

# GEORGIA traffic PROSECUTOR

A Publication of the Prosecuting Attorneys' Council of Georgia Traffic Safety Program

## our mission

The goal of PAC's Traffic Safety Program is to effectively assist and be a resource to prosecutors and law enforcement in keeping our highways safe by helping to prevent injury and death on Georgia roads.

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Photo courtesy: Middle Georgia Traffic Enforcement Network ([www.wehuntatnight.com](http://www.wehuntatnight.com))

In this final issue of the Georgia Traffic Prosecutor for 2009, the Prosecuting Attorneys' Council would like to thank everyone involved in the fight to stop impaired drivers from the havoc they wreak in Georgia and every state in this nation. Increasingly, DUI cases are appealed because more impaired drivers are being arrested and prosecuted. This year's final issue of the Georgia Traffic Prosecutor gives an update of appellate court decisions in 2009, including a review of *Arizona v. Gant* where the U.S. Supreme Court limits the scope of automobile searches. Finally, we address the training provided by PAC to part time and municipal solicitors.

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## The Impact of *Arizona v. Gant*: Limiting the Scope of Automobile Searches?

By Mark M. Neil, Senior Attorney, National Traffic Law Center

The scope of a police officer's search of an automobile incident to the arrest of an occupant has been somewhat limited by a recent U. S. Supreme Court decision. The Court held in *Arizona v. Gant*,<sup>1</sup> that the search incident to arrest exception to the warrant requirement did not apply to the facts of this case and held that a vehicle search is not authorized incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle.

While investigating *Gant* for alleged drug activity, Tucson police officers learned that *Gant*'s driver's license had been suspended and that there was an outstanding warrant for his arrest for driving with a suspended license. Officers observed *Gant* drive by, park and then get out of his automobile and shut the door. While about 30 feet apart, one officer called to *Gant* and they approached each other meeting 10 to 12 feet from *Gant*'s car. *Gant* was then arrested and handcuffed.

Incident to his arrest, the officers then searched *Gant*'s car, one finding a gun and the other a bag of cocaine in the pocket of a jacket on the backseat.

Because *Gant* was handcuffed and could not access the interior of the car to retrieve weapons or evidence at the time of the search, the Court found that the search incident to arrest exception did not justify the search in this case.

A divided Court (4-1-4) held (Stevens, J.) generally that a vehicle search incident to a recent occupant's arrest is not authorized after the arrestee has been secured and cannot access the passenger compartment of the vehicle. This is seemingly contrary to prior opinions in *Thornton v. United States*<sup>2</sup> and *New York v. Belton*.<sup>3</sup> Applying the safety and evidentiary justifications underlying *Chimel v. United States*<sup>4</sup> to limit *Belton*, much of what has been taught to and practiced by law enforcement officers regarding search incident to arrest is no lon-

ger valid. Gone is the more open and generous license to law enforcement officers in their ability to search the passenger compartment of a vehicle or any containers therein simply because they have arrested an occupant or recent occupant of the vehicle.

Yet, the opinion notes that *Gant* is consistent with the holding in *Thornton* and follows the suggestion of Justice Scalia's concurring opinion therein.<sup>5</sup> *Thornton* had expanded *Belton* to allow for searches of the passenger compartment of a vehicle that is contemporaneous incident to arrest even when the officer did not make contact until that person had left the vehicle. The rationale of allowing a search of the entire passenger compartment, regardless of the manner of contact with the arrestee, was in the search for a clear rule. Still, it is one based on ensuring officer safety and preserving evidence. Justice Scalia's concurring opinion in *Thornton* argued that if *Belton* searches were justifiable, it was because of the safety and evidentiary issues, not simply because the vehicle might contain evidence relevant to the crime for which he was arrested.

While at the same time limiting an officer's ability to search the vehicle incident to arrest based upon proximity and access for the purposes of officer safety and evidentiary safekeeping, the Court also indicated that there may be circumstances unique to the automobile context to justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.

The Court stated that not only is an officer permitted to "conduct a vehicle search when an arrestee is within reaching distance of the vehicle" but also if "it is reasonable to believe the vehicle contains evidence of the offense or warrant." (emphasis added) This allows for searches incident to arrest where the vehicle is outside of the arrestee's reach based upon reasonable belief rather than probable cause. Assuming that the defendant had been stopped

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and subsequently arrested for Driving Under the Influence of Alcohol (DUI), the officer would be justified in searching for evidence of the consumption of alcohol if the officer had a “reasonable” belief such evidence might be found. A search might also be permitted in the case of the arrest of the occupant of the vehicle on an outstanding warrant so long as the officer had reasonable belief that evidence of the crime charged in the warrant might be found in the vehicle.

Going on, the Court lists certain exceptions that still apply and are available to officers:

• **Frisk for Weapons.** Permitting officers to search a vehicle’s passenger compartment when there is reasonable suspicion that an individual, whether or not the arrestee, is dangerous and might access the vehicle to gain immediate control of weapons.<sup>6</sup> This flows from the rationale for frisking a suspect for weapons.<sup>7</sup>

• **Probable Cause of Evidence of Crime.** Where there is probable cause to believe a vehicle contains evidence of criminal activity.<sup>8</sup> Of particular interest is the mention that this allows for searches for evidence relevant to offenses other than the offense of arrest, and the scope of the search authorized is broader. This exception does not rely upon an arrest for justification.

• **Protective Sweep.** Where safety or evidentiary interests would justify a search, such as a limited protective sweep of those areas in which an officer reasonably suspects a dangerous person may be hiding.<sup>9</sup> From a vehicle perspective, this exception may be applicable when dealing with larger vehicles such as multi-passenger vans, recreational vehicles, motor homes, buses and the like.

