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Georgia DUI Law

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Research Guides

Georgia DUI Law

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Scope

There is a vast collection of cases dealing with the differing Georgia DUI Statutes and their interpretations. Additionally, there is an abundant of cases involving what actions a law enforcement officer may take and the level of evidence required or the evidence's admissibility. The material I have selected is intended to introduce a broad spectrum of the most common issues found within differing case fact patterns. With a few exceptions, I have also limited the material to cases decided within the last several years, specifically eyeing those published in 2011. I have also decided to add a set of Federal Regulations for the research enthusiast who questions where and why Georgia may have included certain elements within its own statutes.

Purpose

The purpose of this research is to inroduce to the novice attorney unfamiliar with Georgia DUI laws a broad overview of Georgia's DUI Statutes and their applications through case law. As each case is differentiated by it's own unique fact pattern, the information included is meant only to be a starting place and should not be viewed as the ending point of any specific fact pattern research.

About the Author

Christopher Ward is a third-year law student at Georgia State University College of Law. Chris wrote this web research guide for Professor Johnson's Advanced Legal Research Class in the Fall 2011 semester.

Disclaimer

The material contained in this research guide was developed for the Fall semester of 2011 academic requirement. It is intended to provide a broad overview of the Georgia's DUI laws, it does not constitute legal advice. This material was prepared during the ending quarter of 2011 and, as State statutes are amended and legal case rules and interpretations are updated and changed, it should be checked to ensure they are still good law. The materials presented do not address all issues that can and will arise, therefore, the researcher should read the full text of the resources cited.

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Primary Sources

General Comment on Georgia Cases

Please note the issues included within the Georgia Case section is not an exhaustive list of issues encountered in a prosecution or defense of a DUI. The grouping reflect the 2011 decisions and issues argued. For the most part, the issues decided are based on settle law and the cases reflect the application of those laws on differing fact patterns. The basis for this "settled" law can be analyzed by following the citations illustrated within the decision.

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Georgia Statutes

Georgia Statutes

Ga. Code Ann. §40-6-391 (West, Westlaw through 2011 Regular and Special sessions) Drivers with Ability Impaired by Alcohol, Drugs, or Toxic Vapor
Georgia's Driving under the influence law and associated penalties.

Ga. Code Ann. §40-6-391.1 (West, Westlaw through 2011 Regular and Special sessions) Plea of Nolo Contendere by Persons Charged with Driving Under the Influence of Alcohol or Drugs
States the conditions for acceptance by the court of a nolo plea and its effect.

Ga. Code Ann. §40-391.2 (West, Westlaw through 2011 Regular and Special sessions) Forfeiture of Motor Vehicle Operated by Person who has been Declared Habitual Violator and Whose License has been Revoked and Who has been Arrested for Driving Under the Influence
States the elements and procedure for forfeiture of a motor vehicle.

Ga. Code Ann. §40-6-391.3 (West, Westlaw through 2011 Regular and Special sessions) Punishment for School Bus Driver Convicted of Driving Under the Influence of Alcohol or Drugs while Driving School Bus
States the violation and punishment for driving a school bus while intoxicated.

Ga. Code Ann. §40-6-392 (West, Westlaw through 2011 Regular and Special sessions) Chemical Test
The elements and procedures for a proper chemical test and inferences based on certain alcohol concentrations.

Ga. Code Ann. §40-5-55 (West, Westlaw through 2011 Regular and Special sessions) Implied Consent to Tests to Determine Presence of Alcohol or Other Drug
A person driving a motor vehicle will have been deemed to have given consent to take a chemical test.

Ga. Code Ann. §40-5-67 (West, Westlaw through 2011 Regular and Special sessions) Persons Charged with Driving Under the Influence; Taking of Driver's License; Issuance of Temporary Permit; Procedure upon Conviction or Acquittal
Procedures for revoking and suspending driving privileges and loss of driving privileges for 12 months for refsing to take the State adminstered chemical test.

Ga. Code Ann. §40-5-67.1 (West, Westlaw through 2011 Regular and Special sessions) Tests to Determine Presence of Alcohol or Other Drugs; Implied Consent Notice; Suspension of License; Refusal to Submit to Testing; Hearing; Judicial Review; Attendance of Law Enforcement Officers at Implied Consent Hearing; Certification of Breath-Testing Instruments
The ALS hearing, requirements for appeal, determination standards.

Ga. Code Ann. §40-6-67.2 (West, Westlaw through 2011 Regular and Special sessions) Terms and Conditions for Suspension of License; Return of License
Revocation and reinstatement of driving privileges.

Ga. Code Ann. §40-6-393(a) (West, Westlaw through 2011 Regular and Special sessions) Homicide by Vehicle
States punishment for causing anothers death through the violation of OCGA §40-6-391.

