Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JUNE 20, 2008

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THIS WEEK:

Jury Charges - Retreat

Felder v. State, A08A0996

Appellant was found guilty of aggravated assaulted, possession of a firearm by a convicted felon, and carrying a handgun without a permit. Appellant contends the trial court erred in failing to charge on the principles of retreat applicable to self-defense cases as set out by Glover v. State, 105 Ga. 597 (1898). Appellant argues that since the State put retreat in issue during cross-examination and because self-defense was his sole defense, he was entitled to a jury charge fully explaining the principles of retreat, even absent a written request. At trial, appellant made an oral request and the trial court refused.

The rule in Georgia is that if the person claiming self-defense was not the original aggressor there is no duty to retreat. Where self-defense is the sole defense, and the issue of retreat is raised by the evidence or placed into issue, the defense is entitled to a charge on the principles of retreat. In order for a charge on no duty to retreat to be required, the issue of retreat must be raised by the evidence or placed into issue. A trial court's failure to charge the jury on retreat has been found to be reversible error when the prosecution has raised the issue during the questioning of witnesses or in closing arguments. The Georgia Court of Appeals held that, under these circumstances, appellant was entitled to a jury charge on the principles of retreat, even absent a written request.

Search & Seizure

MacKay v. State, A08A0640

Appellant was found guilty of trafficking methamphetamine. Appellant contends that the trial court erred in denying his motion to suppress evidence obtained by law enforcement officers as a result of a warrantless entry into his home. Here, an animal control officer and a deputy entered appellant's home in pursuit of a rottweiller who had attacked a neighbor's goats. At that time, neither the officer nor the deputy had determined who owned the animal. The door to the home was open. The deputy knocked loudly at the entry of the home and identified himself. After receiving no response, the deputy and the animal control officer entered the home. The men observed in plain view what the deputy recognized to be drug paraphernalia. The deputy notified his supervisors to come to the scene.

Appellant's wife arrived and admitted she lived in the home. After Miranda rights were read to her, the wife consented verbally and in writing to a search of their home. The Fourth Amendment generally prohibits officers from entering a home without the homeowner's consent in the absence of a warrant. Evidence seized after an illegal entry is generally inadmissible. However, an exception to the warrant requirement exists where the exigencies of the situation make the need of law enforcement so compelling that a warrantless search

is objectively reasonable under the Fourth Amendment. The Georgia Court of Appeals found that the officers entered in response to what they reasonably perceived as an emergency involving a threat to life and property. Therefore, the trial court's denial of appellant's motion to suppress was proper.

Co-Defendant's Failure to Testify

Sillah v. State, A08A1042

Appellant was convicted of armed robbery. On appeal, appellant contends the trial court erred in permitting the State to call his co-defendant, the gunman, to the stand in front of the jury, even though the gunman (who had earlier pled guilty) had announced to both parties that he would not testify. The trial court has broad discretion in controlling the examination of witnesses. Unless there is a manifest abuse of discretion, an objection such as here will not work a reversal of the case. Presenting a co-defendant's refusal to testify to the jury is not necessarily harmful to the defendant. What is harmful is for the trial court to allow the State, once a witness has invoked Fifth Amendment rights, in effect, to testify for the witness and circumvent meaningful cross-examination as to obvious inferences. Here, the gunman had informed the parties he would not testify, was called to the stand in the presence of the jury, refused to be sworn, simply informing the court that he would not testify. Outside the presence of the jury the court informed the gunman that having pled guilty he had no constitutional right not to testify and he would be held in contempt if he refused. When the gunman still refused to testify and the court held him in contempt, the jury was brought back and informed of the witness's refusal to testify and that he had been held in contempt. The Georgia Supreme Court in Hendricks v. State reaffirmed the lack of prejudice to a defendant in allowing the jury to know that a witness has refused to testify and has been held in contempt as a result. Hendricks v. State, Ga. slip op. at 4-8 (3) (Case No. S08A0475; decided April 21, 2008). The Georgia Court of Appeals found that where the gunman simply refused to be sworn and was not questioned, the trial court did not abuse its discretion and there was no prejudice to appellant.

Equal Access

Thomas v. State; A08A0639

Appellant was convicted of possession of cocaine with intent to distribute. On appeal, appellant contends that the trial court erred by failing to charge the jury on equal access. The record shows that a search warrant was served on a home alleging that the owners were selling drugs out of the house. Appellant, who was in the home at the time of the search, tossed a bag containing crack cocaine into the kitchen after he was apprehended by an officer. There were also several other people in the house, including the owners, when the search was conducted. The Court of Appeals found that the trial court did not err in refusing to charge the jury on equal access because there was direct evidence that appellant had possession of the drugs. Therefore, no presumption of ownership arose and the defense was unavailable.

Search & Seizure– Warrant Based on Defendant's Unlawfully Obtained Voluntary Statement

Brown v. State; A08A0267

Appellant was convicted of rape, aggravated sexual battery, and battery. DNA evidence showed that the elderly victim was attacked and raped by the appellant. On appeal, appellant claims that he was denied effective assistance of counsel because counsel did not challenge the validity of the search warrant used to secure a sample of his DNA. The record shows that the appellant was placed in an interview room and advised of his Miranda rights. Appellant stated that he wanted to speak with a lawyer but the detectives continued the interview. During the interview, appellant admitted that he had been inside the victim's home to use the restroom during the same period that the rape occurred. The detectives submitted an affidavit and application for a search warrant to obtain swabs from appellant's mouth for DNA testing which the magistrate issued. Appellant's trial counsel did not challenge the validity of the search warrant but moved to suppress the incriminating statements, arguing that the statements were inadmissible under Edwards v. Arizona, 451 U.S. 477 (101 SC 1880, 68 LE2d 378) (1981), since the statements were elicited by detectives after appellant had asked for a lawyer. The trial court suppressed the statements.

Appellant contends that his counsel should have challenged the affidavit supporting the search warrant which he claims was issued based on an affidavit that included unlawfully obtained information, such that, when properly modified, the warrant failed to establish probable cause. Appellant contends that had his counsel challenged the affidavit, the search warrant would have been found invalid, and the DNA evidence would have been suppressed at trial.

The Court of Appeals wrote that the Supreme Court of Georgia has held that the "fruit" of a voluntary statement obtained in violation of Miranda and Edwards is not subject to the exclusionary rule. (See State v. Woods, 280 Ga. 758, 759 (632 SE 2d 654) (2006)) The Court found that although appellant's statement was elicited in violation of Miranda and Edwards, the statement could be relied upon by the state in supporting the affidavit in order to obtain the search warrant. Thus, a search warrant can be predicated on a defendant's voluntary but unlawfully obtained statements. Judgment affirmed.