Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING FEBRUARY 15, 2008

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THIS WEEK:

Evidence - Corroboration of Confession

Hargrove v State, A07A1893 (1/29/08)

The appellant was convicted of four counts of aggravated child molestation and three counts of child molestation. On appeal, appellant argues that his conviction should be reversed on the basis that his confession was uncorroborated.

The Court held that where "a confession standing alone is not sufficient to justify a conviction, a free and voluntary confession of guilt by the accused is direct evidence of the highest character and is sufficient to authorize a conviction when corroborated by proof of the corpus delicti." Here, the Court found that the taped statement of the victim and the testimony of the social worker, who took the statement of the victim, were sufficient to corroborate the appellant's confession.

Search and Seizure

King v State, A07A0732 (1/31/08)

The appellant was convicted of trafficking in cocaine and possessing marijuana with intent to distribute. On appeal, appellant claims that the trial court erred in denying his motion to suppress. The record shows that officers on patrol saw a juvenile peeking through the windows of a residential home. Three officers exited their cars, and the juvenile ran to the rear of the house. When the officers stopped the juvenile, he stated that he did not live at the house. Officers knocked on the back door of the house to ask the homeowners whether they knew the juvenile, and could explain why he was looking through the windows. While the officers were at the back door of the residence, they smelled burnt marijuana. The officers were able to see through the windows into the kitchen. The officers observed the appellant at a table placing marijuana into small packages. Cocaine was also on the table. The officers knocked on the door and identified themselves. Appellant grabbed a portion of the marijuana and ran to the bathroom. The officers entered the home in order to stop the destruction of the drugs. The appellant argues that the officers had no right to approach the back door to his home. The Court of Appeals noted that chasing a burglary suspect into a backyard is a permissible police activity. Based on the facts and circumstances of the case, the Court found that the officers were authorized to be at the back door when they saw the drugs.

Hinton v. State, A07A1651

The appellant appeals her DUI conviction. On appeal, appellant claims that the trial court erred in denying her motion to suppress. Appellant was observed by an officer drinking from what he thought to be a beer bottle. Appellant subsequently threw a cigarette out of the window and was stopped for littering. The officer saw several beer bottles inside the car and arrested the passenger on an outstanding warrant. The officer returned to the car and could still smell alcohol. When the appellant stepped out of the car, the officer noticed that the appellant smelled like alcohol. Appellant

told the officer that she had consumed three beers. The appellant was given an alco-sensor test, and tested positive. Appellant argues that the officer lacked probable cause to ask her to submit to the test. Because the officer could smell the alcohol, even after the passenger and the bottles were removed, those facts provided the officer with a reasonable basis to ask the appellant to take the test. The judgment of the trial court was affirmed.

Key v. State, A07A1708

Appellant was convicted of DUI. On appeal, appellant argues that the trial court erred in admitting a tape recording of the 911 call that led to his arrest. At trial, the State moved in limine to introduce a recording of a 911 call from a Mr. Jones. Jones did not testify at trial, but called 911 on the night the appellant was arrested. Jones' call lasted over sixteen minutes, during which he repeatedly updates dispatch on the location of the car driven by appellant and describes the manner in which the car was being driven. Appellant argues that the recording was a testimonial statement admitted in violation of the confrontation clause, and also that the recording was hearsay that did not qualify under res gestae. Under the standard of Pitts v. State, 280 Ga. 288, the determination of whether a 911 call is testimonial is made on a case by case basis. The Court held that the call in this case was made to prevent immediate harm to the public, not to establish evidentiary facts for a future prosecution. Even though Jones stated that the driver was 'drunk', his statements were an attempt to convey to dispatch the urgency of the situation. The Court found that the statement did not violate appellant's confrontation clause rights under Crawford. Furthermore, because the statement was non-testimonial and made at the pendency of the alleged crime, it was admissible under res gestae.

