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Over the limit, Outside the 5th

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Research Guides

Over the limit, Outside the 5th

Guide Information

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Introduction

Topic Overview

Impaired drivers pose a serious safety threat on the road. O.C.G.A. § 40-6-391(a) criminalizes driving or being in actual physical control of moving vehicle while the person is under the influence of alcohol, drugs, inhalents or any combination thereof, to the extent that it is less safe for the person to drive or if the person's alcohol concentration is 0.08 grams or more (0.02 grams or more if under 21) at any time within three hours after driving or being in actual physical control of a vehicle. The severity and penalty of driving under the influence increases with each subsequent conviction, becoming a felony offense upon the fourth conviction.

To discourage individuals from drinking and driving, O.C.G.A. § 40-6-392 provides that evidence of the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance, as determined by chemical test, shall be admissible at any civil or criminal proceeding arising out of acts allegedly committed by any person in violation of O.C.G.A. § 40-6-391. Under O.C.G.A. § 40-5-55, any person that operates a motor vehicle upon the highways or elsewhere in the state is deemed to have given consent, subject to the provisions in O.C.G.A. § 40-6-392, to a chemical test or tests or his or her blood, breath, urine, or other bodily substance for the purpose of determining the presence of alcohol or drugs if they are suspected of driving under the influence or are involved in any traffic accident resulting in serious injuries or fatalities. Consent to the test is assumed where the person is dead, unconscious, or otherwise incapable of refusing the test. O.C.G.A. § 40-5-67.1 requires that the tests under O.C.G.A. § 40-5-55 shall be administered as soon as possible at the request of a law enforcement officer having reasonable grounds to believe that the person is in violation of O.C.G.A. § 40-6-391. At the time that the law enforcement officer requests a chemical test, the arresting officer shall select and read to the person the appropriate implied consent notice based on the offender's age and license classification. The implied consent notice informs the individual of their right to an independent test after submitting to the state test and the consequences of refusing to submit to the state administered test, including suspension of their driver's license and use of the refusal as evidence at trial.

Admission of the person's paricipation in field sobriety tests and consent or refusal to submit to state administered tests has been challenged as violating a defendant's right against self incrimination. Under the United States Constitution, an individual has the right not to be compelled in any criminal case to be a witness against himself. Likewise, the Georgia Constitution guarantees that "no person shall be compelled to give testimony tending in any manner to be self-incriminating." O.C.G.A. § 24-9-20 provides greater protection against self incrimination stating that no person charged in any criminal proceeding with the commission of any indictable offense or any offense punishable on summary conviction shall be compellable to give evidence for or against himself. However, these constitutional and statutory protections against self-incrimination have been held not to apply to field sobriety tests and consent or refusal to take the preliminary breath test or state administered test where the defendant was not in custody and there was no threat or use of force on the part of the law enforcement officer.

Topic Scope

This research guide surveys an individual's constitutional and statutory right against self-incrimination during an investigation or arrest for driving under the influence through primary sources (constitutional provisions, statutes, and case law) and a variety of secondary sources (treatises, legal encyclopedias, and books). Laws governing driving under the influence are extremely complex and this guide should be used as a starting point for research. Because DUI law is unique to each state, this guide focuses on a person's rights under Federal and Georgia law.

User Warning

This legal bibliography does not constitute legal advice and is not comprehensive. It has not been updated since April 2010. This annotation should serve as a starting point for researching the right against self-incrimination regarding driving under the influence in Georgia. The materials below do not address all issues that will arise, and researchers should read the full text of the resources cited. If you have questions as to how to proceed with your research, please consult a legal reference librarian.

About the Author

This research guide was prepared for Professor Nancy Johnson's Advanced Legal Research class in the Spring of 2010 by K. Kylene Farmer, a third year law student at Georgia State University's College of Law. Send an email to njohnson@gsu.edu for more information about this bibliography.

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Primary Sources

Constitutional Provisions

U.S. Const., Amend. V

". . . nor shall be compelled in any criminal case to be a witness against himself. . ."

GA. Const. Art. I, § 1, ¶ XVI

"No person shall be compelled to give testimony tending in any manner to be self-incriminating."

Official Code of Georgia Annotated

O.C.G.A. § 24-9-20 (2009).

This statute provides the basis for Georgia's statutory privilege against self-incrimination. It provides that "[n]o person who is charged in any criminal proceeding with the commission of any indictable offense or any offense punishable on summary conviction shall be compellable to give evidence for or against himself." It fruthers provides that a defendant has the option to testify on his or her own behalf and if they elect to do so, they may be sworn as any other witness, examined and cross-examined. However, it also protects a defendant that elects not to testify allowing no presumptions to be drawn and no comment to be made. This statute provides greater protections than either the U.S. Constitution or the Georgia Constitution and has been interpreted by courts to include all evidence, testimonial in nature or real. Real evidence includes the rests of field sobriety tests and statements made to law enforcement officers regarding consent or refusal to take the preliminary breath test or state administered test.

