

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 15, 2008

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THIS WEEK:

- **Jury Trial Waiver**
- **Speedy Trial**
- **Equal Access**
- **Merger**

Jury Trial Waiver

Chase v. State; A08A1506

Appellant appeals from the judgment entered after a bench trial at which she was found guilty under OCGA § 16-6-5.1 of sexual assault against a person enrolled in a school. On appeal, appellant contends that she did not knowingly and intelligently waive her right to a jury trial and that the trial court should have made an in depth inquiry to ensure that the waiver was valid. Appellant further contends that the trial court erred in not considering evidence that the victim consented to the sexual encounter. The record shows that appellant submitted a written waiver of her right to a jury trial. The waiver stated that appellant knew of her right to a jury trial; that she did not want to be tried by a jury but wanted all issues to be tried by the court; and that she understood that she was giving up her constitutional right to trial by jury and freely and voluntarily waives said right after conferring with her attorney. The Court accepted the waiver without questioning appellant. The undisputed evidence at trial was that appellant and the victim, a 16-year-old student at the school where appellant was a teacher, developed a sexual relationship. The victim testified that she started the relationship with appellant and still had feelings for her.

The Court of Appeals held that the question of whether a defendant is capable of making a knowing and intelligent waiver of her rights is to be answered by the trial judge, and will be accepted unless clearly erroneous. Here, appellant's counsel testified that he discussed with appellant what the likely punishments would be in a jury trial versus a bench trial, his concern about the sexual orientation issue if the case went to a jury trial and that appellant was informed that she could have a jury trial if she wanted one. Thus, the Court found that in light of appellant's comprehensive written waiver and the testimony of trial counsel, the trial court's decision was not clearly erroneous. Lastly, the Court rejected appellant's contention that she could not be found guilty under OCGA § 16-6-5.1 because the victim consented to the relationship. OCGA §16-6-5.1 specifically provides that consent is not a defense to a prosecution under the statute. Judgment affirmed.

Speedy Trial

State v. Stallworth; A08A1021

The State appealed from an order granting defendant's motion to dismiss his indictment on speedy trial grounds. The record shows that the defendant was arrested on May 17, 2005 and was indicted on two counts of burglary on May 24, 2005. Defendant's case was never placed on a trial calendar and defendant moved to dismiss the indictment on speedy trial grounds on September 20, 2007. The trial court granted defendant's motion to dismiss in December 2007, finding that the more than 30 month delay was presumptively prejudicial and defendant's right to a speedy trial had been violated.

The Court of Appeals held that while the trial court properly found that the 30-month

delay was presumptively prejudicial, the delay standing alone was insufficient to establish a speedy trial violation. The Court concluded that since the defendant neither demonstrated nor claimed actual prejudice, and failed to show specific prejudice caused by the delay, the trial court abused its discretion in granting defendant's motion to dismiss the indictment. Judgment reversed.

Equal Access

Bryson v. State; A08A1390

Appellant appeals his conviction for possession of methamphetamine, driving under the influence, open container, and no license on person. On appeal, appellant contends that the trial court erred in denying his motion for new trial because others had equal access to the truck. The record shows that an officer found appellant passed out in his truck while it was still running, with his foot on the break. The officer administered an Alco-sensor field sobriety test which registered positive, and appellant was arrested for driving under the influence. During an inventory search of the truck, the officer found a Georgia Bulldogs tin with a substance later identified as methamphetamine. At trial, appellant testified that he was unaware that the tin was inside the truck and that five to six others had equal access to the truck for two weeks before his arrest.

The Court of Appeals held that whether the evidence of equal access is sufficient to rebut any inference of possession arising from the discovery of drugs is a question left to the jury. The Court found that at trial, the jury heard both the officer's and appellant's testimony, the judge properly charged the jury on the doctrine of equal access, and it was up to the jury to determine whether the State proved appellant was guilty beyond a reasonable doubt. Just because appellant testified that others had equal access to his truck did not require the jury to rule in his favor. Judgment affirmed.

Merger

Arnold v. State; A08A1454

Appellant was convicted of 14 counts of theft by deception and sentenced to serve 15 years in confinement followed by 20 years on probation. On appeal, appellant asserts that the trial court erred in not merging the sentences

for the counts involving the same victims. Appellant asserts that because the victims were uncertain of the dates and "multiple transactions took place roughly simultaneously," the counts involving the same victim should be merged. The record shows that appellant, a car salesman, obtained more than \$500 from each victim by creating the impression that he could sell them a vehicle at a discounted price but never delivered the vehicles they thought they were buying. Six victims testified that they paid appellant large sums of money on two separate occasions.

Under OCGA § 16-1-6(1), two offenses will merge as a matter of fact if one of them is established by proof of the same or less than all the facts required to prove the other. The Court of Appeals found that when appellant took the first sum of money from a victim, the offense of theft by deception was completed. When appellant later took more money from the same victim, appellant committed yet another offense of theft by deception. Thus, the trial court did not err in not merging any of the counts for sentencing purposes. Judgment affirmed.