Although not mentioned in the opinion, other exceptions should also still apply:

• **Consent.** The easiest of all exceptions to the search warrant requirement is the one of consent. When the defendant makes a knowing and intelligent waiver of his rights, the officer may search without a warrant.<sup>10</sup> This consent, however, may be limited in scope.<sup>11</sup>

• **Inventory.** So long as the officer’s department has a written policy providing for it, the officer may inventory the contents of a vehicle prior to it being impounded and towed for the purpose of safekeeping and avoiding claims of loss.<sup>12</sup>

• **Plain View.** In situations where the officer is in a position in which he is lawfully entitled to be, anything plainly visible as being evidential or contraband falls under this well established exception.<sup>13</sup>

• **Abandonment.** If the vehicle has been abandoned, then the privacy interests normally protected by the 4<sup>th</sup> Amendment have also been abandoned and the officer is free to search the vehicle.<sup>14</sup>

• **Sobriety Checkpoints.** Police may still

conduct appropriate sobriety checkpoints to detect impaired drivers but not for general criminal activity.<sup>15</sup>

• **Exigent Circumstances.** There may be circumstances that arise to the level permitting a search under this exception, but caution should always be used in relying upon it. Only in the direst of circumstances such as hot pursuit, imminent destruction of evidence or danger to a third person might this be applicable.<sup>16</sup>

Some activities do not rise to the level of a search and officers should not worry about this case having changed how they handle these situations. For example, dog sniffs of vehicles during an otherwise lawful stop are not affected. The dog sniff itself is not a search and as long as it is done during the pendency of a lawful stop and not beyond, there is no issue.<sup>17</sup>

It would also be appropriate to note that quite often vehicles are part of a crime scene, such as in vehicular homicide or DUI with Death cases. Care should be taken to remember that there is no crime scene exception for search warrants.<sup>18</sup> Reliance purely upon the motor vehicle exception may not be workable when the vehicle is no longer mobile because of the crash. Some evidence within the vehicle, such as crash data recorders or some physical evidence might be subject to the exigent circumstances exception if the officer has a reasonable belief that the evidence may otherwise be lost. Officers are allowed to secure a crime scene pending the issuance of a search warrant.<sup>19</sup>

In short, the holding in *Arizona v. Gant* is not an overly burdensome one on law enforcement. While it certainly limits the prior practices of officers conducting wide-ranging searches incident to an arrest of an occupant of a motor vehicle, it does still permit those searches under more defined circumstances. Perhaps the most important requirement to come out of this case is the need for officers to articulate, and prosecutors to elicit, with great care and detail, the basis for the search.

### Endnotes

<sup>1</sup> 556 U.S. \_\_\_, No. 07-542 (2009).

<sup>2</sup> 541 U.S. 615 (2004).

<sup>3</sup> 453 U.S. 454 (1981).

<sup>4</sup> 395 U.S. 752 (1969).

<sup>5</sup> *Id.*, 541 U.S. at 632.

<sup>6</sup> *Michigan v. Long*, 463 U.S. 1032 (1983).

<sup>7</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>8</sup> *United States v. Ross*, 456 U.S. 798 (1982).

<sup>9</sup> *Maryland v. Buie*, 494 U.S. 325 (1990).

<sup>10</sup> *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

<sup>11</sup> *Florida v. Jimeno*, 500 U.S. 248 (1991).

<sup>12</sup> *South Dakota v. Opperman*, 428 U.S. 364 (1976).

<sup>13</sup> *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

<sup>14</sup> *California v. Greenwald*, 486 U.S. 35 (1988).

<sup>15</sup> *Michigan Dept. of State Police v. Sitz*, 469 U.S.

444 (1990), *Indianapolis v. Edmund*, 531 U.S.

32 (2000).

<sup>16</sup> *Welsh v. Wisconsin*, 466 U.S. 740 (1984),

*Schmerber v. California*, 384 U.S. 757 (1966).

<sup>17</sup> *Illinois v. Caballes*, 543 U.S. 405 (2005).

<sup>18</sup> *Mincey v. Arizona*, 437 U.S. 385 (1978), *Flippo*

*v. West Virginia*, 528 U.S. 11 (1999).

<sup>19</sup> *Thompson v. Louisiana*, 469 U.S. 17 (1984).

## ...> aggressive driving

- The National Highway Traffic Safety Administration (NHTSA) defines aggressive driving as “the operation of a motor vehicle in a manner that endangers or is likely to endanger persons or property”—a traffic and not a criminal offense like road rage. Examples include speeding or driving too fast for conditions, improper lane changing, tailgating and improper passing.
- Approximately 6,800,000 crashes occur in the United States each year; a substantial number are estimated to be caused by aggressive driving.
- 1997 statistics compiled by NHTSA and the American Automobile Association show that almost 13,000 people have been injured or killed since 1990 in crashes caused by aggressive driving.
- According to a NHTSA survey, more than 60 percent of drivers consider unsafe driving by others, including speeding, a major personal threat to themselves and their families.
- About 30 percent of respondents said they felt their safety was threatened in the last month, while 67 percent felt this threat during the last year. Weaving, tailgating, distracted drivers, and unsafe lane changes were some of the unsafe behaviors identified.
- Aggressive drivers are more likely to drink and drive or drive unbelted.
- Aggressive driving can easily escalate into an incident of road rage. Motorists in all 50 states have killed or injured other motorists for seemingly trivial reasons. Motorists should keep their cool in traffic, be patient and courteous to other drivers, and correct unsafe driving habits that are likely to endanger, antagonize or provoke other motorists.
- More than half of those surveyed by NHTSA admitted to driving aggressively on occasion.
- Only 14 percent felt it was “extremely dangerous” to drive 10 miles per hour over the speed limit.
- 62 percent of those who frequently drive in an unsafe and illegal manner said they had not been stopped by police for traffic reasons in the past year.
- The majority of those in the NHTSA survey (52 percent) said it was “very important” to do something about speeding. Ninety-eight percent of respondents thought it “important” that something be done to reduce speeding and unsafe driving.
- Those surveyed ranked the following countermeasures, in order, as most likely to reduce aggressive and unsafe driving behaviors: (1) more police assigned to traffic control, (2) more frequent ticketing of traffic violations, (3) higher fines, and (4) increased insurance costs. Increased police enforcement was rated “Number 1,” both for effectiveness and as a measure acceptable to the public to reduce unsafe and illegal driving.
- NHTSA research shows that compliance with, and support for, traffic laws can be increased through aggressive, targeted enforcement combined with a vigorous public information and education program.

(Courtesy NHTSA)

### GEORGIA'S AGGRESSIVE DRIVING LAW:

O.C.G.A. § 40-6-397

(a) A person commits the offense of aggressive driving when he or she operates any motor vehicle with the intent to annoy, harass, molest, intimidate, injure, or obstruct another person, including without limitation violating Code Section 40-6-42, 40-6-48, 40-6-49, 40-6-123, 40-6-184, 40-6-312, or 40-6-390 with such intent.

(b) Any person convicted of aggressive driving shall be guilty of a misdemeanor of a high and aggravated nature.

