Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING APRIL 25, 2008

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THIS WEEK:

Crawford – Child Hearsay

Williams v. State, A07A1927

Appellant was convicted of child molestation. The evidence at trial showed that appellant molested his seven-year-old niece while babysitting her and her younger sister. The victim was interviewed by a forensic interviewer. At trial, a videotape of the forensic interview was admitted into evidence without objection. Appellant gave two written statements admitting to the molestation. On appeal, appellant claims that the introduction of the child's hearsay statements via the videotape of the forensic interview violated Crawford. The Court of Appeals cited Campell v. State, 282 Ga. App. 854 (2006), which held that if a victim is available at trial Crawford is not violated. In this case, appellant had subpoenaed the victim, and the record established that she was present and available for cross-examination. Therefore, there was no Crawford violation.

Search and Seizure – Traffic Stop

Camacho v. State, A08A0784

Appellant was charged with DUI less safe, DUI per se and failure to maintain lane. Appellant filed a motion to suppress challenging the lawfulness of the stop. The trial court denied the motion and appellant was convicted at a bench trial. On appeal, appellant claims that the stop was illegal. The record shows that a Forsyth County Deputy Sheriff saw appellant's car hit a large pothole on an exit ramp. According to the Deputy, the pothole was a "pretty good distance off of the road" such that a car would not hit it if it were traveling entirely within its lane. Based on that observation, the Deputy turned his car around and stopped appellant's car. The deputy testified that the reason for the stop was that the defendant violated OCGA 40-60-48, failure to maintain lane. On cross-examination, the Deputy was asked to view photographs of the exit ramp and admitted that the pothole was not as far from the roadway as he had remembered. The trial court found that the deputy acted in good faith when he stopped appellant for weaving out of his lane. The Court of Appeals noted that even if the officer was mistaken, a mistaken but honest belief may nevertheless demonstrate the existence of at least an articulable suspicion and reasonable grounds for the stop. Therefore, the judgment of the trial court was affirmed.

Search and Seizure

State v Ballew, A07A1966

The State appeals the trial court's judgment granting appellees' motion to suppress. The appellees moved to suppress evidence seized as a result of a search made pursuant to a no-knock search warrant. The State argues that the warrant was supported by probable cause and that if there was no basis for a no-knock provision that the flaw should not result in the evidence being suppressed. The evidence

at the hearing showed that a Polk County officer had received reports of drug activity at 120 Jackson Street. The officer saw two people approach the house, leave and then drive off in a truck. The officer had the truck stopped when it failed to maintain its lane. The driver of the truck admitted that he had illegal drugs on his person and spontaneously stated that he purchased the drugs at 120 Jackson Street. The officer told the magistrate that the no-knock provision was needed for officer safety and to prevent evidence from being destroyed. None of the reasons that the officer gave for the no-knock provision were particularized. No evidence was given to show the reliability of the anonymous tips. The officer also admitted that he had no reason to trust the driver of the car. Despite all of those circumstances the Court noted that the driver's statement was clearly against his penal interest. Therefore, the Court found that the magistrate had probable cause to issue the warrant and the trial court erred in granting appellees' motion to suppress.

State v. Felix, A08A0110

Appellees, husband and wife, were indicted for trafficking and possession of marijuana. Appellees moved to suppress the evidence arguing that no consent was given for the warrantless search of their home. The trial court granted the motion and the State appeals. The evidence showed that telephone complaints to police officers were made about drug activity out of the appellees' house. The drug task force agent did not obtain a warrant, but instead went to the home with two plain clothes officers. The appellees stood inside as three of their friends walked out of the home. The officer stepped inside and identified himself. The officer explained why he was there and asked if they minded if he came in to speak with them. The officer testified that consent to search was given. No written or recorded consent was obtained. Sheralyn Felix testified that no consent was given and that she strongly objected to the search. According to Sheralyn Felix, the officer entered the residence uninvited and stated that their landlord had already consented to the search. Since there was evidence from which the trial court could find that the officer entered the home uninvited and appellees did not consent to the search, the suppression of the evidence was not clearly erroneous.

Evidence – Defendant's Prior In Court Statement

Crutchfield v. State, A08A0449

Appellant was found guilty of possession, possession with intent to distribute and distribution of methamphetamine. On appeal, appellant argues that the court erred in denying his motion to suppress his prior in court statement. Appellant testified at another trial involving a defendant named David Bartlett. A transcript of appellant's testimony in the Bartlett case was admitted at appellant's trial. In essence, appellant testified that he met Bartlett in jail. Appellant told Bartlett that he was in the same location as Bartlett when Bartlett was arrested. Appellant also stated that he smoked and shot methamphetamine with Angela McAtee when Bartlett was not present. Appellant moved to suppress these statements claiming that he had not made a knowing waiver of his rights. In denying the motion, the trial court noted that Bartlett was not a co-defendant and that appellant was in jail on a completely unrelated case. Appellant approached Bartlett and testified at his request. Appellant neither objected to testifying nor claimed a Fifth Amendment privilege. The Court of Appeals found no error in the admission of this testimony.