

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JANUARY 12, 2007

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THIS WEEK:

- **Search and Seizure**
- **Search and Seizure-
Avoiding Safety Checkpoint**
- **Speedy Trial**

Search and Seizure

State v. Simmons, A06A2451; A06A2452

The State appealed the trial court's granting of the appellees' motions to suppress. The Court of Appeals reversed. The officer testified that he observed appellees drive by him as he was in his vehicle, on the side of the road. The officer observed that the window tint on the side-windows were so dark that he could not see inside the vehicle and that he believed it to be in violation of the window tint law. The officer subsequently stopped the vehicle and determined that the tint was, in fact, illegal. In addition, the officer found the driver to be driving without a license. While the officer was writing citations, a free air search was conducted with a drug dog, around the exterior of the vehicle. The dog alerted on the car, and upon searching the car officers discovered marijuana, cocaine and methamphetamine. The trial court granted appellees' motions to suppress, finding that the officer did not have a sufficient basis for suspecting that appellees were involved in criminal activity. In reversing the judgment of the trial court, the Court held that the officer's testimony that he could not see into the vehicle and that he believed that the window tint was illegal provided him with

a sufficient basis to suspect that the appellees were involved in criminal activity, having illegal window tint. Therefore, the stop was lawful and the trial court had no basis for granting the motions to suppress.

Search and Seizure- Avoiding Safety Checkpoint

Terry v. State, A07A0170

The appellant was convicted of DUI. On appeal, appellant challenges the trial court's denial of his motion to suppress, arguing that the officer stopped him without a sufficient legal basis. Officers were conducting a safety checkpoint and observed appellant's vehicle stop prior to the checkpoint, turn into an entryway leading to closed buildings, back out into the road, blocking both lanes, and then drive away in the opposite direction. The officer pursued and stopped appellant, testifying that he stopped him because he believed the appellant was attempting to avoid the safety checkpoint, and that the backing maneuver was illegal. After performing field-sobriety tests appellant was arrested. The Court affirmed the trial court's denial of the motion to suppress. The court reasoned that reasonable suspicion may be present when a driver takes abnormal actions to avoid a checkpoint, even if the actions are not illegal. Taylor v. State, 249 Ga. App. 733, 549 S.E. 2d 536 (2001). Alternatively, an officer's honest belief that he has witnessed a traffic violation being committed may give rise to reasonable suspicion, even if it is later determined that the action was not illegal. Dixon v. State, 271 Ga. App. 199, 609 S.E. 2d 148 (2005). Therefore, the officer had a sufficient basis to

stop appellant, and the denial of appellant's motion to suppress was proper.

Speedy Trial

Lackey v. State, A06A1890

Appellant appeals the trial court's denial of his plea in bar and demand for acquittal. Appellant argued that the State's delay in bringing his case to trial violated his Sixth Amendment right to a speedy trial. The court affirmed the judgment of the trial court. Appellant was indicted in March 2003. Appellant filed for a continuance in December 2003. The case was placed on six different trial calendars but never came to trial. The case was specially set for trial in May 2006, but in April appellant filed the plea in bar and demand for acquittal. The Court considered appellant's argument by analyzing four factors: length of delay, reason for the delay, whether the appellant asserted his right to a speedy trial, and the prejudice to appellant's defense. State v. Redding, 274 Ga. 831, 561 S.E. 2d 526 (2006). The Court accepted the trial court's finding that the delay was presumptively prejudicial. Because the record contained very little explanation for the delay, it was presumptively the fault of the State to bring the case to trial. However, the Court found that appellant failed to assert his right to a speedy trial until the filing of the plea in bar immediately preceding the specially set trial date. Furthermore, appellant failed to show that the delay had caused any actual prejudice to his defense. The Court held that the trial court did not abuse its discretion by denying the plea in bar and demand for acquittal because of appellant's failure to assert the right to a speedy trial for thirty-six months following the indictment, and the lack of any actual prejudice to his defense. Those factors outweighed the presumption of prejudice caused by the length of the delay and the presumptive negligence in bringing the case to trial.