

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 9, 2013

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THIS WEEK:

- **Search & Seizure; Gant**
- **Statute of Limitations; Demurrers**
- **Jury Charges; Accident**
- **Search & Seizure; Motion to Suppress**
- **Search & Seizure; Obstruction**
- **Forfeitures; Continuances**
- **Search & Seizure; Probable Cause**
- **Search & Seizure; GPS Tracking**

Search & Seizure; Gant

Ross v. State, A13A0597 (7/15/13)

Appellant was convicted of manufacturing marijuana. The evidence showed that a GSP helicopter spotted two marijuana plants growing in a tire. The plants were located in a rural area of young pine trees and high grass. The helicopter notified a ground team to travel to that location. The plants were behind a house situated a quarter of a mile or more from the next residence. The backyard of the house was an area of mowed grass that ended at an apparent property line where the area with pine trees and high grass began. The marijuana plants were at the end of a distinct path that led from the property line for a distance of approximately 75 feet. After spotting the marijuana plants, the crew of the helicopter observed appellant come out of the house and go to a black car. Appellant went back and forth between the house and the car several times before the ground team arrived. When the ground team arrived, appellant was found in his car and he was detained. Appellant's

car was searched and evidence of marijuana use and cultivation was seized. Appellant was subsequently arrested.

Appellant contended that the trial court erred by denying his motion to suppress, asserting that the warrantless vehicle search violated *Arizona v. Gant*, 556 U. S. 332 (2009). The Court disagreed. Although police officers must secure a warrant prior to conducting a search, the automobile exception was applicable here. Under the automobile exception, a police officer may search a car without a warrant if he has probable cause to believe the car contains contraband, even if there was no exigency preventing the officer from getting a search warrant. Probable cause to search an automobile exists when the facts and circumstances before the officer are such as would lead a reasonably discreet and prudent man to believe that the contents of the vehicle offend the law. Above all, the inquiry is based on the totality of circumstances surrounding the transaction. Probable cause to believe a vehicle contains evidence of criminal activity authorizes a search of any area of the vehicle in which the evidence might be found.

Here, the Court found, the officers observed marijuana plants in a rural area, a traveled path between the closest residence and the marijuana plants, and appellant's contemporaneous movement from the house to his vehicle. Appellant was stopped in his vehicle, and a responding officer subsequently noted that one of the tires on the vehicle did not match the others and that the tire had the same make, model and serial number as the tire in which the marijuana plants were being grown. Based on the totality of the circumstances, the Court found that a reasonable and prudent officer could believe that appellant was manufacturing marijuana and using his vehicle to

transport the contraband. Consequently, there was probable cause to believe that appellant's vehicle contained marijuana, and the search of the passenger compartment and trunk was justified pursuant to the automobile exception to the warrant requirement.

Statute of Limitations; Demurrers

Pennington v. State, A13A0012 (7/16/13)

Appellant was convicted of five counts of felony theft by conversion and six counts of felony theft by taking. He was acquitted of one count of theft by conversion. Appellant contended that the trial court erred in denying his motion to quash the indictment. The Court agreed and reversed appellant's convictions on seven counts of the indictment and concluded that appellant was entitled to a new trial on the other four.

The evidence at trial showed that appellant was an accountant whose business provided payroll and tax-related services for numerous clients. Beginning in 2004, appellant repeatedly withdrew or transferred funds from the payroll escrow account to pay personal and/or unrelated business expenses. As a result of these illegal withdrawals, the payroll escrow account often held insufficient funds for appellant to pay his clients' payroll taxes as they became due. Because of his failure to pay the client's taxes, appellant's clients started to receive delinquent tax notices from the IRS, even though they had paid the money they owed to appellant. Upon receiving these notices, the clients contacted appellant, who offered a variety of excuses for the notices and consistently assured his clients that he would take care of the problems with the IRS, thereby abating his clients' concerns. Ironically, it was not until after appellant reported an employee's theft to the county sheriff's office in May 2008 that an official investigation and private audit of his financial records revealed to some of his clients that he had been illegally withdrawing and transferring funds from the payroll escrow account for several years.