# 2009 DUI Case Law Update

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## Habitual Violator; Intoxilyzer 500 Certification

*West v. State, A09A2069, 2009 Ga. App. LEXIS 1229*

Appellant was convicted of DUI and Habitual Violator. He contended that the trial court erred in allowing the officer to testify concerning information in the certificates of inspection regarding the Intoxilyzer 5000. Specifically, he argues that the officer should not have been allowed to testify that, since the certificates showed that the unit was in good operating order on August 10, 2005 and November 3, 2005, "it still would have been in good working condition" between those dates. The officer testified that he had a valid permit issued by the GBI that certified him to operate the Intoxilyzer 5000, that the machine had been inspected approximately two months prior to appellant's arrest and one month after his arrest and found to be in good working order on both occasions, that the machine appeared to be operating properly on the day of his arrest, and that the machine completed the appropriate self-diagnostic tests on the day of his arrest. Therefore, the officer's opinion that the machine was in good working order on the dates between the certificates of inspection was based on his observation of the certificates of inspection as well as his own observations of the machine and its self-diagnostic tests on the day of appellant's arrest. Thus, the officer's testimony concerning the machine being in good working order was not speculative and the trial court did not err in allowing the testimony.

Appellant also argued that the trial court erred in allowing the State to introduce into evidence the certified copy of his notice that he was a habitual violator because the State did not prove that it was sent to his last known address. OCGA § 40-5-58 (b) provides that when a person becomes a habitual violator, notice shall be given by certified mail, with return receipt requested. "For the purposes of [the Code Section], notice given by certified mail or statutory overnight delivery with return receipt requested mailed to the person's last known address shall be prima-facie evidence that such person received the required notice." OCGA § 40-5-58 (b). Since the State provided evidence that notice was sent to appellant at his last known address and the return receipt clearly had his printed name and signature under the "received by" section of the return receipt, and since he failed to rebut this evidence, the jury was authorized to conclude that the Department of Public Service complied with the statutory requirements. The trial court therefore did not abuse its discretion in allowing the State to introduce the evidence.

## Discovery; Full Information; DUI

*Stetz v. State, A09A1474, 2009 Ga. App. LEXIS 1241*

Appellant was convicted of DUI. He contended that the trial court erred in denying his motion for discovery concerning the Intoxilyzer 5000. Appellant filed a motion seeking numerous documents, tests, graphs, books, manuals, and assorted other documents concerning the machine. OCGA § 40-6-392 (a) (4) provides that "[u]pon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney." The Court held that it must decide the scope of "full information" under OCGA § 40-6-392 (a) (4) when the "test or tests" of a person's blood alcohol concentration is determined by an intoxilyzer. Unlike a gas chromatography test, which produces data that has to be interpreted by a chemist to determine blood alcohol level, an intoxilyzer does not produce raw data but rather prints out the actual test result showing the person's blood alcohol level. In other words, the machine computes the test result. Therefore, the Court held, "the only discoverable information from an intoxilyzer test under OCGA § 40-6-392 (a) (4) is the computer printout of the test result." Moreover, the Court held, the trial court did not abuse its discretion by denying appellant's discovery request because it was overbroad.

## DUI; Search Seizure; Exigent Circumstances

*Johnson v. State, A09A1141, 2009 Ga. App. LEXIS 1159*

Appellant was convicted of DUI. He contended that the trial court erred in denying his motion to suppress. The evidence showed that a trooper was called to the scene of a one-car accident. He ran the tag and went to appellant's apartment complex but could not find appellant's particular apartment. Appellant's father approached the trooper and said that his son had been in an accident. The trooper and the father then went to appellant's apartment where the father knocked on the door. When appellant answered, the trooper said "come on out here," and appellant almost immediately stepped out of the apartment. The trooper did not enter the home or touch appellant before he exited. The trooper then developed probable cause from which he determined that appellant was under the influence.

Appellant argued that he was seized when the officer ordered him to leave his apartment, and that the trooper lacked a warrant or exigent circumstances which would justify a search or seizure within the residence. The Court disagreed for the following reasons: First, the

trooper was authorized to go to the door of appellant's apartment in the course of investigating the crash because where a police officer enters upon private property only to the extent of knocking on outer doors, the Fourth Amendment is not violated. Second, if a suspect complies with an officer's request to step outside the home and is arrested on the porch, the detention does not occur inside the home for purposes of Fourth Amendment analysis. And third, the trooper did not force Johnson to cross the threshold. Therefore, appellant was not unlawfully seized within his home when the trooper met him at the threshold of his apartment, told him to "come on out," and he chose to comply with the instruction. Although the officer did not have probable cause to arrest appellant at the time of their initial encounter, the trooper did have reasonable suspicion of criminal activity sufficient to authorize a brief detention for purposes of investigating why appellant drove his car off the road and into a tree.

## DUI; Search & Seizure; Articulable Suspicion

*Sims v. State, 299 Ga. App. 871 (2009)*

Appellant was convicted of DUI. She contended that the trial court erred in denying her motion to suppress. The evidence showed that a police officer was dispatched to an address regarding a drunken woman. En route, he received a BOLO stating that the woman had left the address. He was given a description of the woman, the truck she was driving and the tag no. The officer went to the residential address listed for her license plate. She was not there, so the officer waited near the entrance to the subdivision. Appellant drove into the subdivision and was stopped by the officer. She was subsequently arrested for DUI.

Appellant argued that the officer did not have a reasonable articulable suspicion to stop her because he had not seen any improper driving and the information from the dispatcher had come from a source of unknown reliability. The Court held, however, that a dispatcher's report of a suspected intoxicated driver, containing details about the driver, the driver's vehicle, the driver's behavior and the location where the behavior occurred, has been held to provide articulable suspicion authorizing a responding officer to detain the driver, even if the source of the report is a citizen or unidentified informant. Under such circumstances, the responding officer is not required to question the dispatcher about the source of the information or to wait until he actually observed the driver committing a crime. Here, the dispatcher's report provided the officer with a description of appellant and her vehicle, including its tag number. The dispatcher's report further informed the officer that appellant was suspected of driving while intoxicated; it gave

the location where she had been seen driving; it indicated that she had left that location; and it provided the address of another location (appellant's residence) where she might reasonably be found still engaged in this criminal activity. This information was sufficient to authorize the officer to stop appellant.

### **DUI; Implied Consent; Independent Test**

*Waterman v. State*, 299 Ga. App. 630 (2009)

Appellant was convicted of DUI (less safe), DUI (per se), and speeding. He contended that the trial court erred in failing to suppress the results of his breath test because he did not get an independent test of his own choosing. The evidence showed that after appellant was stopped for speeding, the officer noticed signs of intoxication. The officer then asked the appellant to blow into an Alco-sensor which registered positive. After he was arrested, but before the officer read him his implied consent rights, appellant asked, "Is there any way I can blow again?" Appellant then asked three more times if there was any way he could blow again, each request coming before he was read his implied consent rights. After the officer read the rights, appellant agreed to the test and then a few minutes later, asked if he would get the opportunity to "blow again." At the station, appellant took a breath test but did not ask for a second test of his own choosing.

