

# 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 our fellow prosecutors in keeping our highways safe by helping to prevent deaths and accidents on the roads in Georgia.

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### feature article >

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## Foreign Drivers in Georgia

By Chuck Olson, General Counsel, Prosecuting Attorneys' Council of Georgia

While Georgia has always welcomed foreign nationals to visit, invest and live in Georgia, the importance of this international trade has never been greater to the Georgia economy and the economies of local governments than it is today. More than 1800 companies from 42 countries have operations in Georgia and employ more than 107,000 Georgians. Georgia firms exported approximately \$20.6 billion in goods and imported \$47.9 billion in goods in 2005. More than 650,000 foreign nationals visited Georgia in 2005; more than 18,000 students from other countries study in Georgia, contributing more than \$250 million to the state's economy. All of this international trade means that the odds of law enforcement officers coming in contact with a driver from another country is greater than ever. The ways in which officers handle these contacts can become a major factor when the leaders of foreign companies make the decision to keep their operations in Georgia or locate new facilities here.

Generally, foreign nationals who are present in this State are subject to Georgia law. They are entitled to be treated by law enforcement the same way as any citizen. Because operating a motor vehicle on the roads of this state is a privilege, not a right, state law generally determines who may operate motor vehicles in this state. However, because motor vehicles affect both interstate and international commerce, federal law also applies.

In the case of foreign nationals who are driving in the United States, "[t]he United States has entered into a treaty with certain countries to allow drivers licensed by the participating countries to drive in the other countries that are parties to the treaty without further examination."<sup>1</sup> Those treaties are the Convention on Road Traffic,<sup>2</sup> (hereafter cited as "CRT"), and the Convention on the Regulation of Inter-American Motor Vehicle Traffic<sup>3</sup> ("CRIMVT"). Both are multilateral treaties which have been ratified by the United States. As such, they "supersede[] the statutory provisions of the State of Georgia to the extent state statutory provisions are in conflict with the provisions of that agreement."<sup>4</sup> However, because more countries are parties to the CRT

than the CRIMVT,<sup>5</sup> this article will discuss the CRT, noting any differences or exceptions that apply to countries that are only parties to the CRIMVT.

*Foreign Nationals May Drive in Georgia Using A Driver's License Issued in their Home Country if They Are Here Legally and Not a Resident of Georgia.*

Under Georgia law,

A nonresident who is at least 16 years of age and who has in his or her immediate possession a valid license issued to him or her in his or her home state or country; provided, however, that any restrictions which would apply to a Georgia driver's license as a matter of law would apply to the privilege afforded to the out-of-state license.<sup>6</sup> (Emphasis added)

Thus, a foreign national who enters the United States lawfully and has a valid driver's license issued by his or her country of nationality, may operate a motor vehicle on the roads of this State for up to one year unless he or she becomes a resident of this State. However a foreign national who has not been lawfully admitted to the United States, is not entitled to drive in Georgia even if he or she has a valid driver's license from his or her country.<sup>7</sup>

*What constitutes a legal resident of the state of Georgia as far as requiring someone to obtain a Georgia driver's license?*

Georgia law defines "resident" for the purpose of driver's licenses as follows:

"Resident" means a person who has a permanent home or abode in Georgia to which, whenever such person is absent, he or she has the intention of returning. For the purposes of this chapter, there is a rebuttable presumption that the following person is a resident:

(A) Any person who accepts employment or engages in any trade, profession, or occupation in Georgia or enters his or her children to be educated in the private or public schools of Georgia within 10 days after the commencement of such employment or education; or

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(B) Any person who, except for infrequent, brief absences, has been present in the state for 30 or more days; provided, however, that no person shall be considered a resident for purposes of this chapter unless such person is either a United States citizen or an alien with legal authorization from the U.S. Immigration and Naturalization Service.<sup>8</sup>

