

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 8, 2008

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THIS WEEK:

- **Child Molestation, Sexual Battery, Improper Bolstering**
- **Search & Seizure, Trafficking**
- **Search & Seizure**

Child Molestation, Sexual Battery, Improper Bolstering

Whitaker v. State; A08A1159

Following a jury trial, appellant was convicted of child molestation and sexual battery. Appellant appeals from the denial of his amended motion for new trial, contending that the trial court erred in allowing the State to introduce into evidence the victim's videotaped interview because it improperly bolstered her testimony and refusing to give a requested charge on prior inconsistent statements to the jury. The record shows that on three separate occasions appellant inappropriately touched his 9- year-old niece. The police were called and a detective conducted an interview with the victim which was recorded on videotape. The videotape was introduced into evidence and played for the jury.

The Court of Appeals held that the videotaped interview was admissible under OCGA § 24-3-16 as a statement made by a child under the age of 14 years describing an act of sexual contact, and that it is not reversible error to fail to charge in the exact language requested when the charge given adequately covers the correct legal principles. The Court found no error since the applicable law was adequately covered in the trial court's pattern charge. Judgment affirmed.

Search & Seizure, Trafficking

Garcia v. State; A08A1084

Following a jury trial, appellant was convicted of trafficking in methamphetamine, driving without a license, driving without insurance, and alteration of license plates. Appellant appeals the drug trafficking conviction, contending that the trial court erred in denying his motion to suppress evidence seized in the search of his vehicle following his arrest at a traffic stop because the purpose of the search is prohibited since it was not conducted to protect the officer from attack, to prevent him from escaping, or to gather evidence of the crime for which he was arrested. The record shows that after appellant was stopped for driving a vehicle bearing an altered license plate, he was unable to present a valid driver's license or proof of insurance. Appellant was subsequently placed under arrest and the car was searched incident to appellant's arrest. An officer observed part of a plastic bag sticking out from a gap in the molding underneath the steering column. The bag was pulled out and later determined to contain over 250 grams of methamphetamine.

The Court of Appeals held that because the officer lawfully arrested appellant for traffic violations, the search of the automobile incident to arrest was valid, and the contraband found in the course of the search was admissible into evidence. Judgment affirmed.

Search & Seizure

McKinney v. State; A08A0830

Appellant appeals his conviction for felony possession of marijuana. Appellant

contends that the trial court erred in denying his motion to suppress because the arresting officer illegally detained him by asking for consent to search his vehicle when he did not have a reasonable articulable suspicion of criminal activity. The record shows that a deputy sheriff stopped appellant for speeding. Appellant, who was driving a rental car, gave the deputy a copy of the rental agreement in lieu of proof of insurance. The deputy ran a license check. While waiting for the license information, the deputy asked appellant if there was anything illegal in the car and for consent to search it. Appellant denied that there was anything illegal in the car, declined to consent to a search of the vehicle but said that the deputy could walk his dog around the vehicle. The dog made a positive alert. The deputy then searched the car and found a zip-lock bag containing approximately 12 ounces of marijuana.

The Court of Appeals found that because appellant failed to provide a transcript of the hearing and the trial court's order denying his motion to suppress, it must presume that the evidence before the trial court supported its decision to deny the motion. Judgment affirmed.