Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MAY 11, 2007

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THIS WEEK:

Confrontation Clause Crawford – Preliminary Hearings

Gresham v. Edwards, S07A0341 (04/24/07)

On appeal, appellant contended that his constitutional right to confront witnesses was violated when a detective was permitted to give hearsay testimony at appellant's preliminary hearing. Appellant argued that the Confrontation Clause is applicable to preliminary hearings because it is a "critical stage" of the prosecution to which the Sixth Amendment's right to counsel applies. The Court opined that when determining whether the Confrontation Clause has been violated the proper inquiry is not whether a particular proceeding is critical to the outcome of the trial. According to the Court, the proper inquiry is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial. Therefore, the critical nature of the proceeding is not the decisive factor.

Appellant further contended that the ruling in Crawford v. Washington prohibits the use of hearsay at preliminary hearings unless there is a showing of unavailability and a prior opportunity to cross-examine the declarant. The Georgia Supreme Court rejected appellant's argument. The Court noted that Crawford addressed a defendant's right of confrontation at ***trial***. The Court pointed out that numerous U.S. Supreme Court decisions have determined that the right to confrontation is basically a trial right. The right to confront the witness at the time of trial forms the core of the values furthered by the Confrontation Clause. California v. Green, 399 U.S. 149 (1970). The Georgia Supreme Court found that there was nothing in Crawford which would indicate a change from the U.S. Supreme Court's previous opinions that the right to confrontation is a trial right. Joining several other States which have addressed the same exact issue, the Court held that Crawford did not apply to preliminary hearings.

Search and Seizure

McTaggart v. State, A07A0764 (04/26/07)

Appellant was convicted of trafficking methamphetamine. On appeal, appellant alleged that the trial court erred when it denied his Motion to Suppress. The record shows that the Cherokee County Narcotics Squad secured a warrant for appellant's trailer. The basis for the warrant was information from a reliable confidential informant who had observed methamphetamine in appellant's trailer within the last seven days. This information was conveyed to Cherokee County from an officer with the Appalachian Drug Task Force. When the narcotics agents executed the warrant they found methamphetamine hidden inside a VCR, $2,230.00 cash in appellant's wallet, a video surveillance system monitoring the front door and driveway, written instructions for making ephedrine, a loose bag of vitamin B-12, a set of scales, and a .38 revolver. Appellant argued that the warrant should have been

dismissed because the Cherokee County agents could not provide personal information about the informant to the magistrate. However, double hearsay alone will not always void a warrant. "Where the chain of information involves two police officers, one the arresting officer and one the undercover agent who dealt with the informer, the evidence is admissible because there is a presumption of reliability as to the report of a police officer or undercover agent in the line of duty to a fellow officer." Thus, the Court of Appeals found no merit in appellant's argument.

The Court of Appeals further opined that a search warrant was not even necessary in this case because at the time of the search appellant had forfeited his right under the Fourth Amendment. The appellant was serving a probated sentence at the time of the search. Special condition 10 of appellant's probated sentence provided that appellant submit to searches of his home, business, person, etc., with or without a search warrant, and that he consented to the use of any items seized as evidence in any proceeding against him. Therefore, the trial court did not err in denying appellant's motion to suppress.