



The Trooper Legal Update

June 2004

Legal Services 404/624-7423

Volume 3, No. 6

Case Law Update:

Miranda & Minors: The U.S. Supreme Court ruled that the same *Miranda* rules apply when the suspect is a minor. So long as the suspect is free to leave, *Miranda* warnings are not required - even if the suspect is under 18. *Yarborough v. Alvarado*, 2004 U.S. Lexis 3843 (6/1/4).

BOLO Stops: To be a good stop, a suspect report should include details. BOLO for a "white male in a dark colored van" is insufficient but a BOLO for "white van driven by white male, wearing baseball cap, near the Regions Bank" is a good stop. The more details the better. *Harden*, A04A0674 (5/12/4)(good stop) *Slocum*, A04A1067 (5/10/4)(bad stop). A BOLO stop can be a good stop even if the information relied upon by the officer turns out to be false. An officer may rely in good faith on facts given by a 911 caller so long as there is enough detail to reasonably identify the driver and the reported facts would form a basis for a stop. Even though the 911 caller made a false report of a crime, this does not affect the good faith stop. *Fisher*, A04A1040 (5/14/4).

Smell of Unburned Marijuana: Officer Chuck Pearson with Henry County PD testified that based on his training & experience he recognized the smell of unburned marijuana. Search of the trunk based on this articulated suspicion was upheld. *King*, A04A0779 (5/21/4).

Window Tint: Ga. Supreme Court held our Window Tint statute is unconstitutional because the law does not apply to non-residents. GSP sponsored a bill last session that would have applied the window tint statute to non-residents. (H.B. 1244) Now, legislation is required before stops/arrests can be made for suspected window tint violations. Note that stops made prior to June 7th will still be good stops. The window tint charge will be dismissed but the search will be upheld. *Ciak*, S04A0343 (6/7/4).

DRIVER'S LICENSE AS BOND: Following last month's article, Legal Services was asked for a more

HUMOR WORKS:

Q: How was copper wire invented?
A: Two lawyers arguing over a penny.

detailed summary of offenses where custodial arrest is

prohibited. Attached is a summary we hope will help. Thanks Don Woodruff of Duluth PD for your inquiry.

MONTHLY MINDERS:

Alco-sensor and Miranda: The Ga. Court of Appeals reminds officers that *Miranda* warnings are generally not required when giving the alco-sensor as part of field sobriety testing. (Even where the officer has enough evidence to go ahead & arrest for DUI & the suspect is not going to be free to leave.) If the suspect has not been placed under formal arrest, *Miranda* is not required for the alco-sensor. *Miranda* is only required before requesting the alco-sensor if the suspect has been placed under formal arrest. *Dixon*, A04A0841 (5/7/4).

Asking for Consent Search: The Ga. Supreme Court reminded officers that asking for a consent search, unrelated to the stop or following the conclusion of the stop, requires: a) reasonable suspicion; or b) the suspect must be free to go. After a warning was issued the officer could say, "Mind if I ask you a question?...you are free to go... but I would like to talk with you..." With consent the officer could then ask, "where are you going and mind if I search?" *Daniel*, S03G1172 (5/24/4).

Roadblocks: The Ga. Appellate Court reminds us that the purpose of setting up a road block can never be for stopping "criminal wrongdoing in general" or to be used as a "drug check point." Testimony regarding the purpose of the road block must **unambiguously** relate to driver safety, i.e., "DUI, insurance, or driver's licenses." Watch your testimony. Also, if a form is used to demonstrate that a supervisor set up the roadblock, the form does not have to specify the date and time but if it does, the roadblock should be conducted on the date and time specified by the form. *Morgan*, A04A0703 (6/9/4).

CONGRATULATIONS to those participating in the high speed chase of suspect Dupree (GSP Sgt. Daniel Pollock, Chattooga County SO, Lafayette PD & Tenn. law enforcement). The Court held that leading officers on an extended high speed chase, maneuvering through roadblocks, and attempting to run officers' vehicles off the road supported charges for aggravated assault of a peace officer. *Dupree*, A04A0239 (5/24/4)

Published with approval of the Office of the Colonel.
Legal Services: Wayne Yancey, Director; Terry L. Long, Deputy Director. Questions/Comments to tlong@gsp.net