



# CaseLaw Update

## Prosecuting Attorneys' Council of Georgia

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### CaseLaw This Week

Week Ending February 11, 2005

- Evidence – Reopening Evidence
- Search & Seizure
- Hearsay – *Crawford v. Washington*

#### Evidence – Reopening Evidence

*Ayoluwa v. State*, A04A2181 (01/26/05), 05  
FCDR 307, 2005 Ga. App. LEXIS 61.

The trial court granted defendant's motion for a directed verdict of acquittal regarding several counts of the indictment. The counts involved all pertained to victims who did not testify at the trial. The State then requested that the evidence be reopened to explain the unsuccessful efforts the State made to locate these victims who had moved out of the state. The trial court allowed the State to reopen the evidence and defendant argued on appeal that this decision was error. The court held **it was not an abuse of the trial court's discretion to allow the State to reopen evidence for the purpose of clarification of its case in chief rather than for rebuttal.** Judgment affirmed.

#### Search & Seizure

*Ponce v. State*, A04A1856 (01/26/05), 05  
FCDR 320, 2005 Ga. App. LEXIS 59.

Defendant was convicted for trafficking in cocaine. The cocaine was found in his tractor trailer which had been pulled over

as part of a safety inspection checkpoint set up by the Georgia Department of Motor Vehicle Safety. The defendant moved to suppress the cocaine alleging it was discovered during an illegal stop and search of his vehicle. The trial court denied the motion. However, the Appellate Court found that the roadblock was unlawful because there was no evidence in the record that every commercial vehicle was stopped as a result of the roadblock; rather, the defendant's truck appeared to have been stopped only at the discretion of the officer. Since the roadblock was determined to be unlawful, the Court had to determine if the police needed a reasonable, articulable suspicion of criminal activity to stop a commercial vehicle. This is a matter of first impression in Georgia. The Court cited to *New York v. Burger*, 482 U.S. 691 (1987) which noted that an owner or operator of a business has a reduced expectation of privacy in commercial property, particularly when that property is used in a closely regulated industry. The *Burger* court held that a warrantless inspection of a business operating in a closely regulated industry does not violate the Fourth Amendment if (1) there is a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made; (2) the warrantless inspection is necessary to further the regulatory scheme; and (3) the statute's inspection program, in terms of certainty and regularity of its application, provides a constitutionally adequate substitute for a warrant.

**The Court held that the *Burger* analysis applies to warrantless inspections**

of commercial vehicles because commercial trucking is a closely regulated industry. In applying the *Burger* analysis to this case, the Court found that the third criterion was not satisfied. The Georgia statutes examined by the court did not provide any guidelines concerning inspection procedures and they failed to constrain the discretion of DMVS officers in conducting inspections. Therefore, **the Georgia statutory scheme for warrantless searches of commercial vehicles does not satisfy the third prong of the *Burger* analysis.** Since there was no reasonable, articulable suspicion that the defendant was engaged in criminal activity, the warrantless search of the commercial truck was unlawful and the evidence seized because of that stop should have been suppressed. Judgment reversed.

crime as it was actually occurring. The caller was requesting that police come to her home to remove [defendant], who she said had broken into her house. The statements made during the 911 calls were made without premeditation or afterthought. Accordingly, the 911 tape was not testimonial.” The court admitted the 911 calls as res gestae. Judgment affirmed.

### *Hearsay – Crawford v. Washington*

*Pitts v. State*, A04A1621 (01/24/05), 05 FCDR 332, 2005 Ga. App. LEXIS 50

The defendant was convicted of false imprisonment, interfering with a 911 call, and simple battery. The victim was his wife. At trial, the victim asserted the marital privilege and did not testify. A responding officer testified to what the victim had told him at the scene. The statements were made after the officers had secured the scene by arresting the defendant, cuffing him, and placing him in a police car. On appeal, defendant argues that the admission of the victim’s statements violated his confrontation right as discussed in *Crawford*. The court held that **the statements were testimonial because they resulted from police questioning during the investigation of a crime and the victim should have reasonably expected her statements to be used at trial because the defendant was already under arrest, handcuffed, and placed in a police car.**

The Court also held that the 911 calls in this case did not come within the ambit of *Crawford*. **“Here, the caller’s statements were made while the incident was actually in progress. The statements were not made for the purpose of establishing or proving a fact regarding some past event, but for the purpose of preventing or stopping a**