#### **How long may a foreign national drive on a driver's license issued by his or her home country in this state?**

The CRT requires signatory countries to permit lawfully admitted foreign nationals to drive on their foreign issued driver's license for up to one year. However, a foreign national who is a resident alien (i.e., has a "green card" issued by I.C.E.) "who has a permanent home or abode in Georgia to which, whenever such person is absent, he or she has the intention of returning" is required to obtain a Georgia driver's license within 30 days of establishing such "permanent home or abode." Foreign nationals who are not domiciled in Georgia do not have to obtain a Georgia driver's license and can drive on the license issued to them in their own country for up to one year. If an officer has probable cause to believe that an individual who is operating a motor vehicle with a foreign driver's license has been a resident of Georgia for more than 30 days, the officer may charge them with the offense of driving without a driver's license under O.C.G.A. § 40-5-120(4).

While the CRT provides that Georgia "must permit a lawfully admitted alien to drive ... using a foreign driver's license ... only during the first year after the alien's admission," Georgia law provides that a foreign national who does not acquire residence in Georgia, (i.e., foreign military personnel or someone who is attending a training program who will return to their native country upon completion of the training) would not have to obtain a Georgia driver's license even though they may be present in Georgia for more than 30 days. Similarly, a foreign national who is a student would not have to obtain a Georgia license so long as he or she meets the requirements of O.C.G.A. § 40-5-21(b).

As indicated above, the General Assembly has excluded undocumented aliens from the definition of "resident." O.C.G.A. § 40-5-1(15) provides:

...that no person shall be considered a resident for purposes of this chapter unless such person is either a United States citizen or an alien with legal authorization from the U.S. Immigration and Naturalization Service.

While this section applies to both those foreign nationals who have entered or remained in the United States illegally, it affects primarily those who entered the country illegally. Since undocumented immigrants do not qualify as a resident for the purpose of driver's licenses, they cannot obtain a Georgia driver's license.

In *Diaz v. State*<sup>9</sup> the Court of Appeals dealt with an undocumented foreign national who had lived in Georgia for five years. At the time of his arrest, Diaz had a valid Tennessee driver's license. When, subsequent to his arrest, it was learned that Diaz had lived in Georgia for five years, he was charged with driving without a valid license. Diaz contended that "because O.C.G.A. § 40-5-1 (15) defines a "resident" to exclude undocumented aliens for purposes of Chapter 5 of Title 40, he was not a Georgia "resident" when he was arrested, and he therefore was not required to obtain a Georgia driver's license within 30 days of moving here." The Court disagreed, holding that "[u]ndocumented aliens who have been living in Georgia for five years . . . are simply prohibited from driving if they cannot obtain a valid Georgia driver's license."

While the Georgia courts have not been confronted with the situation where an undocumented foreign national who has resided in Georgia for over 30 days has a valid license from his or her country, both Federal and state courts "give great weight to an interpretation (of a treaty) made by the Executive Branch."<sup>10</sup> In this case, the Department of State has determined that undocumented foreign nationals are not entitled to the driving privileges that the CRT grants to foreign nationals who have been "lawfully admitted to the United States." Thus, as the Court of Appeals indicated in *Diaz*,

the intention of the General Assembly was not to exempt undocumented aliens from the requirement of obtaining a Georgia driver's license ... Undocumented aliens ..., are simply prohibited from driving if they cannot obtain a valid Georgia driver's license.

#### **Is a foreign national who is driving on a valid license issued in his or her country also required to have an "International Driving Permit?"**

Generally driver's licenses are issued in the national language of the issuing country. Because it is unreasonable to expect law enforcement officers to be able to read every possible national language that they might be confronted with, the CRT authorizes countries to issue their driver's an *international driving permit*. The *international driving permit is not a driver's license* (unless the country does not issue driver's licenses). Rather it is a translation of the text of the foreign national's license into the official languages of the United Nations (English and French) as well as up to six other languages. The CRT establishes a uniform format for the *international driving permit* (see examples on p. 5) and provides that it may be issued by "the competent authority of the Contracting State or subdivision thereof, or by a duly authorized association."<sup>11</sup>

Although O.C.G.A. § 40-5-21(a)(2) does not require the holder of a driver's license issued by a foreign country to possess an "International Driving Permit," most foreign nationals whose licenses are in a language other than English will also have a *International Driving Permit*

as a matter of convenience. In addition, some countries authorize their consulates in the United States to issue either an "international driving permit" or a similar translation of their driver's license into English.