O.C.G.A. § 40-6-391 (2009).

This statute criminalizes the conduct commonly called driving under the influence. Section (a) of this statute prohibits any person to drive or be in actual physical control of a moving vehicle while under the influence of alcohol, drugs, inhalents, or any combination thereof, to the extent that it is less safe for them to drive or if the person's alcohol concentration is 0.08 grams or more within three hours of driving. The remaining sections address prescription drugs, punishment, payment of fines, statutory limits for operators of commercial motor vehicles and minors (persons under the age of 21), and potential additional charges resulting from transporting children under 14 years of age while being under the influence. This statute is the basis for DUI investigations and subsequent charges that create a need for the chemical tests discussed in O.C.G.A. § 40-6-392, implied consent in O.C.G.A. § 40-5-55, and notificiation of implied consent under O.C.G.A. § 40-5-67.1.

O.C.G.A. § 40-6-392 (2009).

This section of the Georgia code establishes that evidence of the amount of alcohol or drug in a person's blood, breath, urine, or other bodily substance at the alleged time of offense and as determined by chemical tests, shall be admissible at any civil or criminal trial arising from acts alleged to have been committed by any person in violation of O.C.G.A. § 40-6-391. This section establishes the standards and procedures to be followed regarding the equipment used, the testing procedures and acceptable standards, qualifications of operators, and admissibility of certificates establishing the proper working order of the machine and proper training of its operator. Most importantly, this code section allows the refusal of a defendant to submit to chemical tests to be admitted into evidence at any criminal trial demonstrating that the individual has no right against self-incrimination regarding answers to the officer's request for chemical test.

O.C.G.A. § 40-5-55 (2009).

This section of the Georgia code considers that any person operating a motor vehicle on the highways or elsewhere within the state of Georgia shall be deemed to have given consent, subject to O.C.G.A. § 40-6-392, to a chemical test or tests or his or her blood, breath, urine, or other bodily substance for the purpose of determining the presence of alcohol or drugs at the time the person was suspected of violating O.C.G.A. § 40-6-391 or was involved in a traffic accident resulting in serious injury or death. It provides that it is within the discretion of the arresting officer to designate which test shall be administered. Implied consent under this statute includes any person who is "dead, unconscious, or otherwise in a condition rendering such person incapable of refusal" and those persons are deemed not to withdrawn consent, allowing the administration of chemical tests, subject to O.C.G.A. § 40-6-392. This statute raises serious concerns about the right against self-incrimination by allowing tests to be ordered of individuals that lack the ability to refuse. However, it is a contributing factor in the courts' decisions to allow evidence of a defendant's refusal to submit to chemical tests to be admitted at trial.

O.C.G.A. § 40-5-67.1 (2009).

This section of the Georgia code requires that the test or tests under O.C.G.A. § 40-5-55 shall be administered as soon as possible at the request of a law enforcement officer having reasonable grounds to believe that the person has violated O.C.G.A. § 40-6-391 and has arrested that person for violating O.C.G.A. § 40-6-391. It reinforces that it is within the officer's discretion to designate the test or tests to be administered and allows an officer to request a subsequent test or tests of any substance not initally tested. This

statute contains the "implied consent notice" language that is printed on cards and carried by officers to be read at the time of arrest for violation of O.C.G.A. § 40-6-391. The implied consent notice informs a person of his or her rights regarding the administration of chemical tests and the consequences of refusing the specified test, including potential suspension of their driver's license and use of refusal at trial against them. Though implied consent notice is read after the person is arrested, it has been deemed to accurately inform the person of their rights regarding the administration of chemical tests, including the right to refuse the test, and their subsequent submission to the test, including the results, or their refusal to take the test is admissible at trial as non-testimonial and being neutral in effect.

O.C.G.A. § 17-4-1 (2009).

This section of the Georgia code establishes what constitutes an arrest to determine when *Miranda* rights arise. It states that "actual touching of a person with a hand is not essential to constitute a valid arrest," rather the person can voluntarily submit to being under arrest or yield on condition of being allowed his freedom of locomotion. The point at which a person is under arrest is extremely important in the context of DUI. Upon arrest, the protections afforded a defendant under *Miranda* arise and any field sobriety test, preliminary breath test, or state administered test given without first informing the individual of their rights is inadmissible at trial.

U.S. Supreme Court Cases

U.S. v. Hubbell, 530 U.S. 27 (2000).

