Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MARCH 16, 2007

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THIS WEEK:

Evidence – Electronic Computer Messages

Hammontree v. State, A06A2367 (02/23/07)

The appellant was convicted of the offense of child molestation. Appellant contends that the trial court erred when it permitted the State to tender into evidence a printed transcript of instant-messages sent between himself and the victim. Appellant argues that the State failed to properly authenticate the document. The Court of Appeals found no error. "Electronic computer messages are held to the same standards of authentication as other similar evidence." Ford v. State, 274 Ga. App. 695 (2005). The admission of transcripts of internet chat sessions, are akin to the admission of videotapes. Videotapes are admissible where the operator of the machine which produced it, or one who personally witnessed the events recorded, testifies that the videotape accurately portrayed what the witness saw take place at the time the events occurred. Here, the victim testified that she actually participated in the chat session at issue. The victim confirmed that the words printed on the paper were in fact the words used in the conversation. The victim further testified that the tendered document was actually printed from her home computer and was printed in her presence. The Court found that the victim's testimony satisfied the authentication requirements set forth in Ford. Therefore, the trial court did not err.

Speedy Trial

Jones v. State, A06A2388 (03/01/07)

Appellant filed a motion for discharge and acquittal on the basis that her Sixth Amendment right to a speedy trial had been violated. The trial court denied the motion and appellant appeals. In January and February of 2003 investigators received reports that Eddie Goodwin and Kelvin Johnson were selling drugs from a trailer. A controlled buy was conducted in which a confidential informant bought cocaine from Goodwin. As a result, a search warrant was obtained for the trailer. The search warrant was executed on February 19, 2003, and crack cocaine, marijuana, beer, weapons and mechanical scales were seized from the trailer. Goodwin, Johnson and appellant were all present when the warrant was executed. No drugs, beer or scales were located in a back bedroom where appellant was found sleeping. However, a weapon and currency in a pair of jeans with a belt bearing the name "Eddie" were located in the room occupied by appellant. All three were arrested and charged with various drug and firearm offenses. Six months later, all three were indicted.

Two years after indictment on August 31, 2005, a jury was selected for appellant's trial which was scheduled to begin on September 14, 2005. However, the case was continued when the trial court granted the State a continuance because they could not locate the confidential informant. In March of 2006, the

State was still unable to locate the confidential informant. By this time appellant had been appointed her fifth attorney, by no fault of her own. In April 2006, appellant's attorney filed a motion for discharge and acquittal which the trial court denied.

The Court of Appeals applied and addressed the Barker factors. With regard to the first factor, length of delay, the Court found that the delay of three years was presumptively prejudicial. The Court next addressed the second factor, the reason for the delay. The Court noted that there was no evidence in the record that the State had deliberately attempted to delay the trial in order to hamper the defense. The record was simply silent with regard to the reason for the delay. Where no reason appears for the delay, the courts must treat the delay as caused by the negligence of the State. Therefore, the reason for the delay weighed against the State. The trial court found that the third factor, defendant's assertion of the right to a speedy trial, weighed heavily against the defendant because she did not assert the right until nearly three years after her arrest. However, the Court of Appeals did not agree and determined that the failure was mitigated by circumstances beyond appellant's control. The Court found that appellant was represented by five different attorneys during the three year period. Appellant's attorneys were replaced or substituted as a result of resignations from the public defenders office and attorneys obtaining different employment. The Court of Appeals concluded that the repeated assignment of new counsel served as a mitigating circumstance that prevented appellant's failure to assert her right to a speedy trial from weighing heavily against her. The last factor, prejudice to the defendant, weighed in favor of the appellant. The Court of Appeals found that the appellant was prejudiced by the loss of the confidential informant as a witness in the case. According to the Court, appellant was deprived of a defense- that she did not participate in the controlled buy and that the CI had never had any contact with her. This testimony would have supported appellant's claim that she was merely present at the trailer during the execution of the search warrant. The Court of Appeals held that appellant was denied her right to a speedy trial, and reversed the judgment of the trial court. The Court found that three of the Barker factors weighed in favor of the appellant, and the one that weighed against her did not do so heavily.

