Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JANUARY 25, 2008

Legal Services Staff Attorneys

David Fowler
Deputy Executive Director
for Legal Services

Tom Hayes
Regional Offices Director

Chuck Olson
General Counsel

Joe Burford
Trial Services Director

Lalaine Briones
Trial Support

Laura Murphree
Capital Litigation

Fay McCormack
Traffic Safety Coordinator

Patricia Hull
Traffic Safety Prosecutor

Gary Bergman
Staff Attorney

Tony Lee Hing
Staff Attorney

Rick Thomas
Staff Attorney

Donna Sims
Staff Attorney

Jill Banks
Staff Attorney

Al Martinez
Staff Attorney

Clara Bucci
Staff Attorney

Brad Rigby
Staff Attorney

THIS WEEK:

• Inconsistent Verdict Rule

• Judicial Comment – Voluntariness of Statement

• Search and Seizure

Inconsistent Verdict Rule

Turner v. State, S07A1741 (01/08/08)

The appellant was charge with malice murder, felony murder and aggravated assault. The jury returned a verdict of not guilty on the malice murder charge and expressly indicated on the verdict form that the appellant's conduct was justified. However, the jury found the appellant guilty with regard to the offenses of felony murder and aggravated assault; expressly indicating on the verdict form that the appellant's conduct was neither justified nor mitigated.

On appeal, appellant argued that the trial court erred in accepting mutually exclusive verdicts. The Supreme Court noted that the rule against mutually exclusive verdicts applies where multiple guilty verdicts which cannot be logically reconciled are returned. Here, the jury returned verdicts of guilty and not guilty. Therefore, the rule is not implicated in this case. Although the appellant did not argue that the verdicts were "inconsistent", the Court opined that this in fact was the basis for appellant's argument. The Court recognized that it had abolished the inconsistent verdict rule in Milam v. State, 255 Ga. 560 (341 S.E.2d 216) (1986). However, the Court stated, it had also recognized an exception to the abolition of the rule. "When instead of being left to speculate about the unknown motivations of the jury the appellate record makes transparent the jury's reasoning why it found the defendant not guilty of one of the charges, there is no speculation, and the policy explained in Powell and adopted in Milam does not apply." Here, the Court found that there was no speculation as to whether the jury verdict was the product of lenity or legal error. The Court opined that the verdict form made it clear that the jury found the appellant not guilty of malice murder because they found his conduct to be justified. Thus, the Court found, the rule abolishing inconsistent verdicts was not applicable in this case.

The question before the Court then became, "does the jury's finding of justification with regard to malice murder require the vacation of the judgments of guilty returned on the charges of felony murder and aggravated assault?" The record shows that the trial court instructed the jury twice that it first must consider whether or not the appellant's conduct was justified and, if they determined it was justified, then they should acquit the appellant as to each count. All the crimes for which appellant was charged were based on his conduct of shooting the victim and the jury found that conduct to be justified. Therefore, the finding of justification as to malice murder also applied to the felony murder and aggravated assault. The Supreme Court held that it was error for the trial court to have entered judgment on the verdicts finding appellant guilty of felony murder and aggravated assault. The judgment of the trial court was reversed.

Judicial Comment – Voluntariness of Statement

Chumley v. State, S07A1280 (01/08/08)

During appellant's trial, what essentially amounted to a Jackson v. Denno hearing was held outside the presence of the jury. The trial court ruled that the appellant's inculpatory videotaped statement was knowingly, intelligently and voluntarily given. When the jurors returned to the courtroom, the trial court instructed them that he had concluded that the appellant understood and knew that he was giving up the rights contained on a Miranda waiver form, and that the statement was voluntary; freely and willingly given.

On appeal, the appellant argued that the trial court's instruction violated O.C.G.A. § 17-8-57 relating to the expression or intimation of an opinion by a judge as to matters proved or guilt of the accused. The Supreme Court agreed. Once a determination has been made that a statement is voluntary, the trial court should simply admit it into evidence and not inform the jury of its ruling. "A trial court's ruling before the jury on the voluntariness of a defendant's statement, even when coupled with an explanation as to the roles played by the trial court and the jury when the voluntariness of a defendant's statement is questioned, amounts to a violation of O.C.G.A. § 17-8-57." Pierce v. State, 238 Ga. 126 (1977) and Ray v. State, 181 Ga. App. 42 (1986). The fact that appellant did not object at trial was immaterial; a violation of O.C.G.A. § 17-8-57 is "plain error." Further, the trial court's comment was not subject to the harmless error principle. The trial court's compliance with the statutory language of O.C.G.A. § 17-8-57 is mandatory and a violation requires a new trial. Therefore, the Court reversed and remanded the case to the trial court for a new trial.

Search and Seizure

Thomas v. State, A07A2059 (01/09/08)

An officer was working in a "high drug area" when he observed a man reaching into the window of a car that was stopped in the middle of the road. The officer noticed that the car's engine was running and could see its brake lights. When the car's driver and the man standing outside of the car (who had previously been observed reaching into the car) saw the officer approaching, they hurriedly left the scene. The officer could not see what the two men were doing but believed that he had just observed a drug transaction. The officer followed the car which was being driven by the appellant. As the officer followed the appellant, he noticed that the car's license plate was illegally covered with plastic. The officer initiated a traffic stop. When the officer approached, he noticed that the appellant's eyes were extremely dilated, which was indicative of being on a stimulant. Based on that the officer asked appellant for consent to search and appellant refused. The officer obtained the appellant's driver's license and went back to his patrol car to write appellant a ticket for the license plate violation. While in his patrol car, the officer called a canine unit which arrived ten minutes later.

When the canine unit arrived, the officer advised the appellant that an open air inspection around the car would be conducted. The officer asked appellant to get out of the car during the inspection for officer safety. Before the canine began the inspection, the officer asked appellant if he could check his pockets. Appellant responded by turning around and placing his hands on the car. The officer patted the appellant down and felt a "squishy" object in appellant's left front pocket. The officer removed the object which appeared to be a plastic bag containing marijuana. The officer handcuffed the appellant. Before the officer could place the appellant into the patrol car, the appellant stated that there was dope and a gun under the driver's seat. Ultimately, the canine's inspection resulted in the seizure of a bag of cocaine in the front seat and a gun under the driver's seat.

On appeal, appellant argued that because the officer lacked probable cause to arrest him without a warrant, the evidence located in the car should have been suppressed. Appellant contends the fact that he was in a "high drug area", a person was observed reaching into his car, and the officer thought it might be a drug deal, did not support his arrest. The Court of Appeals was not persuaded. The officer observed that the appellant's car tag was covered with plastic in violation of O.C.G.A. § 40-2-6.1. This observation made the traffic stop valid. Once the car was legally stopped the officer could ask the appellant for consent to search the car. Simply asking for consent to search did not require additional probable cause or reasonable suspicion. Furthermore, although the appellant refused to give consent, it was perfectly appropriate for the drug dog to walk around the car while the officer wrote the ticket. A drug dog sniffing the exterior of a car does not constitute a search under the Fourth Amendment. Although the record was unclear as to whether the car was searched based on appellant's comments or the drug dog alerting; the issue was irrelevant to the Court because appellant did not challenge the search itself. Therefore, the judgment of the trial court was affirmed.