

## Effective Use of Motions

- I. What is the purpose of your motions?
  - A. Exclusion of evidence
    1. Field Tests
    2. Chemical Test(s)
    3. Alleged Refusal
    4. Statements
  - B. Dismissal of the charges
  - C. Improving the Plea Offer
  - D. Trial Advantage
    1. Developing favorable evidence
    2. Jury charges
  - E. Diversion
- II. Anticipate the “unintended” consequences of your motions
- III. The Difference in “Motions to Suppress” and “Motions in Limine”
  - A. Yes, they are different, and the difference is significant in how and when they are used.
  - B. Motions to Suppress
    1. The requirements for a motion to suppress
  - C. Motions in Limine
    1. What do we use them for?
    2. When do we raise them?
- IV. Identifying the Issues that We’ll Attack in Motions
- V. Necessary Cases for Every Motions Hearing
  - A. Tate v. State, 264 Ga. 53 (1994) - even uncontradicted testimony may be disbelieved if the fact finder finds it unreliable
  - B. Kazeem v. State, 241 Ga. App. 175 (1999) - this is a must have where multiple officers are involved in the stop.
  - C. Carry your favorite PC cases
    1. Provide chart with PC cases which goes through the facts of the cases
- VI. Implied Consent
  - A. Construction of the Implied Consent statute

- B. Timing of the ICW
  - 1. As soon after arrest as possible, but...
  - 2. Serious injuries or death
- C. Does “No” really mean “no further attempts to get the test, please”
- D. Rescission of the refusal
- E. Omissions and Misleading ICW
- F. Statements after the ICW which are misleading
- G. Independent Test Requests
  - 1. Timing of the request
  - 2. Sufficiency of request
  - 3. Sufficient of Accommodation
    - a. “Additional” breath test
    - b. Limitations on available facilities
    - c. Hospital blood tests?
- H. Non-confirmity with the requirements of O.C.G.A. 40-5-67.1

### Attacking the Breath Test at Trial

- I. Know the possible witnesses in your case
- II. Know all of the test results in your case
- III. Know the history of your breath testing machine
- IV. Define your issue
  - A. Do your best to avoid the “shotgun” approach
- IV. Can you afford an expert?
  - A. If you cannot, be creative.
- V. Know the error messages and the protocols associated with each
  - A. Invalid sample
- VI. Sample Variation
- VII. Observation Period
- VIII. Medical issues
- IX. The Disconnect Defense
- X. The “Marginal” Test Result
  - A. Establish early on what the officer will give you on the variability of the test
- XI. Establishing that “Diagnostics OK” means nothing