Pre-Trial Proceedings

Scott T. Poole
Assistant District Attorney
Appalachian Judicial Circuit

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First Appearances and Bail / Bonds

72 Hour Hearings

- Required by O.C.G.A. § 17-4-26
- May or may not be attended by ADA
  - If ADA attends, should listen for admissions which may be admissible later

Governed by Magistrate Court Rule 25.1

- At the first appearance, the judicial officer shall:
  - Inform of the charges
  - Inform of right to an attorney and to remain silent (basically *Miranda*)
  - Advise on how to get appointed attorney
  - Advise on Pre-indictment PC hearing
  - Schedule PC hearing if requested
  - Inform of right to indictment by Grand Jury
  - Inform of right to waive PC hearing
  - Set bail if not superior court only

Bonds set by Magistrate

- Magistrate can set bond for misdemeanors and felonies not otherwise excluded
- Usually following a "schedule" locally agreed upon
- Judge can modify up or down based on particulars of the case
- Judge maintains right to modify / revoke
  - O.C.G.A § 17-6-18.
    - All bonds taken under requisition of law in the course of a judicial proceeding may be amended and new security given if necessary.

Bonds set by Superior Court

- O.C.G.A. § 17-6-1 gives the superior court exclusive authority to set bond:
  - Manufacturing / distribution of Schedule I and II
  - Trafficking Cocaine/Methamphetamine/Marijuana

Consent Bonds

- Basically a contract between the State and the defendant ratified by the court
- Any condition agreed to by parties can be included
- Be creative!

Sample Consent Bond Order

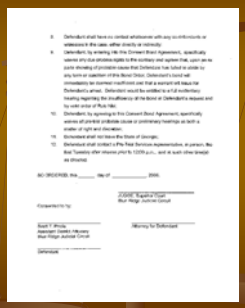
IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

IN RE: STATE OF GEORGIA	v.	INDICTMENT NO.

CONSENT BOND ORDER

The above-styled matter coming come before this Court with the defendant charged with the offense(s) of _____ and the defendant and the State having agreed to the following, it is hereby ORDERED that bond be set in the amount of $_____ subject to the following special conditions:

1. Defendant shall appear in Court when required;
2. Defendant shall not threaten nor endanger any person or property;
3. Defendant shall not violate the laws of any governmental unit;
4. Defendant shall notify of the following address pending sentencing: _____
5. Defendant shall not possess any firearms nor carry any weapons in vehicle in which firearms are present;
6. Defendant shall not possess or consume any alcohol or controlled substances, without a prescription, nor occupy any residence or vehicle in which alcohol or controlled substances are present;
7. Defendant consents to a waiver of his rights under State and Federal law against search and seizure as long as he is subject to the bond order and shall submit to such searches of his person, vehicles, bodily substances and those as may be requested by law enforcement officials;



8. Defendant shall have no contact whatsoever with any co-defendants or witnesses in the case, either directly or indirectly;
9. Defendant, by entering into this Consent Bond Agreement, specifically waives any due process rights to the contrary and agrees that, upon ex-parte showing of probable cause that Defendant has failed to abide by any term or condition of this Bond Order, Defendant's bond will immediately be deemed insufficient and that a warrant will issue for Defendant's arrest. Defendant would be entitled to a full evidentiary hearing regarding the insufficiency of the Bond at Defendant's request and by order of this Court.
10. Defendant, by agreeing to this Consent Bond Agreement, specifically waives all pretrial probable cause or preliminary hearings as both a matter of right and discretion;
11. Defendant shall not leave the State of Georgia;
12. Defendant shall contact a Pre-Trial Services representative, in person, the first Tuesday after release prior to 12:00 p.m., and at such other time(s) as directed.

SO ORDERED, this _____ day of _____, 2006.

_____
JUDGE, Superior Court
Blue Ridge Judicial Circuit

Consented to by:

_____ _____
Scott T. Poole, Attorney for Defendant
Assistant District Attorney
Blue Ridge Judicial Circuit

_____
Defendant

Bond Hearing Clip

Bond Hearings

- Criteria for setting bond found in O.C.G.A. § 17-6-1 (e):
  - A court shall be authorized to release a person on bail if the court finds that the person:
    - (1) Poses no significant risk of fleeing from the jurisdiction of the court or failing to appear in court when required;
    - (2) Poses no significant threat or danger to any person, to the community, or to any property in the community;
    - (3) Poses no significant risk of committing any felony pending trial; and
    - (4) Poses no significant risk of intimidating witnesses or otherwise obstructing the administration of justice.

Ayala v. State

262 Ga. 704 (1993)

- Because of the phrasing of the statutory language, we conclude that the defendant has the burden of coming forward initially with evidence to show that he or she poses no significant risk of fleeing, threatening the community, committing another crime, or intimidating a witness. ...Once the defendant meets the burden of production, the state may present evidence to rebut it. Placing the burden of production on the defendant is fair because the accused is the best source of information on his or her community ties.
  - Ayala at 706.

Ayala, (Cont.)

