

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MAY 4, 2007

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THIS WEEK:

• Search & Seizure

Search and Seizure

State v. Gray, A07A0757, (04/16/07)

Appellee Gray was indicted for several drug offenses. Subsequently, the appellee filed a motion to suppress which the trial court granted. The State now appeals. The record shows that a deputy stopped an SUV because the tail lights were not illuminated. During the stop the deputy asked the driver, Ezell, for permission to search the SUV. Ezell refused because the SUV did not belong to him. Ezell informed the deputy that the vehicle belonged to appellee, Angela Gray, however, the vehicle's registration identified Nancy Gray as the owner. The deputy walked his canine around the SUV, and the dog alerted on the passenger side of the vehicle. During a search of the vehicle the deputy located drug paraphernalia and potential methamphetamine lab-related materials. The deputy was joined by a narcotics officer at the scene. The officers then followed Ezell to the Gray residence so that they could discuss the defective condition of the car and the items found inside with the appellee.

The Gray residence was surrounded by a wrought iron fence and Ezell opened the gate with an automatic door opener. While the officers were following Ezell to the back door of the residence, they observed items often used in the manufacture of methamphetamine. A woman identified as Cobb met Ezell and the officers at the back door. While at the door

talking to Cobb, the officers saw suspected marijuana inside a cigarette pack in plain view on the living room counter. From their vantage point the officers were also able to look through the kitchen window and see brass fittings, tubes and other items commonly present at methamphetamine labs. The officers asked Cobb for consent to search. Cobb responded that the house was not hers and that she could not give consent. One officer entered the residence to secure it and to perform a walk through to make sure no one else was present. The officers later obtained a search warrant and executed it the following morning. During the search officers seized marijuana and several items used to manufacture methamphetamine.

The Court of Appeals held that there was sufficient evidence to support the trial court's determination that the officers illegally searched the curtilage of the home because they did not have a right to be where they were when they observed the items in question. The Court opined that the officers could not assume that just because Ezell was driving Nancy Gray's car and opened the gate with the door opener that he was authorized to grant access to the property. The Court noted that the officers admitted that they did not ask Ezell any questions which would elucidate whether he had authority to grant access to the property, such as whether he lived on the property, had clothes there, paid rent, paid a portion of the mortgage or any other bills, which would indicate some connection to the property. Thus, there was evidence to support the trial court's conclusion that the objective facts available to the officers at the time would not warrant a person of reasonable caution

to conclude that the third party (Ezell) had authority over the premises.

The Court of Appeals further affirmed the trial court's ruling that the sweep through the residence was warrantless and constituted an illegal search. "Officers are authorized to perform a protective sweep in connection with an in-home arrest when they possess articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." Maryland v. Buie, 494 U.S. 325 (1990). The Court of Appeals held that the sweep in this case did not comply with these rules. This case did not involve an "in-home" arrest and furthermore there was no evidence that anyone else was inside the home who posed a threat to the officers. The State argued that the sweep was necessary because there may have been a working methamphetamine lab in the home. The Court rejected this argument, pointing out that "the presence of contraband without more does not give rise to exigent circumstances sufficient to authorize a warrantless entry into a home."