

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JUNE 15, 2007

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THIS WEEK:

• Supreme Court of the United States

Supreme Court of Georgia

• Double Jeopardy

• Guilty Plea

Georgia Court of Appeals

• Evidence: DUI and Obstruction of an Officer

• Search and Seizure

• Miranda Rights

Supreme Court of the United States—

Brendlin v. California, No. 06-8120, 551 U.S. (2007), Decided June 18, 2007

In this case, the Supreme Court of the United States held that when a police officer makes a traffic stop, the passenger, like the driver, is seized within the meaning of the Fourth Amendment. The record shows that an officer observed a parked car with expired registration tags. The officer learned through dispatch that an application for renewal of the registration was being processed. Later, the officer saw the same vehicle on the road and noticed that it displayed a temporary operating permit indicating that it was being legally operated. There was nothing unusual about the permit or the way it was affixed. Nevertheless, the officer pulled the car over to verify that the permit matched the vehicle. When the officer approached the car, he recognized the Petitioner who was a passenger. The officer recalled that Petitioner may be an individual

who had dropped out of parole supervision. The officer verified that Petitioner had violated his parole and was wanted on an outstanding no-bail warrant for his arrest. Once back-up arrived, the officer ordered Petitioner out of the car and arrested him. In a search incident to arrest officers found an orange syringe cap on Petitioner's person. In addition, items used in the manufacture of methamphetamine were located in the car.

At the trial court level, Petitioner moved to suppress the evidence on the basis that the officer lacked probable cause or reasonable suspicion to make the traffic stop therefore the evidence was obtained as the fruit of an unconstitutional seizure. The State conceded that the officer had no reasonable basis to suspect unlawful operation of the car. However, the State contended that Petitioner was not seized until he was ordered out of the car and arrested for the parole violation. The trial court denied the motion. The California Court of Appeals reversed the denial, holding that Petitioner was seized by the traffic stop. The Supreme Court of California reversed, holding that Petitioner was not seized because the driver of the vehicle was the exclusive target of the stop. The United States Supreme Court granted certiorari to decide whether a traffic stop subjects a passenger, as well as the driver, to Fourth Amendment Seizure.

In reaching its decision, the Court explored whether a reasonable person in Petitioner's position when the car stopped would have believed himself free to terminate the encounter between the police and himself. The Court opined that "a traffic stop necessarily curtails the travel a passenger has chosen just as much

as it halts the driver, diverting both from the stream of traffic to the side of the road, and the police activity that normally amounts to intrusion on privacy and personal security does not normally distinguish between passenger and driver.” The Court found that it was reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation will not let people move around in ways that could jeopardize the officer’s safety. Citing numerous cases, the Court noted that its prior opinions reflect the societal expectation of unquestioned police command which is contrary to any notion that a passenger would feel free to leave, or to terminate the encounter any other way, without advance permission. The Court further opined that holding that a passenger is not seized in a traffic stop would invite police to stop cars with passengers regardless of probable cause or reasonable suspicion of illegal activity.

Supreme Court of Georgia–

Double Jeopardy

State v. Evans, S07A0033 (06/04/2007)

The State appealed the trial court’s judgment acquitting appellee on charges of malice murder, felony murder and aggravated assault. Prior to jury selection, appellee made a motion for a bench trial in his case to be conducted simultaneously with his co-defendant’s jury trial. The State objected and the trial court conducted a bench trial over objection. In Zignan v. State, 281 Ga. 415, (2006), the Supreme Court previously determined that a trial court could not conduct a criminal bench trial over the State’s objection. Despite the fact that the trial court disregarded the holding in Zignan, the Supreme Court determined that any improper exercise of the trial court’s authority did not render the judgment of acquittal void. The result of a bench trial which is conducted in the manner described in this case is an ineffective waiver of the right to trial by jury, not a void judgment. The Court concluded that O.C.G.A. § 5-7-1(a) does not authorize the State to appeal a judgment of acquittal and the trial court’s decision to conduct a bench trial over the State’s objection is not one of the statutorily-enumerated rulings that the

State can appeal. Furthermore, Zignan did not create a right of appeal. Therefore, the Court held that it was without jurisdiction and dismissed the State’s appeal.

