Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MAY 25, 2007

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THIS WEEK:

U.S. SUPREME COURT DECISIONS

Search & Seizure: "Reasonableness"

Los Angeles County, California, et al. v. Max Rettele et al.
550 US ___ (2007) decided May 21, 2007

Deputies of the Los Angeles County Sheriff's Department obtained a valid warrant to search a house, but were unaware that the suspects sought in connection with fraud and identity theft charges had moved out three months earlier. The suspects sought were four African-Americans, a detail known to the Sheriff's Deputy Dennis Watters and the other deputies involved in the execution of the search warrant. The new owner of the home, Max Rettele, resided there with his girlfriend Judy Sadler and Sadler's son, Chase Hall, all three of whom are Caucasian.

Around 7:15 in the morning, Watters and the other deputies knocked on the door. Hall answered the door and was ordered to lie face down on the ground. Deputies entered the bedroom with guns drawn and ordered Rettele and Sadler out of bed despite their protests that they were not clothed. Deputies held the two, unclothed, at gunpoint for two minutes before permitting them to dress. Three to four minutes later, the deputies realized the mistake, apologized to the residents, thanked them and left.

Respondents filed a § 1983 suit against LA County, the LA County Sheriff's Department, Deputy Watters, and other members of the Sheriff's department alleging petitioners violated their Fourth Amendment rights by obtaining a warrant in a reckless fashion and conducting an unreasonable search and detention. The District Court held that the warrant was valid and the search was reasonable and alternatively, that any Fourth Amendment rights violated were not clearly established and therefore, the deputies were entitled to qualified immunity. On appeal, respondents did not challenge the validity of the warrant, but only that the search was unreasonable. In an unpublished opinion, the Court of Appeals for the Ninth Circuit reversed and held that a reasonable jury could conclude that the search and detention were "unnecessarily painful, degrading, or prolonged," and involved "an undue invasion of privacy," Franklin v. Foxworth, 31 F. 3d 873 at 766. The majority held that the respondents' Fourth Amendment rights were clearly established as a reasonable deputy should have known that the search and detention were unlawful. The Court of Appeals based much of its reasoning on the fact that the suspects and the respondents were of different races and the deputies should have realized that the respondents were not the subjects of the search warrant.

The United States Supreme Court rejected the Court of Appeals' reasoning and reversed. The Supreme Court reasoned that the deputies had no way of knowing that the suspects were not elsewhere in the house and that the presence of some Caucasians in the residence did not eliminate the possibility that the suspects also lived there. The Supreme Court found the orders by the police to be permissible and necessary to protect the safety of the deputies and referenced case law to support the contention that many suspects sleep with firearms, which bedding can conceal. The deputies needed to secure the room and the detention was not prolonged, and the two respondents were unclothed for about two minutes. The Supreme Court held that the warrant was valid, the execution was reasonable, and as respondents' constitutional rights were not violated there was no reason to inquire into the issue of qualified immunity.

Justices Stevens and Ginsburg concurred in the judgment based on defendants' qualified immunity and would not reach the constitutional question.

SUPREME COURT OF GEORGIA

Brady

Walker v. Johnson, S07A0261 (5/14/07)

Appellee was charged with armed robbery, kidnapping, aggravated assault, burglary, and possession of a firearm during the commission of a felony. Appellee was convicted and sentenced to life plus five years. The Court of Appeals affirmed his sentence. Appellee filed a petition for a writ of habeas corpus and alleged that the State suppressed evidence in violation of Brady v. Maryland. Appellee argued that the State did not give the defense audiotapes containing exculpatory witness statements and appellee's own statement to police. Appellee and his counsel were unaware of the tapes which were not turned over during discovery despite appellee's election to participate. The tapes were discovered after an Open Records request was filed by the appellee's father. The Court found that the appellee did not receive either copies of the tapes or transcripts of the tapes. The Court held that there was a reasonable probability that, had the evidence been disclosed to the defense, the outcome of the trial would have been different. The Court opined that the tapes provided useful impeachment evidence to attack critical witness testimony. The Court concluded that in the hands of a skillful defense attorney, the tapes would have had a negative impact on the jury's willingness to rely on the testimony of the only witness to identify appellee as the perpetrator. The Court rejected the State's contention that it complied with Brady by producing investigative case notes containing a one paragraph reference to one of the witness' forty-eight page statement. The notes omitted much of the potentially exculpatory material contained in the complete audiotape or transcript. The habeas court's granting of relief was proper.

