



GEORGIA STATE PATROL

DUI Case Preparation

Summer 2005

The following is provided to assist in making and presenting DUI arrests and prosecutions in light of current law.

I. THE ARREST

A. Basis for the Stop

1. Probable Cause Stop

Generally, any observed violation of the law is a good basis for a stop, no matter how minor. Examples:

- Failing to use turn signal when traffic conditions warrant. *Barrow*, 269 Ga. App. 635 (2004).
- Tag light out. *Draper v. Reynolds*, 369 F.3d 1270 (2004).
- Going 6 m.p.h. over the speed limit. *Owens*, 239 Ga. App. 722 (1999).
- Drive-out-tag not in compliance with statutory specifications. *Anderson*, 253 Ga. App. 338 (2002).

2. Reasonable Suspicion Stop

Specific articulable facts which indicate to a reasonable person that an individual may have violated or is about to violate the law. Examples:

- Weaving within the lanes. *Veal*, 2005 A05A0750 (4/19/05).
- Suspiciously avoiding road check. *Powell*, 270 Ga. App. 707 (2004).
- Violations observed by others:
 - For Reasonable Suspicion stops you may rely on reliable communications from other law enforcement officers. *Pennyman*, 248 Ga. App. 446 (2001).
 - You may rely on statements of other citizens only if you can establish that they are a reliable witness. A reliable witness means that they provide sufficient information or details that you can confirm/corroborate. If the caller is anonymous (or unidentifiable), then the court will require even more details and corroboration of the information provided. *Riding*, 269 Ga. App. 289 (2004); and *Camp*, 259 Ga. App. 228 (2003).

3. Stop Based on Road Check

- _____ Road check approved by a supervisor (giving approximate date, locations and times).
- _____ Legitimate primary purpose of road check (purpose may not relate to drug enforcement or general criminal activity).
- _____ All vehicles are stopped (or a pre-determined plan for allowing some vehicles to pass through).
- _____ Experienced/trained officers used (experience/training must relate to the basis for the road check; DUI, license/registration).
- _____ Road check identified as an official law enforcement check (marked cars, officers in uniforms, use of vehicle lights).
- _____ Only minimal delay to stopped motorist (may extend stop if PC or reasonable suspicion).

Perdue, 256 Ga. App. 765 (2002).

[Department policy should be reviewed and followed.]

4. Accident

Establish Suspect was the Driver

In any DUI case, establishing that the suspect was the driver is a necessary element. Commonly, in an accident situation, the driver has exited the vehicle or the officer did not witness the driving and it becomes more difficult to ID them as the driver. Circumstantial evidence may be used to establish driving.

Examples:

- slouched over the wheel of the vehicle
- injuries caused by the steering wheel
- witnesses ID or admissions

Jarriel, 255 Ga. App. 305 (2002).

Establish the Driving was Recent

Because time of driving is a factor in a DUI case, circumstantial evidence to show recent driving is important (add facts like engine still warm, car in gear, lights/radio still on, officer previously in area & car not there, etc.).

If Driving occurred more than 3 hours prior to testing, in order to use test results in court:

- Must establish continuous observation of suspect or little opportunity to consume alcohol since last drove.
- Must have expert witness to testify regarding the dissipation rates of alcohol. *Allen*, 256 Ga. App. 798 (2002).

B. Developing PC for DUI

1. Typical Drunk Case

Make Observations & Collect information from Witnesses or Suspect

- Suspect appearances, smells, behavior/demeanor
- Ask suspect about being DUI -- get admissions
- Smell of marijuana
 - Can be smell of unburned marijuana.
King, 267 Ga. App. 546 (2004).
 - burning marijuana (can't be previously burnt marijuana).
Charles, 264 Ga. App. 874 (2003).

Conduct field sobriety (on video if possible)/Alco sensor

Statements by Passengers/Witnesses

Physical Evidence --Take photos (bottles, drugs in vehicle, rolling papers, etc.)

