Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JUNE 29, 2007

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THIS WEEK:

Evidence- Co-Conspirators Statement

Williamson v. State, A07A0621 (06/11/07)

Appellant, Turner, and Meadows were convicted of armed robbery. At trial, two letters from Turner to Kemp (who was also involved in the crime) were introduced into evidence. The letters proposed a story for the defendants to tell to attempt to get out of the charges. The Court held that the trial court was authorized to find that Turner wrote the letters because of the wealth of detail contained in the letters. The letters were properly admissible under the hearsay exception to co-conspirators in the concealment phase of the conspiracy. The Court also noted that it was not improper to give a charge on conspiracy even when it is not charged in the indictment when the evidence in the case tends to show a conspiracy.

Res Gestae

Stewart v. State, A07A0676 (06/08/07)

Appellant was convicted of possession of cocaine. On appeal, appellant alleged that the trial court erred in admitting evidence of telephone conversations between deputies in his apartment and unknown people who called the apartment. The trial court admitted the conversations as part of the res gestae. The Court notes that the conversations occurred contemporaneously with the arrest and that the circumstances under which the call occurred are free from evidence of premeditation or fabrication. Therefore, the calls were properly admitted.

DUI

O'Connell v State, A07A0547 (06/14/07)

Officers were dispatched to a residence in a mobile home park in reference to a possible drunk driver in a gray Thunderbird. When officers arrived at the scene they found no vehicles fitting that description. Later, an officer responded to a second dispatch regarding the same vehicle and the same residence. The officer located appellant's Thunderbird parked outside of his trailer. The officer touched the vehicle's hood, which felt warm, and determined that the vehicle had recently been driven. The officer knocked on the door of the residence and appellant answered, inviting the officer inside. The appellant, who was alone, displayed visible signs of intoxication. The appellant gave the officer the keys to the vehicle. The appellant was arrested and took a breath test at the station blowing a .217. On appeal, appellant argued that there was no direct evidence and insufficient circumstantial evidence to support his conviction. The Court found that the conviction was warranted by the circumstantial evidence and that the evidence was enough to exclude all other reasonable hypothesis.

Identity Theft

Jones v. State, A07A0154 (06/14/07)

Appellant was convicted of identity fraud and theft of services. On appeal, appellant challenged his conviction on the basis that the evidence was insufficient. The record shows that the appellant asked a store clerk to open a cell phone account for him in exchange for fifty dollars. Appellant did not have the credit to open an account in his own name. The clerk opened the account in another person's name using that person's credit application. The State's case was premised on the theory that appellant knew that the clerk could not activate an account without an approved credit application and therefore must have known that another's credit information was being used in order to provide appellant with the phone. In reviewing the testimony of the clerk, the Court found that the State did not show that appellant knew that another person's credit had to be accessed in order to secure the phone. The Court also found that the State's evidence was consistent with the hypothesis of appellant's innocence. Therefore, appellant's conviction for identity fraud was reversed. However, the theft of services conviction was affirmed.

Crawford

Jennings v. State, A07A0478 (06/11/07)

Appellant was convicted of armed robbery and hijacking a vehicle. Appellant stole Willie Jones' fiancée's car from him outside a barbershop. After the robbery, Jones and his fiancée obtained appellant's name and gave it to the police. Police prepared a photo line-up which included appellant's picture. Jones positively identified appellant as the man who robbed him at gunpoint. Prior to trial, appellant's trial counsel informed the court that Jones had obtained appellant's name through hearsay. During the trial, the jury did not hear any details regarding the alleged hearsay. Jones merely testified that he got the name Marcus Jennings and supplied it to police. Appellant contends that when the victim testified that he provided appellant's name to authorities that the testimony was testimonial hearsay in violation of Crawford. Appellant also claims that a detective's testimony that he obtained appellant's name from Jones was testimonial hearsay. The Court found no Crawford violation and upheld the conviction. The Court reasoned that neither witness repeated any alleged hearsay that appellant was the perpetrator. The Court further found that the evidence was not offered for the truth of the matter asserted but for the limited purpose of explaining why appellant's photo was in the photo lineup.

Search and Seizure

Bennett v. State, A07A0771 (06/12/07)

Appellant was convicted of possession of methamphetamine with intent to distribute. The trial court denied appellant's motion to suppress and he appeals the denial of that motion. Appellant was observed driving away from the back of a retail building at midnight. A Dawson County deputy followed him for five miles and admitted that he was looking for any reason to pull him over. The deputy stopped appellant for speeding. The appellant produced his driver's license and proof of insurance. Appellant's license listed an address in another county. Through further questioning, the officer determined that appellant had moved to Dawson County. As a result, the deputy also wanted to issue a written courtesy warning for failure to change address within a 30-day period. The deputy had no warning forms in his possession therefore he arranged for another officer to bring him a warning book. The second officer arrived and began to fill out the warning. Meanwhile, the deputy got his K-9 out of his patrol car and walked it around appellant's vehicle. The K-9 alerted. The deputy searched the car and found methamphetamine which the appellant stated he was delivering. On appeal, appellant claims that the deputy extended the traffic stop without reasonable suspicion and that his continued detention was illegal. The Court of Appeals agreed. The Court found that under the circumstances, the deputy's decision to detain appellant while he waited for another officer to bring the warning book was unreasonable. The deputy admitted that he could have issued a citation or simply given a verbal warning. The Court concluded that under the totality of the circumstances the officer did not have specific and articulable facts that could constitute a particularized and objective basis to suspect that appellant was involved in criminal activity.