The Court held that the motion was properly denied. During cross-examination, appellant admitted that he did not know the difference between an independent and State-administered test and did not care who administered the test. Appellant's repeated questions of whether he would have the opportunity to blow again was best construed as an attempt to confirm that he was going to have an opportunity to take another breath test, administered by the State, in hopes that his blood alcohol content would fall sufficiently prior to the test such that he would somehow be able to evade driving under the influence charges. Therefore, the trial court did not err in concluding that the officer should not have reasonably construed appellant's question, "am I going to have the opportunity to blow again?" as a request for an independent chemical test.

### **DUI; Search & Seizure; Medical Records**

*Brogdon v. State*, 299 Ga. App. 547 (2009)

Appellant was convicted of DUI (less safe), DUI (per se) and other related traffic charges which arose after he ran his truck into another at vehicle at a stop light. He contended that the trial court erred in denying his motion to suppress. He specifically challenged the validity of the search warrant issued for his medical records from the hospital which treated him following the traffic accident. The Court rejected his first argument that the medical records were "private papers" under OCGA § 17-5-21 (a) (5), finding that the issue was foreclosed by the decision in *King v. State*, 276 Ga. 126 (2003). Appellant also argued that the affidavit contained false and misleading

information because it incorrectly referred to beer cans inside of the vehicle, when there was only one opened and empty beer can inside his truck, and incorrectly described the number of cars involved in the accident. The Court held that these misstatements were not so material that they would have affected the finding of probable cause. Finally, appellant argued that the search warrant impermissibly authorized a general search of his medical records. Here, the search warrant sought all medical records of appellant, "who appeared at Gwinnett Medical Center on or about December 16, 2007 [at] 8:34 p.m." The Court held that the search warrant was narrowly drafted to seek only the medical records from the hospital where appellant was treated on the day of the accident and thus was not a general warrant.

### **DUI; Marijuana; Drugs**

*Richardson v. State*, 299 Ga. App. 365 (2009)

Appellant was convicted of driving under the influence of drugs. He argued that the State failed to prove that he was under the influence of marijuana at the time he was stopped and that the marijuana affected his driving, because the State did not show that samples of his blood or urine had been tested by an expert and that there was, in fact, evidence of marijuana in his system. The Court held that the evidence was sufficient for two reasons. First, the State did not charge appellant with driving under the influence of marijuana. Instead, it charged him with driving under the influence of "drugs" to the extent it was less safe to drive. "[Appellant] has cited to no authority, and we are aware of none, that requires the State to present the results from scientific testing of a driver's blood or urine in order to prove the specific type of drug allegedly ingested by the defendant so that the State may obtain a conviction for DUI-less safe under OCGA § 40-6-391 (a) (2)." Second, the arresting officer testified that he smelled marijuana emanating from appellant's car; appellant admitted to the office that he smokes marijuana and that he was a regular user of marijuana; and that appellant was, in his expert opinion, under the influence of marijuana to the extent that appellant was less safe to drive.

### **DUI; Minor; Miranda Warning**

*Brown v. State*, 299 Ga. App. 402 (2009)

Appellant was convicted of DUI (per se), DUI (less safe), and underage possession of alcohol. She argued that the trial court should have granted her motion to suppress because as a minor she was entitled to be advised of her *Miranda* rights prior to the administration of the alco-sensor test. Specifically, when an officer administers an alco-sensor test to someone he knows to be a minor, *Miranda* warnings are allegedly required because the "sole and direct focus of the investigation is the minor's guilt or innocence of, at least, the crime of minor in possession of alcohol by consumption" in violation of OCGA 3-3-23 (a) (2). However, the Court found that appellant's argument was based on a misapprehension of OCGA § 3-3-23. OCGA § 3-3-23 (a) explicitly provides

that underage alcohol consumption is not a crime if the consumption is "otherwise authorized by law." OCGA § 3-3-23 (b) and (c) provide such authorized exceptions. Therefore, appellant's assertion that "a positive alco-sensor of a minor establishes, without question, guilt of the crime of minor in possession of alcohol by consumption" is incorrect.

### **Possession of Marijuana; Search & Seizure (Arizona v. Gant discussed)**

*Agnew v. State*, 298 Ga. App. 290 (2009)

Appellant was convicted of possession of marijuana with intent to distribute. He argued that the trial court erred in denying his motion to suppress. The evidence showed that an officer stopped a van for speeding. Appellant was the owner of the van and in which he was a passenger at the time of the stop. The officer placed the driver under arrest for driving with a suspended license and handcuffed him. He then returned to the van and searched the driver's seat area over the objections of appellant. During his initial search, the officer found a marijuana cigarette inside an open pack of cigarettes. He then removed appellant and another passenger from the van before searching the entire van more thoroughly. The officer found 10 one-gallon size plastic bags of marijuana, digital scales, and a box of plastic sandwich bags.

The Court noted that all of the briefs in this case were due before the United States Supreme Court issued its decision in *Arizona v. Gant*, \_\_\_ U.S. \_\_\_, 129 SC 1710, 173 LE2d 485 (2009), and the search at issue in this case falls squarely within the scope of the Supreme Court's holding in *Gant*. As a result, the Court vacated the trial court's order denying appellant's motion to suppress and remanded the case to the trial court to conduct a hearing and consider the Supreme Court's holding in *Gant*.

### **DUI; Vehicular Homicide; Hospital Blood Test; Probable Cause; Deceased Officer; Implied Consent**

*Daniel v. State*, 298 Ga. App. 245 (2009)

Appellant was convicted of three counts of first degree homicide by vehicle and two counts of DUI. She contended that the trial court erred in admitting the results of the blood test given to her at the hospital after the accident. A document of the results of such a test is admissible at trial under the routine business record exception to hearsay, provided the proponent lays the proper foundation. A proper foundation includes testimony of a witness familiar with the method of record keeping, stating that it was the regular course of business to keep such records, that this record was kept in the regular course of business, and that it was made at or within a reasonable amount of time after the event it records. Writings may be admitted into evidence under this exception if they contain routine facts whose accuracy is not affected by bias, judgment or memory of the author. There is no requirement that the testifying witness have personal knowledge of the specific document's creation.

Here, the Court held, the State laid a proper foundation. Thus the evidence showed that the test was completed in the regular course of business, a record was kept in the regular course of business, the test results showed only factual data, and blood test records are usually made at or within a reasonable amount of time after the blood was tested. Although the evidence did not show that appellant's test was recorded within a reasonable time after the results were generated, it was the usual practice of the hospital to make the record contemporaneously to generating a printed blood test result, and the printed result was time stamped only ten minutes after the blood test was ordered.