This case reiterates the principles laid out in earlier case law that the Fifth Amendment privilege against self-incrimination applies only to compelled incriminating communications that are testimonial in character and does not prohibit requriing the person to exhibit physical characteristics or to produce incriminating documents, where the documents creation was not compelled.

Pennsylvania v. Muniz, 496 U.S. 582 (1990).

This cases delineates the types of DUI testing that are considered testimonial in nature and therefore, inadmissible without *Miranda* warnings. The defendant was arrested for driving under the influence and taken to the booking center where he was not read his *Miranda* rights, but was subjected to field sobriety tests, asked seven questions (name, address, height, weight, eye color, date of birth, and current age), additionally asked the date of his sixth brithday, and finally, asked to consent to a breathalyzer test. The Court stressed that to be testimonial, the communication must "explicitly or implicitly, relate a factual assertion or disclose information." Here, the Court found that the defendant's answer to direct questions, including his physical manifestations of slurred speech and lack of muscular coordination, were nontesimonial and did not violate defendant's right against self-incrimination. Further, defendant's utterances during the field sobriety tests and breathalyzer were not prompted by interrogation and therefore, should not have been suppressed. However, the defendant's inability to answer the date of his sixth birthday was incriminating, not just for the manner in which it was given, but because the content supported his confused mental state. This case indicates that a defendant's physical manifestations of impairment, slurred speech and lack of muscular coordination for example, are admissible as evidence of impairment even where a defendant makes a statement to the police. However, if the content of the statement is being used to indicate the defendan'ts impairment, that is a violation of his right against self-incrimination and inadmissible at trial.

South Dakota v. Neville, 459 U.S. 553 (1983).

This case most directly addresses the issue on point and finds that state implied consent laws which give the defendant the choice of submitting to state administered tests to determine impairment or refusing to submit to the test with the understanding that their license may be suspended or revoked and that the refusal may be used at trial against them does not violate a defendant's Fifth Amendment right against self-incrimination where there was no coercion. A South Dakota statute permitted a person suspected of driving while intoxicated to refuse to submit to a blood-alcohol test, but authorized the revocation of the person's driver's license if they refused the test and permited the refusal tobe used against him at trial. Here, the defendant was stopped for failure to stop at a stop sign and when asked to get out of the car, staggered and fell against the car for support and the officers could smell alcohol on the defendant's breath. After failing to produce a driver's license, admitting to the officers that it was suspended after a previous DUI conviction and being unable to touch his finger to his nose or walk in a straight line, the defendant was arrested and read *Miranda*. The officers then read from a printed card and requested the defendnat to submit to a blood-alcohol test, warning him that he could lose his license if he refused. The defendant refused the test. The defendant then sought to suppress all evidence of his refusal to take the blood-alcohol test and the Circuit Court granted the suppression motion. The Supreme Court of South Dakota affirmed the suppression on the grounds that the statute allowing introduction of the evidence violated the federal and state privilege agaisnt self-incrimination. The U.S. Supreme Court reversed holding that admission into evidence of defendant's refusal to submit to blood-alcohol test, when lawfully requested by an officer, is not an act coerced by the officer and not protected by the privilege against self-incrimination. The Court emphasized that, while the defendant may have a difficult choice between submitting to the test or refusing, he was not "compelled" within the meaning of the Fifth Amendment and therefore, not entitled to its protections. The Court points to previous holdings that the Fifth Amendment is limited to prohibiting the use of physical or moral compulsion upon the person asserting the privilege.

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

This cases addresses what information is protected by the Fifth Amendment privilege against self-incrimination. The Court said that the privilege against self-incrimination protects an accused only from being compelled to testify against himself or otherwise providing the State with evidence of a testimonial or communicative nature. This has not been extended to apply to evidence of acts noncommunicative in nature, even though those acts may be compelled in order to obtain the testimony of others. In this case, the Petitioner was convicted of driving under the influence after being involved in an accident that resulted in injuries. While being treated for his injury at the hospital, Petitioner was arrested and the officer, over Petitioner's objection, had a blood sample drawn by the physician which was later subjected to chemical analysis of alcohol content; the results of which indicated intoxication. Petitioner argued that the forcible taking of his blood and subsequent use of the results of the blood test at trial violated his right against self-incrimination. The Appellate Department of the California Superior Court rejected this argument and affirmed Petitioner's conviction. The U.S. Supreme Court held that the privilege against self-incrimination bars the State only from compelling "communications" or "testimony" and because a blood test was "physical or real" evidence rather than testimonial, it was unprotected by the Fifth Amendment. However, the Court expressly reserved the question whether evidence of refusal violated the privilege against self-incrimination.