Ga. Code Ann. §40-6-393.1(a) (West, Westlaw through 2011 Regular and Special sessions) Feticide by Vehicle in the First Degree
Homicide by the first degree if it results in the death of the mother through the violation of OCGA §40-6-391.

Ga. Code Ann. §40-6-394 (West, Westlaw through 2011 Regular and Special sessions) Serious Injury by Vehicle
Defines serious bodily harm through the violation of OCGA §40-6-391 as serious injury by vehicle and sets punishment range.

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Georgia Case Law

"in custody"/Miranda

DiMauro v. State, 714 S.E.2d 105 (Ga. App. 2011)

Waiting approximately 20 minutes for an HGN qualified officer is not "in custody" for Miranda purposes.

Waters v. State, 701 S.E.2d 550 (Ga. App. 2010)
Miranda warnings are only required after being taken into custody. A traffic stop deprives motorist of his "freedom of action" but does not trigger Miranda warning requirements.

Harper v. State, 534 S.E.2d 157 (Ga. App. 2000)
"The test for "in custody" during a traffic stop is if a reasonable person in the suspect's position thought detention would not be temporary."

Hale v. State, 714 S.E.2d 19 (Ga. App. 2011)
Field sobriety test given while suspect is not "in custody" and are not "testimonial or communicative" in nature do not invoke Miranda warnings concerning rights against self-incrimination.
When the subjective intent of the police officer to arrest is conveyed, the suspect is "in custody."
While "in custody" yet prior to Miranda warning, if a suspect request a field test, such test results are admissible.
The State administered Intoxilyzer 5000 breath test given at the police station was properly excluded at trial because the State never allowed Hale to obtain an independent blood test he had requested.
During a preliminary instruction to the jury, the judge mention the excluded test. The comment is harmless as viewed in the "context of the trial as a whole."

Request for Independent Test

State v. Davis, 711 S.E.2d 76 (Ga. App. 2011)
Suspect requested an independent blood test. Purse was left in the car and suspect was not afforded an opportunity to have it returned or given other opportunities to make arrangements to pay for test therefore, reasonable efforts to accommodate the request were not made.

Ritter v. State, 703 S.E.2d 8 (Ga. App. 2010)
Factors to be considered in determining whether a reasonable effort to accommodate the suspect who seeks an independent blood test explained.

State v. Metzager, 692 S.E.2d 687 (Ga. App. 2010)
Whether the officer made a reasonable effort depends on the local circumstances.

Erroneous Jury Charge

Ruiz v. State, 686 S.E.2d 253 (Ga. 2009)
An erroneous jury charge is "considered in the context of the entire jury charge and trial record..." and "... is not reversible unles it causes harm."

Intoxilyzer 5000

Miller v. State, 706 S.E.2d 94 (Ga. App. 2011)
Fact pattern contesting the sufficienty of the evidence and erroneous reading of the Intoxilyze 5000.

State v. Padidham, 714 S.E.2d 657 (Ga. App. 2011)
Intoxilyzer 5000 Breath Test: administrative, procedural, and clerical steps performed in conducting a test are not part of the required approved method therefore, such issues go to the weight not the admissibility.

Commercial Vehicle

Tunali v. State, No. A11A1158, 2011 WL4552410 (Ga. App. Oct. 4, 2011)
Reasonable, articulable suspicion of criminal activity required to initiate a traffic stop.
Judicial notice of the rules adopted by the Georgia Public Service Commission issued by the Federral Motor Carrier Safety Administration permitting certain DPS officers to stop commercial vehicles and conduct safety inspections. An F250 displaying a hazardous materials placard qualifies as a commercial vehicle.

40-6-391(a)(6) Unconstitutional

Love v. State, 517 S.E.2d 53 (Ga. 1999)
Held OCGA §40-6-391(a)(6) is unconstitutional on equal protection grounds.

Sandlin v. State, 707 S.E.2d 378 (Ga. App. 2011)
Held that Love v. State, 271 Ga. 398 (1999), does not require a showing that a suspect is legally entitled to use a controlled substance before the unconstitutionality of OCGA §40-6-391(a)(6) attaches.

Evidentiary Issues

Steele v. State, 703 S.E.2d 5 (Ga. App. 2010)
Includes requirements for introduction of similar transaction evidence.

Ayiteyfio v. State, 707 S.E.2d 186 (Ga. App. 2011)
Fact pattern of other incidents which were sufficiently similar to the incident at issue were allowed admittance of similar transaction evidence.

Massey v. State, 711 S.E.2d 65 (Ga. App. 2011)
Fact pattern for the admissibility of similar transaction evidence to show bent of mind and course of conduct.

