

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING JULY 1, 2005

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## **This Week:**

- **Evidence-Character**
- **Evidence-Relevance**
- **Similar Transactions**
- **Guilty Plea**
- **Prosecutorial Misconduct**
- **Search and Seizure**
- **Jurisdiction**
- **Statements**
- **Statements-Corroboation**

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## Evidence-Character

*Mills v. State*, A05A0591, 06/16/05, 05 FCDR 1883

The defendant was convicted of aggravated assault upon a peace officer, obstruction of a peace officer, and fleeing from a police officer. The defendant appealed his convictions on the grounds that the trial court improperly admitted evidence that he was on probation at the time of the alleged offense. The court held that this evidence was properly admitted to show the defendant's motive for fleeing from law enforcement even though it incidentally put the defendant's character in issue.

## Evidence-Relevance

*Ray v. State*, A05A0199, 06/15/05, 05 FCDR 1898

The defendant was convicted of armed robbery and other offenses, arising from incidents in which he and an accomplice robbed stores while wearing ski masks. The defendant

argued that ski masks found in his apartment along with bullet casings should not have been admitted as evidence at trial, because they were not positively shown to have been involved in the crimes. The court held that the evidence was directly relevant, because of victim testimony that the perpetrators wore ski masks and that at one point they fired a weapon.

## Similar Transactions

*Mills v. State*, A05A0591, 06/16/05, 05 FCDR 1883

The defendant was convicted of aggravated assault upon a peace officer, obstruction of a peace officer, and fleeing from a police officer. He appealed these convictions, contending that the trial court should not have admitted evidence of similar transactions. In the charged offense the defendant fled on foot following a traffic stop and then violently resisted arrest. The state offered as similar transaction evidence, three instances in which the defendant had pled guilty to obstruction of a peace officer or fleeing from a police officer. In all of the incidents the defendant fled on foot either when approached by an officer or when pulled over by an officer and in the last incident he violently resisted arrest. The court held that evidence of these incidents were properly admitted, because it was introduced to show a course of conduct and bent of mind, the incidents were sufficiently similar, and they were substantiated by the defendant's guilty pleas.

*Williams v. State*, A05A0328, 06/14/05, 05 FCDR 1893

The defendant was convicted of burglary, arising from an incident in which he stole computers from an office building during the night. The defendant appealed his conviction

on the grounds that the trial court improperly admitted evidence of similar transactions. The state offered evidence of two similar transactions. In the first transaction, the defendant stole computers from Bell South during the night and in the second he stole computers from Fidelity Bank during the night. The defendant had pled guilty to burglary in both instances. The court held that these transactions were properly admitted, because there was no question as to the defendant's guilt in those transactions, they were sufficiently similar to the charged offense, and they were offered to show course of conduct, bent of mind, or identity.

*Moody v. State*, A05A0532, 06/15/05/, 05 FCDR 1892

The defendant was convicted of speeding and DUI. He appealed his conviction, contending that the trial court erred in admitting evidence of similar transactions in the form of the defendant's three previous DUI convictions. The court held that evidence of those convictions was properly admitted. The court reasoned that the convictions were introduced to show bent of mind or course of conduct, that they were sufficiently similar in that they occurred at night and the defendant consented to a breath test in each instance, and there was sufficient evidence that the defendant committed the acts given his previous convictions.

## Guilty Plea

*Zellmer v. State*, A05A1333, 06/10/05, 05 FCDR 1888

The defendant pled guilty to armed robbery and voluntary manslaughter. The defendant appealed the denial of his motion to withdraw, contending that his plea was not intelligently and voluntarily entered. The defendant argued, specifically, that he entered the plea under duress and hired a clinical psychologist to testify as to that. The psychologist testified that the defendant was suffering from post traumatic stress disorder and did not understand what was happening at the plea hearing. The trial court found this testimony unpersuasive in light of the defendant's behavior at the hearing and in light of his repeated statements that he did not require more time with his attorney. The court held that the trial court's findings were not clearly erroneous and therefore could not be disturbed on appeal.