Search and Seizure

State v. Ealum, A06A2476; A06A2477 (02/28/07)

The State appeals the trial court's order granting appellee's motion to suppress. The record shows that officers observed several people standing outside a trailer screaming and laughing. The officers walked over to the individuals to ask them to quiet down in order to avoid noise disturbance complaints from neighbors. As the officers approached the trailer, the individuals standing outside ran into the residence. The officers walked to the front door and were greeted by appellant who had stepped out of the front door. The front door to the trailer remained open. The officers could see inside the trailer and claimed that they could smell the odor of alcohol emanating from the interior of the trailer. No bottles or cans of alcoholic beverages were visible. Inside the trailer, officers observed a large group of "young people" who appeared to be under twenty-one years of age in various states of intoxication. The officers concluded that an under-age drinking party was going on. The officers entered the trailer without obtaining a search warrant. Approximately 15 individuals were found and detained. The officers arrested those individuals who tested positive for alcohol (alco-sensor) and who were underage. Appellant was arrested and charged with furnishing alcohol to a minor, obstruction and disorderly house.

The trial court questioned whether the officers had probable cause to enter the trailer; expressing doubt that the officers could have smelled the odor of alcohol from where they were standing. The Court of Appeals noted that whether the officers had probable cause or not was of no consequence. "Even when an officer has probable cause for an entry, warrantless intrusion of a person's home is prohibited by the Fourth Amendment, absent consent or a showing of exigent circumstances." Here there was no evidence presented that appellant consented to the search. Furthermore, there was no evidence presented that the entry was necessary to protect against the injury or death of any of the occupants. Nor was there any evidence that contraband was in imminent danger of being destroyed. Officers never saw any bottles, cans, or cups containing alcoholic beverages either inside or outside the trailer. The Court also noted that such items are not of the type which can be easily destroyed, i.e. by flushing them down a drain, toilet, or by burning. The Court of Appeals held that the trial court did not err and the judgment was affirmed.

Norton v. State, A06A2170 (02/28/07)

Appellant was convicted of the offense of trafficking in methamphetamine and other various drug offenses. On appeal, appellant contends that the trial court erred in denying her motion to suppress. The Court of Appeals agreed and reversed the judgment of the trial court. The record shows that a confidential informant went to the home of appellant's aunt and bought methamphetamine from a sixteen-year-old male. A drug task force officer applied for and obtained a search warrant for the location. The search warrant was executed at the residence which was the home of Sharon Norton and her son C.R. Appellant was not named in the warrant, did not reside in the house, and had not previously come to the attention of investigators. When officers arrived at the residence appellant was standing by a truck in the driveway talking with another individual. There were several others on the premises both inside the house and in the front yard. Officers detained everyone and patted them down including the appellant. No contraband or weapons were seized from appellant during her pat down. During the search of the home officers found a locked safe. After opening the safe with a hammer, officers found that it contained scales, ecstasy, and methamphetamine. The officers then began to retrieve keys from the individuals found on the premises. A detective had taken appellant's keys. A key on appellant's key chain fit the safe and opened the lock. Appellant was arrested.

The Court of Appeals determined that appellant's detention and the subsequent search for the keys were unlawful. ***Absent independent justification for a personal search***, searches of persons not named in a search warrant, but found on the premises to be searched when the warrant is executed, are illegal. O.C.G.A. § 17-5-28 permits officers to search persons found on the premises during the execution of a warrant to: 1) protect himself from attack; or 2) prevent disposal or concealment of any items described in the search warrant. In order to justify a search under O.C.G.A. § 17-5-28 the officer must be able to articulate specific facts that would support a reasonable belief or suspicion that the person to be searched was armed and dangerous. In this case, the officers failed to articulate any facts showing that they reasonably believed that appellant was armed. Even if the initial detention and pat down were permissible as a precaution to protect the officers from harm, the later search of appellant for the keys had no relation to their safety and cannot be justified under O.C.G.A. § 17-5-28. Furthermore, the search could not be justified under the premise that officers were seeking to prevent the destruction of evidence. Appellant was outside the home standing in the driveway when officers arrived. Officers then directed appellant to enter the house where she was always supervised by officers. Appellant was never in a position to dispose of or conceal any items sought in the warrant. Nor did appellant ever attempt to flee from officers. Thus, the Court of Appeals held that appellant's detention and search could not be justified under O.C.G.A. § 17-5-28.