Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING DECEMBER 14, 2007

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THIS WEEK:

Evidence – Aggravated Assault

In the interest of T.Y.B., A07A1768 (11/28/07)

T.Y.B. was adjudicated delinquent for committing the "designated felony act" of aggravated assault. The record shows that T.Y.B. was screaming and cursing at his mother as she sat in her bedroom. T.Y.B. cursed at her stating, "I'm tired of you doing me like a damn dog." Then he went to the stove where he picked up a pot of boiling water. T.Y.B. took the pot of boiling water to the doorway of his mother's bedroom and stood there with it as he stared at her. T.Y.B.'s mother stated, "You pour that hot water on me, you're going to go to jail." T.Y.B. then walked away. On appeal, T.Y.B. contends that the evidence was insufficient to support the juvenile court's adjudication of delinquency. T.Y.B. argues that he made no overt verbal or aggressive action toward his mother when he approached her doorway with the pot. The Court held that an assault is shown "if there is a demonstration of violence, coupled with an apparent *present* ability to inflict injury so as to cause the person against whom it is directed *reasonably* to fear that he will receive an *immediate* violent injury unless he retreats to secure his safety." Johnson v.State 158 Ga. App. 432, 433 (1981). Further, the Court found that there must be a substantial step towards the commission of a battery. The evidence showed that T.Y.B. was angry, cursing, and screaming at his mother when he took the pot off the stove and stood a short distance from her as he stared at her. The Court held that T.Y.B.'s actions constituted both a substantial step toward committing a battery and a demonstration of violence coupled with a present ability to inflict injury which placed the mother in reasonable apprehension of immediately receiving a violent injury.

Jury Charges

Cain v.State, A07A1684 (11/21/07)

Appellant was charged with aggravated assault for aiming a gun at the mother of his child and firing the gun at her as she turned to flee. On appeal, the appellant argues that the trial court erred when it would not give the jury instruction on reckless conduct. The Court of Appeals held that while reckless conduct can be a lesser included charge of aggravated assault, it need only be charged where a factual predicate reasonably raises it. Martin v.State, 283 Ga. App. 652, 652 (2007). The Court found that appellant was not negligent when firing his gun and therefore no jury charge for reckless conduct was necessary.

Search and Seizure and Possession of Methamphetamines

West v.State, A07A2420 (11/26/07)

Appellant was charged with possession of marijuana, cocaine and methamphetamine. Although none were found on his person or in his apartment during a search, appellant admitted to using all three. Officers requested a urine sample which was provided and the urine sample tested positive for metabolites of all three drugs.

Appellant challenges his conviction on the bases that venue was never properly proven and the State failed to prove that he knowingly possessed the methamphetamine. The Court found that where "it cannot be determined in what county a crime was committed, it shall be considered to have been committed in any county in which the evidence shows it could have been committed." OCGA § 17-2-2(h). The Court held that because at the time the urine sample was requested the appellant was in Cherokee County and that by the establishment of the metabolites the drug use could have occurred in Cherokee County. Therefore, venue was properly proven.

As to the knowing possession of the methamphetamine, the Court found that because the metabolites were in the appellant's urine and that he admitted to using methamphetamine the jury was authorized to find that he knowingly possessed the substance.

Search and Seizure

State v. Connor, A07A1076 (11/21/07)

Officers stopped a vehicle because the dealer tag was missing a reflective silver strip and the driver was not wearing his seat belt. The officers asked the driver to step out of the vehicle and proceeded to question the driver and passenger separately. The officer told the driver he was issuing him a warning, took his license and began to fill out the warning. The officer returned the license to the driver. After returning the license, the officer began to question the passenger some more. Later, the officer returned to the driver, gave him his warning and asked "Before you guys take off, do you have any objection to my looking around in your car?" Consent was granted and drugs were found in the trunk.

The trial court found that there was an unlawful detention after the traffic stop was over. The Court of Appeals affirmed. The Court found that "lengthening the detention for further questions beyond that related to the initial stop is permissible in two circumstances. First, the officer may detain the driver for questioning unrelated to the stop if he has objectively reasonable and articulable suspicion illegal activity has occurred or is occurring. Second, further questioning unrelated to the initial stop is permissible if the initial detention has become a consensual encounter."

The Court found here that after the initial traffic stop ended the driver and passenger were not free to go. The officer held onto the warning and asked further questions of both individuals. The Court found that the initial stop ended when the officer returned the license to the driver and that the subsequent questioning was an impermissible further detention. Therefore, all evidence found after the illegal detention was properly suppressed. For these reasons, the Court affirmed the trial courts finding.

Terroristic Threats

Reeves v.State, A07A2270 (11/21/07)

While being arrested for aggravated assault arising from a domestic dispute, the appellant shouted at his wife "You f—king bitch; I will kill you when I get out of jail!" The Court found that a defendant need not have immediate ability to carry out the threat in order to violate OCGA § 16-11-37. A threat of future violence against a party is sufficient to support a conviction of terroristic threats.

Chain of Custody

Thomas v.State, A07A1109 (11/28/07)

Appellant was charged with aggravated sodomy and simple battery. The victim in the case was the cellmate of the appellant. The injuries to the victim were discovered the morning following the events. An anal swab was taken from the victim by paramedics while GBI agents were present. The kit was sealed and turned over to the GBI. The kit was then given to a forensic biologist at the crime lab. The forensic biologist provided and verified the kit's identifying numbers and a bar code. The kit was then sent to a lab in Louisiana for testing. After the completion of the testing, the kit was sent back to the crime lab.

Appellant argues that the State failed to establish proper chain of custody in that it did not present every individual who handled the package while it traveled from the crime lab to the testing center in Louisiana. The appellant further argued that anyone along the way could have tampered with the kit. The Court found that the State must establish "with reasonable assurance that the item seized is the same as the item being offered into evidence." Armstrong v.State, 274 Ga.771, 772 (2002). And where there is "bare speculation of tampering it is proper to admit evidence and let whatever doubts remain go to weight." Kerr v.State, 205 Ga. App. 624, 626 (1992). The Court found that the chain of custody was proper and affirmed the conviction.