On December 4, 2009, the State filed an accusation charging appellant with only four counts of theft by conversion. Eight months later, on September 13, 2010, the State filed an indictment which contained twelve counts. Prior to trial, appellant moved to quash the indictment, based in part on the fact that some of

the alleged crimes were barred by the four year statute of limitations. The Court did not rule on the motion prior to trial, and after the close of the evidence, ruled against appellant and also denied his motions for directed verdict.

Appellant contended that the trial court erred in denying his motion to quash. The Court initially addressed whether the indictment superseded and related back to the date of the accusation. To relate back to an accusation, a superseding indictment brought after the statute of limitation passed will be deemed valid as long as (i) the original indictment is still pending; (ii) the original indictment was timely; and (iii) the superseding indictment did not broaden or substantially amend the original charges. Whether an amended indictment broadens or substantially amends the charges contained in the original indictment depends upon whether the new charges contain elements that are separate and distinct from the original charges. The record showed that the accusation only charged appellant with four counts of theft by conversion, that each offense was allegedly committed within eight- to twelve-month periods in 2006 or 2007, and that each count charged appellant with illegally taking funds from "[appellant's] Payroll Escrow Account," without naming any individual or business who had deposited funds into that escrow account. In contrast, the indictment charged appellant with committing three counts of theft by conversion during certain periods in 2006 and 2007, but it also included two charges that he committed theft by conversion in 2004 and 2005—additional offenses that the State did not allege in the accusation. Further, the indictment added seven counts of theft by taking that allegedly occurred on specific dates in February, March, or April 2006. And, unlike the accusation, which stated that appellant had stolen from his business' payroll escrow account, each of the counts of the indictment named specific and independent businesses that had deposited funds into the escrow account for the purpose of paying taxes and, thus, were the alleged victims of appellant's thefts from the account. The drastic change between the accusation and indictment prompted the Court to conclude that the indictment substantially and materially amended the accusation, so that the indictment did not relate back to the accusation. Consequently, the State's filing of the accusation did not stop the running of the

four-year statute of limitation period for filing the indictment and therefore, seven counts of the indictment were barred by the statute of limitations.

Next, the Court determined whether the trial court's erroneous denial of appellant's motion to quash these seven counts prejudiced appellant to the extent that he was denied a fair trial as to the four counts upon which he was convicted. The Court held that the admission of evidence on the seven counts unduly prejudiced the jury's independent consideration of appellant's guilt on the other four counts. Further, there was a reasonable probability that the jury's verdict would have been different if the evidence on these seven counts had not been disclosed to the jury. Thus, the Court held that appellant was entitled to a new trial on the other four counts of the indictment and remanded the case to the trial court.

Jury Charges; Accident

Hughes v. State, A13A0553 (7/15/13)

Appellant was convicted of hijacking a motor vehicle, armed robbery, attempted kidnapping, obstruction, and marijuana possession. The evidence showed that the victim was stopped at an intersection in the early morning when appellant jumped into her manually driven vehicle, held a pistol in the victim's direction, and demanded that the victim "[d]rive or die." The victim, fearing for her life, abandoned the vehicle and appellant slid into the driver's seat. Unable to drive the manual gearbox, appellant remained in the vehicle until officers arrived, at which point appellant fled on foot, taking the victim's purse with him. Upon his arrest, appellant complained of experiencing blurred vision, which he attributed to an attack upon him earlier that night by several males.

Appellant contended that the trial court erred when it declined to charge the jury on the law of accident, which he maintained was his sole defense and was authorized by his testimony. The Court stated that to authorize a jury instruction on a subject, there need only be slight evidence to support the theory of the charge. O.C.G.A. § 16-2-2 provides that, "[a] person shall not be found guilty of any crime committed by misfortune or accident where it satisfactorily appears there was no criminal scheme or undertaking, intention, or criminal negligence." In addition, the facts

must show that the defendant did not act in a manner showing an utter disregard for the safety of others who might be expected to be injured thereby.