- To protect this presumption of innocence, we hold that the state has the burden of persuasion in convincing the superior court that a defendant is not entitled to pretrial release. This requirement means the state has the burden of proving by a preponderance of the evidence that the trial court should deny bail either to secure the defendant's appearance in court or to protect the community. Depending on the quality of the defendant's evidence, the state may not need to present any evidence to carry its burden of persuasion.
  - Ayala at 706.

Should you call witnesses?

- Did defendant fight with officers?
- Did defendant threaten anyone?
- Does defendant have a record?
  - If so, certified copies of convictions
  - At least GCIC to use on cross
- Does defendant have substantial assets or connections to other states (countries)?
- Are the "ties to the community" real?
  - Own property vs. rent
  - Dependants / Spouse
  - Employment status
- Is defendant on probation or parole?
- ***Remember, not a PC Hearing! (But know your judge)***

Probable Cause Hearing (AKA: Commitment Hearing)

- Defendant waives *right* to a PC hearing if they make bond.
  - See Watts v. Pitts, 253 Ga. 501 (1984)
- Defendant has no *right* to a PC hearing after indictment.
  - See State v. Godfrey, 204 Ga. App. 58 (1992)
- Magistrate can grant a PC hearing by *discretion* whenever they choose.

Procedural Rules

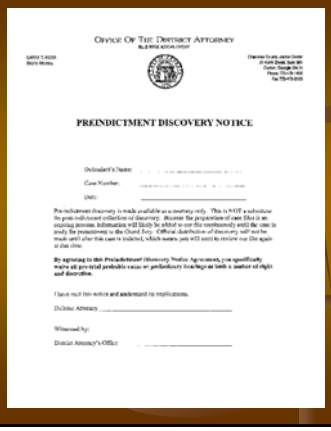
- Rules of Evidence apply except that hearsay may be allowed.
- State can be represented by ADA, LEO, solicitor, or private attorney
- Defendant can be pro se or have an attorney
- Defendant permitted to introduce evidence
  - Uniform Rules for the Georgia Magistrate Courts, Rule 25.2

Practical Considerations

- If possible, use only one witness
  - But make sure that witness can cover all elements
- Issue is Probable Cause, not admissibility of evidence
  - "The jurisdiction of such courts, as to State offenses is limited to determining 'whether there is sufficient reason to suspect the guilt of the accused, to require him to appear and answer before the court competent to try him....'"
    - Bradshaw v. State, 163 Ga. App. 819 at 821 (1982)

Ways to Avoid a PC Hearing

- Consent bond condition
  - "Defendant, by agreeing to this Consent Bond Agreement, specifically waives all pre-trial probable cause or preliminary hearings as both a matter of right and discretion;"
- Present case to Grand Jury
- Exchange for early discovery



OFFICE OF THE DISTRICT ATTORNEY

PREINDICTMENT DISCOVERY NOTICE

Defendant's Name: _____

Case Number: _____

Date: _____

Pre-indictment discovery is made available as a courtesy only. This is NOT a substitute for post-indictment collection of discovery. Because the prosecution of case file is an ongoing process, information will likely be added to our file continuously until the case is ready for presentment to the Grand Jury. Official distribution of discovery will not be made until after this case is indicted, which means you will need to review our file again at that time.

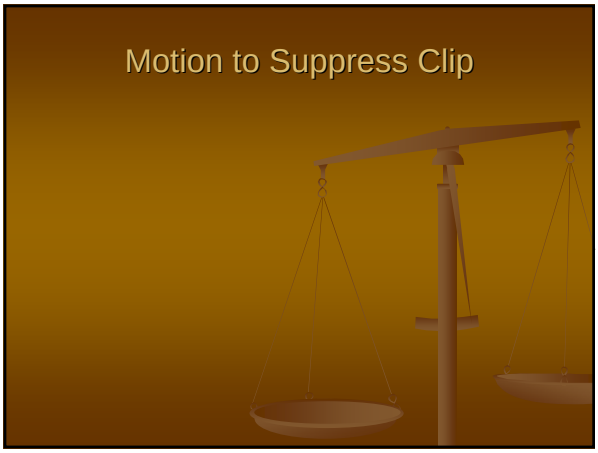
By agreeing to this Preindictment Discovery Notice Agreement, you specifically waive all pre-trial probable cause or preliminary hearings as both a matter of right and discretion.

I have read this notice and understand its implications.

Defense Attorney _____

Witnessed by:

District Attorney's Office _____



Motions to Suppress

- Governed by O.C.G.A. § 17-5-30
  - Must be in writing
  - Must be heard in a court with jurisdiction to try the underlying offense
  - State has the burden of proving the legality of the search / seizure
    - You have to call witnesses and/or produce documents:
      - Certified copies of:
        - Search Warrants
        - Arrest Warrants if search is incident to the service of a warrant

Motions to "Reveal the Deal"

- If a "deal" exists, it must be disclosed.

