Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING NOVEMBER 9, 2007

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THIS WEEK:

Cruel and Unusual Punishment

Humphrey v. Wilson, S07A1481 (10/26/07)

The Georgia Supreme Court held that Genarlow Wilson's sentence of ten years in prison for having consensual oral sex with a 15-year-old girl when he was seventeen years of age constituted cruel and unusual punishment.

When determining whether a punishment is cruel and unusual the court may consider recent legislative enactments. These legislative enactments constitute the most objective evidence of a society's evolving standards of decency and of how a society views a particular punishment. The legislative enactments can "reflect a decision by the People of Georgia that [the punishment] makes no measurable contribution to acceptable goals of punishment." Fleming v Zant, 259 Ga. 687 (1989). A decision to change the punishment associated with a law can show a court that the prior punishment was disproportionate to the crime and therefore cruel and unusual. Relying on the foregoing reasoning, the Supreme Court found that the legislature's recent amendment to O.C.G.A. § 16-6-4 which now punishes Wilson's conduct as a misdemeanor represents a "seismic shift in the legislature's view of the gravity of oral sex between two willing teenage participants." Therefore, the Court concluded that the amendments reflect a decision by the people of Georgia that the severe felony punishment and sex offender registration imposed on Wilson make no measurable contribution to acceptable goals of punishment. The Court further concluded that as a matter of law, Wilson's punishment was grossly disproportionate to his crime. Therefore, Wilson's sentence constituted cruel and unusual punishment under both the Georgia and the United States Constitutions.

The Court emphasized that nothing in the opinion should be read as an endorsement of attempts by the judiciary to apply statutes retroactively. The Court reiterated that it was not applying the 2006 amendment retroactively in this case. The Court further stated that the opinion would only affect a very small number of cases. According to the Court, the opinion would only impact those cases involving teenagers convicted only of aggravated child molestation, based solely on an act of sodomy, with no injury to the victim, and involving a willing teenage partner no more than four years younger than the defendant.

Charging an Individual as a Party to a Crime

Byrum v State, S07A1392 (10/29/07)

OCGA §16-2-21 does not require that one who is a party to a crime be indicted as a party; rather, it provides that one who is a party to the crime may be indicted, convicted, or punished for that crime upon proof that he was a party to the crime. The indictment does not have to charge the individual as a party in order for a jury charge instructing the jury that the defendant can be convicted of being a party to the crime. Brinson v State, 261 Ga. 884 (1) (1992).

Impeachment by Videotape

Byrum v State, S07A1392 (10/29/07)

Like with impeachment with a written document, the witness must be drawn to the time place, person, and circumstances attending the former statement. The video must be shown to the witness, but where like in the instant case the witness has confirmed his knowledge of the videotape and has declined an offer to view it, it is proper to impeach the witness with the tape.

Statements to Police prior to Miranda

Byrum v State, S07A1392 (10/29/07)

Where a police officer responds to a direct question from a suspect, and there is no express questioning by the officer, statements then made to the police are admissible. Here, the defendant asked why he was being arrested and the officer responded "You're probably going to be charged with murder." The suspect then admitted to shooting the victim. The court found no reversible error because the officer's response did not subject the suspect to words or actions that police should have known were reasonably likely to elicit an incriminating response.

Kidnapping

Lyons v State, S07A1061 (10/29/07)

The Court made clear that it is not the distance that a kidnapper transports the victim, but instead, whether the movement is designed to better carry out the criminal activity. Garza v State, 285 Ga. App. 902 (2007). Here, the defendant ordered the victim to go from a standing to a lying position. The Court found that this was more than a mere change of position; this was to better facilitate the strangulation of the victim. Thus, the evidence was sufficient to show that there was a kidnapping.

Showing of Post-incision Autopsy Photographs

Lyons v State, S07A1061 (10/29/07)

Post-incision autopsy photos are admissible where the picture will show a material fact that becomes apparent only due to the autopsy. Here, the two photos revealed two injuries that were not identifiable prior to the autopsy. Appellant alleged that because the wounds were not the subject of the indictment they were simply used to inflame the jury. The Court held that the pictures of the injuries were material in corroborating the details of the assault which caused the victim's death. Therefore, the jury was not prejudiced by the alleged inflammatory photographs, but instead the photographs were probative to help the jury in their determination.

Similar Transactions

Judkins v State, S07A0770 (10/29/07)

In order to put in a similar transaction, the transaction (1) must be introduced for the proper purpose, (2) sufficient evidence must show that the accused committed the independent offense, and (3) a sufficient connection or similarity must exist between the independent offense and the crime charged that proof of the former tends to prove the latter. Only the third prong was challenged in the current instant. Here, the appellant was charged with attempting to rob a McDonald's in the early morning with a companion. The appellant wore a mask and used a 9mm weapon. The independent transaction involved the appellant robbing a convenience store in the early morning with a companion. The appellant was wearing a mask, and used a 9mm weapon. The court held "[a] transaction does not have to mirror every detail in order to authorize its admission; rather, the proper focus is upon the similarities between the incidents and not upon the differences." Collum v State, 281 Ga. 719 (2007). Further, "[w]here as here such evidence is admitted for the purpose of showing bent of mind, a lesser degree of similarity is required than if introduced to prove identity." Here, showing factors that were similar was enough to introduce the similar transaction.

