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DAILY REPORT

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Anonymous Tip, Drugs in Car Aren't Enough for Home Search, Panel Says

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THE GEORGIA Court of Appeals has thrown out the discovery of 10 types of drugs in a man's home, holding that an anonymous tip and the finding of a small amount of marijuana in the man's car were not enough to justify the search of his house.

The decision Monday reversed a ruling from then-Chief Magistrate Court Judge Frank Cox in Cobb County, who resigned last month amid complaints he was abusive to lawyers and litigants.

Defendant Jack Wiggins was charged with possession of less than an ounce of marijuana during a traffic stop, a

misdemeanor. Afterward, the Kennesaw Police Department obtained a warrant to search his home, where 10 other drugs were found. Wiggins was charged with felony possession with intent to distribute.

Cox denied a motion to dismiss the evidence on Wiggins' claim that police did not conduct a proper investigation before asking for the search warrant.

The Court of Appeals sided with the defendant.

"On appeal, Wiggins argues that the search was invalid because there was insufficient probable cause to support the issuance of the search warrant. We agree," wrote Judge Stephen Dillard. Presiding Judge Sara Doyle concurred; Judge



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Defense attorney Lawrence Zimmerman:
"The Fourth Amendment is alive."

M. Yvette Miller concurred in judgment only.

The panel concluded that police based the search warrant request on an "anonymous informant's wholly uncorroborated allegations that Wiggins was selling drugs at some undisclosed time."

Based on that tip, an undercover narcotics agent watched Wiggins' house for 10 minutes before following him and calling another officer to stop him for failure to maintain his lane. During the stop, police said they smelled marijuana, then searched the car and found a "user amount" of the drug and a revolver.

The Court of Appeals said the tip and the traffic stop did not provide probable cause for a warrant to search the home without a proper investigation.

"The fact that Wiggins appears to have actually been engaged in drug trafficking is ultimately of no consequence for purposes of our analysis, which is grounded in the safeguards afforded by the Fourth Amendment," Dillard wrote.

Wiggins' attorney, Lawrence Zimmerman, said a reversal of an interlocutory or pretrial appeal in a drug case is rare. But, he said, "The Fourth Amendment is alive and you

can't just search people's homes on what amounts to an anonymous tip."

Zimmerman added, "Magistrate judges are not rubber stamps for law enforcement, and it's their duty to ask more questions to the person seeking the warrant before they sign off on it."

Asked whether the judge's demeanor in the courtroom that day reflected the complaints made against Cox before he resigned, Zimmerman wrote in an email, "The hearing was a little unusual, and his demeanor toward me was consistent with some of the facts that have come to light of late. It was a very tense hearing to say the least. However, to Judge Cox's credit, he signed my certificate of immediate review. If he did not, we would have been denied the opportunity to appeal until the case was over and we may have been in a different posture."

Zimmerman said he expects the charges to be dropped to a

misdemeanor possession charge from the traffic stop. He also expects the return of property seized from his client's home, including a Chevrolet Corvette, a Harley-Davidson motorcycle, a "bunch of firearms" and about \$2,000 in cash.

Cobb County District Attorney Vic Reynolds said in an email that his office is reviewing the Court of Appeals' opinion.

"Our appellate team will determine a course of action in the near future," he said. 