Appellant also contended that the trial court erred in denying her motion to suppress on the ground that the State failed to show that the officer had probable cause to believe appellant had been driving under the influence of an intoxicating substance at the time he requested the test. The evidence showed that the officer who read appellant her implied consent rights had died prior to the hearing. At the suppression hearing, the State presented another officer's testimony that the deceased officer had told him over the phone that he had detected the odor of alcohol on appellant at the hospital. The Court held that this testimony was not inadmissible hearsay violating her right of confrontation because hearsay is admissible during a suppression hearing when determining the existence of probable cause.

**DUI; Habitual Violator; DDS Notification**  
*Eason v. Dozier*, 298 Ga. App. 65 (2009)

Appellant appealed from an order revoking his license as a habitual violator. The record showed that appellant was convicted of first degree vehicular homicide, DUI, racing, and failure to maintain lane on October 7, 2004. He surrendered his driver's license to the Department of Corrections when he entered prison in January 2005. On August 28, 2007, DDS sent notification to him that as of September 11, 2007, he would be declared a habitual violator, pursuant to OCGA § 40-5-58, and he would not be eligible for reinstatement of his license for five years from the later of September 11, 2007, or the date upon which he surrendered his license to DDS (September 20, 2007). The declaration was based on appellant's 2004 convictions.

Appellant contended that he should have been declared a habitual violator in October 2004 or alternatively, the court should have considered his license revoked as of the time he entered the correctional facility in January 2005. He argued that he is being penalized for the failure of the court of conviction to timely transmit the record of his convictions to DDS, and he was penalized because he could not surrender his license to DDS during the time he was incarcerated. The Court held that under OCGA §40-5-53 (b), a court of conviction is required to transmit notification of applicable convictions to DDS within ten days of the date of conviction, but a trial

court's failure to timely transmit the records, which failure results in delayed revocation of an individual's license, does not affect the validity of the revocation or the calculation of the five-year period. Thus, even if appellant could have been declared a habitual violator as early as October 2004, he was not declared a habitual violator until September 11, 2007. Therefore, under the plain language of the statute, his license could not have been revoked based on his status as a habitual violator until the later date. Moreover, while his license may have been held by the Department of Corrections while he was incarcerated, his five-year revocation period may not be reduced by that time because he had not been declared a habitual violator by DDS.

**DUI; Defective Accusation**  
*Knapp v. State*, 297 Ga. App. 844 (2009)

Appellant was convicted of DUI in probate court. She contended that a defect in the accusation rendered her conviction null and void. The record showed that a traffic citation was issued charging "Jane Marie Knapp" with driving under the influence of alcohol. A one-count DUI accusation referencing the number of the traffic citation was subsequently filed in probate court. The accusation was styled "State of Georgia v. Jane Marie Knapp," but the body of the accusation identified as the defendant an individual named "Billy Thomas Jones." The Court held that this was not merely a misnomer because an entirely different person was named as the person in the body of the accusation. Therefore, the accusation was fatally defective because of its allegation that someone other than the defendant committed the crime charged.

**Habitual Violator; Motion for Directed Verdict**  
*Christian v. State*, 297 Ga. App. 596 (2009)

Appellant was convicted of driving without a valid license after being declared a habitual violator and DUI. He argued that the trial court erred in denying his motion for a directed verdict after the close of the State's case. The State had charged that appellant "did operate a motor vehicle after having received notice of the revocation of his license to operate a motor vehicle because of his having been declared a habitual violator by the Department of Public Safety of Georgia and his not having thereafter obtained a valid driver's license, in violation of OCGA § 40-5-58." However, the evidence showed that appellant had been issued a probationary license by DPS. Although the State claimed that a probationary driver's license was not a "valid driver's license" pursuant to OCGA § 40-5-58 (c) (1), the Court held that such a statutory interpretation would mean that any holder of a probationary driver's license could not operate a motor vehicle without violating OCGA § 40-5-58 (c) (1). The Court further stated that while appellant could have been charged with other violations of OCGA § 40-5-58, such as violating the terms of his probationary driv-

er's license, when a crime can be committed in more than one way, the State is not permitted to prove that crime in a different manner than that alleged in the indictment. Thus, because there was no conflict in the evidence, and the charge of being a habitual violator operating a vehicle without a "valid driver's license" demanded a verdict of acquittal as a matter of law, the trial judge erred in denying his motion for a directed verdict as to that count.

**DUI; Vehicular Homicide; Implied Consent; OCGA § 40-5-67.1**  
*Williams v. State*, 297 Ga. App. 596 (2009)

Appellant was charged with vehicular homicide, driving while under the influence of a drug, and other serious traffic offenses. He moved to suppress the results of a blood test that police obtained from him without first informing him of his implied consent rights. The trial court denied his motion, but certified the order for immediate review and the Court granted his application. The evidence showed that in May 2006, appellant was involved in a fatal car accident. One of the investigating officers suspected that appellant might be under the influence of drugs. The officer asked him for a blood sample, but did not advise him of his implied consent rights. Appellant agreed to give the sample, which showed the presence of marijuana in his system.

In the 2006 legislative session, OCGA § 40-5-67.1 was amended to provide that nothing in the implied consent statute "shall be deemed to preclude the acquisition or admission of evidence of a violation of [the DUI laws] if obtained by voluntary consent or a search warrant as authorized by the Constitution or laws of this state or the United States." The trial court agreed with the State that the statute should be applied retroactively to this case. However, the Court disagreed and reversed. A statutory amendment may be applied retroactively if the changes do not affect constitutional or substantive rights and if the legislature did not express a contrary intention. The implied consent statute grants drivers *the right to refuse* to take a state-administered test, with one of the consequences of exercising that right being that evidence of such refusal is admissible at trial. Here, the statutory amendment eliminates the need to give the notice where an individual "voluntarily" agrees to testing. "This amendment not only changes the substance of the implied consent warning, it does away with the requirement that the warning be given at all where an officer manages to otherwise lawfully obtain consent to testing. This is not merely a procedural or evidentiary change, but one eliminating a defendant's substantive right to refuse to submit to testing. Therefore, the trial court erred in applying the amendment retroactively and in denying [appellant's] motion to suppress."

