

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING AUGUST 25, 2006

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Staff Attorney

**Laura Murphree**  
Staff Attorney

## THIS WEEK:

- **Evidence— Possession of a Firearm by Convicted Felon**
- **Search and Seizure**

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### **Evidence— Possession of a Firearm by Convicted Felon**

Tanksley v. State, A06A1681 (08/10/06)

At the second part of a bifurcated trial, appellant was convicted of two counts of possession of a firearm by convicted felon. On appeal, appellant contends that the trial court erred in admitting an unredacted copy of his prior felony conviction. The trial court admitted a certified copy of appellant's burglary conviction without redacting an attachment that set forth the evidence supporting the conviction. The Court of Appeals acknowledged that in Ross v. State, 279 Ga. 365 (2005), the Georgia Supreme Court held that a defendant charged with possession of a firearm by convicted felon should be allowed to stipulate to his status as a convicted felon, where his prior felony is not related to the crime being prosecuted and is of a nature likely to inflame the passions of the jury. The Court of Appeals found this case to be distinguishable from Ross. In this case, the appellant did not offer to stipulate unlike the defendant in Ross. Furthermore, the prior burglary conviction involved the appellant burglarizing his ex-wife's home and taking jewelry. The Court of Appeals found that neither the prior burglary conviction nor the facts surrounding it were of a kind that would inflame the passions of a jury.

## **Search and Seizure**

State v. Starks, A06A1796 (08/08/06)

The trial court granted appellee's motion to suppress on the basis that the officers had no reasonable articulable suspicion to conduct the traffic stop which resulted in the discovery and seizure of marijuana. The State appeals the trial court's ruling. Two officers followed appellee in his car as he drove towards his mother's house. The officers did not observe the appellee speed, weave, cross lanes or commit any other traffic violation. Despite that, the officers stopped the appellee, and asked him for his driver's license and insurance information. One officer went to his patrol car to verify appellee's insurance information, while the other engaged appellee in conversation. Appellee asked the remaining officer why he had been stopped. The officer could offer no reason. Fifteen minutes later, the first officer confirmed that the insurance was valid and returned to appellee's car. The second officer, who had remained with the appellee, claimed that he could smell the odor of raw marijuana coming from appellee's car. The second officer claimed that he too noticed the odor. Appellee did not give consent to search. Therefore, the officers detained appellee until they could get a drug dog on the scene. The drug dog arrived a half-hour later and alerted to the presence of contraband in the car. Officers located a pound of marijuana.

At the motion to suppress hearing, one of the officers testified that the reason they stopped appellee was because the state computer indicated that appellee had no valid insurance when they ran his tag. The trial court found the officer's testimony to be "suspect and insufficient." On appeal, the State argued that the trial court was required to believe that the officers had run a computer check before

stopping appellee's vehicle. Determining the credibility of witnesses lies solely with the trier of fact. The trier of fact is not obligated to believe a witness even if the testimony is uncontradicted and may accept or reject any portion of the testimony. The Court of Appeals found that the record indicated that the officer's testimony was contradicted and inconsistent, thus supporting the trial court's finding that the testimony was incredulous. Therefore, the Court of Appeals found no error and affirmed the granting of appellee's motion to suppress.