

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JUNE 6, 2008

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THIS WEEK:

- **Search and Seizure**
- **Brady**
- **Hearsay and Right to Confrontation**

Search and Seizure

Zorn v. State, A08A0383

Appellant argues that the trial court erred in denying his motion to suppress evidence seized pursuant to a search warrant. Appellant challenges the validity of the warrant, claiming the magistrate lacked key information relating to the informant's reliability. Reliability should be evaluated: "based on the type of information previously supplied by the informant, the use made of that information, and the elapsed time since the new information was furnished." An officer must make every effort to include information that affects reliability.

Here, the officer included in his warrant application his past involvement with the informant. Specifically, the officer had known the informant for 18 months and during that time they had worked on numerous cases together where drugs had been seized, stolen property recovered, and fugitives apprehended. However, the officer neglected to include in the affidavit information that the informant may have received compensation. The Court of Appeals found that although the "better practice would have been for the officer to include all information relating to reliability, including criminal history and payment status, there was still no indication that the officer's affidavit contained deliberate falsehoods, that

the officer made it with reckless disregard for the truth, or that he consciously omitted material information, which if included, would have indicated a lack of probable cause."

Appellant also challenged the reliability of the tip received by the informant on the basis that the tip was stale by the time the police executed the warrant. Here, the officer waited 72 hours after receiving the tip to seek the warrant. Though time is certainly an element of probable cause, Georgia does not apply rigid rules in determining it or assessing a tip's timeliness. The proper inquiry requires that the court assess: "whether the factual statements within the warrant affidavit are sufficient to create a reasonable belief that the conditions described in the affidavit might yet prevail at the time of issuance of the search warrant." The Court of Appeals concluded that there was a substantial basis for believing that the drugs would still be found in the house three days after the tip was received. Therefore, the judgment of the trial court was affirmed.

State v. Martin, A08A0753

The Court of Appeals held that the trial court correctly granted appellee's motion to suppress evidence. Here, drugs were found in appellee's car after the officer pulled him over because he saw "arms flailing" and thought an altercation was taking place between the appellee and a passenger.

Although a law enforcement officer may conduct a brief investigative stop of a vehicle, the stop must be based on reasonable, articulable suspicion. Vansant v. State, 264 Ga. 319, 320 (1994). Articulable suspicion requires a particularized and objective basis for suspecting that a citizen is involved in criminal activity. In determining whether the officer

had articulable suspicion, the court must look to the totality of the circumstances. The State bears the burden of presenting evidence that demonstrates a reasonable suspicion of criminal activity. State v. Dixon, 280 Ga. App. 260, 264 (2006).

Here, the officer testified that he witnessed an argument and feared for the safety of the driver and other drivers on the road. However, an argument is not a crime. Under these circumstances, the Court of Appeals held that the trial court correctly found that the officer lacked sufficient articulable suspicion of criminal activity to warrant stopping the vehicle.

Brady

Griffin v. State, A08A0048

A Hall County jury found the appellant guilty of possession of methamphetamine and giving a false name. On appeal, the appellant alleges that the State failed to provide her with exculpatory evidence contained in a file involving a complaint of burglary lodged against appellant by her neighbors. Appellant wanted the trial court to conduct an in camera inspection of the prosecutor's burglary file. The trial court denied appellant's motion because she was not charged with burglary and the State did not intend to introduce evidence of the burglary investigation. There are three components to a true Brady violation: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; (2) that the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) prejudice must have ensued.

Here, there was no Brady violation because the material was disclosed to the appellant and she suffered no prejudice. Appellant's defense was that the complaining neighbor had planted the methamphetamine at her residence. At trial, defense counsel elicited testimony from an officer that they went to the appellant's house because of the neighbor's burglary complaint. On re-direct, the State refreshed the officer's recollection by showing him the police reports pertaining to the burglary. The State even attempted to tender the reports into evidence over appellant's objection. Thus, the burglary reports had been "revealed" to the appellant. Brady does not require a pre-trial disclosure of materials sought under a Brady motion. Brady

is not violated when the Brady material is made available to defendants during trial. Floyd v. State, 263 Ga. App. 42, 43 (2003).

Hearsay and Right to Confrontation

Hernandez v. State, A08A0059

Appellant contends that the trial court erred in admitting alleged inaccurate translations of a non-testifying witness in violation of the hearsay rule and the Sixth Amendment right to confrontation. During trial, the court permitted the State to play an audiotape of appellant's in-custody interview with a narcotics officer. Because appellant spoke minimal English, Sonia Loredo, who spoke both English and Spanish, acted as an interpreter during the interview. Loredo did not testify at trial. Under the "language conduit" rule, "absent a motive to mislead, distort or some other indication of inaccuracy, when persons speaking different languages rely on a translator as a conduit for their communications, the statements of the translator should be regarded as the statements of the person's themselves without creating an additional layer of hearsay. Lopez v. State, 281 Ga. App. 623, 625 (2006). Appellant does not allege that Loredo had a motive to distort his statements or mislead, rather, he argues that the trial court did not have adequate assurances that the translation was reliable. Evidence was presented by the State that the translator spoke both Spanish and English and helped officers with interviews in the course of her work. The trial court also permitted appellant to call its own translator. The Court of Appeals held that the trial court did not err when it concluded that Loredo's out-of-court statements could be regarded as appellant's statement. Therefore, the statement was not inadmissible hearsay.

Furthermore, the admission of the audiotape statement did not violate the appellant's Sixth Amendment right to confrontation. Here, the testimony was being given by the appellant. "Under the language conduit rule, the statements of the translator are considered to be the statements of the declarant." Appellant does not have the right to confront himself. Although a defendant has the right to question an interpreter's honesty and competence, appellant failed to provide any authority that the Sixth Amendment requires the cross-examina-

tion of the translator as the exclusive manner in which to test these issues.