The *International Driving Permit* should not be confused with so-called "International Driver's License" which is available on the Internet and from other non-governmental sources. The sale of the International Driver's License is a scam and the document is fraudulent. A person who uses a fraudulent international driver's license in lieu of a government (U.S. or foreign) issued driver's license may be violating O.C.G.A. § 16-10-20, false statements, by presenting it to a law enforcement officer. For more about the international driver's license scam, go to <http://www.ftc.gov/bcp/conline/pubs/alerts/driveralrt.htm>.

#### **Verifying Foreign Driver's Licenses.**

Unlike out-of-state licenses, it is not possible to validate foreign driver's licenses (except Canadian licenses) through the Georgia Crime Information Center. However, officers can request verification of a foreign driver's license through a consulate or the embassy. Most consulates will try to verify that a driver's license is valid through their country's driver's licensing agency. However, it can take 30 days or more to get a response depending on the process that the consulate must follow. For the 51 countries with consulates in Georgia, the Department of Economic Development maintains a Web site containing contact information for the consulates (<http://www.georgia.org/Business/International/Consulates.htm>). If the country does not have a consulate in Georgia, it will be necessary to contact that country's embassy. Contact information for foreign embassies in the United States can be found at <http://www.state.gov/documents/organization/64190.pdf>.

#### **Endnotes**

<sup>1</sup> *Schofield v. Hertz Corp.*, 201 Ga. App. 830, 832 (1991).

<sup>2</sup> 3 U.S.T. 3008, 3016, TIAS 2487 (1952). "U.S.T." refers to the United States Treaties and International Agreements, the official compilation of treaties to which the United States is a party and is comparable to the United States Code. 1 U.S.C. § 112a.

<sup>3</sup> 61 Stat. 1129; TIAS 1567; 3 Bevans 865 (1946).

<sup>4</sup> *Schofield v. Hertz Corp.*, supra; See also *Flint River Steamboat Co. v. Foster*, 5 Ga. 194, 195 (1848); *Goldstein v. Goldstein*, 229 Ga. App. 862, 665 (1997); *Camp v. Sellers &c. Ltd.*, 158 Ga. App. 646, 648 (1981).

<sup>5</sup> Countries that are parties just to CRIMVIT are Brazil, Colombia, Costa Rica, El Salvador, Honduras, Mexico, Nicaragua, Panama, and Uruguay. U.S. Dept. Of State, TREATIES IN FORCE, A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE ON JANUARY 1, 2006, p. 374 (available on line at <http://www.state.gov/documents/organization/66335.pdf>)

<sup>6</sup> O.C.G.A. § 40-5-21(a)(2).

<sup>7</sup> In 2002, the United States Department of State issued a legal opinion in which they held that the term “‘driver admitted to its territory’ . . . is not intended to encompass a person merely found or present in the territory of the receiving state without having been allowed to enter through an affirmative act of ‘admission’ by the receiving state.” Thus, while the CRT allows foreign nationals who lawfully enter the United States “to drive in Georgia using a foreign driver’s license . . .” it provides no protection to foreign nationals who enter the United States without authority. Ltr, Catherine W. Brown, Assistant Legal Advisor for Consular Affairs, U.S. Dept. of State, dated Apr. 12, 2002, reprinted as Murphy, *Interpretation of 1949 Convention on Road Traffic, Contemporary Practice of the United*

*States Relating to International Law*, 96 Amer. J. Int’l L. 709 (2002).

<sup>8</sup> O.C.G.A. § 40-5-1(15). This definition, except for the last provision, is essentially the same as for “domicile”. Ga. Op. Atty’ Gen. U88-34. <sup>9</sup> 245 Ga. App. 380 (2000).