**DUI; Demurrer**  
*State v. King*, 296 Ga. App. 353 (2009)

Appellee was charged with DUI (less safe) and DUI (per se). During trial, the trial court

granted his general demurrer to the per se count. The accusation alleged that appellee “was in actual physical control of a moving vehicle on Piedmont Road with an alcohol concentration of 0.08 grams or more within three hours after being in actual physical control ended [sic], in violation of OCGA § 40-6-391. . . .” OCGA § 40-6-391 (a) (5) provides that “a person shall not drive or be in actual physical control of any moving vehicle while . . . the person’s alcohol concentration is 0.08 grams or more at any time within three hours after such driving or being in actual physical control from alcohol consumed before such driving or being in actual physical control ended.” The trial court concluded that the accusation was fatally defective because the State failed to include essential words from the relevant statute. The Court disagreed and reversed. It held that a charging instrument “should contain a complete description of the offense charged, and that there can be no conviction unless every essential element thereof is both alleged in the indictment and proved by the evidence.” However, where an accusation charges the defendant with having committed certain acts “in violation of” a specified penal statute, the accusation incorporates the terms of the referenced Code section. Since an accused cannot admit an allegation that her acts were “in violation of” a specified Code section and yet not be guilty of the offense set out in that Code section, such an accusation is not fatally defective. Thus, an accusation will survive a general demurrer if it charges an accused with having committed certain acts in violation of a specific criminal statute, notwithstanding the omission of an essential element of the crime. Here, the accusation did not specifically allege that appellee’s alcohol concentration resulted from alcohol consumed before his driving ended. But, the accusation was not defective because it alleged that the appellee violated OCGA § 40-6-391 and it was titled “Driving Under the Influence of Alcohol (Per Se).” Therefore, there could be no confusion over the crime the appellee was charged with. Under these circumstances, the trial court erred in sustaining appellant’s general demurrer regarding the DUI per se charge.

#### **DUI; Accusation; Implied Consent; Rescind Refusal**

*Page v. State*, 296 Ga. App. 431 (2009)

Appellant was convicted of DUI. She argued that she did not freely and voluntarily consent to the state-administered blood test because the officer provided her with false and misleading information concerning the consequences of her failure to take the test, which confused her and impaired her ability to make an informed decision under the implied consent law, and amounted to an “unlawful inducement.” The Court stated that even when an officer properly gives the implied consent notice, if the officer gives additional, deceptively misleading information that impairs a defendant’s ability to make an informed decision about whether to submit to testing, the defendant’s test results or evidence of his refusal to submit to testing must be suppressed.

The suppression of evidence, however, is an extreme sanction and one not favored in the law. Here, the officer properly advised appellant of her rights pursuant to OCGA § 40-5-67.1 (g) (2) (B); that in response to her repeated questioning, the officer informed her that she was being arrested for DUI-less safe; and that the officer made no extraneous statements of the law beyond the implied consent notice. Thus, the trial court did not err in denying appellant’s motion to suppress.

Appellant also argued that even though she allowed blood to be taken from her arm at the hospital, her consent was invalid. The Court disagreed. Appellant refused when asked at the scene of the traffic stop whether she would take a blood test. But, the evidence showed that she later rescinded her refusal and consented to the test. The officer even permitted her to call an attorney before her blood was drawn, although he was not required to do so. The officer’s actions, including reading appellant the implied consent warnings multiple times, were reasonable and the procedure he utilized was fair.

Appellant further argued that the trial court erred in denying her oral motion to quash Count 2 of the accusation, contending that it did not contain all of the essential elements of OCGA § 40-6-391 (a) (6). This Court stated as follows: “DRIVING UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE-PER SE (BENZOYLECGONINE) . . . by being in actual physical control of a moving vehicle when benzoyllecgonine, a controlled substance, was present in her blood, in violation of OCGA § 40-6-391 (a) (6) and 16-13-21.” Appellant argued that the accusation was fatally flawed because it incorrectly states that benzoyllecgonine is a controlled substance, rather than a metabolite of a controlled substance. The Court stated that although the accusation could have been more artfully drawn, it is not legally insufficient. Here, the accusation informed appellant of the charge against her by reciting the appropriate Code section, OCGA § 40-6-391 (a) (6), which criminalizes driving with metabolites of a controlled substance present in the person’s blood. Benzoyllecgonine is a metabolite of a controlled substance —cocaine. Appellant could not have admitted to all that was charged in Count 2 and still be innocent of having committed any offense. Nor could she have been surprised or misled to her prejudice by the evidence at trial because she was aware of the substance she ingested. Thus, the accusation was sufficient.

#### **DUI; Sentencing; Credit for Time Served**

*Reese v. State*, 296 Ga. App. 186 (2009)

Appellant was convicted of DUI and making a false statement under OCGA § 16-10-20. He argued that the trial court erred by increasing his sentence after he had begun serving it and by refusing to give him credit for time served. The record showed that on March 3, 2008, the trial court sentenced ap-

pellant to six years probation with not less than 240 days and not more than 300 days to serve in a probation detention center. At a second sentencing hearing on March 17, the trial court ordered that appellant spend 90 days in jail, to be suspended upon his transfer to the detention center. Appellant began serving his sentence when he met with the probation officer on March 3. Therefore, the trial court did not have authority to “increase his sentence” at a subsequent hearing. A trial court is authorized only to “modify” a sentence by revoking a defendant’s probation if the court concludes the defendant had violated his probation by refusing to abide by the conditions of it. The Court consequently vacate appellant’s sentence and remanded for resentencing. The Court also held that “[t]he amount of credit [for time served] is to be computed by the convict’s pre-sentence custodian, and the duty to award the credit for time served prior to trial is upon the Department of Corrections.” The trial court should not involve itself in the matter on remand. To the extent that appellant was dissatisfied with the credit received; his relief can be had only by means of a mandamus or injunction action against the Commissioner of the Department of Corrections.

#### **DUI; Municipal Officer; Authority to Arrest**

*Griffis v. State*, 295 Ga. App. 903 (2009)

Appellant was convicted of DUI, laying drags and reckless driving. He contended that the arresting officer lacked authority to arrest him. The evidence showed that a city officer was on line in a drive-thru lane at a restaurant in an unincorporated part of the county. The defendant pulled in behind him and then began laying drags in the lane. The officer called for back-up and a county officer responded. While the county officer stood by, the city officer conducted an investigation of the defendant and eventually arrested him for DUI. The Court held that generally, a municipal police officer is authorized to investigate crimes and/or arrest suspects only for those infractions that occur within that officer’s territorial jurisdiction. However, a law enforcement officer has authority to arrest a person accused of violating any law or ordinance governing the operation of a vehicle if the offense is committed in his presence, regardless of territorial limitations. Thus, the city officer had authority to arrest because he observed appellant laying drags and upon investigation, driving under the influence. Furthermore, the Court stated, even if the city officer “should be considered a private citizen because he was off-duty at the time of the incident, our holding remains the same because a private citizen also is authorized to make an arrest if the offense is committed in his presence.”

