Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MARCH 23, 2007

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THIS WEEK:

Search and Seizure– Vehicle Stop – Consent Search

Giles v. State, A06A2013,

Appellant was convicted of trafficking cocaine. On appeal, appellant challenges the trial court's denial of his motion to suppress evidence that was discovered following a vehicle stop and subsequent consent search conducted by a state trooper. The Court of Appeals affirmed the denial of the motion to suppress. Appellant was stopped on I-20 after he was observed weaving and a computer check of the vehicle's tag indicated that it was expired. Appellant showed signs of nervousness including trembling hands and a pulsating carotid artery. The trooper questioned appellant about his itinerary and destination "to determine how long he had been driving and whether he was too tired to continue." The trooper elicited that appellant was traveling all night, from Houston to Atlanta, to visit his sister who was having a baby, but that he did not know her due date or exactly where she lived. The trooper also elicited that appellant had purchased the vehicle three days prior to his trip to Atlanta for cash. The trooper returned appellant's driver's license and bill of sale without issuing a citation, and questioned him for two more minutes. Next, the trooper obtained consent to search, and six kilograms of cocaine were discovered in a false battery compartment. The only issue on appeal was whether the trooper had reasonable suspicion of criminal activity independent of the initial stop in order to prolong the seizure, because appellant did not challenge the initial stop and the State did not argue that there was a consensual encounter following the stop. In finding that the trooper possessed reasonable suspicion of criminal activity, the Court credited the trooper's testimony regarding his interdiction training and the presence of several "red-flag" indicators including appellant's extreme nervousness, inconsistencies in his story, and the trooper's training and knowledge of drug trafficking patterns, including the route and the purchase of a vehicle prior to a smuggling venture. The Court reasoned that, under the totality of the circumstances test, an officer may utilize information concerning "the modes or patterns of operations of certain kinds of lawbreakers. From such data, a trained officer draws inferences and makes deductions - inferences and deductions that might well elude an untrained person." Evans v. State, 262 Ga. App. 712, 716 (1)(b), 586 S.E.2d 400 (2003). Although the facts which provided the trooper's reasonable suspicion were capable of innocent explanation, when viewed in light of the trooper's training and experience, they were also indicative of criminal activity. Evans, 262 Ga. App. at 716. Because the trooper possessed reasonable suspicion, the trooper was justified in prolonging the detention to investigate further. State v. McMichael, 276 Ga. App. 735, 634 S.E.2d 212 (2005).

Justification For Stop– BOLO

State v. Dias, A06A2021,

Appellee was arrested and charged with VGCSA, less than one ounce of marijuana, following a traffic stop and a frisk. Police stopped defendant following a BOLO broadcast for a burglary suspect. The trial court granted appellee's motion to suppress and the State appeals. The Court of Appeals affirmed the judgment of the trial court. The BOLO was for a "maroon or brown Mercury Topaz or Ford Taurus or Ford Tempo driven by a white male wearing a baseball cap traveling east on Oakridge Drive". Appellee was stopped approximately two miles from the incident scene on the same road. Appellee was driving a maroon Mercury Topaz. There was no indication that the officer had observed appellee violating any traffic offenses prior to the stop, which occurred approximately two minutes following the broadcast of the BOLO. The testimony apparently indicated that appellee was not wearing a white hat. The Court held that the description provided by the BOLO was not sufficiently particularized to provide a basis for stopping appellee. The Court pointed out that the general nature of the descriptions of both vehicle and suspect, coupled with the popularity of the types of vehicles listed, "would cover a staggering number of vehicles and drivers in the State of Georgia." Further, the Court noted the absence of information in the record which would indicate the size of the area in which a suspect may have been found, the lack of testimony regarding the lapse in time between the report of the information and the officer's receipt of the BOLO, and the number of other motorists in the area. The Court reasoned that, without that information, the generic description provided to officers was not a sufficient basis, standing alone, to justify a vehicle stop.

Sentencing– Life Without Parole

Velazquez v. State, A06A2226,

Appellant was convicted of raping his 7-year-old stepdaughter and was sentenced to life without parole. Appellant appeals his sentence, claiming that he was not eligible for that sentence. The State did not seek recidivist sentencing as appellant was not eligible under O.C.G.A. § 17-10-7. The Court held that, unless the State seeks the death penalty, enumerated offenses under O.C.G.A. § 17-10-6.1 are punishable by a maximum penalty of life imprisonment. State v. Ingram, 266 Ga. 324, 467 S.E.2d 523 (1996). Therefore, unless the State seeks the death penalty or recidivist sentencing, a sentence of life without parole is not authorized.

Sufficiency of Accusation

Striplin v. State, A06A2204,

A jury convicted appellant of DUI-Less Safe, and he appeals. On appeal, appellant challenges the trial court's denial of his demurrer to the accusation. Appellant, who was nineteen years old at the time of the offense, was involved in a single car collision with a tree. Appellant was arrested for DUI and submitted a blood sample under implied consent, which showed a B.A.C. of 0.1333. An accusation was drawn charging appellant with DUI- Per Se Under 21, and failure to maintain lane. The accusation was later amended to include DUI-Less Safe and reckless driving. The trial court excluded the blood test and dismissed the per se count. The less safe count described the offense as "DUI UNDER AGE 21" and appellant raised a challenge to the accusation, but the trial court ruled that it was "mere surplusage" and redacted the language from the accusation. The trial court also cautioned the jury that the age of appellant was not a factor for the jury to consider when determining guilt or innocence for the count. The Court of Appeals held that, although the inclusion of the "under age 21" language in the accusation made it imperfect, it did not make the accusation void because the remaining language accurately described a violation of O.C.G.A. § 40-6-391(a)(1). Therefore, the language was "not essential to proving the crime alleged in the remainder of the count," and the trial court properly denied appellant's demurrer.