

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING APRIL 20, 2012

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THIS WEEK:

- Appeals
- Identification
- Cross-Examination; Impeachment
- Search & Seizure

Appeals

State v. Ramirez-Herrera, A10A0982 (4/13/2012)

The Court of Appeals vacated its opinion in *State v. Ramirez-Herrera*, 306 Ga. App. 878 (2010), and dismissed the appeal, holding that the State was required to obtain a certificate of immediate review before appealing the trial court's grant of a general demurrer. In *State v. Ramirez-Herrera*, the Court reversed the grant of a general demurrer to five counts of a twelve-count indictment. Thereafter, the Georgia Supreme Court decided *State v. Outen*, in which that Court explained that the State must secure a certificate of immediate review in order to appeal an order granting a special demurrer. Based on its opinion in *Outen*, the Supreme Court granted the petition for a writ of certiorari in this case and remanded it back to the Court of Appeals for further consideration. Because the State was required to obtain a certificate of immediate review before proceeding, the Court of Appeals lacked jurisdiction to review the trial court's order granting the general demurrer. Accordingly, the Court vacated its prior judgment in this case and dismissed the appeal.

Identification

Davis v. State, A12A0088 (4/12/2012)

Appellant was convicted of armed robbery and giving a false name. He contended that his

trial counsel was ineffective because he failed to challenge an improper show-up by police. The Court found that the show-up was not impermissibly suggestive and therefore that trial counsel was not ineffective for failing to challenge it. Consequently, the Court affirmed Davis's convictions.

The victim testified that he was robbed while he was working at a gas station. A man wearing a peach-colored jumpsuit and blue jacket entered the store. The man approached the counter where the victim was standing, pulled out what appeared to be a semiautomatic handgun, pointed the gun at the victim, and demanded money. The victim put money from the cash register and his cell phone in a bag for the robber. The robber left the store, and the victim called 911. The victim described to the 911 dispatcher the robber, the clothes he was wearing, and the fact that he was driving a black Volvo S40 north on Interstate 75. Ten minutes later, the police drove the victim north on Interstate 75 and showed him a man sitting in the back of a police car. The officers asked the victim, "Is this the gentleman that you saw in your store?" The victim immediately identified the man as the robber. The man was wearing the same peach-colored jumpsuit, and the same black Volvo S40 was parked nearby. In court, the victim identified appellant as the robber.

The Court stated in reviewing whether the show-up is impermissibly suggestive, it applies a two-part test: First, is the show-up was impermissibly suggestive, and if so, then considering the totality of the circumstances, was there a "very substantial likelihood" of irreparable misidentification. With regard to part one of the test, the Court noted that on-the-scene show-up identifications were often necessary due to the practicabilities inherent in

such situations. Thus, as long as the show-up was reasonably and fairly conducted at or near the time of the offense, it was not impermissibly suggestive and the Court did not need to reach the second part of the test. The Court stated that the mere fact that appellant was in a police car when he was identified did not taint the identification. Further, the Court noted that there was no evidence that the victim knew that appellant was in handcuffs. Additionally, there was nothing unfair in the police asking the victim, "Is this the gentleman that you saw in your store?" Thus, the Court held, the show-up identification testimony was admissible and trial counsel, therefore, was not ineffective for not objecting to or moving to exclude the testimony.

Cross-Examination; Impeachment

Ridley v. State, S11A1416 (3/5/2012)

Appellant was convicted of malice murder, felony murder predicated on aggravated sodomy, felony murder predicated on aggravated assault, and aggravated sodomy, all with regard to the murder of Lorraine Lansford. Appellant contended, among other things, that the trial court erred by: limiting appellant's cross-examination of one of the State's witnesses and letting the State ask appellant about a prior domestic dispute with his wife.

The record showed that the victim was strangled in 1994 in an abandoned building. Lansford's face and head had bruises, her face had numerous lacerations, her nose was broken, and her body had bite marks on it. The autopsy also showed that Lansford likely died while being anally penetrated. Jerry Perry and Diane Humphrey found Lansford's body, but neither Perry nor Humphrey contacted the police. Instead, they directed others to contact the police, who showed up at the scene, secured it, and began collecting evidence. Perry talked to the police the next day and admitted that he paid to have protected sex with Lansford days before her death. He told police about the nature of his relationship with Lansford and gave samples of blood and hair. Perry later admitted that he actually paid Lansford for sex on the day of her murder, October 4, 1994. Police discounted Perry as a suspect because he had no criminal history of sex crimes.