Gamble v. State, 641 S.E.2d 556 (Ga. App. 2007)
Reviewing court does not re-weigh evidence or credibillity, but only to determine if sufficient evidence for a rational trier of fact to find the accused guilty.

Harris v. State, 706 S.E.2d 702 (Ga. App. 2011)
Fact pattern for sufficiency of evidence.

Bacallao v. State, 705 S.E.2d 307 (Ga. App. 2011)
Describes the three types of police-citizen encounters. Gives fact pattern for a tier one encounter.

Shy v. Jackson, 709 S.E.2d 869 (Ga. App. 2011)
A discussion on the allowable uses and limits of similar transaction evidence.
Case includes jury charges on the use of similar transaction evidence and the proper use by juries of such evidence.

Out of State Witness

Davenport v. State, 711 S.E.2d 699 (Ga. 2011)
Defines the statutory scheme requesting an out of state witness.

Roadblock

Owens v. State, 707 S.E.2d 584 (Ga. App. 2011)
Procedural requirements for a legal roadblock and a fact pattern for sufficiency.

Blood Test Evidence

Stubblefield v. State, 690 S.E.2d 892 (Ga. App. 2011)
Blood test taken at hospital the night of arrest for a diabetes condition was admitted over the refusal of the suspect to take the state administered test.

Limited Right for State Appeal

State v. Outen, No. S10G1596, 2011 WL2536102 (Ga. June 27, 2011)
The State has a very limited direct appeal right under OCGA § 5-7-1 and 5-7-2. When the trial court dismisses less than all counts of an indictment, such actions are not final.
Changes the interpretation of State v. Tuzman, 145 Ga.App. 481 (1978), that interpreted a dismissal of a count within a multi-count indictment as being final.

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United State Supreme Court Cases

United States Supreme Court Cases

Bullcoming v. New Mexico, 131 S.Ct. 2705 (2011)
Defendant has a right to confront analyst who certified blood-alcohol analysis report and the report is testimonial within the meaning of the Confrontation clause.

Padilla v. Kentucky, 130 S.Ct. 1474 (2010)
counsel engaged in deficient performance by failing to advise defendant that his plea of guilty made him subject to automatic deportation. The Strickland ineffective assistance test includes alleged omissions by counsel.

Virginia v. Harris, 130 S.Ct. 10 (2009) writ of cert denied.
An interesting read, albeit not the law, concerning Fourth Amendment reasonable suspicion. The question poised in the writ was whether additional corroboration is needed when the police are given an anonymous tip concerning an unsafe driver.

Leocal v. Ashcroft, 543 U.S. 1 (2004)
Driving under the influence and causing bodily injury is not a "crime of violence" and therefore, not an "aggravated felony" warranting deportation.

Illinois v. Lidster, 540 U.S. 419 (2004)
Brief stops of morotists at highway checkpoint at which police sought information abut recent fatal hit-and-run accident on that highway were not presumptively invalid under the Fourth Amendment and the stop of motorist who was arrested for driving under the influence of alcohol after he arrived at the stop did not violate his Fourth Amendment rights.

Atwater v. City of Lago Vista, 532 U.S. 318 (2001)
The Fourth Amendment does not forbid a warrantless areest for a minor criminal offense, such as a misdemeanor seatbelt violation punishable only by a fine.

City of Indianapolis v. Edmond, 531 U.S. 32 (2000)
A city's vehicle checkpoint program whose primary purpose is indistinguichable from the general interest in crime control violates the Fourth Amendment. Contrast with Michigan Department of State Police v. Sitz, 496 U.S. 444 (1990) allowing sobriety checkpoints.

United States v. Nachtigal, 507 U.S. 1 (1993)
Driving under the influence of alcohol in national park was "petty offense" to which constitutional right to jury trial did not apply.

Pennsylania v. Muniz, 110 S.Ct. 2638 (1990)
Involves a person arrested but not given miranda warning: slurred speach is nontestimonial and admissible, answers to the question "what date is your sixth birthday on" is testimonial and properly excluded, and comments in response to instruction, deemed not words of action, for a sobriety test were voluntary and admissible.

Michigan Department of State Police v. Sitz, 496 U.S. 444 (1990)
Highway sobriety checkpoint is consistent with the Fourth Amendment. The case lays out the elements are deem a checkpoint consistent.

Blanton v. City of North Las Vegas, Nevada, 489 U.S. 538 (1989)
Jury trial not required for "petty offenses." A petty offense is defined as a prison term of six months or less. A Sixth Amendment issue argument.

Pennsylvania v. Bruder, 488 U.S. 9 (1988)
Ordinary traffic stop did not involve custody for purposes of Miranda rule therefore, statements driver made during roadside questioning were admissible.