Georgia Supreme Court Cases

Price v. State, 269 Ga. 222 (Ga. 1998)

Court found a defendant to be in custody, giving rise to the need to read defendant her *Miranda* rights before administering field sobriety test, when the officer learned through a license check that the defendant's license was suspended, the officer had a strong suspicion that the defendant was intoxicated, and the officer told the defendant that he would take her to jail regardless of whether she performed the field sobriety tests or not. The Court notes that their holding would be different if the defendant had brought her challenge solely under federal law because the U.S. Constitution's prohibition against self-incrimination only applies to evidence that is "testimonial" and field sobriety tests are not "testimonial" in nature. This indicates that the State Constitution and statutes afford the defendant greater protection than federal law. It also makes the point at which a defendant is placed under arrest, requiring *Miranda* warnings to precede the administration of field sobriety tests, a serious issue to be considered in each future case.

Keenan v. State, 263 Ga. 569 (1993)

In this case, the Georgia Supreme Court found that O.C.G.A. § 24-9-20, which prohibits the State from forcing the defendant to present any incriminating evidence, did not aply to admission of defendant's prearrest refusal to submit to preliminary alcohol level screening test because the defendant was not charged in any criminal proceeding at the time the defendant was requested to perform the field sobriety tests. This case establishes the elements necessary to invoke the statutory right against self-incrimination, namely that the individual must be 1. charged in a 2. criminal proceeding with any 3. indictable offense or any offense punishable on summary conviction. Only then does the statutory right protect the defendant from be compelled to give evidence for or against himself. The statutory privilege affords greater protection than the Constitution, prohibiting being compelled to give any evidence, rather than evidence of a "testimonial" or "communicative" nature.

Hughes v. State, 259 Ga. 227 (Ga. 1989)

The Georgia Supreme Court found that the motorist was under arrest from the time that the officer told him he was not free to leave, therefore *Miranda* warnings were required and any statements uttered by the defendant were properly suppressed. However, the Court found that evidence of the alphabet test and field dexerity tests perform following his arrest were not "testimonial" or "communicative" in nature and should not have been suppressed. This was based on the idea that the defendant based his motions solely on the U.S. Constitution, not the Georgia Constitution or statutory right against self-incrimination under O.C.G.A. § 24-9-20.

Strong v. State, 231 Ga. 514 (1973)

The Georgia Supreme Court found that the defendant was in custody when a blood sample was taken at the hospital, but that the removal of a substance from the body through a minor intrusion does not cause the person to be a witness against himself within the meaning of the Fifth Amendment. Here, two different police departments were involved in the investigation of a driver suspected of being under the influence and the subsequent accident he was involved in. Where an officer from the first department placed the defendant under arrest, despite the fact that the officer from the second department had not completed his investigation of the accident seen and had not placed defendant under arrest, the defendant was deemed to be in custody. The defendant was injured in the accident and was taken to the hospital. While unconscious at the hospital, a blood sample was taken from the defendant and the Court found no violation of the right against self-incrimination.

Georgia Court of Appeals Cases

Bramlett v. State, 2010 WI 654350 (Ga. Ct. App. 2010).

Court considered whether the defendant was compelled to perform field sobriety tests in violation of the Georgia Constitution's guaranty that no one shal be compelled to give testimony tending in any manner to be self-incriminating. Testimony has been construed to include all types of evidence. This includes oral confessions or incriminating admissions of an involuntary character, or of doing an act against his will which is incriminating in its nature. Court held that the defendant was not compelled to perfom field sobriety tests in violation of his right against self-incrimination when he voluntary consented to the field sobriety tests, after refusing the preliminary breath test demonstrating that he knew they were voluntary, because the investigating officer did not issue threats or use force.

State v. Carder, 2009 WL 47225224 (Ga. Ct. App. 2009).

Court found that privilege against self-incrimination was not violated where defendant spontaneously stated "I know what you want the blood for, I'm not giving you my blood" because the privilege against self-incrimination only protects an accused from being compelled to testify against herself or otherwise provides the state with evidence of a testimonial or communicative nature. The privilege is only triggered when it is the intent of the officer to extort information from the accused. Here, the officer was not attempting to secure a communication from the defendant when asking for a sample of her blood to test for presence of alcohol. Likewise, the defendant's refusal to submit to the state's request for blood is admissible against the defendant at trial where implied consent warnings were read as soon as practicable after the arresting officer observed her physical manifestations at the hospital.

Clark v. State, 289 Ga. App. 884 (Ga. Ct. App. 2008).

