



CaseLaw

Update

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General Counsel

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Trial Services Director

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Patricia Hull
Traffic Safety Prosecutor

Tom Hayes
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Gary Bergman
Staff Attorney

Tom Jones
Staff Attorney

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Staff Attorney

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Staff Attorney

Al Martinez
Staff Attorney

Troy Golden
Staff Attorney

Clara Bucci
Staff Attorney

CaseLaw This Week

Week Ending June 11, 2004

Constitutional Law – Ex Post Facto Law

Denson v. State, A04A0498 (05/20/04), 04 FCDR 1823, 2004 Ga. App. LEXIS 703.

The defendant pled guilty to statutory rape in 1997 and received a sentence of ten years, two to serve and eight on probation. In June, 2003 the General Assembly enacted O.C.G.A. § 42-1-13 which provides that registered sex offenders cannot reside within 1000 feet of any child care facility, school, or area where minors congregate. The defendant is registered with the sex offender registry and prior to June, 2003 was residing within 1000 feet of a day care facility. The defendant claims that O.C.G.A. § 42-1-13 is an unconstitutional ex post facto law as applied to him because prior to the enactment he was in compliance with the law and the new law unfairly increases his sentence retroactively. **The court held that O.C.G.A. § 42-1-13 is not unconstitutional as applied to defendant because the statute does not increase defendant's punishment; rather, it only punishes for the future offense of living within 1000 feet of a day care facility.**

Search & Seizure

King v. State, A04A0779 (05/21/04), 04 FCDR 1849, 2004 Ga. App. LEXIS 708.

The defendant stipulated at a bench trial that he was in possession of more than one ounce of marijuana and was convicted of violating the Georgia Controlled Substances Act. On appeal, the defendant contends that the trial court erred in denying his motion to suppress the ten pounds of marijuana found in his trunk. Although a K-9 unit arrived on the scene seconds after the defendant's vehicle was stopped, the dog was not utilized. Instead, the officer testified that he was able to smell raw or unburned marijuana in the trunk. After searching the trunk, the officer found ten pounds of marijuana wrapped in cellophane and placed in plastic bags. Since the credibility of the officer witness was at issue, the Court of Appeals deferred to the trial court's judgment in denying the motion. **However, Justice Barnes stated in a special concurrence that this case should not be cited as precedent because the facts of this case strain against the outer boundaries of the clearly erroneous standard.**

PAC Summer Interns

Logan Butler and Erin O'Mara
404-969-4001