<sup>10</sup> *United States v. Stuart*, 489 U.S. 353, 369, 109 S.Ct. 1183, 103 L Ed 2d 388, 406 (1989); See also *Kelly v. Lloyd’s of London*, 255 Ga. 291, 293 (1985).

<sup>11</sup> CRT, at. 24, ¶ 3. The law of the issuing country determines who is the “competent authority” to issue the “international driving permit” but it must be either a government agency or an “association” authorized by the government of the country to issue it. Most countries reserve this

authority to a government agency but the United States Department of State has authorized the American Automobile Association (AAA) and the American Automobile Touring Alliance (AATA) (also known as the National Automobile Club) to issue the “international driving permit” to any U.S. citizen who has a valid driver’s license. The AAA and AATA do not issue international driving permits to holders of foreign driver’s licenses.

**For photos of International Driving Permits and Foreign Driver’s Licenses, please turn to page 5 >**

**For more information on the International Driving Permit, go to [http://travel.state.gov/travel/tips/safety/safety\\_1179.html#permits](http://travel.state.gov/travel/tips/safety/safety_1179.html#permits).**

## Effect of Missing Information on the Proof of Impaired Driving

By John Kwasnoski, Professor Emeritus of Forensic Physics, Western New England College, reprinted with permission

Much of the emphasis in police and prosecutor training in the area of DWI focuses on acquiring the blood or breath test that can be used to prove impaired driving, intoxication, or whatever the legal element of the case. But a very problematic situation is created when an impaired driver is involved in a collision and leaves the scene; now the impairment condition of the alleged driver must be reconstructed from information gathered in the investigation of the collision. This reconstruction of the BAC (blood alcohol concentration) at the time of the collision requires an investigative focus on information that might ordinarily not be part of the investigation. The investigative information needed by a toxicologist or pharmacologist to reconstruct the BAC at the time of the collision includes:

- time of last drink
- ETOH concentration drinks
- quantity of alcoholic drinks consumed
- food eaten during drinking
- pattern of drinking

The time of the last drink will be necessary to know for the toxicologist to make an assessment of whether the driver had fully absorbed all the alcohol that was ingested by the time of the collision, or whether some of the alcohol was still in the stomach of the driver and therefore not part of the impairment calculation. The ETOH (ethanol) concentration of the drinks is an integral part of the BAC determination and varies from brand to brand of beer, and among various wines and distilled spirits. Just as an example, several popular beers are listed below, with their ETOH concentrations, taken from a popular industry magazine article.

Brand	ETOH Concentration
Budweiser	4.65 %
Colt 45	5.59 %
Guinness	4.27 %
Michelob	4.80 %
Heineken	5.17 %
Schlitz Malt Liquor	5.90 %

It should be apparent that the declaration, “I only had two beers,” may have a variety of meanings when it comes to the amount of ETOH consumed by the drinker. Additionally, since the beers are sold in various size containers, the total alcohol consumed when one “beer” is indicated may have represent quite a range of possibilities. The investigation, when possible, should identify the brand name and number of ounces rather than just the number of beers.

The time of the last drink determines when a toxicologist will conclude that the driver had absorbed all of the alcohol he/she had consumed and, thus, when the driver was on their way down from the absorption peak. This is often a hotly contested issue at trial, with the defense declaring that the defendant was really on his/her way up to the peak at the time of the collision. The food eaten during drinking may affect the absorption of the alcohol and, thus, is an important investigative factor for police to seek information about. The toxicology information may be obtained from drinking records, bar tabs, server’s recollections, and most importantly from others who may have observed the defendant drinking. As an example of how important the investigative information can be, consider this case of a hit-and-run operator by considering the actual information and the hypothetical information offered at trial by the defendant’s attorney during cross examination of the state’s toxicology effort (if the actual information had not been found). In each case the state’s toxicologist would use the familiar Widmark equation, and then subtract out the amount of ETOH that would be eliminated by the body prior to the time of the collision. For this example both defendant’s attorney and the prosecutor agree that an elimination rate of - .015 /hr is acceptable.

