



# CaseLaw Update

## Prosecuting Attorneys' Council of Georgia

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### CaseLaw This Week

Week Ending March 11, 2005

- Evidence
- Search & Seizure

#### Evidence – Impeachment

*Emberson v. State*, A05A0155 (02/24/05), 05 FCDR 605, 2005 Ga. App. LEXIS 172.

Defendant was convicted of aggravated assault and aggravated battery. On appeal, defendant claims the trial court erroneously allowed the State to impeach him with evidence of his delinquent adjudications in juvenile court. During cross-examination the defendant stated that he was not used to criminal cases. The State impeached the defendant with evidence that he had been previously charged with criminal damage to property and that he had been previously adjudicated delinquent in juvenile court. Although evidence of the felony charge was proper, the court erred by allowing impeachment through evidence of the juvenile adjudication. The Court held that **because an adjudication of delinquency is not a conviction of a crime, these matters did not tend to impeach defendant by disproving his testimony about criminal matters.** However, the Court found no cause for reversal. Judgment affirmed.

#### Search & Seizure

*Kirsche v. State*, A04A1949 (02/21/05), 05 FCDR 633, 2005 Ga. App. LEXIS 150.

Defendant was convicted of manufacturing and possessing marijuana. On appeal, defendant argues that his motion to suppress the evidence should have been granted. The police were responding to a domestic call from Defendant's daughter. The daughter was at a neighbor's home and she told police that her father was irate and she was scared and had left the home. She also told police that her father was growing marijuana in the backyard. An officer went to knock on the front door of defendant's home and two other officers went to the back door of the home for security reasons. While approaching the back door of the home one of the officers observed a ten foot tall marijuana plant. The court held that **the officer's should not have been at the back of the residence. There was no evidence that the defendant was armed or dangerous. The court also noted that no other reasons existed for the officers to go to the back of the house. As a result, the officers were not lawfully in defendant's backyard.** The motion to suppress should have been granted. Judgment reversed.