

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING DECEMBER 21, 2007

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THIS WEEK:

- **Search and Seizure**
- **Evidence**
- **Brady**

Search and Seizure

State v. Fulghum, A07A2034 (12/04/07)

Officers went to a home in Toccoa to assist the executor of an estate in performing an inventory of the property. The resident of the house allowed officers to walk through the house. The officers found cocaine and methamphetamine in plain view. They called for backup and secured all the people in the home, including the appellee who was a visitor to the house. The appellee gave written and oral consent to the officers to search her car and informed them that the keys to her car were in the rear bedroom. Appellee did not consent to a search of her purse. Officer Scott searched her purse and found methamphetamine and prescription drugs in the purse. The trial court granted appellee's motion to suppress the evidence. The Court of Appeals affirmed the judgment of the trial court. The Court found that nothing that took place justified a search of appellee's purse. The Court found that the trial court was correct in concluding that the exchange between Officer Scott and appellee did not give him consent to search her purse for her keys.

Evidence

Williams v.State, A07A1839 (12/04/07)

Relying on a tip from an informant, Clayton County narcotics agents placed a call to an

unknown man offering to buy \$50 of cocaine. The appellant met the agent at the agreed location and sold him the cocaine. Appellant challenged the admission of the narcotics agent's testimony that appellant had offered to sell cocaine to his CI. The Court of Appeals found that the defense attorney did not object to the statement that appellant solicited a narcotics sale, but only to what the informant told the agent. Furthermore, the attorney did not ask for a curative instruction, and the trial court did not grant one sua sponte. The Court of Appeals found no error and the judgment was affirmed.

Perkins v.State, A07A2007 (12/07/07)

In this interlocutory appeal, the appellant contends that the trial court erred in ruling before trial that she could not inform the jury of the specific mandatory minimum sentence and fine for trafficking in cocaine. Appellant was charged with trafficking in cocaine after a duffel bag of cocaine was found during a traffic stop for a seatbelt violation. Appellant's defense was that she was a 'blind mule' who transported the drugs with no knowledge that they were in the car. Appellant sought to ask the State's expert on drug trafficking about the mandatory minimum sentence for drug trafficking and about what incentive a drug dealer would have to get someone else to transport the drugs. The trial court denied this motion. The Court of Appeals noted that there is one small exception in non-capital cases to a discussion of the potential sentence. This is found in State v.Vogleson, 275 Ga. 637. Vogleson allows the questioning of a witness who is testifying for the State in exchange for a reduction in prison time about the amount of time the witness

thinks that they are avoiding. Here, there is no co-defendant who struck a deal. The trial court did not err when it ruled that appellant was prohibited from asking the State's expert questions regarding the mandatory minimum sentence for trafficking in cocaine.

Brady

Bass v.State, A07A1519 (11/30/07)

The appellant was convicted of 24 offenses including robbery, battery and property crimes for which he was sentenced to 40 years in prison. On appeal, appellant asserts that the trial court erred when it denied his motion for new trial. The basis of appellant's motion was that the State committed a Brady violation when it did not disclose to him that a reward would be paid to witnesses if he was convicted. Appellant claimed that two prosecution witnesses received money after he was convicted and sentenced. However, appellant also claimed that neither witness knew about the possibility of a reward until after they testified. The Court of Appeals noted that appellant made no showing of prejudice. Since the witnesses did not know of the reward money until after they testified, the Court failed to see how the non-disclosure prejudiced the appellant.