#### **DUI; Roadblock; Duration**

*McGlou v. State*, 296 Ga. App. 77 (2009)

Appellant was convicted of DUI. He argued that the trial court erred in denying his motion to suppress. The evidence showed that appellant was stopped at a roadblock. Appellant argued that the state failed to prove that

his stop occurred during an authorized roadblock because the state failed to prove when he was stopped and failed to show the duration of the roadblock. The Court disagreed. The evidence showed that the roadblock was authorized for June 9 beginning at 8:00 and that the roadblock began at that time. The Intoxilyzer report indicated that appellant committed a violation on June 9 at 8:17. Thus, the Court held, even without evidence establishing the exact ending time for the roadblock, the evidence was sufficient to show that appellant was stopped 17 minutes after the roadblock began. The trial court, therefore, was authorized to find that appellant was stopped within the time period for which the roadblock was authorized and did not err in denying his motion to suppress.

### **DUI; Implied Consent; Coercion; Rescind Refusal**

*State v. Quezada*, 295 Ga. App. 522 (2009)

The trial court granted the defendant's motion in limine to suppress the results of the defendant's breath test and the State appealed. The Court reversed. The evidence showed that the defendant unequivocally refused to take a breath test when initially read her implied consent rights. She was transported to the jail and placed in a holding cell. The arresting officer then proceeded to prepare the intoxilyzer at the jail, telling the defendant that if she changed her mind, she could still submit to a breath test. The officer then filled out the form for suspending her driver's license. When the officer advised the defendant that he needed her signature on that form, she told him that she had "changed her mind" and would take the breath test. Although the defendant said that she was coerced into taking the test, the trial court found that she was not threatened or coerced in taking the test. However, the trial court granted the motion because it believed that under the decision of *Howell v. State*, 266 Ga. App. 480 (2004), once a suspect has refused to submit to chemical testing, the State may not thereafter ask the suspect a second time if she will submit to such testing.

The Court held that *Howell* did not stand for such a proposition. The *Howell* Court recognized that a police officer may attempt to persuade a suspect to rescind her initial refusal to submit to chemical testing, so long as any "procedure utilized by [an] officer in attempting to persuade a defendant to rescind his refusal [is] fair and reasonable." The *Howell* Court concluded that under the facts of that case, merely sitting the defendant down and telling him that he needs to blow into the machine was hardly to be considered a fair and reasonable procedure. Here, however, the officer asked the defendant if she wanted to submit to chemical testing or told her that she could take the test if she changed her mind. The defendant, by her own admission, then changed her mind and agreed to take the test. Therefore, in the absence or any threats or inducements by the officer, the Court concluded that the officer did not act unreasonably and that the trial court erred in granting the defendant's motion.

### **DUI; Probable Cause for Per Se DUI**

*State v. Rish*, 295 Ga. App. 815 (2009)

The trial court granted the defendant's motion to suppress the results of the defendant's breath test and the State appealed. The Court reversed. In granting the motion to suppress, the trial court made specific findings of fact to support its conclusion that the defendant exhibited no signs of impairment and that the police therefore lacked probable cause to arrest him. The Court stated that given that there was some evidence in the record to support these findings, it had to affirm them. However, those findings only addressed the question of whether the State had probable cause to arrest the defendant for DUI-less safe. The trial court's order did not address the issue of whether the officer had probable cause to arrest the defendant for DUI-per se.

If the evidence shows only that a driver is intoxicated and does not show that his consumption of alcohol has impaired his ability to drive, there is no probable cause to arrest for DUI-less safe. Conversely, probable cause to arrest for DUI-per se exists where an officer has a reasonable basis to believe that: (1) the suspect has, within the previous three hours, been in physical control of a moving vehicle; and (2) the suspect's current blood alcohol concentration is greater than .08 grams. Here, the record showed that the defendant admitted having had three to four drinks prior to driving and that he had consumed the last of those approximately thirty minutes before the traffic stop. Additionally, two alco-sensor tests administered to him showed that he had a blood alcohol concentration of greater than 0.08 grams. These facts established a reasonable probability that the defendant was in violation of OCGA § 40-6-391 (a) (5) and gave the officer probable cause to arrest him. Accordingly, the trial court's grant of the defendant's motion to suppress was reversed.

### **DUI; Roadblock Requirements**

*Coursey v. State*, 295 Ga. App. 476 (2009)

Appellant was convicted of DUI. He contended on appeal that the trial court erred in denying his motion to suppress based on an improperly constituted roadblock. A roadblock in Georgia is valid when it meets five requirements: (1) supervisory officers decided where and when to implement it for a legitimate purpose; (2) all vehicles were stopped; (3) the delay to motorists was minimal; (4) the operation was well-identified as a police checkpoint; and (5) the screening officer was competent to determine which motorists should be given field tests for intoxication. Appellant contended that the first requirement was not met for the initiation of the roadblock. First, he argued that the officers in the field were unaware of the roadblock's primary purposes and therefore its purpose could not have been legitimate. However, the Court found that the evidence showed that the officers were briefed before the roadblock, and the field officer testified about the specific, legitimate tasks he undertook at each stop. The purposes about

which the field officer testified —checking for valid licenses, insurance, impaired drivers, and safety concerns were consistent with the purposes set forth in the roadblock initiation form generated by the supervising officer. The trial court's finding that the roadblock was conducted for a legitimate primary purpose was therefore not clearly erroneous.

Appellant also contended that the field officers did not conduct the roadblock at a location approved by the supervisor, because the roadblock was not set up on the highway as indicated on the roadblock initiation form. The Court held that this difference in location is insignificant and does not invalidate the roadblock because supervisory personnel need not direct the precise location for a roadblock, so long as supervisory personnel and not field officers decided to implement the roadblock, which was the case here.

### **DUI; Serious Injuries; Unconscious Defendant**

*Gilliam v. State*, 295 Ga. App. 358 (2009)

Appellant was convicted of DUI. He contended that the trial court erred in denying his motion to suppress. The evidence showed that appellant failed to yield and made an illegal left turn in front of another vehicle causing an accident which rendered him unconscious. An investigating officer and an EMT treating appellant both smelled alcohol on his breath, but because of his unconsciousness, no field sobriety tests were conducted. While appellant was still unconscious at the hospital, his blood was drawn and sent to the GBI for chemical testing. Appellant argued that because the only information the officer had concerning appellant's possible impairment was the smell of alcohol allegedly coming from him, the trial court erred in denying his motion to suppress the blood test results because the police officer did not have probable cause to believe that he was driving under the influence of alcohol.

The Court disagreed. Not only did the officer and the EMT treating appellant testify concerning the strong odor of alcohol emanating from his body, but the officer further testified that he had probable cause to believe appellant had been driving while under the influence of alcohol because appellant had caused the collision by his unsafe act of failing to yield to the oncoming vehicle. Thus, the Court held, where an individual has been involved in a traffic accident resulting in serious injuries or fatalities and the investigating law enforcement officer has probable cause to believe that the individual was driving under the influence of alcohol or other drugs, the chemical testing of the individual's blood is both warranted and constitutional.

