

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING APRIL 27, 2007

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THIS WEEK:

- **Search & Seizure**
- **Double Jeopardy**
- **Scientific Evidence**

Search & Seizure

Spence v. State, S06A1850 (3/19/07)

Appellant argued that his rape confession was improperly admitted at trial, and also that the trial court erroneously admitted evidence discovered during a subsequent search of his residence. The Georgia Supreme Court held that appellant's confession was rendered inadmissible by the interrogating officer's false statement to appellant that his statements would be kept confidential. However, this illegal act was sufficiently attenuated from the subsequent search of appellant's residence so as to dissipate any taint of illegality. When police arrived to search appellant's residence, his roommate freely and voluntarily consented to a search of the residence. Because this consent was not a product of any illegal conduct, evidence discovered pursuant to the search was admissible.

Burk v. State, A07A0114 (4/10/07)

Appellant appeals her conviction for contributing to the delinquency of a minor, contending that the trial court erred in denying her motion to suppress evidence obtained during the warrantless search of her home. The Court of Appeals held that

exigent circumstances justified the warrantless search, where appellant admitted to officers that juveniles were consuming alcohol inside her home. Because underage consumption of alcohol presents risks to public safety, and because evidence of furnishing alcohol to minors is easily destroyed when the minors leave the scene of the crime, a reasonable belief that minors are consuming alcohol inside a residence will constitute exigent circumstances that justify a warrantless entry into the residence.

Double Jeopardy

White v. State, A07A0029 (4/6/07)

Appellant contends that the trial court erred in failing to dismiss his indictment on double jeopardy grounds. Appellant, who had previously plead guilty to the theft of 358 items of jewelry from Friedman's Jewelers, was indicted for the theft of 109 additional items that were subsequently discovered in his possession. The Court of Appeals rejected appellant's contention that his prior guilty plea barred his subsequent prosecution for the theft of the newly discovered items. Because appellant presented no evidence that, at the time of his initial prosecution, the prosecutor had actual knowledge of the additional stolen items, his subsequent prosecution was not barred by procedural double jeopardy.

Scientific Evidence

Mann v. State, A07A0212 (4/12/07)

Appellant contends that the trial court erred in admitting the results of a drug test conducted using a Roche On Track TesT stik

at his probation revocation hearing. The Court of Appeals held that admitting the test results was error, where the State failed to establish the reliability of the On Track Test with expert testimony, and where there was no admissible evidence that a “substantial number of courts” have recognized the reliability of the test.