An officer is not required to precede field sobriety tests, including the preliminary breath test, with *Miranda* warnings unless the defendant is in custody. The test for deteriming whether a person is "in custody" at a traffic stop is if a reasonable person in the suspect's position would have thought that the detention would not be temporary. In this case, the evidence showed that the defendant took the field sobriety tests while under temporary, investigative detention before being handcuffed and formally arrested. Because the defendant was not under arrest at the time of administion of the field sobriety tests, he was not entitled to *Miranda* warnings. The Court found that where *Miranda* warnings were unnecessary and had not been given, a defendant's refusal to undergo the alco-sensor test did not violate his right against self-incrimination. The Court of Appeals also found that a defendant charged with DUI was not compelled to perform field sobriety tests in violation of his right against self-infrimination because he was not threatened with criminal sanctions for his failure to perform the tests, nor was he physically forced to do the tests, nor was there any show of force tantamount to an actual use of force.

Ferega v. State, 286 Ga. App. 808 (Ga. Ct. App. 2007).

The Fifth amendment protection against self-incrimination protects an accused from being compelled to testify against himself or provide evidence of a testimonial or cumminicative nature. For a communication to be testimonial, thus implicating the Fifth Amendment privilege against self-incrimination, the communciation must itself, explicitly or implicitly, relate a factual assertion or disclose information. It follows that evidence from an accused that is not testimonial in nature, such as field sobriety tests, do not fall within the protections of the Fifth Amendment. Here, the Court found that a defendant's refusal to submit to voluntary field sobriety tests did not implicate the defendant's privilege against self-incrimination because there was no impermissible coercion and the defendant was specifically told that the tests were voluntary.

Numerous cases decided by the Georgia Court of Appeals find Miranda warnings must procede field sobriety tests only when a defendant is in custody. Though these cases have slight variations factually, they all come to the same conclusion. The test for determining whether a person is in custody is if a reasonable person in the suspect's position would have though detention would not be temporary. This is an objective test. The defendant's subjective belief that they could be arrested is not sufficient. Nor is the fact that the defendant is not free to leave because they could be arrested for violation of state law. An officer must take overt acts before the suspect will be found to be in custody. Detention of the suspect is not sufficient to effectuate an arrest where there is no reason to believe that the detention is not temporary and the defendant's status is merely delayed.

- ***Groudhaus v. State***, 287 Ga. App. 628 (Ga. Ct. App. 2007)(defendant was not in custody for *Miranda* purposes when he performed field sobriety tests, despite the fact that officers requested a tow truck).

- ***Tune v. State***, 286 Ga. App. 32 (Ga. Ct. App. 2007)(defendant was not in custody before arrival of officer who administered field sobriety tests, and thus, *Miranda* warnings were not required).
- ***Amin v. State***, 283 Ga. App. 830 (Ga. Ct. App. 2007)(defendant was not in custody or under arrest when officer told him that he had a witness that saw him drive the vehicle, therefore, the field sobriety tests were not subject to suppression for failure to advise of *Miranda* rights).
- ***Abrahamson v. State***, 276 Ga. App. 584 (Ga. Ct. App. 2005)(defendant was not subjected to custodial arrest requiring *Miranda* warnings before the officer cnducted his investigation and attempted field sobriety tests).
- ***Evans v. State***, 267 Ga. App. 706 (Ga. Ct. App. 2004)(defendant was not in custody despite her subjective belief that the officer was going to "take her in" because this merely demonstrates her apprehension, not an arrest; therefore, the lower court properly denied her motion to suppress the results of the field sobriety tests).
- ***State v. Dixon***, 267 Ga. App. 320 (Ga. Ct. App. 2004)(defendant was not "in custody" for *Miranda* purposes when the officer administered preliminary alcohol-screening breath test merely because the officer had probable cause to arrest him).
- ***State v. Pierce***, 266 Ga. App. 233 (Ga. Ct. App. 2004)(defendant was not in custody for *Miranda* purposes when he performed field sobriety tests because the officer was conducting an investigation into the defendant's possible impairment).

State v. Carraway, 251 Ga. App. 469 (Ga. Ct. App. 2001).

The privilege against self-incrimination protects an individual from being compelled to testify or present evidence against himself of a testimonial or communicative nature. However, this Court found that a response to the State's request to take an alcohol breath test is neither testimonial nor communicative, rather it is neutral in effect and not protected by the privilege against self-incrimination. Therefore, the Court held that the results of driver's alcohol breath test were not protected by the privilege agaisnt self-incrimination so that failure to give *Miranda* warnings prior to arrest did not require suppression of test results, nor did the failure to give *Miranda* require suppression of evidence regarding police officer's observations of driver at the scene of the traffic stop.

Scanlon v. State, 237 Ga. App. 362 (Ga. Ct. App. 1999).

Court held that motorist's affirmative response when asked to take the breath test was not protected by the privilege agaisnt self-incrimination, nor was her understanding of the Intoxilyzer test and her consent to take the test prompted by an "interrogation" within the meaning of *Miranda.* The statutory protections against self-incrimination were not applicable to motorist's consent to a chemical breath test or the taking of that tast because the requirements that *Miranda* warnings must precede a request to perform a field sobriety test if the suspect is in custody did not apply to a request to consent to a chemical breath test and the state constitutional right of due process and privilege against self-incrimination were not vioated.

