

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 3, 2007

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THIS WEEK:

- Closing Argument
- Search and Seizure: Search Warrant
- Search and Seizure

Closing Argument

Ayers v. State, A07A0219

Appellant was convicted of two counts of kidnapping, three counts of child molestation, two counts of enticing a child for indecent purposes and two counts of false imprisonment. In a 5-2 decision, the Court of Appeals reversed appellant's convictions on the basis that the trial court erred in denying appellant's request to have both of his defense attorneys present closing argument. The Court of Appeals noted that the Georgia Supreme Court has unequivocally stated that it is error to refuse to allow two attorneys to present middle closing argument on the defendant's behalf. The Court of Appeals opined that they could not say that the error was harmless because the evidence was not so overwhelming that it demanded a guilty verdict. Although the appellant admitted to binding and tickling the victims at trial and the State introduced sexually explicit images of adult bondage obtained from the appellant's computer, the Court of Appeals concluded that the evidence that appellant's conduct was sexually motivated was not overwhelming. Thus, the Court simply could not say the evidence was overwhelming and reversed.

Search and Seizure: Search Warrant

Beck v. State, A07A0017

The Court of Appeals affirmed appellant's convictions for possession of marijuana and cocaine with intent to distribute. The police used a confidential informant to make a controlled buy from appellant, one of two defendants, at the home of appellant's mother. While executing a search warrant, the police found the second defendant in a bedroom on top of a bag of marijuana. Additionally, the officers found other bags of marijuana in the bedroom, a cooler under the bed containing 19 ounces of marijuana, a bag with 5.39 grams of crack cocaine on the floor of the bedroom, digital scales, and \$1,466 in cash on appellant's person, including the \$10 bill used by the confidential informant during the controlled buy. The Court held that appellant could not collaterally attack de facto a magistrate's signing of the warrant where the de facto magistrate read the warrant to the chief magistrate over the phone. The fact that the de facto magistrate was not old enough to serve as a magistrate or that other statutory prerequisites were unfulfilled does not invalidate the search warrant. The Court held that "the fact that a person is ineligible to hold a particular office, or has failed to take an oath, does not prevent that person from being an officer de facto, and while de facto in such office, competent to act therein."

Search and Seizure

State v. Venzen, A07A0325

In a 4-3 decision, the Court of Appeals reversed the trial court's grant of appellee's

motion to suppress marijuana. On the day of appellee's arrest, police had approached the residence to execute an arrest warrant for another man, Delyno Theodore Brown. As the officers approached the door, they looked through a window and saw a man, later identified as appellee, sitting on the couch rolling a marijuana cigarette. The police also saw a bag of marijuana beside appellee on the coffee table. When the police knocked on the door to execute the warrant, appellee opened the door with the burning marijuana cigarette in hand. Exigent circumstances arise when an officer reasonably believes that immediate action "is a necessary response on his part to an emergency situation," and had the officers retreated to obtain a warrant, neither appellee nor the contraband would have been present upon their return. For these reasons, the Court found that exigent circumstances existed. Further, appellee's lawful arrest for possession of marijuana authorized a search of the area within his immediate presence. Thus, the contraband discovered during that search including the marijuana cigarette in his hand and the marijuana in plain view on the coffee table were admissible as the product of a search incident to arrest.

Patton v. State, A07A0657

The Court of Appeals affirmed the trial court's denial of appellant's motion to suppress evidence found during appellant's arrest for trafficking in methamphetamine. A woman who had been arrested told a special agent that she would set up a purchase of methamphetamine from appellant. The woman had not been previously used as a contact, but when she was arrested she provided reliable information regarding a stolen tractor. The agent monitored the phone call the woman ostensibly made to appellant wherein the woman arranged to meet appellant and make the drug purchase the next day at 9:00 p.m. at a Dairy Queen. The woman told the agent that appellant would be driving a red Toyota Paseo with chrome rims and tinted windows and may have someone with him. At 9:30 p.m. the following night, a red Paseo occupied by two men pulled into the Dairy Queen. The informant, who was not supposed to be present, approached the vehicle

and spoke with the occupants. Subsequently, appellant made a U-turn and sped out of the parking lot. After a short chase on Highway 20, the police stopped appellant's vehicle, told the occupants to get out and lie down and handcuffed the men. The officer saw a Ziploc baggy containing numerous pink pills and a pill bottle of hydrocodone in plain view. Although a tip provided by an informant of unknown reliability will not ordinarily create a reasonable suspicion of criminal activity, if the tip is detailed enough to provide some basis for predicting the future behavior of the suspect, reliability may be established if the details are corroborated by the observations of the police. The tip did predict aspects of appellant's future behavior that were not available to the general public and were corroborated by the observations of the officers. Further, the officers had a separate basis for the stop and arrest of appellant based on appellant's reckless act of speeding through a parking lot.

St. Fleur v. State, A07A0778

The Court of Appeals reversed the trial court's denial of appellant's motion to suppress evidence found during the execution of a search warrant at his residence. Appellant contends that the magistrate did not have a substantial basis for determining that probable cause existed to search appellant's home. The State conceded that the informant was not a reliable informant as he had never previously provided information to the investigator and the investigator did not know the confidential informant prior to the informant's arrest for possession of marijuana. Further, the investigator did not verify that the informant actually spoke to the appellant or that the informant called a number connected to the appellant when the informant agreed to call "Ed" to arrange a marijuana buy. Nothing in the affidavit indicated that appellant was actually observed at the residence prior to the issuance of the warrant. Moreover, during the conversation between the informant and "Ed," the informant did not set a time for the buy and later, no steps were taken towards actually conducting the transaction. Thus, the information provided by the informant remained unconfirmed.