



TRAFFIC LAW NEWSLETTER June, 2008

MINDFUL DRIVING



The other day I was in Juvenile Court representing a 16 year old who was stopped for speeding; he was charged with driving 73 miles per hour in a 45 mile per hour zone. He had only had his license a month or so; he had taken the mandatory defensive driving class; he had ridden motor cycles as a younger boy, and therefore had some experience in handling motor vehicles; by all measures he was your typical teenager.

Because of the graciousness of the Gwinnett D.A.'s office, we were able to negotiate a plea where his license would not be suspended. As we waited outside the courtroom to pay his fine, I told him that he needed to be more "aware" of what he was doing when he was driving, because if he received another traffic infraction in the next 12 months he would definitely lose his license. He nodded in agreement, assured me he would be more careful, then I left the courthouse.

Later I saw an article about handling anger by using a technique known as "mindfulness." Simply put, "mindfulness" is "paying attention on purpose." I got to thinking that perhaps teenage drivers (and adults, too!) could eliminate many driving problems such as tickets, accidents and road rage by "paying attention" to their driving. These are just a few suggestions to paying attention while driving. Pass these along to any teenage drivers you know. If you can think of other ways of being a "mindful" driver, pass them along to me!

1. Before you start your car, take a moment and think about where you are going. Tell yourself, I know where I am going and will pay attention until I get there.
2. Promise yourself that you will notice speed limit signs. Promise yourself that you will travel no faster than 10 miles over the limit. If necessary put a "sticky" note on your dash board to remind yourself to WATCH YOUR SPEED!
3. Switch off the radio and experience the silence. We often drive along while listening to the radio or to recordings on tape or CD. Just as an experiment, try seeing what it's like to have the sound turned off. It might seem at first as if something is missing, but you'll quickly learn that the silence gives you an opportunity to fill your awareness with other perceptions, some of which are more enriching. But before that, I'd just like to suggest that not listening to advertisements, the news, music, and opinion can leave you quieter, calmer, more focused, and happier than you otherwise would be.
4. If you are traveling to work, or school, or the store, or any other place other than a long distance trip, TURN OFF THE PHONE!. In fact, I would suggest a law that forbids ANY phone use while driving; do we really think we are capable of multitasking while traveling 45+ mph inside 3,000 pounds of steel?
5. The extra attention that's freed up because you're no longer listening to the radio or talking on the phone is now available to notice other things (like speed limit signs, stop signs, red lights and other cars).

6. Slow down. As an experiment, try driving at or just below the speed limit. Most of us tend to want to push the speed limit, driving just a little faster than allowed. Driving just a fraction under the speed limit can take away a lot of tension. Shift over into the slower lane if necessary.
7. Notice your attitudes. Often we become competitive while driving, and this leads to tension. Make a practice of noticing cars trying to enter the road, and adjust your speed so that you can let them out if it's safe to do so. Notice if you're in a hurry. How does this make you feel? How does it feel if you let the pace slacken a little?
8. Practice being more aware of the other traffic around you. Sometimes we become very focused just on what's around us, but it can be very fulfilling (and much safer) to develop an all-round awareness, using our mirrors as well as what we can see in front on us.
9. Use every stop light or any other necessary stop to practice a fuller mindfulness of your surroundings. At those moments you can also notice what's around you — the sky and the trees, and other people.
10. If there are other people in the car with you, let them know that as the driver, their safety is in your hands. Therefore you would appreciate it if they didn't do things to distract you.

You might like some or all of these suggestions. For teenagers especially, I understand that the radio, cell phone, and having fun with friends in the car are all part of the experience. Unfortunately all it takes is a split second of unmindfulness for a life to change forever.

NEW DUI LAW GOES INTO EFFECT JULY 1

Effective July 1, ALL look back periods for punishment purposes have changed to 10 years instead of 5 years.

So, if you get a DUI after July 1, and you have a prior DUI conviction July 1998 or LATER, you would be punished as a 2nd DUI offender.

A first DUI conviction now REQUIRES a clinical evaluation; however, the Judge can waive that provision.

A 2nd DUI in 10 must get a clinical evaluation and follow up with any recommended treatment PRIOR to license reinstatement; (this is important: A person whose prior DUI occurred 6 years ago is entitled to a limited permit under 40-5-63; however under this new law, he cannot get the permit until he has completed the evaluation AND treatment! The treatment could take as long as 6 months to complete! The advice would therefore be to send anyone with a 2nd in 10 immediately to an alcohol evaluator and begin any recommended treatment immediately)

The jail time provisions for 1st, 2nd, and 3rd DUIs in 10year period remain the same as under the old law.

A 4th in 10 will now be a felony, punishable up to 5 years in prison.

GEORGIA CASE LAW UPDATE

I know I sound like a broken record; the Appellate Courts continue to eviscerate many valid defenses we thought we had; examples:

Hill v. St A08A0726 May 15, 2008

Defendant in prosecution for driving while intoxicated (DWI) was not entitled to discovery of source code used to program breath testing machine used to determine his blood alcohol content, since the code was not within the possession, control, or custody of the state; machine's software was not created for the state, and state did not own code and was not otherwise in possession or control of the code.

West's [Ga.Code Ann. §§ 17-16-1\(1\), 17-16-23\(b\)](#).

Note: There apparently are other appeals pending relating to the "Source Code Defense"; however, if this case is any indication, this defense will go the way of many other past innovative defenses.

Bell v. St. A08A0548 May 7, 2008

Bell was stopped by an officer Mitchell; Mitchell did not testify at the motion to suppress hearing; the trial court allowed hearsay testimony from another officer as to why Mitchell stopped Bell. Mitchell did testify at trial. Here is what the Appeals court says:

But "hearsay is admissible in determining the existence of probable cause." Further, "in reviewing the denial of a motion to suppress, we consider all the evidence of record, including evidence introduced at trial." Thus, we are required to consider Mitchell's trial testimony, and his testimony that he observed Bell "drift" into the adjacent lane more than seven times constitutes probable cause sufficient to justify the traffic stop. Accordingly, this enumeration presents no basis for reversal.

In spite of the foregoing, I remain confident that many DUI cases can be defended successfully; Each case is different and is either successful or not based on the facts of the case. As of this writing, my case total for year 2008 is:

17 Wins, 14 Pleas, 0 guilty verdicts.

MY 4 SIMPLE RULES IF YOU ARE STOPPED BY POLICE

1. DON'T ADMIT DRINKING (OR ANYTHING ELSE)
2. DON'T DO ANYTHING ON SIDE OF ROAD
3. DO TAKE BREATH TEST IF YOU'VE REALLY HAD 2 DRINKS
4. DON'T TAKE TEST IF MORE THAN 2 DRINKS*



* Refusing to take the State test (at jail or hospital) could result in losing your license for a full year; the only way of getting the license back earlier is to win the DUI; on the other hand, if the officer does not try to suspend the license because of a refusal, the State does not have a blood alcohol level to use against you!

MY 1 SIMPLE RULE FOR PARENTS OF CHILDREN UNDER AGE 21

If your child gets a traffic ticket, regardless of how minor you may think it is, **DO NOT PAY TICKET WITHOUT CALLING ME!!!**

WHAT DO I DO IF STOPPED BY THE POLICE??

For the answer, [see my page on "your legal rights"](#) and [print out a copy](#) to keep in your car!



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DUI, serious traffic offenses, and drug offenses.
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