



# CaseLaw

## Update

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#### CaseLaw This Week

Week Ending December 17, 2004

- Search and Seizure
- Prior Difficulties with Victim
- Similar Transactions

#### Search and Seizure

*State v. Joyner*, A04A1135 (11/19/04)

Defendant's motion to suppress evidence supporting the charge of driving without a license was granted. The sole witness at the suppression hearing was the police officer who initiated the traffic stop. The officer testified that he ran a random tag check on the vehicle ahead of him, and learned that the tag did not exist. The officer stopped the vehicle. The defendant provided his registration and tag information to the officer. The officer then asked the defendant for his license and the defendant told the officer that his license was suspended. Defendant argued that the traffic stop was illegal because the officer should have ended the investigation after verifying the registration information. The trial court ruled that the stop was invalid. When the officer resolved the vehicle registration question, the investigation for which he had originally stopped the defendant concluded. **The pertinent questions becomes whether the continued detention, during which the officer obtained the incriminating evidence, was authorized by the officer's reasonable suspicion of criminal activity. The record reveals that, after concluding his investigation**

**concerning registration of the vehicle, the officer then launched a separate investigation concerning the driver's license, prolonging the defendant's detention. Once the suspicion of unlawful conduct evaporated, the officer was not authorized to continue the detention in order to investigate other, potential violations of the law.**

*State v. Beasley*, A04A0821 (11/29/04)

The State appeals the trial court's grant of defendant's motion to suppress all evidence that led to his citation for possession of alcohol by a minor and fraudulent use of a driver's license. The investigating officer was in a local bar to check whether it was "letting underage people in to drink." The officer approached the defendant, after noticing that he appeared to be intoxicated and looked pretty young, and asked if he had consumed any alcohol. The officer smelled a strong odor of alcohol on the defendant's breath and when asked to see his driver's license, the defendant produced his brother's license. Subsequently, the defendant admitted that he was younger than 21 and the driver's license was his brother's license. The suppression hearing took place approximately one year after the incident. In granting the motion to suppress, the trial court found that the officer "had no distinct recollection of the events of November 2, 2002 concerning the defendant's actions which could support a finding of probable cause of criminal activity." **A police officer does not need probable cause to support every interaction with the public. In a first**

tier police-citizen encounter, a police officer may approach a citizen, ask for identification, and freely question the citizen without any basis or belief that the citizen is involved in criminal activity, as long as the officer does not detain the citizen or create the impression that the citizen may not leave. Thus, even though the officer only suspected, that the defendant was involved in underage drinking, an officer's reasonable suspicion that a person may be involved in criminal activity permits the officer to stop the person for a brief time and take additional steps to investigate further, including requesting identification. After questioning the defendant, the officer detected the smell of alcohol and had reason to suspect that the identification that was furnished did not belong to him. These activities were all reasonably connected to the officer's investigation, and no Fourth Amendment violation occurred. Accordingly, we find that the trial court erred in granting the defendant's motion to suppress. Judgment reversed.

### Prior Difficulties with Victim

*Brogdon v. State*, A04A2196 (11/19/04)

Defendant was convicted of aggravated stalking, aggravated assault, cruelty to children, and possession of a firearm during the commission of a felony. Defendant contends that the trial court erred in allowing evidence of prior difficulties between him and his estranged wife. "Evidence of prior difficulties between a defendant and a victim is generally admissible when the crime charged was perpetrated against the victim and the evidence demonstrates: (1) the relationship between the defendant and victim, and (2) the defendant's motive, intent or bent of mind." *Tuff v. State*, 278 Ga. 91, 92 (2004). "Unlike similar transactions, prior difficulties between the parties are not independent acts or occurrences arising from the relationship between the same people involved in the prosecution and are related and connected by such nexus." *Kinney v. State*, 234 Ga. App. 733, 735 (1998). **Here, the defendant was charged with aggravated stalking for making contact with his estranged wife in**

**violation of the temporary restraining order for the purpose of harassing and intimidating her. The defendant's wife's testimony about the rapes and threats that occurred prior to her seeking the restraining order demonstrated the nature of the relationship between the couple, and the defendant's intent, motive, and bent of mind in committing the crime. Judgment affirmed.**

### Similar Transaction

*Knox v. State*, A04A2312 (11/19/04)

Defendant appeals from convictions arising from a stalking episode, arguing that the trial court erred when it admitted evidence of previous similar offenses. Because the previous stalking offenses were not sufficiently similar, and because the trial court's finding of fact to the contrary was not sufficiently explicit. Each of the stalking episodes had the same fundamental features: the defendant's belief that he had some significant relationship with a woman; and an effort to establish or reestablish contact with her, accompanied by rage, threats, and false imprisonment or kidnapping. **These similar transactions gave rise to convictions for crimes including criminal trespass, terroristic threats, and kidnapping. The prior acts were "relevant and admitted for a proper purpose, namely course of conduct," being "so sufficiently similar" that proof of the independent crimes tended to prove the crime in the case-in-chief. Judgment affirmed.**