



The Trooper Legal Update

June 2005

Legal Services 404/624-7423

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Legal Services Welcomes a new Attorney:

Ms. Chiquita Johnson. Ms. Johnson is being transferred from DMVS to DPS as a result of the H.B. 501 transfer of DMVS enforcement. She graduated from Emory University, School of Law in 1996, and received an undergraduate in Journalism from the University of Georgia in 1990. Prior to serving as the Dep. Director of Legal Services for DMVS, Ms. Johnson served as an Assistant General Counsel for the Association of County Commissioners of Georgia, an Assistant City Attorney for the City of Atlanta, and Staff Attorney for the Dougherty County Superior Court. Please help us welcome Chiquita Johnson to Legal Services.

MONTHLY MINDERS: DRIVING TOO FAST FOR CONDITIONS

A charge of "driving too fast for conditions," where the suspect is driving below the speed limit, requires that the officer place on the citation/accusation:

1. The speed of the vehicle
2. The hazard/condition that required a slower speed.

Bilbrey, 254 Ga. 629 (1985). "Speed" may be an estimate or approximation & may be established by circumstantial evidence, including the degree of impact/damage or marks left by a vehicle after it leaves the roadway. *Blackwell*, 180 Ga.App. 253 (1986). O.C.G.A. § 40-6-180 (too fast for conditions). Thanks Sgt. Thomas Jackson of Post 27 Blue Ridge for your question.

Window Tint Statute --

The window tint law restricts the amount of tinting that may be placed on windows. An exception is provided for windows behind the driver of a "multipurpose passenger vehicle." A multi-purpose passenger vehicle is defined in the statute as: "a motor vehicle **designed to carry ten persons** or less which is constructed on a truck chassis or with special features for occasional off-road operation." O.C.G.A. § 40-8-73.1(a)(5). Whether this exception includes "trucks" is not specifically addressed. However, a truck is defined in O.C.G.A. § 40-1-1(70) as a vehicle "**designed primarily for the transportation of property**." Arguably, a truck does not fall within the multipurpose passenger vehicle exception. Talk to your prosecutor or judge to see if they will support the window tinting charge against a truck.

DUI CASE PREPARATION:

This month's issue of the Trooper Legal Update features the DUI Case Preparation sheet. (Attached.) The DUI Case Preparation sheet was developed in order to help officers better prepare for DUI cases and to outline some of the recent developments in DUI law. While not every legal issue can be covered, the summary provides an outline of the basic concepts to help refresh your recollection when preparing a DUI case. The essential legal requirements are outlined to cover the most common situations. We hope this will assist you in making a DUI case. Special thanks to Major Don Chastain & Lt. Ken Peterman for your suggestions.

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Legal Quickies:

Miranda: A suspect voluntarily agreed to go to the station to give a statement. Suspect followed in their own car & was never told he was under arrest. The interview room was not locked and the suspect was repeatedly told he was not under arrest and was free to leave. Suspect never attempted to stop the interview. Suspect was not “in custody” for purposes of *Miranda*. *Miranda* not required. The fact that officers lied to the suspect and told him, “the victims had identified him in a lineup” was irrelevant. *Parks*, A05A0263 (05/20/05).

Confession: Telling a suspect, words to the effect that, “If you don’t confess, I will send you to jail with no bond, but if you confess, I will get bond for you the next day” is improper. The confession was held not voluntary, and was suppressed.

Johnson, A05A0485 (05/19/05). The Court noted statements which do not implicate the sentence or the charge at issue such as a promise of bond reduction, solitary cell, or a promise to report suspect’s cooperation to the judge are all proper & would not result in suppression of confession.

Assault on an Officer: Forcing 2 police cars onto the curb to avoid a head-on collision supported charge for two counts of aggravated assault on a police officer. *Card*, A05A0043 (05/02/05). Also, where officer had to step out of the way of a fleeing suspect’s vehicle to avoid being hit, this supported a charge of aggravated assault on an officer. *Young*, A05A0187 (05/03/05).

Obscene Telephone Calls: The Court finds statute unconstitutional. O.C.G.A. § 46-5-21(a)(1) prohibited indecent, lewd, lascivious, filthy & obscene telephonic communications. This portion of the statute was held unconstitutional. The GA Supreme Court held this was an overbroad infringement on the First Amendment guarantee of free speech. The remaining portions of the statute,

which make harassing phone calls illegal, are still good law. *McKenzie*, S05A0298 (04/26/05).

ON THE CIVIL SIDE

Sexual Harassment Can be Expensive: A former sheriff’s officer wins nearly \$3 million for a coworker’s harassment because of her sexual orientation. *Caggiano v. County of Essex*, #L-1608-00, 42 (2084) GERR (BNA) 1106 (verdict 11/15/04).

HELP YOUR PROSECUTOR

Make sure **EVERY** officer that plays a critical role in a DUI case is identified & comes to court. These include:

1. The officer who made the stop or who can establish the suspect is the driver.
2. Any officer whose observations helped establish PC for arrest.
3. The officer who reads implied consent.
4. The officer who conducts the Intox or takes custody of the blood.

GOOD NEWS for DREs

Drug Enforcement Experts are still a relatively new concept in GA law. There is not a lot of case law discussing issues relating to DRE testimony. The one case that has looked at such an expert’s testimony relied upon his testimony to find that there was sufficient evidence to support a DUI less safe charge for drugs. *McKee*, 258 Ga. App. 99 (2002). Hopefully, the courts will continue to build on this positive holding.

HUMOR WORKS:

Two attorneys were vacationing in Africa on safari when they heard an approaching lion. One sat down & began removing his shoes, saying, “I run better barefooted.” The other attorney replied, “Don’t be crazy, you can’t outrun a lion!” To which the first attorney replied, “No, I don’t have to. I just have to outrun you.”

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