The Court held that appellant's testimony did not warrant the charge. According to appellant, he used the victim's passing vehicle as his getaway vehicle from a drug deal gone bad. Thus, he admittedly entered a stranger's car without the driver's consent, frightened her, knowingly placed her life in danger of his pursuing attackers; threatened her that she would be harmed if she did not comply with his demands; and repeatedly ordered her to drive him away, irrespective of her pleas and protest. His words and acts induced the driver to abandon possession of her vehicle and her purse and to flee on foot because of fear for her personal safety. Appellant further testified that he then slid into the driver's seat; but upon realizing that police had arrived, he fled pursuing officers because he knew he had drugs on his person; and as he fled police, he carried with him the driver's purse. The Court held that nothing in appellant's testimony authorized a charge on accident. Therefore, the trial court committed no error when it declined to give such a charge.

Search & Seizure; Motion to Suppress

Nash v. State, A13A0200; A13A0201 (7/16/13)

Nash and Davis were charged with VGCSA. After the trial court denied their motions to suppress, the Court granted them a consolidated interlocutory appeal. The evidence showed that an officer initiated the stop of a vehicle based on what appeared to be a window tint violation. The vehicle had a South Carolina license plate and when the driver rolled down his window, the officer noticed the presence of several air fresheners inside the vehicle. The vehicle had three occupants: the driver; Nash, seated in the front seat passenger; and Davis, seated in the back. After the driver gave the officer conflicting stories concerning his destination, the officer tested the window tint and subsequently radioed for backup. The second officer arrived less than 10 minutes after the radioed request, and about 20 minutes into the stop. Following his arrival, the first officer issued the driver a warning citation. When the officer counseled the driver about the citation however, he returned the driver's

license and gave him a copy of the citation, but not the registration of the vehicle. The officer then asked if the driver had any drugs in the vehicle, to which the driver responded that there was not. When the officer then returned the registration, the officer then asked the passenger, Nash, to consent to a search. Nash appeared nervous and the officer then radioed a K-9 unit to perform a free air search. The K-9 officer was about 25-27 miles away when he had received the dispatch and it took "twenty minutes, give or take" to respond. When the K-9 arrived and alerted officers to the presence of drugs, the officers recovered contraband inside of the vehicle. Davis testified that he sat in the first officer's patrol car for about 45 minutes after the window tint test concluded, waiting for the K-9 unit to arrive.

Appellants contended that the trial court erred in suppressing the evidence of the drugs recovered from the vehicle. Specifically, they argued that there was no reasonable articulable suspicion of criminal activity to justify the continued detention once the officer wrote the window tint warning. The Court stated that generally, a reasonable time to conduct a traffic stop includes the time necessary to verify the driver's license, insurance, registration, and to complete any paperwork connected with the citation or a written warning. A reasonable time also includes the time necessary to run a computer check to determine whether there are any outstanding arrest warrants for the driver or the passengers.

The Court found that the evidence showed while the officer was completing his investigation of the window tint, he questioned the driver about his destination and relationship with Nash and Davis, and also questioned Nash regarding the same matters when he returned to the vehicle to obtain the reading on the window tint. Thus, the questioning did not unreasonably expand the scope or duration of the stop.

However, the Court determined that the stop was impermissibly extended after the officer radioed for the K-9 unit. An officer may order a free-air search of the area surrounding the vehicle by a trained canine without implicating the Fourth Amendment, if it is performed without unreasonably extending the stop. At its core, the Fourth Amendment inquiry examines the reasonableness of the officer's conduct, measured in objective terms by examining the totality of the circumstances.

While acknowledging that there was no bright line, the Court noted that a detention of fifteen minutes or less to await the arrival of a drug dog was appropriate where an officer had reasonable suspicion of other criminal activity.