Welsh v. Wisconsin, 466 U.S. 740 (1984)
A warrantless, nighttime entry of petitioner's home to arrest him for a civil, nonjailable traffic offense, was prohibited by the special protection afforded the individual in his home by the Fourth Amendment. Wisconsin Law first offense statute stated that first offense for driving a motor vehicle while under the influence was a noncriminal violation subject to a $200 fine.

South Dakota v. Neville, 459 U.S. 553 (1983)
Held the admission into evidence of a deendant's refusal to submit to a blood-alcohol test does not offend the Fifth Amendment right against self-incrimination.

Mackey v. Montrym, 443 U.S. 1 (1979)
A statute which mandated suspension of a driver's license because of a licensee's refusal to take a breath-analysis test upon arrest for driving while under the influence of alcohol did not violate the due process clause.

Schmerber v. State of California, 384 U.S. 757 (1966)
A State can force a defendant to submit to a blood-alcohol test without violating the defendant's Fifth Amendment right against self-incrimination.

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Federal Statutes

Federal Statutes

23 U.S.C.A. §158 (West, Westlaw through P.L. 112-39 approved 10-12-11) National Minimum Drinking Age
Withholds federal funds for State not setting minimum drinking age at 21

23 U.S.C.A. §161(a) (West, Westlaw through P.L. 112-39 approved 10-12-11) Operation of Motor Vehicles by Intoxicated Minors

Withholds federal funds for State not enacting and enforcing a law were under 21 years of age with a blood alcohol level at or above 0.02 whileoperating a motor vehicle is driving while intoxicated or driving under the influence

23 U.S.C.A. §163 (West, Westlaw through P.L. 112-39 approved 10-12-11) Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons
Granting of incentives to States for enacting or withholding federal funds to States for failure to enact law setting a blood alcohol content of .08 or greater as a per se offense of driving while intoxicated

23 U.S.C.A. §164 (West, Westlaw through P.L. 112-39 approved 10-12-11) Minimum Penalties for Repeat Offenders for Driving While Intoxicated or Driving Under the Influence
Limiting use of federal funds for failing to enact and enforce state laws concerning minimum punishment for driving while intoxicated

23 U.S.C.A. §402 (West, Westlaw through P.L. 112-39 approved 10-12-11) Highway Safety Programs
Federal funding for federally approved highway safety programs created and administered by the States that include, among others, programs to reduce deaths resulting from persons driving while intoxicated

23 U.S.C.A. §410 (West, Westlaw through P.L. 112-39 approved 10-12-11) Alcohol-Impaired Driving Countermeasures
Federal funding for State enacted programs to reduce traffic safety problems resulting from individuals driving under the influence of alcohol.

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Secondary Sources

Books

William C Head & Frank T. Gomez, The Georgia DUI Trial Practice Manual, (West, 2011 ed.)

There are numerous books covering all aspects of a Georgia DUI. I expect some to be excellent and informative while others 'not so good.' I know some are written by experienced trial litigators while others seem to be written by individuals who believe a DUI conviction makes them an expert on the subject.

I have perused through a number of books on the subject dealing with the history of DUI to a comparative treatise on the differing governmental policies affecting DUI laws and I recommend this book.

The Georgia DUI Trial Practice Manual offers an excellent road map for the Georgia attorney. It covers the issues one might expect to find and many others one might not.

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Interest Groups and Associations

MADD

Mothers Against Drunk Drivers is a national organization advocating for tougher DUI laws. The organization has been extremely effective both at the legislators office and the judge's bench.

- MADD Home Site
  http://www.madd.org/
  Mothers Against Drunk Drivers is a national organization advocating for tougher DUI laws. The organization has been extremely effective both at the legislators office and the judge's bench.

UDETC

The Underage Drinking Enforcement Training Center was established by the Office of Juvenile Justice and Delinquency Prevention (within the U.S. Department of Justice) to support its Enforcing Underage Drinking Laws Program.

- UDETC
  http://www.udetc.org

Drunk Driving Information

This site argues there are many serious problems with the laws and enforcement of the laws related to driving while intoxicated and driving with a prohibited BAC.

- One of a few sites advocating an opposite position
  http://www.drunkdriverinfo.com

DUI Foundation

An organization whose mission is to create awareness of the danges of DUI. The site also names other organizations with similar goals.

- DUI Foundation
  http://www.duifoundation.org
  An organization whose mission is to create awareness of the danges of DUI. The site also names other organizations with similar goals.

DWI Panel

A panel of volunteers whose lives have been dramatically altered by a drunk driver tell their stories. Judge Admire:"The program is designed to provide offenders with a very personal perspective on the agony inflicted upon innocent victims by drunk drivers."

- DWI Panel
  http://dwipanel.org

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