### Real facts:

- defendant was drinking on an empty stomach, no food eaten during drinking
- drinking started at 10:45 PM
- last drink at 11:45 PM

- crash at 12:45 AM
- defendant had four beers, each beer was 16 oz, 6% ETOH
- defendant weighs 180 lbs

### Calculation:

$$\text{BAC (Widmark)} = \frac{\text{ounces} \times \% \text{ ETOH}}{\text{body weight} \times 13.1}$$

13.1 is a conversion factor for males, called the Widmark factor

$$\text{BAC (Widmark)} = \frac{64 \times 6}{180 \times 13.1} = .162$$

Now subtract 2 hours of elimination, .162 - .03 = .132

**Hypothetical Facts** (because investigation did not reveal true facts):

- defendant was drinking on an empty stomach, no food eaten during drinking
- drinking started at 9:45 PM
- last drink at 11:45 PM
- crash at 12:45 AM
- defendant had four beers, each beer was 12oz, 4.5% ETOH (only 10oz. consumed)
- defendant weighs 190 lbs

### Calculation:

$$\text{BAC (Widmark)} = \frac{\text{ounces} \times \% \text{ ETOH}}{\text{body weight} \times 13.1}$$

13.1 is a conversion factor for males, called the Widmark factor

$$\text{BAC (Widmark)} = \frac{40 \times 4.5}{190 \times 13.1} = .072$$

Now subtract 3 hours of elimination, .072 - .045 = .027

Because of a lack of information, the state’s toxicologist would determine the defendant driver to be only .027 BAC at the time of the collision. This example should demonstrate how important the investigation of the toxicology information can be, and why police should be aware of the impact that missing information can have in this type of case.

# Driving Too Slowly: A Look at NHTSA Impaired Driving Cues and Reasonable Articulable Suspicion in Georgia DUI Cases

By Sgt. Pete Lamb, Richmond County Sheriff's Office, Augusta, Georgia

According to the National Highway Traffic Safety Administration's (NHTSA) Standardized Field Sobriety Testing program, DUI detection is conducted in three distinct phases, Vehicle in Motion, Personal Contact and Pre-Arrest Screening. The principal decision in Phase One is whether or not to stop the car. To assist police in making this decision, NHTSA has sponsored a couple of studies to determine what indicators or cues of driving impairment are exhibited by drivers with targeted blood alcohol levels. The first study was conducted in the mid 1970's and dealt with the .10 per se level. The second study was released in the late 1990's and was intended to update the first with the lower .08 target BAC driver.

While the NHTSA studies were helpful in pointing out the most common driving errors made by impaired drivers, they leave some holes for the DUI enforcement practitioner, particularly where the study mentions driving behaviors which are not otherwise supported by statute or case law. Georgia appeals courts have consistently supported any stop which is based on any statutory violation, even for trivial violations of law. Many of the driving cues mentioned in the 1997 NHTSA study are violations of Georgia traffic law. The dilemma occurs where some of these driving cues are not traffic violations.

If the behavior is not a violation of traffic law, the officer must have at least reasonable articulable suspicion to make the stop. The Georgia Courts have defined reasonable articulable suspicion as, "[S]pecific, articulable facts sufficient to give rise to a reasonable suspicion of criminal conduct. ... The stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *State v. Templeman*, 229 Ga. App. 6 (1997). A further guide to reasonable articulable suspicion is found in *State v. Armstrong*, 223 Ga. App. 350 (1996): "There must be a specific, articulable suspicion which is determined by looking at the totality of the circumstances -- "objective observations, information from police reports, the modes or patterns of certain kinds of lawbreakers, and the inferences drawn and deductions made by a trained law enforcement officer."