## Prosecutorial Misconduct

*Ransby v. State*, A05A0622, 06/09/05, 05 FCDR 1891

The defendant was convicted of aggravated assault arising from an incident in which he drove his vehicle at two police officers. He appealed this conviction, contending that the trial court should have quashed the indictment, granted a directed verdict, or granted his motion for a new trial, because important evidence, his car, had been destroyed. The court held that the destruction of evidence by the state raises a constitutional problem when 1) the evidence had apparent exculpatory value when it was destroyed and 2) that the state acted in bad faith in failing to preserve the evidence. The court held that although the defendant later claimed that he drove toward the officers, because they had fired at him might have been substantiated if the car showed signs of being struck by a bullet, it was not apparent at the time that the state failed to preserve the totaled vehicle that it might have exculpatory value. The court further held that in the defendant's case there was no evidence of bad faith, and found that in the absence of evidence of bad faith the defendant's conviction could not be reversed.

## Search and Seizure

*Moody v. State*, A05A0532, 06/15/05/, 05 FCDR 1892

The defendant appealed his conviction for speeding and driving under the influence of alcohol. He contended that the trial court erred in denying his motion to suppress, because there was not sufficient probable cause to arrest him and because he should have been read his Miranda warnings prior to being instructed to submit to field sobriety tests. The court held that there was sufficient probable cause to arrest the defendant after he failed a series of field sobriety tests. Further, the court held that the defendant was not entitled to have his Miranda warnings read prior to the field sobriety tests, because he was not under arrest and had no reason to believe he was being placed under arrest rather than simply being detained during an investigation.

*Williams v. State*, A05A0542, 06/16/05, 05 FCDR 1886

The defendant appealed his conviction for trafficking in methamphetamine on the

grounds that the officer who discovered the methamphetamine in the defendant's car did not have probable cause to search that vehicle when he smelled a strong odor of marijuana coming from the vehicle during a routine traffic stop. The court held that the strong odor of drugs gave the officer probable cause to search the defendant's vehicle. The defendant also contended that the officer exceeded the scope of the initial traffic stop and should have terminated that stop when he received all of the requested information from the defendant. The court held that although once the original purpose of a traffic stop is fulfilled, further detention constitutes a second detention, not all second detentions are unconstitutional. Such detentions are constitutional where they are justified by objectively reasonable and articulable suspicion of illegal conduct. Here, the odor of marijuana provided that objectively reasonable and articulable suspicion.

*State v. Massa*, A05A0704, 06/09/05, 05 FCDR 1895

The defendant's motion to suppress was granted. The state appealed, arguing that the trial court erred in granting the defendant's motion to suppress a baggy containing marijuana. An officer discovered the defendant's vehicle unoccupied on a dirt road. He observed a small baggy in an ash tray. He then opened the door with a Slim Jim device and removed the baggy. The defendant who was fishing at a nearby stream was charged with fishing without a license and his vehicle was impounded. The trial court found that the warrantless search was improper under the circumstances. The state then appealed arguing that, under the automobile exception to the search warrant requirement, the search was proper. The court held that the automobile exception was not an exemption and that there were no exigent circumstances to justify the officer's warrantless search of the vehicle, since it was unoccupied and he had no indication that it was going to be moved in the near future.

*Ray v. State*, A05A0199, 06/15/05, 05 FCDR 1898

The defendant was convicted of armed robbery, burglary, and a firearms offense. He appealed that conviction, contending that his consent to the search of his vehicle and apartment was not voluntary. The court held that where the defendant was a well-educated

college senior with a firm grasp of the English language, who signed consent forms to the search of his vehicle and apartment after freely driving himself to the police station for preliminary questioning, he voluntarily consented to the searches.

## **Jurisdiction**

*Green v. State*, A05A0078, 06/15/05, 05 FCDR 1897

The defendant was convicted of several offenses, including trafficking in cocaine. He requested that the trial court modify his sentence. The court held that the trial court was without the authority to modify the defendant's sentence, because his request was submitted a year after the original sentence was entered and the trial court's jurisdiction to modify sentence expires within a year, unless the sentence is void. Here, the sentence was not void.

## **Statements**

*Ray v. State*, A05A0199, 06/15/05, 05 FCDR 1898

The defendant was convicted of armed robbery, burglary, and a firearms offense. The defendant appealed, contending that the trial court erred in admitting his confession to police, because it was not voluntary. The court found that where the suspect was questioned briefly prior to being arrested, but did not confess until after being arrested and advised of his Miranda Warnings, his confession was voluntary.

## **Statements-Corroboration**

*Ray v. State*, A05A0199, 06/15/05, 05 FCDR 1898

The defendant appealed his convictions, arguing that his confession could not be sufficient to prove his guilt, because it was not corroborated by other evidence. The court held that Georgia law does not require that a confession be corroborated by other evidence. However, the court went on to find that in this case the defendant's confession was supported amply by other evidence.