

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING NOVEMBER 16, 2007

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THIS WEEK:

• Search and Seizure

Search and Seizure

Smith v. State, A07A0866 (10/26/07)

On appeal, appellant contends that the trial court erred when it denied her motion to suppress. The record shows that an agent with the drug task force received an anonymous tip that Vincent, appellant's co-defendant, was manufacturing methamphetamine at a specified location. The caller provided descriptions of the property and the vehicle that Vincent would be driving. The agents set up surveillance at the property. During the surveillance, an officer, who knew appellant, recognized her car traveling down the road toward the property. This officer had received anonymous tips that the appellant was involved in manufacturing and using methamphetamine. The officers followed appellant.

Appellant drove to and parked her car in front of a locked gate which led to the property where Vincent was allegedly manufacturing methamphetamine. The officers pulled their car behind appellant's car. The officers approached appellant who was seated inside her car. An officer noticed that appellant was cupping something inside of her hand and suspected that it might be drugs. The officer opened appellant's car door and told her to step out of the car. Appellant got out of the car. The officer asked appellant what she was holding and she showed the officer a tooth. Next, the officers requested consent to search the

car and received it. The search yielded methamphetamine, a set of scales, and a key to the locked gate. The Court of Appeals held that the trial court erred in denying appellant's motion to suppress and reversed. The Court noted that the appellant's movement was physically restrained when the police officer forcibly opened her car door. A reasonable person would believe that he or she was not free to leave. Thus, the officer's conduct amounted to a detention. In order for a detention to be lawful, it must be supported by reasonable suspicion. Here, the officers had not observed the appellant engage in any criminal activity or violate any traffic offenses. Although the officer had received anonymous tips regarding the appellant, the tips had not been corroborated. Thus, the tips offered no basis for the detention. Therefore, the evidence was seized as a result of an unlawful detention and the appellant's consent was a product of an unlawful detention.

Morse v. State, A07A1343 (11/07/07)

On appeal, appellant contends that the trial erred when it denied his motion to suppress. A sheriff's deputy received a report that a pick-up truck was parked at a residential construction site late at night. Several thefts had occurred at nearby construction sites. The caller provided the deputy with the truck's tag number. The deputy ran the tag and learned that the truck was registered to appellant's wife. The deputy later spoke with appellant who admitted that he had been at the construction site. The appellant explained that he was at the site to take pictures of the house in order to get ideas for his own house which he was in the process of building.

The deputy went to appellant's property and found the construction site described by appellant. The property was fenced and the driveway was blocked by a locked gate. Signs reading "no trespass" and "beware of dog" were posted at the entrance. The deputy climbed the fence. The house was framed but had no sheetrock or doors. The deputy located a stolen white trailer and Bobcat skid steer loader with a missing VIN plate. The deputy subsequently obtained a search warrant and as a result located numerous other stolen items on the property. The Court of Appeals begrudgingly concluded that appellant had no reasonable expectation of privacy. The Court noted that the far-reaching "open fields" doctrine threatens the integrity of the Fourth Amendment. Despite that, *stare decisis* compelled the Court to apply the doctrine in this case. The structure on appellant's property was not a "dwelling" under the Fourth Amendment, nor did it have protected curtilage. The home was under construction and uninhabited. Therefore, the property fell under the open fields doctrine and the entry was proper.