.

CARSEAT Charges: The chart to assist officers in making charges for child car seat violations

HUMOR WORKS:

Judge: "Do you understand that you have sworn to tell the truth?"

Witness: "I do."

Judge: "And do you understand what will happen if you are not truthful?"

Witness: "You bet...My side wins."

has been slightly modified. Please replace the previous chart with the **Attached** updated version.

Legal Quickies:

BOLO: A stop based on a BOLO for a specifically described vehicle leaving the scene of a crime is a good stop. *McNair*, A04A0547 (6/15/4); and, *Garlington*, A04A0236 & A04A0237 (7/1/4).

PAT DOWN: A pat down for officer safety is justified where the individual is a suspect in a robbery and appears nervous "like they may try to flee." *McNair*, supra. A pat down for officer safety is justified where the suspect was on probation for cocaine possession and appeared nervous. Officer testified that in his experience weapons were often present when drugs were involved. *Holmes*, A04A0559 (6/2/4).

DRUG DOGS at Roadblocks: The court affirmed that having K-9 at a roadblock does not turn the roadblock into an impermissible drug checkpoint -- where the supervisor set the roadblock for the permissible purpose of driver/safety, approx. 1000 vehicles were checked for license/registration and only about 10 vehicles were checked by the K-9 while they were detained to verify the license. Use of the K-9 did not extend the detention and the detention to verify the license was justified where the license was torn, hard to read and out-of-state. *McCray*, A04A0457 (6/24/4).

IMPLIED CONSENT: The warning should be read, if at all possible, at the scene -- at the time of arrest. (Just prior to or immediately following formal arrest.) Implied consent may be read a second time at the jail. *Oliver*, A04A0785(7/1/4).

PROSECUTOR ASSISTANCE: If you have a case where a foreign national is arrested and claiming that you violated his/her rights under international treaties, you may wish to contact the Georgia Prosecuting Attorneys' Council. The PAC has prosecutors who are experts in this area. The PAC has form briefs to assist prosecutors and officers. The PAC may be reached at 404-969-4001 or contact us & we will connect you.

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