

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JUNE 22, 2007

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THIS WEEK:

- **Evidence: Search and Seizure**
- **Implied Consent Rights**
- **Evidence: Corroboration**

Evidence: Search and Seizure

Maxwell v. State, A07A0288 (06/05/2007)

The Court of Appeals affirmed appellant's burglary conviction finding that the trial court properly ruled that appellant's motion to suppress was moot where no tangible evidence was admitted at trial. Appellant kicked in the front door of the victim's home and stole packs of meat, bedding, clothing and car keys which he put in his van. The appellant then drove to a home four miles down the road and kicked in its front door. The appellant fled upon discovering an occupant in the house. Based on a description given by the second victim, a deputy stopped appellant's van, questioned him, and released him. Later, the first victim reported the incident and the deputy recalled seeing the stolen items in the van. The van was located with its side door open and the stolen items were in plain view. None of the tangible, physical evidence was admitted at trial therefore appellant's motion to suppress was moot.

Implied Consent Rights

State v. Underwood, A07A0576 (06/01/07)

The Court of Appeals affirmed the trial court's order granting appellant's motion

to exclude the evidence of the results of the state administered breath test. Appellant was stopped because his vehicle matched the description of a vehicle the police were looking for in connection with a hit and run. One of the officers at the scene testified that appellant smelled of alcohol and admitted that he had consumed several beers. Appellant also had a pipe in his car that he admitted was for drug use. A videotape showed and the officer testified that appellant was arrested based on possession of marijuana and the hit and run allegations. The officer read the implied consent notice to which appellant responded, "sir, I don't understand exactly what that means," but indicated that he wanted to take a breathalyzer test. The officer testified that he would not have read the implied consent warning if he had not also been under arrest for DUI. The trial court found that there was probable cause to arrest appellant for DUI, but that appellant was not arrested for DUI at the time the implied consent notice was read to him and on that basis excluded the evidence of the results of the breath test. The Court of Appeals held that the trial court's finding was not clearly erroneous and therefore affirmed.

Brooks v. State, A07A0793 (05/31/07)

The Court of Appeals affirmed appellant's DUI conviction. The evidence supported the trial court's ruling that the appellant did not request an independent chemical test when he asked the arresting officer, "Do I have to take a breathalyzer or a blood alcohol content?" in response to the officer's question as to whether the defendant would submit to a breath test administered by the state. Further, appellant did not request an independent chemical

test when he asked “Do I have to take a breathalyzer? I’d prefer to take a blood test or a urine test.” The Court opined that the appellant was not requesting an independent blood test at his expense, but rather was asking the officer to give him a state-administered blood or urine test instead of a breath test.

Evidence: Corroboration

Palmer v. State, A07A0204 (06/04/07)

The Court of Appeals affirmed appellant’s convictions for armed robbery, rape, and aggravated sodomy. Calls made from the victim’s stolen cell phone were traced back to co-defendant Griffin. Griffin was arrested, admitted to his participation in the crimes and identified appellant as the gunman. Later, police seized a black pellet gun from the appellant in an encounter unrelated to this particular case. At trial, the victim in this case identified the black pellet gun, found in the appellant’s possession, as the weapon used by her attackers. Appellant claims that his identity was established solely through the uncorroborated testimony of Griffin because the victim could not identify her attackers because their faces were covered. The appellant argues that Griffin’s testimony was not sufficiently corroborated and that the trial court should have granted his motion for directed verdict. The Court of Appeals held that the victim’s testimony was sufficient to corroborate Griffin’s identification of appellant. Therefore, the trial court did not err in denying appellant’s motion for a directed verdict.