Taken by themselves, do the driving behaviors mentioned in the NHTSA study provide us with reasonable articulable suspicion to stop the vehicle? Take for example, driving 10+mph below the speed limit, mentioned in the NHTSA study as being 48% reliable as an indicator of driving impairment. Several Georgia cases have dealt with the issue of slow driving as reason for the stop. Most of them have gone poorly for the police. *Ledford v. the State*, 237 Ga. App. 712 (1999) was decided

in favor of the state, but still leaves some room open for defense challenges. I have already been told by one of our local State Court judges that he will NOT support driving too slowly as reasonable articulable suspicion by itself, and that "just because NHTSA says so" doesn't make it a good reason for the stop. More on this particular driving cue later.

With all of this in mind, I took a second look at the '97 study to ascertain the following:

a. The driving cues that were actual violations of law and those that were not.

b. Whether the driving cues that were **not** violations of statutory law could be supported by existing case law.

I made some surprising findings. (See the tables below).

[article continues >](#)

## DRIVING CUES SUPPORTED BY STATUTE

Cue	Reliability	Statute
Weaving across lane lines	54%	40-6-48
Improper or unsafe lane change	35%	40-6-48 or 40-6-123
Straddling lane/center divider lines	61%	40-6-40 or 40-6-48
Driving without headlights at night	14%	40-8-20
Following too close	37%	40-6-49
Driving in opposing lanes/driving the wrong way on one-way street	54%	40-6-47
Driving on other than the designated roadway	80%	40-6-48 or 40-6-123
Turning with wide radius	68%	40-6-120
Failure to signal	18%	(intersection only)
Failure to respond to officer	65%	40-6-395 or 40-6-74
Stopping problems	69%	40-6-21

(NOTE: For a recent case that more clearly defines the difference between "Failure to Maintain Lane" and "Improper Lane Usage", see *Crenshaw v. the State (2006) A06A0985*

## DRIVING CUES SUPPORTED BY CASE LAW ONLY

Cue	Reliability	Case
Weaving within a lane	52%	<i>State v. Diamond</i> , 223 Ga. App. 164 (1996)
Swerving	78%	<i>State v. Diamond</i> , 223 Ga. App. 164 (1996)
Unusual behavior	48%	<i>Nelson v. State</i> , 252 Ga. App. 454 (2001) (Domestic Dispute)
Appearing to be impaired	90%	<i>Stephens v. State</i> , 271 Ga. App. 634 (2004) (Passed out at wheel)
Slow Speed	48%	<i>Ledford v. the State</i> , 237 Ga. App. 712 (1999)
Stopping inappropriately to officer	69%	

## DRIVING CUES NOT SUPPORTED BY STATUTE OR CASE LAW

Cue	Reliability
Accelerating/decelerating for no apparent reason	70%
Varying speed	49%
Improper turn ( <i>too fast, too jerky, too sharp, etc.</i> )	50%
Almost striking another vehicle or object	79%
Stopping in lane for no apparent reason	55%
Appearing to be impaired (none dealing with appearance of a driver while driving, except at roadblock stops or passed out at the wheel)	90%

The driving cues that are supported by case law need little discussion here, as it is already clear that if someone violates traffic law, the stop is authorized. Driving behaviors that are supported by case law will be addressed shortly, but let's touch on cues which are not supported by either case law or statute.

**Accelerating or decelerating for no apparent reason.** Impaired drivers do this because depth perception is affected. They have trouble assessing safe following distances and controlling the speed of their vehicle which also explains the **Varying Speed** cue.

**Improper Turn** when more clearly defined as being too fast, too jerky or too sharp, does not fit into any statutory or case law context. However, some of these could also merge into swerving, so you might have a combination of cues which are supported by case law.

**Almost striking another vehicle or object** is a no-brainer for the link between this cue and impairment. It is unlikely that any officer would have a problem articulating that this is less safe. This cue has not been addressed in Georgia case law.

**Stopping in lane for no apparent reason** is not supported unless traffic is being clearly impeded. Case law is pretty clear that you cannot get a conviction for Impeding the flow of traffic unless traffic has no other lawful avenue to get around the impediment.

