

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING APRIL 20, 2007

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THIS WEEK:

- Hearsay
- Bond Forfeiture
- Indigent Defense
- Jurisdiction
- Opening Statement
- DUI; Chemical Testing

Hearsay

In the Interest of B.S., A07A0467 (3/29/07)

Appellant contends that the trial court erroneously admitted hearsay testimony. Appellant's brother, L.S., had previously testified that he did not make any statements about his brother shooting anyone. In response, the State called a friend of L.S. who testified that L.S. was at her house at the time of the shooting, and that, after receiving a text message on his cell phone, L.S. told her that "my brother just shot [someone]." The Court of Appeals held that the State was entitled to present evidence that L.S. had made a statement that was inconsistent with his trial testimony, and further held that "a statement made by [Appellant's] brother after receiving a startling text message that his brother had just shot someone" was admissible under the excited utterance exception to the hearsay rule.

Bond Forfeiture

Joe Ray Bonding Co. Inc. v. State, A07A0731 (3/29/07)

Appellant contends that the trial court erred in denying its motion for remission of

judgment of bond forfeiture. Appellant moved for remission when the principal of a previously forfeited bond was located and returned to court within two years of the forfeiture. The Court of Appeals upheld the denial of the motion, on the basis that, where the surety played no role in returning the principal to court, it was not statutorily entitled to remission. Although the District Attorney's office had signed a proposed order remitting the bond, such consent would not change the legal effect of a statutory scheme that was correctly applied by the trial court.

Indigent Defense

Georgia Public Defender Standards Council v. State, A06A2177 (03/29/07)

The Court of Appeals held that a trial court erred by ordering the Georgia Public Defender Standards Council to pay for transcripts requested on behalf of indigent defendants. The Court of Appeals determined that, at the time the Indigent Defense Act of 2003 was enacted, existing law required counties to pay for transcripts requested by indigent defendants. The 2003 Act did not repeal those laws directly, or by implication. Further, no law authorizes the Standards Council to pay the cost of transcripts. Thus, obligation for the cost of providing transcripts remains with the counties, and not with the Public Defender Standards Council.

Jurisdiction

Anderson v. State, A06A1236 (4/4/07)

Appellant contends that the trial court erred in finding that it lacked jurisdiction to

hear his appeal of a conviction for cocaine possession because the original sentence, imposed in 1995, had expired. The Court of Appeals reversed, holding that, because appellant was serving a federal sentence that was enhanced as a result of the state conviction, he was still suffering collateral consequences from the conviction. Thus, appellant's motion for permission to file an out-of-time appeal could be construed as a petition for habeas corpus relief, and the trial court had jurisdiction to hear it.

Opening Statement

Brooks v. State, A07A0369 (4/3/07)

Appellant contends that the trial court erred in denying his motion for mistrial based on the prosecutor's comments during opening statement that characterized his silence in the face of questioning as "refusal to take responsibility for his actions." The Court of Appeals held that, although the prosecutor's statements were improper, appellant waived appeal by failing to object to the statements at the time they were made, waiting instead until the end of opening statements to move for a mistrial.

DUI; Chemical Testing

Cunningham v. State, A07A0173 (03/30/07)

Appellant contends that the trial court erred in denying her motion to suppress the results of chemical tests conducted while appellant was hospitalized after a serious traffic accident. The Court of Appeals held that sufficient probable cause existed to order the tests while appellant was hospitalized. At the time the tests were ordered, the ordering officer was aware only that there had been a serious accident, and that witnesses had seen appellant swerve suddenly into oncoming traffic. However, police later discovered prescription drugs and drug paraphernalia in appellant's car that would clearly constitute probable cause for testing. Thus, regardless of whether probable cause existed at the time the tests were initially ordered, the test results were admissible under the doctrine of inevitable discovery.