2. Accident Case

- **If suspect is taken to the hospital prior to arrest**, PC may be developed at the hospital or suspect may be arrested at the hospital. Arrest and reading implied consent may be done by a second officer. Both officers' observations can be combined to develop PC, but the arresting officer should be told the details of the first officer's observations prior to making the arrest if the observations are to be combined. The arresting officer must have PC before arrest. An arresting officer may rely upon the first investigating officer's observations to develop PC. If both officers provide observations for PC, both will have to testify. Also, the officer that made the initial stop, or who can verify suspect was driver, must testify (this could be a 3rd officer).
- **Serious Injury/Fatality** is no longer a basis for Implied Consent. Just because there is a serious injury/fatality does not mean an officer can automatically request state testing. There must be PC and formal arrest. *Cooper, 277 Ga. 282 (2003).*
- **Search Warrant for Medical Records:** If you have PC, you may obtain a warrant for the treatment records and use the results of the blood test in the medical records as a basis for a charge. *Harris, A04A2124 (3/22/05).* **You can no longer use a warrant to force compliance with the test.** [Note: Some prosecutors are still using a subpoena to obtain medical records and then providing a privacy hearing regarding protected information. This theory has not yet been tested in the appellate courts.]
- **The unconscious/deceased driver** may be tested. 40-5-55(b).

3. Reading Implied Consent

- Must have PC to place suspect under arrest.
- Must Read Implied Consent AFTER formal arrest.
- Must read Implied Consent IMMEDIATELY following formal arrest. (Any delay must be explained. Generally, only officer/public safety reasons justify a delay in reading implied consent.) *Handschuh*, A04A0838 (2004).
- Never try to explain Implied Consent, just read it.
- Irrelevant that the person can't speak English. IC is only read in English. *Lucas*, 275 Ga. 508 (2002).
- Only has to be read once.
- Deaf Persons, see § 24-9-103. Wait 1 hour for a DHR interpreter before trying any other option.
- If suspect is given test make sure there is evidence of clear and unambiguous consent.
- Reading Implied Consent: If the suspect takes the state test this triggers their right to an independent test. (If test results of State's test are going to be used against the suspect then they have a right to independent testing.) *Chamberlain*, 246 Ga. App. 423 (2000). Any ambiguity at all regarding whether the suspect has asked for a test will be construed in favor of the suspect. If the suspect mentions testing, it is best to clarify whether they are requesting an independent test. *Allen, Johnson*, 261 Ga. App. 633 (2002); and *Schmidt*, 256 Ga. App. 749 (2002).
- If treated as a "Refusal" try to make sure you have clear documentation/evidence that they refused.

4. Consent to Test

- If you do not have PC for a formal arrest (& Implied Consent), you may want to try to obtain driver's voluntary consent.
- Burden is on the officer to establish that the suspect consented. Generally, this means if the only evidence you have is your word against the suspect, you lose. You should have an additional believable eye-witness that verifies consent, the suspect's admission that they agreed, a writing giving consent or, the best evidence, a video or tape recording.
- Consent must be given freely and voluntarily (this generally implies no threats and no promises).
- You are not required to advise a suspect of his right to refuse your request for consent. *Kinsey*, A05A0135 (2005); and *Goodman*, A05A0021 (2005).

C. Miscellaneous:

Out of state arrests -- Unless you have hot pursuit or exigent circumstances justifying the need for arrest, Troopers lack jurisdiction to arrest suspects out-of-state. O.C.G.A. § 35-2-32 and 40-13-30. An out-of-state arrest requires deputization of a GA officer or the formal arrest should be conducted by a local officer with proper jurisdiction. This situation usually arises when a suspect is taken to an out-of-state hospital &, due to emergency circumstances, the arrest cannot be made prior to transporting the suspect. Arguably, this situation presents “exigent circumstances” requiring immediate arrest which would extend the Trooper’s jurisdiction. *Watkins*, 207 Ga.App. 766 (1993). Another option is to merely collect evidence for PC at the hospital, get a warrant for treatment records and then issue a warrant for arrest at a later time. Discuss jurisdictional options with your local prosecutor.

