

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JULY 21, 2006

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David Fowler
Deputy Executive Director
for Legal Services

Bob Keller
Executive Counsel

Chuck Olson
General Counsel

Joe Burford
Trial Services Director

Lalaine Briones
Trial Support

Fay McCormack
Traffic Safety Coordinator

Patricia Hull
Traffic Safety Prosecutor

Tom Hayes
DPD Director

Gary Bergman
Staff Attorney

Tony Lee Hing
Staff Attorney

Rick Thomas
Staff Attorney

Donna Sims
Staff Attorney

Jill Banks
Staff Attorney

Al Martinez
Staff Attorney

Clara Bucci
Staff Attorney

Brad Rigby
Staff Attorney

Laura Murphree
Staff Attorney

THIS WEEK:

- **Search and Seizure – Traffic Stop**
- **Family Violence**
- **Motion for New Trial**
- **DUI**

Search and Seizure– Traffic Stop

State v. Dixon, A06A0592 (07/05/06)

Appellee was charged with two counts of V.G.C.S.A. The appellee filed a motion to suppress, which the trial court granted. The State appeals, and argues that the traffic stop was legal and appellee's arrest was supported by probable cause. The arresting officer testified that he pulled the car over based solely on a GCIC check, which indicated that the car's insurance status was "unknown." The trial court ruled that there was no reasonable, articulable suspicion for the traffic stop, and that there was no probable cause to arrest Dixon after the initial illegal traffic stop. The Court of Appeals affirmed. The Court cited the United States Supreme Court case Delaware v. Prouse, 440 U.S. 648 (1979), which held that stopping a vehicle and detaining the driver to check his driver's license and registration is unreasonable under the Fourth Amendment, unless there exists an articulable and reasonable suspicion that the driver is unlicensed, or the vehicle is unregistered, or that the driver or vehicle is otherwise subject to seizure due to a violation of law. The Court opined that the same would apply to stopping a car and detaining the driver to verify insurance status. In this case, the officer did not testify that

"unknown" status was likely to mean a car was uninsured. Further, the officer did not see appellee commit any traffic violations, and he was not authorized to issue a citation based solely on a driver's unknown insurance status. Therefore, the traffic stop was not authorized. The subsequent search was tainted, and the trial court properly suppressed the results.

Family Violence

Gillespie v. State, A06A0212 (07/03/06)

Following a bench trial, the court found appellant guilty of one count of simple battery and one count of simple assault. Because appellant had been charged under the family violence provision of O.C.G.A. § 16-5-23 (f), the misdemeanor battery offense was "of a high and aggravated nature." O.C.G.A. § 16-5-23(f) provides that "if the offense of simple battery is committed between ... persons who are parents of the same child ... the defendant shall be punished for a misdemeanor of a high and aggravated nature."

On appeal, appellant argues that the state failed to prove the type of "family" relationship covered by the statute. Victoria Bellow, the victim, testified at trial that on the day of the offense, she learned she was pregnant with appellant's child. However, at the time of trial Bellow was no longer pregnant, testifying merely that the baby was "gone." The Court of Appeals had to determine whether the appellant and Bellow shared a relationship the legislature intended to protect under the Family Violence Act. It is evident from the relationships listed in O.C.G.A. § 16-5-23 (spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children,

or other persons, excluding siblings living or formerly living in the same household), that some type of familial relationship was intended. Construing the statute favorably to the appellant, the Court opined that O.C.G.A. 16-5-23(f) does not appear to cover the relationship appellant shared with Bellow, a woman with whom he apparently had sexual relations but did not know was pregnant. The fact that Bellow was pregnant does not change the outcome. The Court concluded that such a recently conceived fetus is not a “child” under the meaning of the Family Violence Act. Bellow and appellant did not enjoy any of the familial relationships listed in the statute. Therefore, the offense did not constitute “family violence” battery.

Motion for New Trial

Jones v. State, A06A0355 (07/06/06)

Appellant was convicted of two counts of burglary and two counts of aggravated assault. On appeal, appellant contends that the trial court erred when it denied his motion for a new trial without conducting a hearing. The Court of Appeals agreed. The record indicates that the first motion for a new trial was filed in April, 1997 and scheduled for hearing in November, 1997. However, in November, defense counsel filed an amended motion, alleging new grounds. The hearing was not held, and the court records do not show that it was rescheduled. From 1998 until 2004, the record indicates that appellant was attempting to obtain counsel and documents, essentially proceeding pro se. The trial court is not obligated to conduct a hearing on a motion for a new trial, unless it is requested. In this case, a hearing was requested, and nothing suggests that appellant ever waived or abandoned the hearing. Accordingly, the trial court’s decision to deny a new trial was remanded for a hearing on the motion.

DUI

Norton v. State, A06A0595 (07/06/06)

A jury convicted appellant of DUI less safe, DUI with an unlawful blood alcohol content and failure to maintain lane. On appeal, she argued that the evidence was insufficient to convict her. The Court of

Appeals agreed in part and reversed her conviction for DUI with an unlawful blood alcohol content. On September 9, 2003, at 2:30 a.m., Hall County Sheriff’s deputies were dispatched to a one-vehicle collision. The driver had apparently lost control of the vehicle, crossed over the opposite side of the road and struck an embankment. Officer Michael Crook arrived at about 2:45 a.m. and was shortly joined by other officers. They found the appellant lying on the side of the road, less than half a mile from the collision. Appellant admitted to driving the car, losing control, hitting the embankment and drinking two beers at six o’clock that evening. While an officer spoke with the appellant, he smelled a strong odor of alcohol and noticed that the appellant’s eyes were watery and bloodshot. Appellant failed field sobriety evaluations and a field alco-sensor indicated “positive” for alcohol. Appellant was arrested for DUI, and at 4:12 a.m., submitted to a state-administered breath test. The test indicated that appellant had a BAC of 0.135 grams.

The offense of DUI with an unlawful blood alcohol content is established if “the person’s alcohol concentration is 0.08 grams or more at any time within three hours after ... driving or being in actual physical control of a vehicle.” Although officers became aware of the collision at 2:30 a.m., they did not know when the collision actually occurred. At a minimum, some evidence of a ‘fresh’ accident scene (spinning tires, a warm engine, etc.), is required to show recent operation of the vehicle. In this case, there was no evidence to establish when the wreck occurred or recent operation of the vehicle. Therefore, the state failed to prove an element of the offense.