**Appearing to be impaired** is supported where the driver has encountered a roadblock or where he is found passed out at the wheel. There is no case law where the driver looks trashed while operating his vehicle.

Three Georgia cases stand out as supporting stops where there was no violation of law but the courts supported the reasonable articulable suspicion.

1. "[C]ircumstances short of probable cause for arrest may justify the stopping of a motorist for routine questioning" *McElroy v. the State*, 173 Ga. App. 685 (1985);
2. "Driving behavior, though not illegal, may serve as a reasonable articulable basis for stopping a driver to see if under the influence" *State v. Diamond*, 223 Ga. App. 164 (1996);
3. "To establish a violation of [this Code section], no requirement exists that the person actually commit an unsafe act. . . . Moreover, no particular combination of factors or clues derived from a person's appearance or demeanor is required". *Duren v. the State*, 252 Ga. App. 257 (2001).

Specifically regarding driving too slowly, there are several stand-out cases. *Raulerson v. the State*, 223 Ga. App. 556 (1996); *Taylor v. the State*, 230 Ga. App. 749 (1997); *State v. Whelchel*, 269 Ga. App. 314 (2004); and *Ledford v. the State*, 237 Ga. App. 712 (1999).

In *Raulerson* a police officer observed the defendant driving between 25 and 30 miles

an hour in a 55 mph zone. Defendant turned onto a dirt road and when the officer pulled away, the defendant returned with exhaust now coming from the car. The officer testified that she believed that the driver was either a burglar or an impaired driver. The court held that the motion to suppress should have been granted because neither the car's speed nor the visible exhaust had given rise to a reasonable suspicion of criminal conduct, thereby justifying an investigator stop. The NHTSA studies were not mentioned.

In *Taylor* the officer's testimony was that Taylor was driving so slowly that other drivers were forced to swerve to avoid him and that driving too slowly was a behavior commonly exhibited by drivers under the influence. In this case Taylor was charged with impeding the flow of traffic. This was the first case of its kind to hint at the NHTSA studies.

Whelchel was arrested for DUI after he drove below 10 mph under the speed limit and was also charged with impeding the flow of traffic. The courts found that since other traffic could get around Whelchel he was not impeding the flow of traffic. Again, the NHTSA studies regarding driving too slowly weren't mentioned.

The NHTSA studies were part of the state's argument in *Ledford*. This was also a case predicated on an Impeding the Flow of Traffic charge. Ledford was clearly impeding traffic behind her, but the jury acquitted her of this charge and convicted her of DUI. Over the defense's objection, the officer was allowed to testify as to the NHTSA studies and the probabilities of an impaired driver based on Driving Too Slowly and Stopping Inappropriately in Response to an Officer. It's difficult to call this case a win for the state regarding admission of the driving studies, because the Appeals Court regarded admission of this testimony as "harmless error".

Still lacking are cases where the stop is for driving too slowly without the additional charge of Impeding the Flow of Traffic. This issue is still not completely resolved. Will the "... modes or patterns of certain kinds of lawbreakers, and the inferences drawn and deductions made by a trained law enforcement officer..." [*State v. Armstrong*, 223 Ga. App. 350 (1996)] provide us with reasonable articulable suspicion to support future traffic stops resulting in DUI arrests? It will require an aggressive approach to DUI detection and prosecution to answer this question.

→ fact

Older drivers involved in fatal crashes in 2004 had the lowest proportion of intoxication of all adult drivers.

-Courtesy NHTSA

## Foreign Driver's Licenses:



## International Driving Permits:



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### ---> fact:

Drunk driving is the nation's most frequently committed violent crime, **killing someone every 31 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 2003, an estimated 17,013 people died in alcohol-related traffic crashes in the USA. These deaths constituted 40 percent of the nation's 42,643 total traffic fatalities.

-Statistics courtesy MADD

*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 Editors Fay McCormack or Patricia Hull at PAC.*