The Court held that the detention was neither brief, nor justifiable in its length to confirm or dispel any suspicions of criminal activity quickly. Although the officer testified that he had suspected criminal activity much earlier in the stop because of the air fresheners and conflicting stories, he did not timely inquire into whether the men had illegal substances in the car, did not ask for consent to search, or request the K-9 unit. Instead, the officer continued with the investigation of the window tint violation and completed the warning citation. At that point, even though he suspected criminal activity much earlier in the interaction, he then questioned the men about illegal contraband, asked for consent to search, and then requested a K-9 unit that was almost 30 miles away. Under these circumstances, the Court concluded, the actions of the officer unreasonably expanded the scope or duration of the traffic stop. Therefore, the order of the trial court was reversed and remanded with direction to grant appellants' motions to suppress.

Search & Seizure; Obstruction

Walker v. State, A13A0444 (7/12/13)

Appellant was convicted of possession of cocaine with the intent to distribute and obstruction of a law enforcement officer. He contended that the officer lacked a particularized and objective basis for suspecting that he was involved in criminal activity and thus, appellant was entitled to refuse to comply with the officer's demands and to end the encounter by running away from the officer.

First, the Court considered whether the officer detained appellant in violation of the Fourth Amendment. The three types of police citizen encounters include: (1) communication between police and citizens involving no coercion or detention; (2) a brief seizure that must be supported by reasonable suspicion; and (3) full scale arrest that must be supported by probable cause. In the first tier, police officers may approach citizens, ask for identification, and freely question the citizen without any basis or belief that the citizen is involved in criminal activity, as long as the officers do not

detain the citizen or create the impression that the citizen may not leave. The second tier is triggered when the officer actually conducts a brief investigative stop of the citizen. Even in the absence of probable cause, a police officer may stop persons and detain them briefly when the officer has a particularized and objective basis for suspecting the persons are involved in criminal activity. Also, in a second tier stop a police officer must possess more than a subjective unparticularized suspicion or hunch. The officer's action must be justified by specific and articulable facts which, taken together with rational inferences, reasonably warrant intrusion. Further, the trial court must be able to determine that the detention was neither arbitrary nor harassing. In determining whether the stop was justified by reasonable suspicion, the totality of the circumstances—the whole picture—must be taken into account.

The arresting officer testified that, just after midnight he was searching an area around a school looking for an unidentified man who had been seen trying to steal a motorcycle nearby. The suspect in the attempted theft was described as an African American male in dark clothing. The officer saw appellant, who was wearing a blue sweatshirt and very light colored pants, walking off the school property. The officer approached appellant, who put his hands into his sweatshirt pockets. The officer commanded appellant to take his hands out of his pockets. Appellant refused the order and ran away from the officer. As he ran, he discarded a pill bottle. The officer pursued appellant, who was eventually caught. The officer recovered appellant's discarded pill bottle, and discovered it contained cocaine. When asked at what point during his encounter he decided to arrest appellant, the officer responded, "when he takes off running from me after I attempt to stop him, because what [was] he doing at [the school] at twelve minutes after midnight?" Further, the officer did not testify that he stopped appellant based on any observation other than his presence at that time and place.

The Court noted that the officer approached appellant in the manner of a first tier encounter. However, it immediately escalated into a second tier stop when the officer commanded appellant to remove his hands from his pocket. Thus, the inquiry turned to whether the detention was supported by articulable suspicion. Implicit in the officer's testimony was an assumption that appellant

was trespassing on school property. The Court noted that the officer simply lacked enough information to elevate the assumption to reasonable suspicion. Additionally, there was no evidence that the officer had any information that appellant was present on school property without the consent of the school or for any unlawful purpose. Thus, there was no information available to the officer that appellant's presence on the property was connected with a criminal purpose. Mere presence in an area of suspected crime is not enough to support a reasonable, particularized suspicion that a person is committing a crime. In considering the totality of the circumstances, the Court concluded that the officer's observation of an unidentified person exiting school property shortly after midnight did not amount to an objective, articulable suspicion of criminal activity. Rather, the officer's action amounted to only intuition or a hunch.

