Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MAY 2, 2008

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THIS WEEK:

Evidence – Defendant's Statement

Foster v. State, S07A1668

A jury convicted the appellant and two co-defendants of felony murder, aggravated assault and conspiracy to commit armed robbery. On appeal, appellant contends that the trial court erred when it allowed an incriminating statement he made during a custodial interview to be introduced into evidence. Appellant contends that the statement was involuntary because it was improperly induced by hope of benefit. The record shows that during an interview with detectives the appellant would not reveal the location of the murder weapon. The detectives then presented the appellant with a document providing that no additional charges would be pursued related to the murder weapon. Immediately thereafter, the appellant admitted that he had provided the murder weapon to his co-defendants and that the gun was located at his father's house. The Supreme Court found that the appellant revealed the location of the gun and admitted to providing the murder weapon in the hope of receiving no punishment for crimes related to the firearm. This was an impermissible hope of benefit that rendered appellant's statements inadmissible. Because appellant's statement was the only evidence that appellant provided the gun used to kill the victim, the Court could not conclude that the erroneous admission was harmless. The Court reversed the judgment of conviction and remanded the case to the trial court for a new trial.

Evidence – Opinion Testimony

Bly v. State, S07G1640

The Supreme Court granted certiorari to determine whether the Court of Appeals erred when it affirmed a trial court's decision to permit opinion testimony by a witness who did not personally observe the events which formed the basis of the offense. An officer with the Eatonton Police Department initiated a traffic stop on appellant's vehicle for driving over the center line. During the course of the stop, the appellant cursed at the officer, refused to provide his license and insurance information, and subsequently pulled out a pair of wire snips and stabbed the officer in the arm. The officer pulled out his service revolver. A second officer who arrived on the scene to assist did not see the entirety of what had transpired. At trial, a special agent with the GBI who had investigated the assault on the officer was called to testify. The agent spoke to all of the State's witnesses, and examined some collateral aspects of the scene. Based on the agent's investigation, the testimony he heard at trial and his knowledge and experience, he was asked to render an opinion whether the initial officer acted appropriately as a police officer in the line of duty. The trial court permitted the agent to answer the question over the appellant's objection. Relying on McMichen v. Moattar, 221 Ga. App. 230 (470 S.E.2d 800) (1996), the Court of Appeals affirmed the judgment of the trial court. McMichen held that "a witness may state his impressions drawn from, and opinions based upon, the

facts and circumstances observed by him or the effect which they produced upon his mind." Here, the Supreme Court held that McMichen was inapplicable because the agent was not present at the event, and did not personally observe the facts to which he was asked to render an opinion or impression. Furthermore, the jury was fully capable of making an equally intelligent judgment of their own, independently of the opinion of the agent. The Supreme Court concluded that the error was not harmless and reversed the judgment of the Court of Appeals. Thus, appellant is entitled to a new trial.