

TRAFFIC LAW NEWSLETTER
Spring, 2004



GEORGIA COURTS GIVE STATE "CARTE BLANCHE" TO VIOLATE OUR RIGHTS

Four recent decisions from the Georgia Court of Appeals show why it may be important to start taking judicial elections seriously. Consider the following cases:

A criminal defendant is entitled to know what crime he is charged with committing. In Georgia there are at least 7 different types of DUI; some involve "less safe" driving to due alcohol, aerosol, or drug impairment, and some DUIs are "per se" types, meaning your alcohol level is above a certain amount or you have certain illegal drugs in your system. You need to know exactly what type of DUI you are charged with to defend the case. In Taylor v. St., decided on February 17, the Court of Appeals decided a charging document was sufficient simply if it charged a person with "DUI" regardless of specific type. Even though this violates the 6th Amendment to the US Constitution, this is now the law in Georgia, thanks to Justices Adams, Andrews, and Barnes.

Georgia courts have in the past ruled that the HGN test, a subjective eye exam used by police in determining whether to arrest people suspected of DUI, is a scientific test, and therefore must be administered correctly by the officer to be admitted into evidence. Now, under State v. Pierce, decided March 12, it doesn't matter whether the officer administered the HGN correctly or not. The officer can still testify as to the results (even if they are invalid) and the jury can decide how much weight to give his testimony. Thank you Justices Adams, Andrew, and Barnes.

Georgia Court in the past have ruled that in a very specific situation, breath test results are not valid if the police failed to follow GBI rules in giving the state breath test. These rules, by the way, are established by a government bureaucrat without any legislative approval. Now, under State v. Palmaka, decided on March 26, the Court says that it doesn't matter if the officer fails to follow the rules. The test results

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are still admissible against the defendant. The defendant can always bring in evidence (meaning paying thousands of dollars to an expert) to dispute the results. Thanks to all of the Court of Appeals justices for this one.

Finally, and this is very important especially to people whose teenagers get a speeding ticket, pay the ticket, thinking nothing more about it and about 9 months later get a suspension notice, under Allen v. St, decided April 14, you must challenge any traffic conviction within 180 days of the conviction. It doesn't matter if your rights were violated or you did not understand what you were doing when you paid the ticket. This decision comes to us via Judges Smith, Barnes and Phipps.

Two lessons learned from these decisions: First, if stopped by the police, Never admit to anything, never take field sobriety and never take the State test. If the government does not have to follow its own rules, what sort of society have we become. Second, look at this years judicial races and remember the names mentioned above. Also remember there are several judges races in Gwinnett County this year. On TV you hear politicians bemoaning "activist" judges all the time. Well folks, the activist judges are not only federal judges, many times they are State appellate judges. Reality is that even though Georgia Appellate judges must run for re election, they very seldom have opposition. If you have any questions about the candidates call me!

2004 RECORD: 26 Wins, 0 Guilty Verdict, 11 Guilty Pleas

Idea for grads: How about this for your high school or college grads: A copy of the Declaration of Independence and the US Constitution can be obtained form the Cato Institute at 1-800-767-1241

**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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Practice dedicated exclusively to defense of those accused of
DUI, serious traffic offenses, and drug offenses.

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