**This is just an overview of a few of the cases in the last ten years, with a focus on those that most directly address the issue at hand. There are dozens of other cases with similar holdings dating back to the 1970s.*

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Secondary Sources

Treatises/ Practice Materials

Courtroom Handbook on Georgia Evidence, Paul S. Milich (2010)

- Ctrm. Hbook. Ga. Evid. D5. D.U.I. Cases

Georgia DUI Trial Practice Manual, William C. Head (2009)

- Ga. DUI Practice Manual § 4:14. Constitutional validity.
- Ga. DUI Practice Manual § 4:16. Evidence of refusal used against defendant.
- Ga. DUI Practice Manual § 4:20. Evidence of refusal - Admissibility of trial.
- Ga. DUI Practice Manual § 4:39. State-administered test - Choice of test.
- Ga. DUI Practice Manual § 4:41. State-administered test - Criteria for admissibility.
- Ga. DUI Practice Manual § 6:5. Fifth amendment challenge - Georgia case law - Miranda.
- Ga. DUI Practice Manual § 8:5. When Miranda warnings are not required.
- Ga. DUI Practice Manual § 8:7. Compulsion.
- Ga. DUI Practice Manual § 8:13. Remedy for Miranda violation.
- Ga. DUI Practice Manual § 14:55. Motions in limine - Purposes and use in a DUI case.
- Ga. DUI Practice Manual § 15:30. Evidence - Circumstantial evidence - Cases where circumstantial evidence was sufficient.

Trial Handbook for Georgia Lawyers, Ronald L. Carlson (3d ed. 2009-2010)

Trial Handbook for Ga. Lawyers § 1515. Extent of privilege against self-incrimination.

- Trial Handbook for Ga. Lawyers § 15:16. Invoking privilege against self-incrimination.
- Trial Handbook for Ga. Lawyers § 15:18. Ruling upon existence of privilege against self-incrimination.
- Trial Handbook for Ga. Lawyers § 15:19. When privilege against self-incrimination is lost, generally.
- Trial Handbook for Ga. Lawyers § 24:33. Tests for intoxication.

Daniel's Georgia Handbook on Criminal Evidence, Jack Goger (2009)

- Ga. Crim. Evid. § 7:1.6 Tests of intoxication - warnings and general procedures for obtaining and admitting chemical tests.
- Ga. Crim. Evid. § 7:20. Tests of intoxication - withdrawal of refusal to submit to a chemical test.

Law Review Articles

Frank C. Mills, III, Annual Survey of Georgia Law, 43 Mercer L. Rev. 175, 210-211, 241-242 (1991).

The Honorable Frank C. Mills, III is the Chief Judge of State Court in the Blue Ridge Judicial Circuit in Canton, Georgia. This law review article discusses the current state of Georgia law as it was in 1991. Regarding motions to suppress, Mills discusses *Green v. State*, 260 Ga. 625 (Ga. 1990), a defendant was requested to give a urine sample as a condition of his probation. The defendant challenged the results of the test as violating his right against self-incrimination. Though, at this time the Court had construed the Georgia Constition's privilege against self-incrimination to limit the state from forcing the individual to present evidence, oral or real, it adopted a new rule, which is still in effect today. This new rule stated that the use of a substance naturally excreted by the human body does not violate a defendant's right against self-incrimination under the Georgia Constitution. This can be applied to instances where a defendant is requested to give a blood, breath, urine, or other bodily substance sample to be tested for intoxication.

In the context of DUI, Mills discusses *Jackson v. State*, 196 Ga. App. 724 (Ga.Ct. App. 1990) which held that an alcohol test performed by a hospital for the purposes of treatment was admissible under the business records exception and not controlled by the Implied Consent Law. However, this case was disapproved of by *Oldham v. State*, 205 Ga. App. 268 (Ga. Ct. App. 1992) which found that where the blood was not drawn at the request or direction of a law enforcement officer, the party seeking to admit the results must satisfy the court that the results are admissible pursuant to the rules of evidence. The Court disapproved of any prior cases suggesting that the test results were admissible because they were ordered for the purpose of providing the defendant with medical treatment.

American Law Reports

C.T. Foster, Admissibility and weight of evidence based on scientific test for intoxication or presence of alcohol in system 159 A.L.R. 209 (2010).

J.B.G., Degree or nature of intoxication for purposes of statute or ordinance making it a criminal offense to operate an automobile while in that condition, 142 A.L.R. 555 (2010).

Jay M. Zitter, Admissibility in criminal case of evidence that accused refused to take test of intoxication, 26 A.L.R. 1112 (2010).