Miranda – Miranda is not required to conduct field sobriety & Alco-sensor **unless the suspect is already under arrest at the time field sobriety is administered.** *Dixon*, 267 Ga. App. 320 (2004). Miranda is not required to conduct state administered test (Intox 5000). *Miles*, 236 Ga. App. 632 (1999).

II. THE INVESTIGATIVE REPORT

- _____ Clearly indicate basis for stop.
- _____ List every fact that caused you to suspect DUI prior to stop (if any).
- _____ List every fact that caused you to suspect DUI after the stop. (Include each field sobriety test given and the suspect’s results.)
- _____ ID individual that conducted State’s test (drew blood, collected urine, ran Intox).
- _____ ID all officers present at the scene.
- _____ ID all EMT medical personnel on scene.
- _____ ID all witnesses on scene.
- _____ Document every detail relevant to DUI that suspect said. (Try to get an admission of consuming drugs/alcohol or being around drugs/alcohol.)
- _____ Summary of or written statement of witness. (Include treatment provider’s observations.)
- _____ Photographs of scene, vehicle or evidence. (Include photos of alcohol containers).

- _____ If read implied consent, note that it was read after formal arrest & the card used.
- _____ Video tape number (if any).
- _____ ALS documents & results of ALS.
- _____ Criminal history & driver's history.

*******Note:** ID means more than a name; includes driver's license #, DOB, address, phone #, place of employment, etc., if possible.

III. COURT PREPARATION

Basic Documents (Must have for Court):

- _____ Complete Accident/Incident Report (including info. listed above).
- _____ Video Tape (review prior to trial).
- _____ Implied consent card (if read).
- _____ Officer who administered test -- Intox 5000 Operator Permit.
- _____ Calibration certificates for machine (before test date & after test date).
- _____ Original Intox Printout (You should have 3 originals).
- _____ Consent form(s).
- _____ Chain of custody document/property receipt forms.
- _____ Supervisory Approval of Roadblock form.
- _____ Crime Lab Report.
- _____ Permit indicating officer certified to test for drugs (if conducted test).

All relevant mandatory documents listed above should be admitted into evidence after describing the document. (Bring a photocopy to admit copy instead of original—except Intox reading is a duplicate original.) Be ready to say that these records are official records of DPS: 1) made and kept in the regular course of business; 2) it is the regular/routine business practice for DPS to make these records; and 3) the documents are made at or near the time of the event recorded in the document. OR you can have the copy certified. Certified copies of DPS records are automatically admissible into evidence. O.C.G.A. § 24-3-17.

Basic Mandatory Witnesses (must come to court):

- _____ Officer that made stop or can testify the suspect was driving.
- _____ Any officer who developed probable cause/reasonable suspicion.
- _____ Arresting officer (officer that placed suspect under arrest).
- _____ Officer that read implied consent.
- _____ Officer that took custody of the blood at the time it was drawn. (Best if witnessed blood draw and observed it being sealed.)
- _____ Individual that administered Intox. test.
- _____ Lab Technician that tested blood.
- _____ If road block case, Supervisor or certified “Supervisory Approval Form.”
Morris, 265 Ga. App. 186 (2004).

Note: If officer required above, another officer cannot testify on their behalf.

Basic Mandatory Testimony

1. Basis for the Stop

Road Check Case testimony must establish each of the factors listed above in Section I.

2. PC for Arrest

Observations
Evidence
Field Sobriety/Alco-sensor

Mandatory Testimony for Field Sobriety Tests

Alco-sensor:

- Officer should say, “The device is approved by the Division of Forensic Sciences of the GA Bureau of Investigation as a preliminary breath screening device.” *Baker*, 252 Ga. App. 695 (2001).

- Testify as to whether the test was positive/negative for alcohol only (not the specific results).

HGN, Walk & Turn and One Leg Stand:

- Your training.
- Details of how the test was conducted in accordance with existing standards.
- The suspects' results (details).

3. Arrest/Testing

- **Must read Implied Consent card** into the record.
- **Intox 5000 Test** say, "The test was performed according to methods approved by the Division of Forensic Sciences (DFS) of the GBI."

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