Search & Seizure

State v. Hunter, S07A0139 (5/14/07)

The State appealed from the granting of appellee's motion to suppress. The trial court concluded that the police provided insufficient information to the magistrate to support a showing of probable cause to search appellee's residence. The affidavit provided information that witnesses connected appellee and two others to a shooting which resulted in the death of the victim. Witnesses saw appellee and the other men flee from the scene after the shooting. The affidavit further provided that the appellee, a suspected leader of a narcotics ring, had no recent job history; no listed address; no vehicles registered in his name; and no utilities and phone service listed in his name. Appellee's last known address was an apartment shared with Chequanda Militeer. Appellee was seen driving Militeer's car, and she listed him on her apartment application as her employer. At the time of appellee's arrest, he was driving a car registered to Militeer. Before he was actually taken into custody, appellee attempted to flee in the direction of Militeer's apartment. Based on the foregoing facts, the magistrate issued a search warrant for the apartment appellee shared with Militeer. At the motion to suppress, it was determined that the affidavit did not include the following facts: police surveillance of the apartment revealed that appellee had not been seen at Militeer's residence for the last six weeks; and when appellee tried to flee, he was half a mile away from Militeer's apartment. The Court reversed the trial court's order granting appellee's motion to suppress. Even without considering the additional information not included in the affidavit, the affidavit on its face provided the magistrate with enough information to come to a practical, common sense conclusion, that there was a fair probability that there would be evidence found at the appellee's apartment. See Stewart v. State, 217 Ga. App 45 (1995). The Court held that even after excising the inaccurate information from the affidavit and inserting the more accurate information at the motion to suppress hearing, the magistrate still had a substantial basis for probable cause.

GEORGIA COURT OF APPEALS

Search & Seizure

Morgan v. State, A07A0151 (5/8/07)

Appellant was convicted of eight counts of cruelty to animals. Appellant contends on appeal that the trial court should have granted his motion to suppress and motion in limine. A sheriff's deputy responded to a neighbors call that appellant was keeping animals on his property that were mistreated and unhealthy. The Deputy spoke to the neighbor and knocked on the appellant's front door but got no response. From the driveway, the Deputy observed animals with no shelter, no food and no water exposed to the 10 degree weather in pens located in the front yard. The animals appeared to be starving, distressed, in ill health and maltreated. The Deputy heard dogs barking in the back yard and he decided to check on them. The Deputy wanted to make sure the dogs were not in the same poor condition as the animals observed in the front yard. The Deputy entered appellant's back yard and found more emaciated, mistreated animals. The Deputy and neighbor obtained feed and began feeding the animals located in the front yard. The Deputy also called animal control which assisted him in seizing the emaciated dogs from the back yard. When Morgan arrived home, he was arrested. With the appellant's consent, the Deputy accompanied appellant into his house where more mistreated dogs were discovered. Appellant moved to exclude all evidence related to the search of

his property and the seizure of the dogs. The trial court found the search valid under the plain view doctrine. The Court of Appeals held that the initial plain view observations of the officer did not in and of itself justify a warrantless entry into the appellant's backyard and the removal of his dogs. Unless exigent circumstances existed, the Deputy's entry and seizure of the dogs was unconstitutional. The trial court never addressed whether exigent circumstances existed justifying the Deputy's entry into the backyard and the seizure of the dogs. The Court of Appeals followed multiple jurisdictions and held that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that an animal on the property is in need of immediate aid. Tuck v. US., 477 A2d 1115 (D.C. 1984). It is not for the appellate courts to first consider whether exigent circumstances exist, therefore, the case was remanded to the trial court to consider that question.

