

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING FEBRUARY 1, 2008

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## THIS WEEK:

- **Search and Seizure**
- **Evidence - Impeachment**

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### *Search and Seizure*

State v Stephens, A07A1653

Appellee was indicted for homicide by vehicle, DUI (cocaine), and other related traffic offenses for causing a head-on collision in which a woman was killed. Appellee filed a motion to suppress the results of blood and urine tests. Appellee alleged that the state troopers improperly obtained the samples for the tests without a warrant and without his valid consent. The trial court entered an order granting appellee's motion and the State appealed.

The evidence at the hearing showed that when the trooper arrived on the scene, appellee was lying next to the vehicle in a fetal position. Appellee was crying and mumbling to himself. Appellee was only coherent enough to give his first name. Appellee's wife arrived, followed by EMTs, who took him to the hospital. While at the hospital, the trooper showed the consent form to appellee's wife. The wife explained that appellee could not read. When appellee returned to the room, he asked whether the woman had died. Appellee became upset after learning that the woman was dead, and the trooper began to read him the consent form. Appellee became violent and had to be forcibly restrained. Appellee cried on his wife's shoulder during the reading of the form. Appellee did not sign it; his wife signed it for him.

Appellee testified that he was in shock after the crash and did not remember the trooper reading him the consent form or giv-

ing verbal consent to supply blood and urine samples. The trial court granted the motion, finding that the State did not prove the samples were freely and voluntarily given. The Court of Appeals affirmed the trial court's finding that the evidence should be suppressed. Appellee could not read, was forcibly restrained during the reading of the form, was crying while the form was read, and did not sign the form. Appellee's wife never indicated that appellee understood what was being read to him.

State v Jones, A07A2054

The State appeals from the trial court's grant of appellee's motion to suppress. The trial court found that the officer lacked a reasonable, articulable suspicion to seize a firearm in appellee's vehicle.

Appellee was stopped because his tag light was out. The officer received appellee's license, but did not check it because he saw a hunting rifle in the car. The officer asked appellee to step out of the car and began to pat him down. The officer then told appellee that he had to look at the gun. The officer entered the truck in order to retrieve the firearm. When the officer did so, he moved clothing that exposed contraband. At the hearing on appellee's motion to suppress, the officer admitted that the search was a standard procedure because the firearm might be stolen.

The Court of Appeals opined that this was a second-tier encounter because the officer had appellee step out of the truck and held his license. The Court found that the officer did not have a particularized and objective basis for suspecting that appellee was involved in criminal activity. Therefore, the officer lacked justification to detain appellee, and the subsequent search was not permissible.

Morgan v State, A07A2445

The trial court denied appellant's motion to suppress evidence obtained during a warrantless search of his property and residence. Appellant appeals the judgment of the trial court. The record shows that the appellant was convicted of eight counts of cruelty to animals. On December 23, 2004, sheriff's deputies responded to a call about mistreated animals on appellant's property. At the time of the call, it was ten degrees outside. The deputy could clearly see from the road that the animals outside in the yard had no shelter, no food or water, and were starving. The deputy also heard dogs barking and decided to check on them behind the house. Behind the house, the deputy found two pens with skeletal remains and two dogs in horrible condition. The deputy fed the animals with the help of appellant's neighbor. An animal control officer was called to the scene by the deputy. When the animals were being seized, appellant arrived home and was arrested for cruelty to animals. Appellant consented to the deputy entering the house while he looked secured it and turned off the lights. The deputy noticed that there were additional dogs inside of the residence, and that the floor of the residence was covered with feces.

In a prior appeal in this same case, the Court noted that the deputy acted illegally in entering the property unless exigent circumstances were present. On remand, the trial court found exigent circumstances. The Court notes that exigent circumstances are present where an officer believes that an animal on the property is in need of immediate aid due to injury or mistreatment. Due to the condition of the animals in the front yard, the deputy was authorized to enter the backyard to check on the dogs he heard barking and exigent circumstances were present.

## ***Evidence - Impeachment***

Rosandich v State, A07A1749

Appellant was found guilty of DUI; he appeals challenging the admission of his breath test as impeachment evidence. Appellant successfully suppressed the breath test prior to trial. The test showed that he had a .233 BAC. The State moved in limine to prevent any mention of the breath test or of the State's failure to offer evidence of the breath test. The State's

motion was granted prior to trial. Appellant took the stand and testified that he only had four to five beers the night of the arrest over a four hour period, and did not feel at all affected. Prior to initiating cross-examination, the State sought permission to impeach him with the results of his breath test. The trial court also allowed the arresting officer to testify that appellant's BAC was extremely high and he was not capable of safely operating a motor vehicle.

The Court of Appeals held that while the results were initially suppressed due to an improperly administered implied consent warning, the results were still allowable for impeachment.