The Court also found that appellant's voluntary discarding of the pill bottle with the drugs inside did not remove the taint of the illegal stop. While a criminal defendant's voluntary abandonment of evidence can remove the taint of an illegal stop or arrest, the abandonment must be truly voluntary and not merely the product of police misconduct. When a person who has been unlawfully detained is motivated by the expectation of an impending arrest to throw away contraband, there is no voluntary abandonment of the contraband sufficient to dissipate the taint of the illegal detention. The Court held that there was no attenuation of the taint because the seizure of the challenged evidence was directly and immediately related to the illegal detention and the trial court erred in concluding otherwise. Thus, the Court reversed the denial of appellant's motion to suppress.

Finally, the Court held that appellant's exercise of his right to avoid a first-tier encounter and his actions did not amount to obstruction. Appellant's flight happened *after* and as a result of the officer's violation of appellant's constitutional rights in initiating a second-tier investigatory detention without any reasonable suspicion of criminal activity. In other words, even though the officer was lawfully discharging his duties at the time appellant fled, those official duties during the first tier encounter did not include detaining appellant or preventing him from leaving.

Forfeitures; Continuances

Bourassa v. State, A13A0092 (7/16/13)

Appellants appealed from a judgment of forfeiture entered against their property pursuant to O.C.G.A. § 16-13-49. The record showed that on November 12, 2008, the State filed its complaint for forfeiture. From December 2008 through September 10, 2010, the trial court entered a series of consent orders that continued the forfeiture hearing. In October 2010, the State filed a motion to stay the proceedings, citing as good cause a federal court civil suit against the prosecutor and case agent involved in the forfeiture action, which alleged that they had acted with malice and prejudice against appellant's civil rights. On November 4, 2010, the trial court ruled that the federal action was good cause for a stay and that the forfeiture case be calendared within sixty days of the issuance of an order on the State's motions to dismiss filed in the federal action. In February 2012, one of the appellants filed a motion to dismiss the complaint for failure to timely hold a forfeiture hearing, alleging that the federal lawsuit did not constitute good cause to indefinitely stay the forfeiture proceeding. The trial court ultimately heard the forfeiture action on April 3, 2012 and granted judgment for the State.

Appellants contended that the trial court should have dismissed the forfeiture action for lack of a timely forfeiture hearing. The Court agreed. Under O.C.G.A. § 16-13-49(o)(5), "[i]f an answer is filed, a hearing must be held within 60 days after service of the complaint unless continued for good cause." The term "must" has been interpreted as meaning "mandatory" in order to ensure speedy resolutions of contested property rights. Although the State argued that the trial court was authorized to conclude that the pendency of the federal suit was good cause for a continuance, the Court noted that it had previously held that the outermost limit of a continuance would be an additional 60-day period before either the matter would be heard again, or another continuance granted. Here, the record showed that after the trial court granted the State's motion to stay, one year had passed before either a hearing or another continuance had been heard.

In so holding, the Court also dismissed the States' contention that O.C.G.A. § 16-13-49(w) allowed the trial court to stay the forfeiture case "pending the resolution of a

related legal matter” in federal court. The Court noted that the language of the subsection only provided that the trial court may stay civil forfeiture proceedings “during the criminal trial resulting from a related indictment or information alleging a violation of this article.” Because the language of the subsection extended only to criminal and not civil proceedings, the Court declined to interpret the meaning endorsed by the State.

Search & Seizure; Probable Cause

Chatham v. State, A13A0789 (7/15/13)

Appellant was indicted for VGSCA. He contended that the trial court erred in denying his motion to suppress evidence seized from his residence pursuant to a search warrant. Specifically, he contended that the warrant was issued without probable cause. The Court agreed.