Motions to Reveal the Identity of a Confidential Informant

- Identity of a confidential informant is protected as a "State Secret" under O.C.G.A. § 24-9-27(d):
  - No official persons shall be called on to disclose any state matters of which the policy of the state and the interest of the community require concealment.
- However, the State's interest must be balanced against the defendant's right to a fair trial as outlined in Brady and Roviaro

Threshold Issue

- As a threshold issue, the Court should determine whether the CI was an active participant or a "mere tipster"
  - "[I]f the State proves to the court's satisfaction that the informer is a pure tipster, who has neither participated in nor witnessed the offense, any evidence he might offer would be hearsay and inadmissible. …It follows, therefore, that if the trial court initially determines that the informer was merely a pure tipster, his identity would be privileged, and no further inquiry would be necessary."
    - Thornton v. State, 238 Ga. 160 at 165 (1977)

Two-Step Test (With Prongs)

- Initially, the trial court should hear evidence to determine:
  - (a) that the confidential informant is an alleged informer-witness or informer participant whose testimony appears to be material to the defense on the issue of guilt or punishment;
  - (b) that the testimony for the prosecution and the defense is or will be in conflict; and
  - (c) that the CI was the only available witness who could amplify or contradict the testimony of these witnesses.
    - Grant v. State, 230 Ga. App. 330 at 331 (1998)

Final Analysis

- If the court finds all of the previous elements have been met, the trial court must conduct an *in camera* hearing of the CI's testimony and apply the balancing test outlined in Rovario v. U.S., 353 U.S. 53 at 62 (1957):
  - "We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors."

Similar Transactions

Similar Transactions

- Governed by Uniform Superior Court Rule 31.3
  - Must be filed 10 days prior to trial
    - Court can shorten (See Wilson v. State, 210 Ga. App. 705 (1993).
  - Must be in writing and served on defendant's counsel
  - Shall state the transaction, date, county, and names of the victims for each occurrence
  - Copies of accusations and indictments, if any, and guilty pleas or verdicts shall be attached
    - But, see Sweatman v. State, 181 Ga. App. 474 (1987)
      - Substantial compliance OK

Hearing on Admissibility

- You can state the facts "in your place" or put up a witness who will testify to the facts
  - Know your judge—some require a witness
- Burden of proving admissibility is on the State
- Court must make a finding on the record
  - See Maxwell v. State, 262 Ga. 73 (1992)

Williams v. State
261 Ga. 640 (1991)

- State must make 3 affirmative showings:
  - First, that evidence will be admitted for an "appropriate purpose" such as:
    - a system of mutually dependent crimes
    - evidence of guilty knowledge
    - may bear upon the question of the identity of the accused
    - articles connected with the offense
    - evidence of prior attempts by the accused to commit the same crime upon the victim of the offense for which he stands charged
    - where it tends to prove malice, intent, motive, or the like, if such an element enters into the offense charged

Williams (Cont.)

- Secondly, that there is sufficient evidence to establish that the accused committed the independent offense or act.
- Thirdly, that there is a sufficient connection or similarity between the independent offense or act and the crime charged so that proof of the former tends to prove the latter.

Appropriate Purpose

- When a similar transaction is introduced to show intent, less similarity between the prior crime and present charge is required.
  - See Banks v. State, 225 Ga. App. 754 (1997).

Evidence that Defendant Committed Prior Crime

- Certified copy of prior conviction admissible to prove identity in prior crime.
  - See Spinks v. State, 204 Ga. App. 249 (1992)
- "Concordance of name alone is some evidence of identity. Further, in the absence of any denial [by defendant] and no proof to the contrary[,] this concordance of name is sufficient to show that [defendant] and the individual previously convicted were the same person."
  - Lewis v. State, 234 Ga. App. 873 at 877-78 (1998)

Similarity

- "The similar transaction does not have to be identical to the crime for which the defendant stands accused. In fact, the admissibility of a similar transaction is not dependent on the number of similarities between the prior act and the crime charged. Rather, admissibility turns on whether the similarities tend to show that the prior act is relevant to a proper issue at trial."
  - Callaway v. State, 230 Ga. App. 369 (1998).

Similarity (Cont.)

- "[T]here is no requirement that the drug allegedly being distributed or possessed in the indicted offense be the same drug distributed or possessed in the similar transaction."
  - Branch v. State, 255 Ga. App. 596 at 598 (2002)

Final Thoughts on Similar Transactions

- "Furthermore, the prior guilty plea to the sale of cocaine is relevant in this case where Tanner's defense turned on his credibility. Tanner testified at trial, denying that the cocaine fell from his pocket and denying that the cocaine was his.

  It is clear in this case that based upon defendant's denial of the commission of the subject crime (possession of crack cocaine), a past conviction involving the sale of crack cocaine would be most helpful to the jury, and therefore the State's need would have outweighed the prejudice to the defendant."

  - Justice Blackburn in Tanner v. State, 243 Ga. App. 640 at 643 (2000).

Contact Information

Scott Poole
Pickens County DA's Office

(W) 706-253-3511

spoole@pacga.org