

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING NOVEMBER 30, 2007

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THIS WEEK:

- Evidence
- Search and Seizure

Evidence

In the Interest of J.Q.W., A07A1255 (11/16/07)

J.Q.W. was adjudicated delinquent for committing theft by receiving stolen property, a motor vehicle. On appeal, the appellant argued that the juvenile court erred in finding that there was sufficient evidence. The record shows that a Bibb County police officer observed an Oldsmobile driving east in the westbound lane of U.S. 80. The officer pulled behind the car and turned on his blue lights. The Oldsmobile did not stop and a high speed chase began. The appellant was the sole backseat passenger in the Oldsmobile. The chase ended when the Oldsmobile came to a stop, and the three occupants fled on foot. The officer observed that the steering column was broken and that a screwdriver had been used to start the car. A half-full gasoline can was sitting in the backseat unsecured and no gasoline had been spilled in the vehicle. The Court of Appeals reversed the judgment of the juvenile finding that there was insufficient evidence to support the adjudication of delinquency. The Court found that there was no evidence that appellant had ever exercised power or control over the vehicle. The Court further determined that there was no evidence that the appellant aided and abetted in the commission of the crime. According to the Court, the visibly

broken steering column, the fact that appellant was a passenger, and the fact that appellant fled from police was insufficient to demonstrate that the appellant aided and abetted in the crime. The Court concluded that an affirmative act as a party to the crime must be established. Specifically, the Court pointed out that there was no evidence appellant bought the gasoline, filled the gasoline can, or held the can during the chase.

Search and Seizure

State v. McCarthy, A07A1049 (11/15/07)

The State appealed the trial court's judgment granting appellee's motion to suppress. The record shows that Amber Hardy allowed her cousin, Puckett, to stay at her home. When Puckett permitted the appellee to also sleep in the home, Hardy notified police that appellee had an outstanding warrant and gave the police her permission to enter her unlocked house to apprehend appellee. While appellee was being escorted to the patrol car, another officer noticed a bag of marijuana on a bookshelf above the couch where appellee was observed sleeping by officers. After being given Miranda warnings, appellee admitted that the marijuana belonged to him. Hardy gave the police permission to search the residence for drugs. The police located a bag belonging to appellee at the end of the sofa. The bag contained methamphetamine, colored plastic bags, electronic scales and cash. The trial court granted appellee's motion to suppress with regard to the bag. The Court of Appeals affirmed the judgment of the trial court. The Court of Appeals found that appellee was already secured in a police car;

therefore, the search was not for protection or to prevent escape. The Court also concluded that the search was not valid as incident to appellee's arrest because appellee was being arrested solely for the outstanding warrant. The Court further found that appellee never disclaimed ownership of the bag; therefore, he never abandoned the property and possessed an expectation of privacy in the bag. Thus, Hardy's permission to search the residence did not override appellee's privacy interest in the bag, especially given the officers' knowledge that the bag did not belong to Hardy.

officer reasonably believed that parking in the middle of a residential street was a crime, and particularized and objective facts gave rise to a reasonable suspicion that the crime had been committed. Thus, the traffic stop was valid.

State v. Stafford, A07 A1396 (08/20/07)

The trial Court granted appellee's motion to suppress on the basis that the traffic stop was invalid. The State appealed. The record shows that a DeKalb County officer stopped the appellee's car because it was parked in the middle of the street. As the officer got out of his car, he observed the appellee fumbling with something under his seat. The officer was concerned that it might be a weapon. The officer had appellee exit the vehicle and sit in his patrol car until he could conclude his investigation. Appellee got in the patrol car. As the officer was closing the door to the patrol car, appellee tried to push the door open. The officer sprayed appellee with pepper spray and appellee got back into the patrol car. At that point, the officer considered appellee under arrest for obstruction. A crack pipe and cocaine were found in appellee's car. The trial court found that the basis for the stop, improper stopping, standing or parking in violation of O.C.G.A. § 40-6-202 was improper because there was a lack of evidence regarding how long the car had been parked there or that appellee's car was impeding traffic. The Court of Appeals reversed the judgment of the trial court. Although a lack of evidence regarding the period of time the car was parked there or that the car impeded traffic might preclude a conviction under the statute, it does not follow that the officer did not have a particularized and objective basis for suspecting appellee of violating the statute at the time of the stop. The Court reasoned, "It is not the officer's function to determine on the spot such matters as the legal niceties in the definition of a certain crime, for these are matters for the courts." The