Guilty Plea

Arnold v. Howerton, S07A0107 (06/04/2007)

Appellant entered a plea of guilty to charges of burglary, theft by taking, kidnapping, rape, aggravated sodomy, criminal trespass, and firearms offenses. The Court held that appellant’s plea was not knowingly and voluntarily entered. Under Boykin v. Alabama, 395 U.S. 238, 243, “the entry of a guilty plea involves the waiver of three federal constitutional rights: the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one’s accusers.” The guilty plea and sentencing transcript show that the appellant was advised by the court of some of his constitutional rights, but not the right against self-incrimination. It was not enough that appellant answered affirmatively when asked by the trial court if he had been advised of his rights nor was it enough that appellant’s trial counsel told the court that he had advised his client of his rights without identifying the rights he advised appellant of. The trial court did not ensure that appellant was aware of all three Boykin rights and the habeas court erred in finding that the State met its burden of establishing that appellant’s guilty plea was made voluntarily, knowingly, and intelligently.

Georgia Court of Appeals–

Evidence: DUI and Obstruction of an Officer

Ojemuyiwa v. State, A07A0347 (05/31/07)

The Court of Appeals reversed the appellant’s DUI conviction because evidence that appellant’s breath smelled of alcohol, alone, did not support the conviction. No evidence was presented to show that alcohol impaired the appellant’s driving ability, that her speech was slurred, that her gait was unsteady, or that her eyes were red and/or glassy. The Court affirmed appellant’s conviction for obstruction of an officer. The trial court did not err in refusing to allow the appellant to

testify as to her state of mind since she did not admit to the crimes charged, thus making any justification defense inapplicable.

Search and Seizure

Mason v. State, A07A0380 (05/30/2007)

The Court of Appeals reversed the trial court’s judgment denying appellant’s motion to suppress cocaine found on his person. Appellant was a passenger in a vehicle that was searched during a traffic stop. The officer performed a pat down of the driver and appellant for his own safety. As the officer was patting down appellant, he felt something rattle in appellant’s pocket. The officer asked if he could remove it and appellant consented. The officer removed a matchbox. The officer opened the matchbox because in his experience people often keep contraband in matchboxes. The officer opened the matchbox and found seven rocks of crack cocaine. There was no evidence that appellant consented to the opening of the matchbox. Under the plain feel doctrine, during a lawful pat-down, an officer can seize an item if the object’s contours or mass make it immediately identifiable as contraband. This is because the pat-down is conducted for the purpose of ensuring the safety of the officers and others and not for the purpose of procuring evidence. The matchbox was not immediately identifiable as contraband and should not have been seized under the plain feel doctrine, therefore, the search exceeded the permissible scope of a pat-down for weapons.

Miranda Rights

Swain v. State, A07A0247

The 15-year-old appellant was convicted of armed robbery. On appeal, appellant contends that the trial court erred in denying his motion to suppress his confession because he did not make a knowing and voluntary waiver of his constitutional right against self-incrimination. In reaching its determination the Court of Appeals considered: (1) the age of the accused; (2) the education of the accused; (3) the accused’s knowledge as to both the substance of the charge and the nature of his rights to consult with an attorney and remain

silent; (4) whether the accused was held incommunicado or allowed to consult with relatives, friends or an attorney; (5) whether the accused was interrogated before or after formal charges had been filed; (6) the methods used in the interrogation; (7) the length of the interrogation; (8) whether the accused refused to voluntarily give statements on prior occasions; and (9) whether the accused repudiated an extra judicial statement at a later date. Murray v. State, 276 Ga. 396, 397 (2003). The Court held that the trial court did not err in admitting appellant's confession. The fifteen-year-old appellant voluntarily gave his statement, could read and write, read aloud and signed a Miranda warning and waiver form, wrote out a statement, never asked to speak with his guardian or attorney and was never told that he could not speak with anyone else. The Court further concluded that the confession did not have to be excluded on the basis that the interviewing detective did not first notify appellant's court-appointed counsel, since defendant had not been arrested or charged with armed robbery when he was being questioned and the court-appointed attorney was retained for a separate and unrelated offense.

