

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JANUARY 18, 2008

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THIS WEEK:

• Search and Seizure

Search and Seizure

Whitmore v. State, A08A015 (01/07/08)

On appeal, the appellant alleged that the trial erred in denying her motion to suppress. The record shows that an officer approached two vehicles traveling in the same direction which were stopped side by side at a traffic light that was green. The drivers of the two vehicles were speaking to one another. The officer came to a stop behind the vehicles and activated only his rear blue light. The officer, who believed at the time that the drivers had probably been involved in an accident, approached and asked the drivers what they were doing. Both drivers stated that they were lost and were trying to get directions. The officer stated that he would help the drivers with directions and asked them to move their cars to a parking lot on the right because they were in the middle of the road. Both drivers did as the officer asked. When the officer approached the appellant, who was one of the drivers stopped in the middle of the road seeking directions, he smelled an odor of alcohol. Appellant admitted that she had consumed some martinis. The appellant failed several field sobriety tests and refused a breath test. Appellant was charged with DUI less safe, impeding traffic, and possessing an open container of alcohol. The trial court refused to suppress the evidence obtained during appellant's encounter with the officer.

Appellant argued that the traffic stop was illegal and unsupported by a reasonable suspicion of criminal activity. The Court of

Appeals found that the encounter was a first-tier encounter which did not require reasonable suspicion of criminal activity. Here, the officer only stopped to find out was going on. The fact that the officer only activated his rear blue lights to prevent him from being hit from behind supported the conclusion that this was not a traffic stop. The Court found that the encounter became a second tier encounter only when the officer approached appellant in the parking lot and smelled alcohol on her person. Only at that time was a brief investigatory detention initiated. Moreover, the Court found that even if they concluded that a second tier encounter was initiated when the officer asked the drivers to go to the parking lot, the officer had reasonable grounds to conduct an investigatory detention. At the time the officer came upon appellant, she was stopped in the middle of the road impeding traffic. The traffic violation would have authorized an investigatory detention. Therefore, the judgment of the trial court was affirmed.