Woodard v. State, Lewis v. State, A07A1763

Appellants were jointly indicted, tried, and convicted of trafficking in cocaine and possession of less than one ounce of marijuana. They appeal, arguing that the trial court should have suppressed the drug evidence seized by police. In August 2004, appellants were stopped at a roadblock in Rabun County. Shortly after midnight, appellant Lewis (hereinafter Lewis) drove up to the checkpoint with appellant Woodard (hereinafter Woodard) in the passenger seat. A deputy approached, and asked for Lewis' driver's license and registration. While holding the license, the deputy walked behind the van and noticed that the tires were bald. In addition, the deputy also noticed that the license plate on the van was from a different state than Lewis' driver's license. The deputy wanted to check whether the van was stolen. Lewis claimed it belonged to his sister.

Deputies asked Lewis and Woodard where they were headed, and the two gave different stories. Because the stories did not match, the deputies became suspicious and asked for consent to search the van. Consent was given, and twenty-eight grams of cocaine were found in the van along with marijuana. After conviction, both appellants filed motions to reconsider the denial of their motions to suppress. Appellants claim that the agent who effectuated the traffic stop unreasonably prolonged the stop in violation of their 4th amendment rights. Further, appellants argue that the consent to search was a result of the prolonged detention.

The Court of Appeals found no merit in the appellants' arguments. The Court held that the deputy was authorized to pull over the van based on the bald tires. Furthermore, the deputy was authorized to determine whether Lewis was in valid possession of the vehicle because the license plate on the van differed from his driver's license and the vehicle registration was in someone else's name. The detention was further authorized when Woodard and Lewis gave conflicting stories, and Woodard told the agent they were putting in job applications, even though it was after midnight. Following those stories, Lewis gave valid consent to search the van.

Evidence - Brady

Ellis v State, A08A0436

Appellant was convicted of two counts of child molestation and one count of aggravated sexual battery. Appellant argues that the State withheld exculpatory evidence in violation of Brady. In his motion for new trial, and again on appeal appellant claims that the State withheld the results of a sexual abuse medical examination of T.F., who was a similar transaction witness, and T.F's DFCS file. Appellant contends that the exam showed no signs of abuse and the DFCS file shows that T.F. had a reputation for dishonesty. To make a showing under Brady, appellant must show that: 1) the State possessed information favorable to appellant; 2) appellant did not have the evidence nor could he have obtained it with due diligence; 3) the prosecution suppressed the evidence; and 4) a reasonable probability exists that the outcome of the trial would have been different if the evidence was disclosed. However, the DFCS file is confidential under OCGA § 49-5-41. Appellant failed to ask the trial court to subpoena the records and conduct an in camera inspection to determine their relevance. Furthermore, the medical report was known to appellant, and he makes no showing that he could not have obtained it with due diligence. Therefore, the appellant's conviction was affirmed.

Andrews v State, A07A1828

Appellant was jointly indicted with Stanton for trafficking in cocaine. Appellant appeals claiming that the trial court erred in denying his motion to suppress. The record shows that Officer Jones was patrolling I-85 in Troop County. The officer ran a registration check on a vehicle. The car was registered as silver, but was actually greenish-gold in color. Officer Jones pulled the car over to check if the tag matched the VIN. Appellant told Officer Jones that he did not have a license. When asked what they were doing, appellant and Stanton gave different answers. Officer Jones discovered that appellant's license was suspended. Officer Jones then asked for consent to search. Stanton, whose brother owned the car, did not consent to a search. Officer Jones told the two men he was going to have a drug dog walk around the car. Within two minutes, Jones retrieved his drug dog from his car. The dog alerted twice while walking around the car. A search of the car revealed two hundred fifty grams of cocaine.

Appellant claims that the officer lacked a sufficient basis to initiate the traffic stop. The Court of Appeals found that the traffic stop was permissible because Officer Jones had a reasonable belief that the license plate displayed on the car may belong to another vehicle.