

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING FEBRUARY 9, 2007

## Legal Services Staff Attorneys

**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

**Laura Murphree**  
Capital Litigation

**Fay McCormack**  
Traffic Safety Coordinator

**Patricia Hull**  
Traffic Safety Prosecutor

**Tom Hayes**  
Regional Offices 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

## THIS WEEK:

- **Evidence – Victim's Character**
- **Evidence – Hearsay Probation Revocations**
- **Indictment – Public Officials**
- **Search and Seizure**

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### *Evidence– Victim's Character*

Bryant v. State, A06A2401 (01/19/07)

On appeal, the appellant argues that the trial court erred in denying his motion to introduce evidence of the victim's reputation for violence. The record shows that appellant's supervisor warned him not to leave the worksite early without permission. Appellant became disrespectful, and the supervisor knocked him to the ground and held him around his neck. The supervisor's employer intervened and immediately ended the confrontation. About ten to fifteen minutes later, appellant rushed his supervisor and the supervisor fled. Appellant pursued the supervisor and began firing a revolver at him. The supervisor was struck in the buttocks. Both sides conceded that the supervisor started the fight. However, the initial altercation had been over for at least ten minutes before appellant shot the supervisor. Under these circumstances, the Court of Appeals concluded that the trial court properly denied appellant's motion. The appellant failed to demonstrate that the shooting was justified and that he was honestly trying to defend himself at that point against the unarmed supervisor.

### *Evidence– Hearsay Probation Revocations*

Smith v. State, A06A1922 (01/26/07)

The Court of Appeals granted appellant's discretionary appeal to determine whether the evidence presented at appellant's revocation hearing supported the trial court's order revoking his probation. At the revocation hearing, the State's sole witness was an officer with the Athens-Clarke County Police Department. The officer testified that he responded to a call regarding stolen property. The officer interviewed the victim and learned that an air compressor had been stolen from a van. The victim also provided the officer with a description of the air compressor. Appellant objected to the testimony on the basis of hearsay. The State responded that it was being introduced for the purpose of explaining the officer's conduct; the reason for the investigation. The officer went to the home of a man known to buy this type of equipment. There the officer observed a truck with an air compressor in its bed pulling out of the cul-de-sac. The officer testified that the air compressor in the truck bed matched the description given by the victim. The officer initiated a traffic stop of the truck in which appellant was a passenger. Appellant told the officer that he got the air compressor for fifty dollars from two men. After further conversation, appellant told the officer that the compressor was "probably stolen." The Court of Appeals concluded that there was no competent evidence presented that appellant violated the terms of his probation. In this case, the Court found that there was no admissible evidence to establish that the compressor had been stolen. Although the officer testified that

the victim reported that an air compressor had been stolen, this testimony was offered only to explain the officer's conduct in initiating an investigation. Therefore, this evidence was neither offered to show nor was it competent to show (because it was hearsay) that the air compressor had been stolen. The Court of Appeals held that the trial court abused its discretion in revoking appellant's probation based upon incompetent and insufficient evidence, and reversed.

## ***Indictment– Public Officials***

State v. West, A06A2441 (01/25/07)

Appellee, the former mayor of East Ellijay, was indicted for making a false statement under O.C.G.A. § 16-10-20; false writing under O.C.G.A. § 16-10-8; false writing under O.C.G.A. § 16-10-20; falsifying a public record by a public official under O.C.G.A. § 45-11-1; and entering into duties of public office without taking oath of office under O.C.G.A. § 45-3-9. Appellee moved to quash the indictment based upon the State's failure to comply with O.C.G.A. § 45-11-4. The trial court granted the motion and the State appeals. O.C.G.A. § 45-11-4 provides that certain public officials, including mayors, are entitled to a copy of the proposed indictment at least fifteen days before it is presented to the grand jury and are entitled to appear before the grand jury to make a statement when they are charged under subsection (b) of O.C.G.A. § 45-11-4. Appellee was not charged with an offense under O.C.G.A. § 45-11-4 (b). Nevertheless, appellee urges that he is entitled to the protections of O.C.G.A. § 45-11-4 because he could have been charged under O.C.G.A. § 45-11-4 (b) given the facts alleged in the indictment. The Court of Appeals found that the trial court's interpretation of the statute ignored its plain meaning and rendered a portion of the statute meaningless. Therefore, the Court of Appeals held that the trial court erred when it quashed the indictment and reversed.

## ***Search and Seizure***

Harding v. State, A06A2172 (01/19/07)

The appellant appeals the trial court's denial of his motion to suppress. According to the

record, a Fayette County sheriff's deputy observed a car with its lights on parked in front of a closed business around 9:00 p.m.. The deputy stopped to check the car because it appeared to be unattended. At the same time, appellant exited the business and walked into the parking lot, almost bumping into the deputy. The deputy noticed a strong odor of burnt marijuana on the appellant's person. The deputy asked appellant about the odor and appellant responded that "he had smoked everything he had." Appellant was placed under arrest and the deputy instructed him to empty his pockets which revealed methamphetamine and marijuana. Appellant argues that the deputy lacked probable cause to arrest. The Court of Appeals found that appellant's argument had no merit. The deputy's initial contact with appellant was a first-tier encounter. "It is well established that an officer's approach to a stopped car and inquiry as to what is going on does not constitute a stop or seizure and clearly falls within the realm of the first type of police-citizen encounter." Chapman v. State, 279 Ga. App. 200 (2006). Therefore, the deputy was lawfully on the scene, no reasonable suspicion was required to approach the car. Furthermore, appellant was lawfully arrested and subsequently searched because he admitted that he had smoked marijuana. "The smell of burnt marijuana can be a factor to consider in the totality of the circumstances when making an arrest." Soloman v. State, 252 Ga. App. 787 (2001). The judgment of the trial court was affirmed.