

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JANUARY 7, 2011

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THIS WEEK:

- **Sentencing**
- **Search & Seizure**

Sentencing

Johnson v. State, A10A1949 (10/20/10)

Appellant contended that the trial court violated his right to due process by vindictively sentencing him to a harsher sentence on remand. The record showed that appellant was convicted of two felony and two misdemeanor counts. The two felonies were to run consecutively (count 2 consecutive to count 1, each 5 years to serve) and the two misdemeanor counts were to run concurrent to count 2 (twelve months on each). The Court of Appeals reversed count 2 and on re-sentencing, the trial court resentenced appellant to the same sentence on count 1 and that the two misdemeanor counts would run consecutive to count 1 and concurrent to each other.

Due process prohibits the imposition of a more severe sentence as a result of vindictiveness against a defendant for successfully attacking his conviction. Vindictiveness is presumed if the trial court imposes a harsher punishment on resentencing, but the presumption may be overcome by objective information in the record justifying the increased sentence. Accordingly, the threshold issue was whether appellant received a harsher punishment on resentencing. The Court found that he did not. Each of the two felony sentences was for 5 years, making a total of ten years to serve. On remand, the trial court again sentenced appellant to 5 years on the remaining felony and again, a year each on the misdemeanors,

to run consecutively to the felony, but concurrent to each other. This made a total of 6 years. Since the trial court did not impose harsher punishment on resentencing, no presumption of vindictiveness arises therefrom, and the resentencing was affirmed.

Search & Seizure

State v. Bethel, A10A1863 (10/28/10)

The State appealed from the grant of a motion to suppress. The trial court suppressed marijuana discovered in a vehicle as a result of a search during a traffic stop. The trial court held that the search was illegal because the municipal officer who made the stop was outside of his jurisdiction when the stop was made.

The Court reversed. Interpreting the language in OCGA § 40-13-30 and OCGA § 17-4-23, the Court found that as a general rule, a municipal police officer is authorized to investigate crimes and/or arrest suspects only for those infractions that occur within that officer's territorial jurisdiction. However, an officer has authority to arrest a person accused of violating any law or ordinance governing the operation of a vehicle where the offense is committed in his presence regardless of territorial limitations. Therefore, the officer in this case had authority to arrest Bethel when he saw him commit a traffic violation, even though the officer was outside his jurisdiction. Accordingly, the trial court erred in granting the motion to suppress the marijuana.