

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING NOVEMBER 2, 2007

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## THIS WEEK:

- **Closing Argument**



### *Closing Argument*

Lipsey v. State , A07A1458 (10/5/07)

Appellant was convicted of trafficking in cocaine. On appeal, appellant argued that the trial court erred when it prohibited him from arguing in closing that the State could have obtained fingerprint evidence and failed to. The record shows that at the conclusion of the evidence, the State moved in limine to prevent argument during closing regarding fingerprints by the appellant. The trial court denied the motion in part and allowed appellant to present general argument that the State did not offer fingerprint evidence. However, the trial court prohibited appellant from arguing to the jury that the State could have obtained fingerprints from the paper or plastic bags in issue, but failed to do so. The trial court found that no evidence had been presented regarding efforts made by the police to obtain fingerprints in the case or the types of surfaces from which fingerprints could be lifted. On appeal, the Court of Appeals opined that the scope of closing argument is broad, but not unlimited. The trial court has discretion to determine the range of proper closing argument. Furthermore, closing argument must be derived from evidence properly before the jury. Here, the trial court determined that no evidence had been presented regarding fingerprint procedure or techniques. The Court found that the appellant did not show

evidence to the contrary. Therefore, the trial court did not abuse its discretion and properly limited appellant's closing argument.