In 2003, Lansford's murder was again investigated as a "cold case." Due to the simi-

larity of the crimes against to other victims, S. D. and C. S., the appellant became a suspect. DNA evidence linked appellant to the murder. During questioning in 2004, appellant denied having sex with Lansford. Later, appellant admitted that he had sex with Lansford, but he denied killing her.

Appellant argued that the trial court erred by limiting his cross-examination of a detective regarding the extent of Perry's prior criminal record, including a murder for which Perry had been a suspect, but was never indicted or tried. The record showed that, during direct examination by the State, the detective was asked why he determined that Perry was not a viable suspect for the murder of Lansford. He responded that Perry had no sex crimes in his criminal record, and, for that reason, among others, he did not believe that Perry murdered Lansford. On cross-examination, appellant wished to ask the detective about a robbery and an unrelated murder. Appellant, however, had no proof of Perry's conviction of robbery such as a certified copy of a conviction, and it was undisputed that Perry was never indicted or convicted of the unrelated murder. While a defendant is entitled to introduce relevant and admissible testimony tending to show that another person committed the crime for which the defendant is tried, the proffered evidence must raise a reasonable inference of the defendant's innocence, and must directly connect the other person with the corpus delicti, or show that the other person has recently committed a crime of the same or similar nature. The Court found that crimes about which appellant sought to ask did not meet these criteria.

Additionally, appellant maintained that the trial court erred by allowing the State to question him regarding a prior domestic dispute with his wife, contending that the evidence had not been previously determined to be a similar transaction. The record showed, however, that the evidence was admitted to impeach appellant's testimony on direct that he did not beat women with whom he argued. In this connection, OCGA § 24-9-20 (b) provides: "If a defendant in a criminal case wishes to testify and announces in open court his or her intention to do so, the defendant may so testify in his or her own behalf. If a defendant testifies, he or she shall be sworn as any other witness and may be examined and cross-examined as any other witness." Therefore, to

impeach appellant's statement as if he were any other witness, the trial court properly allowed the State to confront appellant with evidence that he beat his wife after an argument, in addition to the similar transaction evidence regarding to other victims, S. D. and C. S.

Search & Seizure

State v. Taplin, A12A0067 (4/12/2012)

Taplin was indicted for aggravated assault, possession of a firearm during the commission of a crime, cruelty to a child in the third degree and driving with a suspended license. The trial court granted Taplin's motion to suppress evidence of a gun found in his truck during a warrantless search incident to his arrest, and the State appealed. Because the uncontroverted evidence demonstrated, as a matter of law, that Taplin was arrested for the crime of aggravated assault, and because it was reasonable for an officer to believe that the truck contained evidence related to that crime, the warrantless search was permitted pursuant to *Arizona v. Gant*, 556 U. S. 332, 129 SC 1710, 173 LE2d 485 (2009). Accordingly, the Court reversed.

The only evidence presented at the suppression hearing was the testimony of a police officer. He testified that he was dispatched to a domestic dispute with information that a person named Steve Taplin had pointed a firearm at his child's mother and then driven away from an apartment complex in a black pickup truck. The Court found that

the totality of the circumstances supported a finding that at the time of Taplin's arrest, the officer had probable cause to arrest him for aggravated assault, specifically the dispatches naming "Steve Taplin" as the perpetrator and indicating that the truck stopped by the officer was registered to "Steve Taplin," the match of the truck to the description provided in the dispatches, the location of the truck near the scene of the aggravated assault, the officers' identification of the truck's driver as Steve Taplin, and Taplin's behavior upon being stopped. Given the evidence that Taplin allegedly had pointed a gun at the aggravated assault victim before leaving the scene in his truck, along with the evidence of Taplin's movements inside the truck and his persistent efforts to reach and look into the truck during the stop, it was reasonable to believe that evidence relating to the aggravated assault (the

gun) might be found in the truck, and thus the warrantless search of the truck incident to Taplin's arrest was justified. Consequently, the trial court erred in granting the motion to suppress.