The record showed that the State produced the affidavit and application that the attesting law enforcement officer submitted in support of the request for a search warrant. In the affidavit, the officer stated he had met with a confidential informant (“CI”) who claimed to have personal knowledge that appellant was selling crystal methamphetamine from a residence at a particular address, and that the CI could purchase crystal methamphetamine from appellant inside that residence. After searching the CI’s person and vehicle and finding no contraband or currency, the officer gave the CI funds with which to purchase drugs and directed the CI to the specified residence to attempt a narcotics purchase. Further, the affidavit provided that the officer acted in an undercover capacity and followed the CI to within a short distance of the residence, observing the CI’s vehicle on the road. A short time later, the officer met with the CI at a predetermined meeting location and the CI immediately handed the officer a quantity of suspected crystal methamphetamine. The CI stated that he purchased the suspected crystal methamphetamine from appellant from inside the above-mentioned residence in exchange for the undercover drug purchasing funds. The officer then searched the CI’s person and vehicle and no contraband or currency was located.

The officer averred further that the CI had a criminal history and was a convicted felon. Also, the CI provided directions to and a description of the residence and fellow law

enforcement officers knew that appellant lived at that residence. Moreover, the officer averred that the CI had participated in at least one (1) narcotics investigation (however, it was only “*this* investigation”) and at no time had the CI shown or expressed any ill will or malice towards appellant. The State did not claim that any additional information was presented to the magistrate. While the trial court found probable cause and remarked that the officer had followed protocol by searching the CI before and after the CI obtained the drugs, the trial court noted that the police had not seen or recorded the purported transaction.

The Court stated that to determine whether a search warrant contains sufficient probable cause, the Court employs the totality of the circumstances analysis as provided in *Illinois v. Gates*. In dealing with a CI, the informant’s veracity and basis of knowledge are major considerations in the probable cause analysis. An informant’s information shows nothing more than rumor if the affidavit does not contain sufficient facts for the magistrate to independently determine the reliability of the informant or the basis of the informant’s knowledge. However, there is no absolute requirement that a search warrant affiant state circumstances which demonstrate the reliability of the informant and his information. Of course, such factors are considered within the totality of the circumstances.

The Court found that the affidavit did not contain sufficient information from which the magistrate could determine that the CI was inherently credible or reliable. It was undisputed that, prior to the purported drug buy, the CI had not assisted police in a narcotics investigation. The fact that the CI knew where appellant lived did not establish that he or she was a credible source of information about appellant’s alleged current criminal activity in the residence. Such a fact did not independently corroborate the CI’s statement. In addition to being untested, the alleged transaction was neither seen nor heard. Further, there was no indication that the officer saw the CI either enter or exit appellant’s residence, or that police monitored his movement. For those reasons, the Court held that the affidavit failed to set forth sufficient information from which the magistrate could have independently determined the reliability of the information or of the CI. Further, the Court rejected the State’s contention that a controlled buy conducted

under the observation of the law enforcement officer could, by itself, provide probable cause. The Court found that here, there was no evidence that the police in fact controlled or observed the purported buy, or observed the CI’s conduct immediately before or immediately after the purported buy. Thus, the trial court erred by denying appellant’s motion to suppress.

Search & Seizure; GPS Tracking

Hamlett v. State, A13A0474; A13A0882 (7/16/13)

Appellants were convicted of burglary and possession of tools for the commission of a crime, but convicted of misdemeanor traffic offenses. They contended that the trial court erred in denying their joint motion to suppress evidence. Specifically, they contended that their conviction resulted from evidence seized from an illegally placed GPS tracker. Further, they claimed that the trial court’s order was not supported by probable cause. The Court agreed that (1) the placement and monitoring of the GPS constituted a search, (2) the trial court’s order failed because there was no probable cause to support the issuance of the warrant, and (3) the illegality of the subsequent traffic stop was not cured by the misdemeanor traffic offenses that the officer observed. Accordingly, the Court reversed appellant’s convictions of burglary and possession of tools for the commission of the crime, but affirmed the misdemeanor traffic offenses.

