



The Trooper Legal Update

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Consent without Implied Consent:

The new trend in DUI law enforcement efforts is the regular practice of obtaining consent to draw blood without using implied consent. GSP SCRT & Gwinnett County have had success in routinely asking drivers to sign a consent form. [See ATTACHED SCRT Consent Form.] Many are overcoming the effects of *Cooper & Handschuh* by asking for consent first (whether or not PC exists). If the driver refuses to consent, then the Trooper/officer still has the Implied Consent option: 1) develop PC, 2) place the driver under arrest, 3) if at all possible, read implied consent right away. Remember the burden of proving consent is always on the officer. There must be a signed form, audio recording, witness or similar evidence to establish that consent was given.

DUI Less Safe: Good Case or Bad Case? It's hard to tell the difference...

Good Case - Stopped vehicle for repeatedly flashing high beams at approaching car, refused field sobriety, & refused state-test, had blood-shot eyes & odor of alcohol. *Long*, A04A2193 (12/6/4).

Bad Case - Stopped for tag registration violation, refused field sobriety & refused state's test, had odor of alcohol, admitted drinking something. *Shaheed*, A05A0173 (12/1/04).

What's the difference? Not much. The Court states that the good case has at least some evidence that the driver is impaired (lights flashing on/off for no apparent reason & bloodshot eyes). While you do not have to show an unsafe act to bring a Less Safe case, you do have to have some evidence showing impairment.

Legal Services Welcomes a new

Director: Ms. Melissa Rodgers. Ms. Rodgers started her legal career with the State Attorney General's office in 1991. In 1994, Ms. Rodgers came to DPS. After serving 5 years at DPS as the Deputy Director, she went to the Pardons & Parole Board to serve 5 years as their Assistant Director of Legal Services. Welcome back Melissa to the Blue & Gray.

Trooper Highlight

Trooper Wayne Darity of Post 4 Villa Rica fought hard when testifying why he did not grant a suspect's request to be transported to Ga. Baptist Hospital in Atlanta for an independent test. The suspect had been arrested in Coweta County. The Court found that the suspect's request was unreasonable. Although there is no bright line defining at what point the distance to the requested facility renders the suspect's request unreasonable, the court must consider such factors as: 1) the time to travel there, 2) the distance, 3) other available testing sites closer than the requested site, and 4) available police resources. *Lenhardt*, A04A2099 (1/7/05).

HELP YOUR PROSECUTOR: Certified DPS records are admissible into evidence automatically without a witness. See *Keller*, A04A0805 (12/1/4) & 24-3-17. If you think it will be used in court, put a signed certification sticker on it. All the posts should have these or you can get a bunch from PIO.

CHARGING COMMERCIAL VEHICLES:

Attached is a cheat sheet for charging Commercial Vehicles with Ga Code violations. This sheet is a modified version of a list utilized by DMVS for charging CVs. Hope it helps.

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Legal Quickies:

Canines: Consistent with Georgia law, the U.S. Supreme Court held that a canine could be used during a routine traffic stop. So long as using the canine does not delay the stop, no reasonable suspicion is needed. In this case, the dog alerted in less than 10 minutes after the original stop for speeding. [Note: You're going to need good reasonable suspicion first, if use of the dog extends the time for the initial stop.] *Illinois v. Caballes*, U.S.Sup.Ct. No. 03-923, (1/24/05).

Mistaken Good Faith Belief Stop: An officer mistakenly thought that a broken fog light violated an equipment/lighting law. Even though it was not an equipment violation, still a good stop. *Dixon*, A04A1682 (1/5/05).

Checking Driver's License: If you stop someone due to questions relating to registration and first verify that the registration is okay, then you cannot ask to see the driver's license. Lesson: If you stop a vehicle with possible registration problems, ask to see the driver's license/insurance before/during the registration check. *Joyner*, A04A1135 (11/19/04).

Aggravated Assault on Officer: Intentionally running a car into an officer's patrol car while the officer is in the car supports a charge for Aggravated Assault on a Police Officer. *Sheffield*, A04A2355 (11/19/04).

Avoiding Roadblock: Backing up in the middle of the road, turning into a driveway & then walking away through the yard provides reasonable articulable suspicion for a detention so that the officer may investigate whether the individual is avoiding the roadblock. *Powell*, A05A0101 (12/01/04).

Minor in Possession & Fraudulent Use of a Driver's License: If a person who is drinking appears to be too young, this provides reasonable suspicion justifying a brief detention and request for ID. *Beasley*, A04A0821 (11/29/04).

ON THE CIVIL SIDE

***Sheriff not liable for injuries caused by a driver released by a deputy who was arguably impaired and driving with a suspended license. The deputy had a good faith belief that the driver was not impaired and a good faith belief that the driver was legally permitted to drive on an issued citation. Even if the deputy was mistaken, there are no grounds for liability. *Holcomb v. Walden*, A04A2333 (11/19/04).**

***Officer allowed 13 year old to look at weapon & minor shot & killed himself. Court held: Employing law enforcement agency & former employing law enforcement agency could be held liable. Employer could be held liable for "negligent retention" & "negligent hiring" due to all the safety infractions the officer had committed before & during employment. A jury could find that the agency should have never hired the deputy or should have fired him. The former employer could be held liable for failing to notify POST Council that the employee resigned in lieu of termination and/or for failing to provide disciplinary information to the hiring agency. *Gove v. City of Norcross*, A04A0956 & A04A0957 (11/23/04).**

HUMOR WORKS:

"You seem to be in some distress," said the kindly judge to the witness. "is anything the matter?"

"Well, Your Honor," said the witness, "I swore to tell the truth, the whole truth, and nothing but the truth, but every time I try, some lawyer keeps objecting."