Books

- George A. Stein, Georgia DUI Law: A resource for lawyers and judges (Lexis Law Publishing 2003).

ISBN: 9780327162964

Call Number: KFG297.8 .S74; Law Reference Desk

George Stein is one of the most prominent DUI attorneys in Georiga. This case bound reference book provides an in-dept analysis of a series of representative cases highlighting factual variations affecting the Court's reasoning and holdings. It advises how to rebut statutory inferences, attack the accuracy and efficiency of the Intoxilyzer 5000, and gives guidance on how to structure a legal argument.

- William C. Head, The DUI Book: A citizen's guide to understanding DUI-DWI litigation in America (National Edition).

Book available online at www.theduibook.com.

William C. Head is a very prominent Georgia DUI lawyer. This book is a comprehensive, easy to follow guide to everything you need or want to know about DUI.

- Georgia Criminal and Traffic Law Manual, 2008-2009 Ed. with CD-ROM (LexisNexis Law Enforcement 2009).

ISBN: 9781422452707

This manual provides quick access to Georgia's criminal law and procedures, motor vehicle laws, and recent legislation with succinct summaries of the legislative changes.

Legal Encyclopedias

American Jurisprudence

- 7A. Am. Jur. 2d. Automobiles § 346. Tests for alcohol or drugs, generally; implied consent.

Corpus Juris Secundum

- 61A C.J.S. MOTORVEH § 1395. Generally.
- 61A C.J.S. MOTORVEH § 1397. Generally.
- 61A C.J.S. MOTORVEH § 1401. Issues, proof, and variance.
- 61A C.J.S. MOTORVEH § 1403. Presumptions - Chemical tests for intoxication, generally.
- 61A C.J.S. MOTORVEH § 1404. Presumptions - Refusal to submit to test.
- 61A C.J.S. MOTORVEH § 1405. Burden of proof.
- 61A C.J.S. MOTORVEH § 1406. Admissibility of Evidence.
- 61A C.J.S. MOTORVEH § 1407. Admissibility of Evidence - tests for intoxication.
- 61A C.J.S. MOTORVEH § 1411. Weight and sufficiency of evidence - tests for intoxication.

Georgia Jurisprudence

- 21 Ga. Jur. Criminal Law § 35:42. Entitlement to *Miranda* warnings.
- 21 Ga. Jur. Criminal Law § 35 43. Generally.
- 21 Ga. Jur. Criminal Law § 35:48. Implied consent - Constitutional protections.
- 21 Ga. Jur. Criminal Law § 35:51. Refusal to take test.
- 21 Ga. Jur. Criminal Law § 35:72. Generally.

Georgia Procedure

- 11 Ga. Proc. Criminal Procedure § 26:2. Fifth Amendment basis.
- 11 Ga. Proc. Criminal Procedure § 26:3. Fifth Amendment basis - Non-testimonial evidence under federal constitution.
- 11 Ga. Proc. Criminal Procedure § 26:6. Procurement of natural body substances.
- 11 Ga. Proc. Criminal Procedure § 26:13. Asserting privilege at trial.
- 11 Ga. Proc. Criminal Procedure § 26:16. Field Sobriety Tests.
- 11 Ga. Proc. Criminal Procedure § 27:11. Voluntariness, generally.
- 11 Ga. Proc. Criminal Procedure § 27:21. Traffic Stops.

Looseleafs

Andrews DUI Litigation Reporter 9

- 2-01-08. Field sobriety tests did not violate right against self-incrimination.

This is a monthly looseleaf highlighting current issues and cases regarding DUI law. It can be found on Westlaw.

BNA Criminal Law Reporter

This is a weekly looseleaf highlighting current issues and cases in criminal law. It can be found through the e-Journal locator on the Georgia State Library page or on Westlaw and LexisNexis.

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Computerized Research

Westlaw

Westlaw provides fee-based access to a large legal database containing primary and secondary sources.

Key Numbers

Westlaw's key number are subject headings that allow you to search all the cases on a given topic. Here are some key numbers useful when researching self-incrimination in the

DUI context.

