

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING FEBRUARY 22, 2008

## Legal Services Staff Attorneys

**David Fowler**  
Deputy Executive Director  
for Legal Services

**Tom Hayes**  
Regional Offices Director

**Chuck Olson**  
General Counsel

**Joe Burford**  
Trial Services Director

**Lalaine Briones**  
Trial Support

**Laura Murphree**  
Capital Litigation

**Fay McCormack**  
Traffic Safety Coordinator

**Patricia Hull**  
Traffic Safety Prosecutor

**Gary Bergman**  
Staff Attorney

**Tony Lee Hing**  
Staff Attorney

**Rick Thomas**  
Staff Attorney

**Donna Sims**  
Staff Attorney

**Jill Banks**  
Staff Attorney

**Al Martinez**  
Staff Attorney

**Clara Bucci**  
Staff Attorney

**Brad Rigby**  
Staff Attorney

## THIS WEEK:

- **Grand Jury**
- **Search and Seizure**

---

---

---

### *Grand Jury*

Harper v. State, S07A1460 (02/11/08)

The Supreme Court granted interim review in this case to determine whether the trial court erred in denying appellant's challenge to the grand jury on the basis that an individual, who was not the person intended to be summoned, served on the grand jury. The record shows that a grand jury summons was issued to "William A. Conner" at a specified address and did not list a date of birth. The summons was received by "William A. Conner, Sr." who lived at the address on the summons, and who served on the grand jury as a result. The grand jury list and the list of jurors appended to the trial court's order to summon jurors for the case listed a "William A. Conner" with a birth date of April 12, 1977. The birth date belonged to "William A. Conner, Jr." William A. Conner, Jr. had moved out of the county ten years prior. However, William A. Conner, Jr. maintained a "permanent address" in the county. The permanent address listed by Conner, Jr. was not the same address to which the grand jury summons had been directed. William A. Conner, Jr. had never lived at the address listed in the jury commissioner's records and the jury summons appended to the court's order.

The director of jury management testified that she believed that the wrong person had served on the grand jury. In its opinion, the Supreme Court pointed out that the record was not clear whether the director was right.

The Court opined that it was possible that the address on the jury summons and in the jury commissioner's records was correct and that the birth date in those records was wrong.

In denying appellant's challenge, the trial court concluded that appellant did not take the substantive step of showing that the grand juror in question was not qualified to serve. The "substantive step" is satisfied when there is a presentation of the alleged illegality with supporting facts, argument and citation of authority. Here, the Court found that appellant had made a sufficient presentation of illegality. Appellant demonstrated the illegality in the composition of the grand jury by showing that someone never selected for service by the jury commission served on the grand jury. Nevertheless, the Court found that the record did not demand nor did the trial court make a finding that the wrong person in fact served on the grand jury. Therefore, the judgment of the trial court was vacated in part and remanded for a ruling on the aforementioned issue.

### *Search and Seizure*

State v. Bellew, A07A1966 (02/01/08)

The State appeals the grant of appellee's motion to suppress and argues that the search warrant was supported by probable cause. The record shows that Officer Wallace with the Polk County police department received anonymous tips regarding drug activity at a house located on 120 Jackson Street. While conducting surveillance at the residence, Wallace observed two people go up to the house, leave, and depart in a truck. Wallace followed the truck and saw that it was being driven in the middle of the road. Wallace contacted uniformed officers who conducted a traffic stop for failure to maintain lane. The driver of

the truck stated that he had illegal substances on his person which he had purchased at 120 Jackson Street. The substances appeared to be marijuana and suspected illegal pills. Wallace obtained a search warrant for 120 Jackson Street and a no knock provision. Wallace admitted that he did not verify the identity of the owners of the house, or from whom the driver had purchased the drugs. In addition, Wallace did not know the driver and had no basis to find him to be reliable.

In this case, no evidence was presented to show the reliability of the anonymous tips or the driver of the truck. However, “when a named informant makes a declaration against penal interest and based on personal observation, that in itself provides a substantial basis for the magistrate to credit the statement.” Graddy v. State, 277 Ga. 765 (596 S.E.2d 109) (2004). Here, the driver of the truck was a named informant who made a statement against penal interest. Further, Wallace’s observation of the driver having just departed 120 Jackson Street provided some corroboration of the driver’s statement. Thus, the magistrate was authorized to conclude that the driver’s statement was reliable, that a crime had been committed and that proof of the crime might reasonably still be found at the location. Lastly, even if there was no basis for the no-knock provision, the evidence will not be suppressed as a result. A violation of the knock and announce rule does not require suppression of the evidence found in an otherwise valid search. Hudson v. Michigan, U.S. (126 SC 2159, 165 LE2d 56) (2006).

Grandberry v. State, A07A2366 (02/07/08)

On appeal, appellant argues that the trial court erred when it denied his motion to suppress. The record shows that complainant called 911 to report that Michael “Cranberry” attempted to rob him at Johnson’s Meat Market. A BOLO was issued for a black Neon with New York license plates traveling in the direction of Thomasville which was being driven by a black male. In addition, the BOLO informed that the suspect was carrying a shot gun and narcotics. All of the information contained in the BOLO was obtained from the complainant.

Officers arrived at the Market at approximately 11:05 p.m. to take a report from the complainant. The complainant was not at

the location therefore dispatch attempted to locate the alleged victim. Dispatch contacted the complainant at the number he had used to call 911. The complainant stated that he was walking towards the crime scene and would arrive in about five minutes. At 11:21 p.m., the complainant had still not arrived. The dispatcher called the same number again and a different individual answered. Davis, who had answered the call, informed the dispatcher that the alleged victim had used his cell phone to report the crime, and that he had last seen the complainant walking toward a trailer park.

While some officers were attempting to investigate the alleged robbery at the Market, a canine officer with the Thomasville Police Department stopped the appellant at approximately 11:12 p.m. driving a black Dodge Neon with New York plates traveling on Highway 84 toward Thomasville. The appellant was removed from the car, handcuffed and placed on the ground. The car was searched for weapons and additional suspects of which neither was located. Appellant denied any knowledge about the robbery and did not consent to a search of the car. Because the BOLO had mentioned narcotics, at approximately midnight the canine officer had his dog conduct a free air sniff around appellant’s car. As a result, cocaine, baggies, and scales were recovered from the trunk of appellant’s car.

The Court of Appeals found that although the initial stop was authorized under Terry, the stop later evolved into an illegal arrest. The Court found that it became apparent shortly after appellant was detained that the complainant was not going to return to the crime scene. Police had no way of contacting the alleged victim because he had used another person’s phone to call 911. Although the complainant alleged that appellant had a shot gun, none was found. Based on the foregoing, the Court opined that the police investigation could not be reasonably characterized as likely to conclude within any particular time frame. Appellant was being held based solely on the word of the complainant, who could not be identified, who could not be located, and whose reliability quickly became questionable. Under these circumstances, the Court found that the forty minute detention exceeded the brief investigatory stop authorized by Terry. A detention beyond that authorized by Terry is an arrest, and must be supported by probable cause. Here, the officers lacked objective

facts and circumstances to believe that appellant had committed a crime. The contraband was located after appellant had been illegally detained. Therefore, the judgment of the trial court was reversed.