

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 10, 2007

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THIS WEEK:

- **Search and Seizure**
- **Jury Charges**

Search and Seizure

Lopez v. State, A07A1445

A Georgia State Patrol officer stopped appellant on I-20 after he observed appellant's vehicle cross over the lane divider three times. Appellant provided the officer with a driver's license from Mexico and was unable to provide proof of insurance. Appellant indicated that the car belonged to a friend whose name he did not know, he did not know the name of the passenger who was traveling with him, he had no specific destination, and he did not know his home address in Smyrna. Although GCIC determined that the car was insured, appellant was arrested for no proof of insurance, driving without a valid driver's license and weaving. The officer also decided to have the vehicle towed. Appellant was handcuffed and placed in the back of the officer's patrol car. The officer then began an inventory of the car's contents. Inside the trunk, the officer found two trash bags containing marijuana and methamphetamine.

On appeal, the appellant argues that the trial court erred in denying his motion to suppress. The Court of Appeals concluded that the officer was not authorized to arrest appellant for driving without a valid driver's license or failure to provide proof of insurance. O.C.G.A. § 40-5-20 (a) provides that any person who has resided in the state for 30 days must obtain a Georgia driver's license before operating a

vehicle. The officer failed to ascertain how long appellant had been in the United States. Therefore, under the circumstances appellant was authorized to drive the vehicle pursuant to his foreign driver's license. At the time of the traffic stop, O.C.G.A. § 40-6-10 did not require drivers to maintain proof of insurance in the vehicle. However, the arrest was valid because O.C.G.A. § 40-6-48 prohibits weaving in and out of one's lane of travel and O.C.G.A. § 17-4-23 (a) permits police to arrest a person accused of violating any law governing the operation of motor vehicles. The Court further concluded that the officer's decision to impound the vehicle was reasonable and that the search of the bags was authorized because it did not exceed the permissible scope of an inventory search.

Jury Charges

Essuon v. State, A07A1379

Appellant was convicted of two counts of criminal solicitation to commit the felony of murder. During the charge, the trial court read the allegations of the indictment and read O.C.G.A. § 16-4-7 (a) which outlines the offense of Criminal Solicitation to Commit a Felony. However, the trial court did not instruct the jury on the legal definitions of "felony" and "murder." The Court of Appeals opined that "felony" and "murder" were essentially elements of the crime charged. The trial judge must charge the jury on each crime specified in the indictment. Even in the absence of a request to charge, the trial court errs when it fails to provide the jury with the legal definitions of the elemental crimes. Therefore, the appellant's convictions were reversed.