The evidence showed that on August 5, someone committed a burglary at a residence in Fulton County. The next evening at about 8:00 p.m., the burglarized homeowner responded to his front door to a man he did not know and who offered to perform yard work, even though it was raining and almost dark. The homeowner refused the offer but asked for the man’s phone number and watched him walk away. Because his home had been burglarized the day before, the homeowner followed and witnessed the man get into the passenger side of a dark colored GMC pickup truck with the tag number “BMP0476.” The homeowner then reported the encounter to the police. A detective later testified that, in August of 2010 he was investigating burglaries that had occurred off of the road in question. Upon receiving the homeowner’s report of the August

6th incident, the detective determined that the tag of the pickup truck was registered to one of the appellants, and he obtained a Cobb County address for him. The detective knew that there was an outstanding arrest warrant for that appellant on a charge of theft by receiving stolen property. According to the detective, that charge arose from a January 2010 theft of three dishwashers from an Atlanta business; the dishwashers were later found at a building supply surplus store. The store's records showed that appellant and another man had brought the dishwashers to the store to sell a few days after they were stolen.

Based on that information, the detective applied for a court order from Cobb County, stating the information as followed: "[t]his Affiant believes that [appellant] and other unknown accomplices are involved in the crime of Burglary in the Atlanta Metro Area. This Affiant requests authorization from the court to install and monitor a GPS signaling device on the 1998 GMC Sierra pickup truck Georgia tag #BMP 0476 to assist in surveillance of the vehicle and its occupants in efforts to identify accomplices and possible fencing locations of stolen goods and lead Police to the arrest of [appellant]." The judge approved the order and the detective went to appellant's home and installed the device on the truck's undercarriage while it was parked in the driveway. Fifteen days later, task force officers monitored the vehicle which traveled to Sandy Springs and stopped for 28 minutes off a residential road. Suspecting suspicious activity, the officers issued a BOLO for appellant's vehicle. Meanwhile, a Sandy Springs officer soon observed the truck matching the description and followed it for a few miles before conducting a traffic stop; he did not stop the truck immediately because he was waiting for backup officers to arrive and assist him when he stopped the truck. While waiting to conduct the stop, the officer observed that the truck's brake lights were not operating and the vehicle displayed an expired paper tag. The officer then conducted the stop and appellants were arrested for the burglaries.

Citing the recent Supreme Court decision of *United States v. Jones*, ___ U. S. ___, 132 S.Ct. 945, 181 L.E.2d 911 (2012), the Court held that attaching the GPS tracker constituted a search under the Fourth Amendment and thus, the installation and monitoring of a GPS device had to be authorized by probable cause.

In determining sufficient probable cause, the issuing magistrate or judge must make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. Where the State fails to show any connection between the items sought and the place to be searched, however, there are no reasonable grounds for the search.

The Court held that the State failed to make the connection required to tie appellant to the August 5th burglary with the following night when appellant knocked on the homeowner's door soliciting yard work. Further, the detective who submitted the order admitted that there was no evidence that appellant or his truck had been at the burglary on August 5th and the homeowner did not identify either appellant. As for the affidavit's assertion that the GPS device could have "lead [the] Police to the arrest of [appellant]," the affidavit itself showed that there was already a seven-month-old outstanding arrest warrant for appellant, and it gave his home address. Thus, the State clearly had the necessary information and a sufficient basis for conducting an arrest of appellant before the detective even executed the affidavit. Therefore, the Court held, all evidence seized as a result of the illegal use of the GPS device should have been suppressed.

Last, the Court concluded that the illegality of the seizure was not cured by the fact that the officer who conducted the traffic stop observed that one of the truck's brake lights was not operating and that the vehicle was improperly displaying an expired, paper "drive-out" tag. Primarily, the Court noted that the underlying reason that the officer began to follow appellant's truck was based on the GPS monitoring of his movements rather than the actual misdemeanor traffic violations. Thus, the evidence showed that the traffic stop of appellant's truck would not have occurred but for the State's illegal use of the GPS tracking device. Consequently, the Court held, because the only proof offered by the State to support appellant's burglary and possession of tools convictions was the evidence illegally seized from the stop of the vehicle, those convictions had to be reversed.