Search & Seizure

State v. Morehead, A07A0681 (5/9/07)

Morehead was charged with possession of cocaine and marijuana along with criminal trespass. Appellee filed a motion to suppress and the trial court granted it. The State appeals and argues that the trial court erred because there was probable cause to arrest appellee for criminal trespass. Appellee was warned by a MARTA officer to leave the MARTA property because he was trespassing. Four hours later, appellee re-entered the property and was arrested by the same officer. The officer testified that the basis of the arrest was the earlier warning. Appellee claims that the officer lacked probable cause for the arrest and subsequent search which revealed cocaine and marijuana on his person. The Court of Appeals found that the notice given to appellee was not sufficient under O.C.G.A. §16-7-21 because he was not told explicitly that he could not return to the train station. Moreover, the Court opined that the earlier warning was given when appellee was outside of the station and appellee could have believed that the warning only applied to that area. Thus, some evidence supported the trial court's conclusion that the arrest, based solely on an invalid criminal trespass warning, lacked probable cause. Therefore, the Court upheld the trial court's grant of appellee's motion to suppress.

Evidence: Cross-Examination

Northern v. State, A07A1142 (05/08/07)

The trial court did not abuse its discretion in sustaining an objection to a question calling for a legal conclusion. Appellant was charged with statutory rape and child molestation. The victim testified that she was forced into having sex and that she had not wanted to engage in sex. On cross-examination, appellant's attorney pressed the victim to identify, "What element of force was present?" The trial court sustained the State's objection that the question called for a legal conclusion. Appellant's attorney did not rephrase the question or further inquire into the matter. Whether a question calls for a legal conclusion is within the sound discretion of the trial court. Here, the trial court determined that the use of the phrase "element of force" was objectionable legal terminology. Furthermore, appellant acquiesced to the trial court's determination by not even attempting to rephrase the question. The Court of Appeals found no abuse of discretion.

Evidence: Opinion

Shafer v. State, A07A0578 (05/09/07)

Appellant was convicted of two counts of aggravated stalking perpetrated against his mother-in-law and custodian of his son, who had a temporary protective order against him. During the State's case-in-chief, the State called the sheriff's deputy who had interviewed the victim and reviewed the five answering machine messages which served as the basis of the charges. On redirect, the State asked the deputy, "Based on your training and experience… in your discretion, do you feel that this string of phone messages amounted to an aggravated stalking in violation of the temporary protective order?" Over objection, the deputy answered "Yes." Appellant argued that the trial court erred in allowing the testimony as it invaded the province of the jury by commenting on the ultimate issue. The Court of Appeals agreed with the appellant that the testimony was a comment on the ultimate issue that should not have been allowed. However, the Court further concluded that the error in admitting the testimony was harmless, since appellant admitted on the stand to leaving the messages for the victim such that "all the elements necessary to complete the offense were established virtually without dispute."

Evidence: Res Gestae

Garrett v. State, A07A0296 (05/08/07)

Appellant was charged and convicted of aggravated assault, kidnapping, and two counts of aggravated stalking. The appellant was not charged with rape. On appeal, the appellant argued that the trial court erred in allowing the victim to testify over objection that the appellant had raped her. The general rule is that evidence of a crime wholly independent from the crime on trial is not admissible. This rule does not apply, however, when the separate crime is committed as a part of the same transaction as that for which the accused is being tried, and forms a part of the res gestae. The evidence shows that the victim's kidnapping and rape were part of one criminal transaction. Therefore, the trial court did not abuse its discretion in admitting evidence of the rape.