- 35k68(3). What constitutes arrest.
- 48Ak349(10). Arrest, stop, or inquiry; bail or deposit --> What is arrest or seizure; stop distinguished
- 48Ak411k. Evidence of sobriety tests.
- 48Ak413k. Refusal of test.
- 48Ak414k. Evidence of sobriety test --> Right to take sample or conduct test; initiating procedure.
- 48Ak415k. Motorists' right to test or to additional or alternative test.
- 48Ak418k. Evidence of sobriety tests --> Grounds for test --> Consent, express or implied.
- 48Ak419k. Grounds or cause; necessity for arrest.
- 48Ak421k. Evidence of sobriety test --> advice or warnings; presence of counsel.
- 110k393(1). Compelling self-incrimination, in general.
- 110k393(2). Introduction of articles taken from accused.
- 110k393(3). Exposing accused or person of accused to view of witness or jury, and compelling submission to physical examination.
- 110k394.1(3). Evidence wrongfully obtained, in general.
- 110k412.1(1). Voluntary character of statement.
- 110k412.1(3). Informing accused as to his rights.
- 110k412.1(4). Interrogation and investigatory questioning.
- 110k412.2(2). Accusatory stage of proceedings; custody.
- 110k517.1(1). Voluntary character of confession, in general.
- 110k519(1). What confessions are voluntary.
- 110k1132.4(3)9. Evidence - Statements, confessions, and admissions.
- 110k1158.13. Admission, statements, and confessions.
- 410k297(1). Self-incrimination, in general.
- 410k300k. Privileges of accused in criminal prosecution, in general.

LexisNexis

LexisNexis is a fee-based legal database containing both primary and secondary sources. Information regarding self-incrimination in the DUI context can be found by clicking on the "search" tab, then "by topic or headnote" and selecting "criminal law and procedure." Finally, search "DUI" in the topic box.

FindLaw

FindLaw is a free website that provides information on legal issues. You can learn about DUI law in general and your constitutional rights by visiting www.findlaw.com and clicking on the "DUI/DWI" link under Learn more about the Law.

Casemaker

Casemaker is a legal research system for the members of the State BAR of Georgia, along with twenty-eight other states. This database includes cases and statutes, along with other secondary source material.

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Interest Groups and Associations

National Highway Traffic Safety Association

The National Highway Traffic Safety Administration (NHTSA) was established by the Highway Safety Act of 1970 to carry out safety programs previously administered by the

National Highway Safety Bureau. NHTSA directs the highway safety and consumer programs established by the National Traffic and Motor Vehicle Safety Acct of 1966, the Highway Safety Act of 1966, the 1972 Motor Vehicle Information and Cost Savings Act and the succeeding amendments to these laws.

The Impaired Driving (Drugs & Alcohol) Safety Program

The Impaired Driving Division develops partnerships to cooperatively save lives, prevent injuries, and reduce traffic-related health care and economic costs resulting from impaired driving (alcohol and other drugs).

To learn more about the Impaired Driving Division including the ignition interlock programs and guideline no. 8 which establishes and implements a safety plan to reduce impaired drivers, visit www.nhtsa.gov and click on "Impaired Drivers."

Remove Intoxicated Drivers

Remove Intoxicated Drivers (RID) began in 1978 in NY and has expanded to include 41 states. Its mission was then and continues now to be to deter impaired driving and teen-binge drinking which often leads to trauma. The group advocates for victims, tougher laws, and serve as watchdogs in law enforcement and adjudication in courts. The group educates the public about the impact of abusive alcohol use on life and health with materials, public awareness campaigns, and intense media interactions.

Mothers Against Drunk Driving

Mothers Against Drunk Driving (MADD) is a non-profit organization started by a group of mothers whose children were injured or killed by drunk drivers. Its mission is to stop drunk driving, support the victims of this violent crime, and prevent underage drinking. The organization publishes magazines, legal brochures, and newsletters. Their campaign against drunk driving includes funding research and gathering sources regarding DUI sinformation.

National Motorists Association

The National Motorists Association is a grassroots organization founded in 1982 to represent and protect the interests of North American motorists. It began by combating the 55 mph National Maximum Speed Limit and continues to support efforts to retain motorists' freedoms and rights. They advocate reasonable speed limits and fight for better driver training, fair enforcement practices and privacy protections.

It advocates a Motorist Bill of Rights:

1. The right to traffic regulation based on sound engineering principles and public consensus.
2. Clear guarantees that revenue collected from highway users for highway purposes be used for such purposes, and that all streets, roads, and highways be properly maintained, signed and regulated in a manner that expedites travel.
3. Freedom from unreasonable search and seizure and the guarantee that all traffic stops will be based on probable cause.
4. The right to choose the type of vehicle and related equipment that best meets an individual's needs and preferences.
5. Protection from discourteous and reckless drivers including those who deliberately impede traffic, who threaten other motorists with their actions, or who are impaired or incompetent.
6. Freedom from unreasonable surcharges, fees, taxes, and fines.
7. Complete access to all public streets, roads, and highways, free of arbitrary restrictions, exorbitant fees, or governmental attempts to dictate personal travel choices.
8. Freedom from driver license suspensions or revocations for non-driving violations or matters of personal conduct.
9. Protection from arbitrary and exploitative insurance industry practices.
10. The right to a fair and impartial trial for traffic offenses, including a trial by jury if requested by the defendant.

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