Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MARCH 21, 2008

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THIS WEEK:

Implied Consent

Chancellor v Dozier, S07A1371

Appellant Chancellor held a commercial driver's license (hereinafter CDL) and was over twenty-one years of age when he struck a tree while under the influence. At the time of the accident, appellant was driving his personal vehicle, and was arrested at the scene for DUI less safe to drive. The trooper read the statutory implied consent notice for suspects over age 21 to appellant, who declined to submit to chemical testing. Appellant was served with an administrative license suspension form. Following a hearing, an administrative law judge disqualified appellant from driving a commercial motor vehicle for life based on his refusal, and a prior DUI conviction. The decision of the administrative law judge was upheld in an appeal to the Superior Court. The Supreme Court accepted appellant's application for discretionary review.

On appeal, appellant argues that the statutory implied consent notice violates due process because it did not make him aware of the actual consequences of refusal to submit to the chemical testing. Appellant urges that he should have been given notice that his refusal to submit to chemical testing would result in his lifetime disqualification from having a CDL. Appellant further claims that because he held a CDL he should have been given the implied consent notice for drivers of commercial motor vehicles O.C.G.A. § 40-5-67.1 (b)(3).

The Court rejected appellant's arguments. The Court held, "as long as the arresting officer informs the driver that he could lose his driver's license for refusing to submit to chemical testing, due process does not require the officer to inform the driver of all the possible consequences of refusing." This is so because the officer has made it clear that refusing the test is not a "safe harbor," free of adverse consequences. South Dakota v. Neville, 459 U.S. 553 (103 SC 916, 74 LE2d 748) (1983). The Court further concluded that the appellant's procedural due process rights were not violated by the officer's failure to read the implied consent notice for drivers of commercial vehicles. Here, appellant requested and received a hearing pursuant to O.C.G.A. § 40-5-67.1 (g) (1). Therefore, he was afforded the procedural due process to which he was entitled.

De Facto Officer Doctrine

Beck v. State, S07G1735

The Court granted appellant's writ of certiorari to determine whether a search warrant is valid when it is signed by an individual purporting to hold office as an assistant magistrate even though no such office existed. Appellant was charged with possession of marijuana with intent to distribute and possession of cocaine with intent to distribute. The charges were based in part on evidence seized pursuant to a search warrant issued by an assistant magistrate.

The magistrate hired an individual to serve as an assistant magistrate because the county administrator told him he could have a part-time assistant. The assistant magistrate previously worked in the magistrate's office in

another county and was twenty-two years of age. The position of assistant magistrate was neither authorized/ created by the county commissioners nor by the judges of the superior court. Further, no certificate for the office was sent to the Administrative Office of the Courts. Before issuing the warrant in this case, the assistant magistrate called the magistrate to discuss the warrant application, and the magistrate instructed the assistant to sign it. The Court of Appeals held that the assistant magistrate was a de facto officer and that the warrant was valid.

The Court rejected the analysis and conclusion of the Court of Appeals. The de facto officer doctrine does not apply when there is no legally created office. "While acts of a de facto incumbent of an office lawfully created by law and existing are often held to be binding from reasons of public policy, the acts of a person assuming to fill and perform the duties of an office which does not exist de jure can have no validity whatever in law." One cannot claim to be a de facto officer unless there is an office in existence. Here, the office of assistant magistrate did not exist, thus the actions of the assistant magistrate who purported to operate in that office were invalid. It is the office of the assistant magistrate that must pass the de jure test not the office of the magistrate as the Court of Appeals had concluded.

Court of Appeals

Search and Seizure

Richards v State, A07A2297

Appellant was found guilty of trafficking in methamphetamine and manufacturing methamphetamine. On appeal, appellant argues that the trial court erred in denying her motion to suppress evidence found in her home. Appellant's ex-husband came over to visit his son. A teenage nephew took the ex-husband into the house and showed him jars full of stuff that 'looked like crank or cocaine'. The sheriff's office was called. When the deputy arrived, the ex-husband told him that he believed that someone was cooking methamphetamine in the residence. The deputy could smell a strong chemical odor from inside the house, the door to which was open. Looking inside the house, the deputy could see mason jars filled with liquid with tubes coming from the top. The deputy ordered everyone away from the house and then searched the inside to make sure no children were present. The house was secured and the drug task force was called. Items consistent with the production of methamphetamine were found outside the house. A warrant was obtained and the house was searched again. Appellant claims that the first entry to her house was unlawful. The trial court held that exigent circumstances were present that allowed the deputy to enter the home. The deputy was told that there were children who lived in the home, he smelled chemicals, and he saw what appeared to be a methamphetamine lab. The trial court did not err in denying appellant's motion to suppress.

Burgess v State, A07A2240

A property owner received a call from a neighbor that people were growing marijuana on her land. The property owner called the county sheriff and notified them that the people were currently on her property. The Sheriff sent narcotics investigators out to the property where they found an empty truck with tools used for growing marijuana in the back. Four wheeler tracks led into the woods. Officers surprised the appellant and his co-defendant and arrested them. A search of their persons' revealed methamphetamine, and a methamphetamine lab was found nearby in the woods. Appellant argues that the evidence should have been suppressed because his person was unconstitutionally seized without probable cause or a warrant. Because the officers were on the property at the behest of the owner, who notified them that no other persons were legally allowed to be there, when they saw appellant they reasonably believed that he was committing criminal trespass. Furthermore, Burgess refused to get off of his four-wheeler and his co-defendant fled the scene. Therefore, the trial court properly denied the motion to suppress.