Miranda

State v Pye, S07A0689; S07A0894 (10/29/07)

The Court determined that officers failed to effectively administer *Miranda* warnings because they first sought a statement without *Miranda*, and upon receiving the statement read the suspect his *Miranda* warning. The officers then had the suspect repeat his statement. The Court held that where a situation like this arises it is unlikely that the *Miranda* warning will effectively advise a suspect of his rights. In order for a statement made in this situation to be admissible, it must be shown that the subsequent statement was knowingly and voluntarily made. The test for determining whether the subsequent statement is knowing and voluntary is described as the "effective warning" test. The test requires an examination of circumstances to determine if the *Miranda* warnings given were effective. Missouri v. Seibert, 542 U.S. 600 (2004). Here, the officer questioned the suspect until a statement was given, then without break or pause the officer read the *Miranda* warning and the appellee essentially repeated the statement. The Court found that under these circumstances it was clear that the second statement was not given knowingly and voluntarily.

Death Penalty – Statutory Aggravating Circumstances

Jones v State, S07A0573 (10/29/07)

Defendant Jones appealed the order of the trial court denying his motion to bar the imposition of the death penalty

or a life sentence without parole because the indictment did not allege the statutory aggravating circumstances. Jones pled guilty to four murders and 18 related crimes.

The Georgia Supreme Court has held that the United States Constitution does not require that statutory aggravating circumstances be included in Georgia indictments. This is because the Fifth Amendment has not been incorporated into the Fourteenth Amendment. All that is required under the Fourteenth Amendment is notice sufficient to satisfy due process. Jones also argued that the Court should find Georgia statutory aggravating circumstances as elements of death eligible murder as a matter of Georgia law. Jones claims that Ring v. Arizona, 536 US 584 (2002) should be considered as persuasive authority in deciding that statutory aggravating circumstances are also elements under Georgia law, and must be included in indictments. This is an issue of first impression for the Court.

The Court framed the issue as, "whether statutory aggravating circumstances are 'elements' of death eligible murder under Georgia law." The Court held, in light of previous case law such as Terell v. State, 276 Ga. 34 (2002), that "under Georgia law statutory aggravating circumstances are sentencing factors rather than 'elements of death eligible murder." Therefore, the Court reaffirmed that statutory aggravating circumstances need not be included in indictments." All justices concurred except Melton, who was disqualified.

Determining Value of Stolen Property

English v State, A07A1351 (10/25/07)

In determining the value of property in a theft by receiving case, the State may not prove the value of property by showing the value of a replacement item. Also, the value cannot be shown where the stolen products were used as payment for services. The fact that the value of the services was between $600 and $900 does not show the value of the stolen property. Finally, the jury may not base the value of property based solely on their experience. While the jury may consider their experience, the value must also be supported by further proffer of evidence of the actual item stolen.

Hearsay Conspiracy

English v State, A07A1351 (10/25/07)

The court held that once a conspiracy is found, the declarations of any one conspirator during the pendency of the criminal project shall be admissible against all. In order to admit the out-of-court statements of a conspirator the State must first make a prima facie showing of the existence of the conspiracy. The testimony of a co-conspirator as to facts within his knowledge involves no hearsay problem, as the statements are given on the stand and are subject to cross-examination. Where a witness testifies to what he or she told another person is not hearsay as the testifying witness is subject to cross examination. A defendant's non-custodial, voluntary incriminating statements are admissible through the testimony of anyone who heard the statements.

Search and Seizure

English v State, A07A1351 (10/25/07)

Fourth amendment rights are personal and where the search took place on the property of a third party, a defendant must show he had an expectation of privacy in the premises that were searched. A showing that a defendant had no ownership interest and that he was not occupying or "seeking shelter" in a third party's residence is enough to show that the defendant did not have a privacy interest in the property. In this case, a showing by the defendant that he had a key to the property and had access to hunt and fish the land did not give rise to a privacy interest.

Sex Offenders

Mann v. Georgia Department of Corrections, S07A1043 (11/21/07)

On appeal, the appellant challenged the constitutionality of O.C.G.A.§ 42-1-15 (a) which prohibits a registered sex offender from residing or loitering within 1,000 feet of any child care facility, church, school, or area where minors congregate. The appellant purchased a home in Clayton County at a time when there were no other structures present. In 2003, a child care facility was built within 1,000 feet of the appellant's residence. The appellant, a registered sex offender, was ordered by his probation officer to vacate the premises which he owned with his wife and resided. The Supreme Court held that OCGA § 42-1-15 (a) is unconstitutional because it permits the regulatory taking of appellant's property without just and adequate compensation. Most concerning to the Court was that the statute permitted sex offenders to face the possibility of being repeatedly uprooted and forced to abandon homes in order to comply with the restrictions in OCGA § 42-1-15. Thus, those sex offenders that do comply at the outset are still faced with the possibility that they will have to move in the future if such a facility is subsequently placed within 1,000 feet of their residence. The Court further noted, O.C.G.A. § 42-1-15 is part of a statutory scheme that mandates public dissemination of information regarding where registered sex offenders reside. OCGA § 42-1-12 (i). Thus, third parties may readily learn the location of a registered sex offender's residence. The possibility exists that such third parties may deliberately establish a child care facility or any of the numerous other facilities designated in OCGA § 42-1-12 within 1,000 feet of a registered sex offender's residence for the specific purpose of using OCGA § 42-1-15 to force the offender out of the community.