Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING MAY 16, 2008

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## THIS WEEK:



## Criminal Practice – Merger

Thompson v. State, A08A0370

Appellant was convicted of two counts of battery and one simple assault. Appellant argues, among other issues, that the trial court erred in failing to merge two counts of battery. The appellant argued that the State proved only a single act of battery. OCGA §16-1-7(a) prohibits convictions for more then one crime if one crime is included in another. Appellant's indictment listed two counts of battery for hitting the victim in the mouth and in the eye.

The issue presented is not whether medically distinguishable injuries were inflicted; but whether the State proved two completed crimes. The State must show the injuries were caused by two completed exchanges separated by a meaningful interval of time or with distinct intentions. Here, the state failed to present evidence that two separate batteries were completed. The Georgia Court of Appeals vacated the sentence and remanded for re-sentencing by the trial court.

## Search & Seizure

Darwicki v. State, A08A0623

Appellant was convicted of driving under the influence and improperly parking on the roadway. Appellant argues that when the deputy parked behind her and turned on his emergency lights, she was illegally seized as the deputy lacked reasonable articulable suspicion of criminal activity. The deputy approached appellant's car to find out what was going on because appellant's car was stopped in the lane of traffic, in front of a closed business, at night, with the headlights on and engine running. The deputy was suspicious but also concerned that the driver might be having car trouble. In Hutto v. State (259 Ga. App 238) (576 S.E.2d 616) (2003), the court discussed three levels of police-citizen contact. Verbal communications which involve no coercion or detention are the first level. The Hutto decision found that an officer is authorized to activate blue lights and such activation does not amount to seizure when it is dark outside and the officer plans to offer assistance.

The fact that it was night, it was dark, the deputy intended to offer assistance, and that both the deputy's car and the appellant's car were parked in the lane of travel all goes to the reasonableness of the deputy in activating his blue lights. The Georgia Court of Appeals found that the officer's activation of the blue lights did not create the impression that the appellant was not free to leave.

Wall v. State, A08A0051

Appellant filed a motion to suppress evidence arguing that the officer entered his apartment illegally. An arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. Here, the officer attempted to serve an arrest warrant on a man named Hawthorne for a probation violation. The warrant listed an address presumably

provided by Hawthorne and verified on December 16, 2005. Appellant told the officer Hawthorne hadn't lived there since October 2005, but because of the verification the officer still had reason to believe Hawthorne resided there and was within. The trial court did not err in denying appellant's motion to suppress because the officer had the authority to enter the home and search for Hawthorne. Additionally, officers have the authority to seize what is in plain sight when an officer is in a place he is constitutionally entitled to be in.

Weldon v. State, A08A0823

Appellant argues that the trial court erred in denying his motion to suppress the evidence resulting from the traffic stop because the stop was unlawful in that it occurred outside the arresting officer's jurisdiction. Peace officers normally only have power to make traffic stops and to arrest in their jurisdiction. However, OCGA §40-13-30 and OCGA §17-4-23(a) authorize police officers to arrest persons for traffic offenses in other jurisdictions in certain situations.

Also, appellant argues that the stop was unlawful because the actual arresting officer did not witness any traffic violations firsthand. Reasonable suspicion need not be based on an arresting officer's knowledge alone, but may exist based on the collective knowledge of the police when there is reliable communication between an officer supplying the information and an officer acting on that information. Here, Sgt. Dunn pulled appellant over after Sgt. Gray reported seeing appellant weaving in and out of lanes several times. Sgt. Gray, who was off-duty, provided a detailed description of the car, and minute by minute updates of its route. The traffic stop was not unlawful and the trial court properly denied appellant's motion to suppress.

## *Sex Offender Registration*

Petway v. State, A08A0072

Appellant appeals his conviction. Appellant argues that he was not required to register as a sex offender because no appropriate official informed him of the registration requirements before he was placed on probation. Appellant relies on OCGA §42-1-12(b) which provides: "Before a sexual offender who is required to register under this Code section is released from prison or placed on parole, supervised release, or probation, the appropriate official shall: (1) inform the sexual offender of the obligation to register." This statute does not make the registration requirement conditional upon being informed prior to release that the individual must register. The language simply directs the appropriate official to give the registration information to someone who is required to register, indicating that the person has a requirement to register independent of notice by an official. The Georgia Court of Appeals upheld the conviction.