



CaseLaw

Update

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CaseLaw This Week

Week Ending June 25, 2004

- **Aggravated Child Molestation**
- **Indictment**
- **Search & Seizure**

arouse her or her daughter's sexual desires. Therefore the defendant did not have the intent required by the statute. **The court held that the determination of whether or not the defendant had the requisite intent was a jury question; therefore the trial court did not err in denying the defendant's motion for a directed verdict.**

Aggravated Child Molestation

Odom v. State, A04A0707 (06/07/04), 04 FCDR 1981, 2004 Ga. App. LEXIS 764

The defendant appeals her conviction for aggravated child molestation and other similar crimes, and contends that the trial court erred in denying her motion for a directed verdict on the aggravated child molestation. The defendant traded sexual acts and compelled her daughter to perform sexual acts on a male individual for the purpose of obtaining crack cocaine. The defendant alleged that she was entitled to a directed verdict on the aggravated child molestation count because her intent in performing the sexual acts in front of her daughter and having her daughter perform sexual acts was for the purpose of obtaining the drugs, not to

Indictment

South v. State, A04A1072 (06/10/04), 04 FCDR 1990, 2004 Ga. App. LEXIS 784

The defendant appeals the denial of his timely filed special demurrer to his indictment for aggravated stalking. The defendant alleged that the indictment failed to state the specific dates on which the stalking occurred. The court noted that the exception to the rule that an indictment must allege a specific date is when the State cannot identify a specific date on which an offense occurred. That exception did not apply here because the State could not demonstrate that it was unable to identify specific dates. The court held that the State's excuse for not listing all of the dates, namely that there were so many separate incidents, was not

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valid. **The court held that because the defendant challenged the indictment before trial, he is entitled to an indictment that is perfect in form.**

Search & Seizure

State v. Gray, A04A1099 (05/17/04), 04 FCDR 1996, 2004 Ga. App. LEXIS 682

The State appealed suppression of the results of a breath test administered while the defendant was in custody. An officer came upon a single-car accident. Defendant claimed another car forced her off the road, causing her to hit the guardrail, and then careen to the other side of the highway and strike the concrete median. The officer observed that the defendant was calm but that she had bloodshot eyes, was unsteady on her feet and appeared dazed, all of which could have been caused by the impact and deployment of the defendant's airbags. The officer also smelled alcohol and the defendant admitted to having had a couple of drinks. The officer performed the HGN test and an alco-sensor test, which was positive. The officer placed the defendant in custody and later performed a breath test. The Court of Appeals held, "[i]f the evidence shows only that the driver is intoxicated but does not show that such has impaired him, the evidence is insufficient to show probable cause for DUI." Suppression affirmed.

The State moved for reconsideration, contending that the opinion made an incorrect statement of law. The opinion stated that, "[i]f the evidence shows only that the driver is *intoxicated* but does not show that such has impaired him, the evidence is insufficient to show probable cause for DUI." The State contended that the word "intoxicated" means that the driver was drunk which means that the driver was impaired. The State argues that the statement should read, "[i]f the evidence shows only that the driver *consumed some alcohol* but does not show that such has impaired him, the evidence is insufficient to show probable cause for

DUI." **The court held that the State is incorrect in equating "intoxicated" with "drunk" because the term "intoxicated" means only that the person consumed an intoxicating liquor. Since being under the influence of alcohol is criminal only if a person is unsafe to drive, it is possible for a person to be under the influence of alcohol without violating the law.** Reconsideration denied.

PAC Note: Black's Dictionary defines intoxication:

"Term comprehends situation where, by reason of drinking intoxicants, an individual does not have the normal use of his physical or mental faculties, thus rendering him incapable of acting in the manner in which an ordinarily prudent and cautious man, in full possession of his faculties, using reasonable care, would act under like conditions." *Hendy v. Geary*, 105 R.I. 419, 252 A.2d 435, 441.

"A disturbance of mental or physical capacities resulting from the introduction of substances into the body." Model Penal Code, § 2.08

State v. Morgan, A04A0703 (06/09/04), 04 FCDR 2000, 2004 Ga. App. LEXIS 771

The State appeals the trial court's order granting the defendant's motion to suppress evidence of marijuana discovered at a roadblock. The trial court found that the roadblock was not approved by a supervisor for the date and time that it actually occurred. The roadblock was approved in writing by a supervisor in the Interstate Criminal Enforcement Unit (ICE) and indicated that the roadblock would be performed on one day, April 19, 2002 from 3:00 p.m. until midnight. The roadblock occurred on both April 18 and 19, 2002. The checkpoint was located at the end of an exit ramp from I-16 and was identified by signs on the interstate as a "DUI/drug checkpoint".

On April 18, 2002 the defendant was riding in a car driven by another. The driver took the exit and then stopped approximately one quarter of the way up

the ramp and appeared to be attempting to back down the ramp when officers yelled at her to stop. The driver then continued up the ramp and stopped at the roadblock. She produced her license and insurance and was asked why she had taken the exit. The driver said that she needed gas. The officer noticed that the tank was three-quarters full. The officer noticed that the driver was acting nervous so he instructed her to proceed to an area where the K-9 Units were located. A dog alerted on the vehicle and 122 pounds of marijuana was recovered.

At the suppression hearing the trial court found that as a matter of law the roadblock satisfied the five-part test stated in *LaFontaine v. State*, 269 Ga. 251. **However, the court held that "the decision to conduct the road block made by supervisory personnel was set for a different day."** Motion to suppress affirmed.

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