### **DUI Implied Consent; Independent Test; Toxicologist; Lab Technician**

*England v. State*, A09A2181, 2009 Ga. App. LEXIS 1393

England appealed his two DUI convictions, arguing that the trial court erred in admit-

ting the results of a State-administered blood test because (1) he requested an independent chemical test and was not granted one, and (2) he was denied his Sixth Amendment right to confront a lab technician, who assisted the State's toxicology expert in conducting the State's blood test. The evidence shows that in the early morning hours of September 22, 2007, a law enforcement officer saw the truck that England was driving cross over the road's fog line and, consequently, turned his patrol vehicle around to follow. After observing England's truck cross over the fog line a second time, the officer initiated a traffic stop. Upon asking England for his driver's license, the officer smelled an alcoholic beverage odor and noticed that England's eyes were red. Thereafter, the officer had England exit his truck and perform several field sobriety tests, including the horizontal gaze nystagmus test, the walk-and-turn test, and the one leg stand test, all of which indicated to the officer that England was under the influence of alcohol. The officer then asked England if he would submit to an alco-sensor test, to which England responded that he preferred a blood test. When the officer told England that he could not conduct such a test at that time because England was not under arrest and because the officer did not have the means to draw blood by the side of the road, England submitted to the alco-sensor test, and his breath tested positive for alcohol. Based on the positive alco-sensor result and England's performance of the field sobriety tests, the officer arrested him for DUI. Immediately after placing England under arrest, the officer read England the appropriate implied-consent. As he concluded reading the

notice to England, the officer asked, "Will you submit to the State-administered chemical tests of your breath under the implied consent law?" England responded that he had concerns about the accuracy of the breath test and stated that he would rather submit to a blood test. Consequently, the officer reread the implied-consent notice to England but concluded by asking him if he would submit to the State-administered chemical tests of his blood. England agreed, and thereafter, the officer transported him to a local hospital where his blood was drawn by a registered nurse. At England's trial, the officer who arrested England testified regarding the encounter, and a videotape of the entire traffic stop was played for the jury. The nurse who drew England's blood also testified. In addition, a GBI toxicologist, who tested England's blood sample, testified that England's blood-alcohol concentration at the time his blood was drawn was 0.143 grams per 100 milliliters.

England appealed, contending that, (1) the trial court erred in denying his motion to exclude the results of the State-administered blood test from evidence because he requested an independent blood test; (2) that the trial court erred in allowing a GBI toxicologist to testify regarding the results of the State-administered blood test. Specifically, he complains that a lab technician, who assisted the toxicologist in conducting that test, did not testify at trial and that therefore he was denied his right of confrontation under the Sixth Amendment of the United States Constitution, applicable to the States through the Fourteenth Amendment.

Affirming the trial court, the Court of Appeals pointed out that England first mentioned that he wanted a blood test when the officer asked him to submit to the alco-sensor test. After the officer read England the implied-consent notice and asked him if he would submit to the State-administered chemical tests of his breath, England responded that he had concerns about the accuracy of the breath test and stated that he would rather submit to a blood test. Consequently, the officer reread the implied-consent notice and asked England if he would submit to the State-administered tests of his blood, to which England agreed. At no point did England request another, independent test of his blood. Given these circumstances the Court found that England was not requesting an independent blood test but was requesting that the officer designate a blood test, rather than a breath test, as the State-administered chemical test. Addressing the second issue, the Court held that testimony of the lab technician was not required to protect England's constitutional right of confrontation. The court reiterated that technicians who prepare samples for testing by the testifying expert need not themselves testify so as to preserve a defendant's right to confrontation, as this is an issue affecting the reliability and weight of the evidence, not its admissibility. No conclusions from the lab technician were submitted to the jury, and thus, England's constitutional concerns were without merit. Accordingly, the trial court did not err in allowing the toxicologist to testify regarding the results of the State-administered blood test.

## ››› training policies: part time/municipal solicitors

The Prosecuting Attorneys' Council is a state agency that provides support to prosecutors who prosecute violations of state law at all levels in Georgia. This support includes research and training. Specifically of interest to municipal prosecutors is the support available through our Traffic Resource Prosecutor, Fay McCormack. All of our training programs are listed on our website (<http://www.pacga.org/training/pac.shtml>).

However, due to budget cutbacks from the current economic situation, the Council has implemented policies concerning training of municipal and part-time prosecutors. In order for a municipal prosecutor to be eligible to attend training, the following policies apply:

(1) Prosecuting attorneys of probate, magistrate and municipal courts who have jurisdiction to prosecute criminal cases on behalf of the State of Georgia, are eligible to attend training provided that the governing authority, or other authorized official of the political subdivision employing such prosecuting attorney, provides the Council in advance of the training with written documentation certifying that the position has been established by law or ordinance and attesting to the appointment of the individual as the prosecuting attorney.

(2) The training offered must also be directly relevant to the jurisdiction and duties of the individual. For example, part-time municipal and other lower court prosecuting attorneys and their staff would be eligible to attend courses that relate to the prosecution of DUI and other traffic offenses but would not be eligible to attend programs which deal exclusively with the prosecution of felony offenses or domestic violence.

(3) Municipal prosecutors are not eligible for reimbursement of expenses unless the brochure for the course specifically states that funds are available to reimburse municipal prosecutors.

(4) A part-time prosecutor who is engaged in the private practice of law is not eligible for reimbursement of expenses by the Council if, on or after July 1, 2009, he or she represents defendants in criminal or forfeiture cases brought by the State of Georgia in the courts of this State unless the course announcement specifically states that such part-time prosecutor will be eligible for reimbursement.

These policies are contained in PAC Policy 7.1.

# GEORGIA traffic PROSECUTOR

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## ---> traffic safety program staff



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### ---> fact:

Drunk driving is the nation's most frequently committed violent crime, **killing someone every 30 minutes.** Because drunk driving is so prevalent, about three in every ten Americans will be involved in an alcohol-related crash at some time in their lives. In 2006, an estimated 17,602 people died in alcohol-related traffic crashes in the USA. These deaths constituted 41 percent of the nation's 42,642 total traffic fatalities.

-Statistics courtesy NHTSA ([www.nhtsa.gov](http://www.nhtsa.gov))

*The "Georgia Traffic Prosecutor" addresses a variety of matters affecting prosecution of traffic-related cases and is available to prosecutors and others involved in traffic safety. Upcoming issues will provide information on a variety of matters, such as ideas for presenting a DUI/Vehicular Homicide case, new strategies being used by the DUI defense bar, case law alerts and other traffic-related matters. If you have suggestions or comments, please contact Editor Fay McCormack at PAC.*