

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 1, 2008

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THIS WEEK:

- **Custodial Statement**
- **Identity Fraud**
- **Consent to Search**

Custodial Statement

Dagenhart v. State; A08A1319

Appellant appeals his conviction for trafficking in methamphetamine and using a cellular phone to facilitate a violation of the Georgia Controlled Substances Act. On appeal, appellant contends that the trial court erred by admitting into evidence his custodial statement to police because he only had a seventh grade education and the officer failed to determine whether appellant was under the influence of illegal drugs. The record shows that the police officer read the waiver of rights form to appellant. At trial, the officer testified that appellant did not appear to be suffering from a mental illness, did not appear to be under the influence, and that appellant denied he was under the influence of an illegal substance at the time he gave his statement.

The Court of Appeals held that the proper standard for evaluating the admissibility of appellant's statement was whether, under the totality of the circumstances, he made it voluntarily, without being induced by hope of benefit or coerced by threat. Here, the Court found that because the record lacked evidence demonstrating that appellant was under the influence of drugs at the time he gave his statement, and because appellant provided no evidence of how his low level of

education impacted his decision to provide a statement to the police, the trial court did not error in admitting appellant's statement. Judgment affirmed.

Identity Fraud

Powell v. State; A08A0952

Following a jury trial, appellant was convicted of identity fraud. On appeal, appellant contends that the trial court erred in failing to direct a verdict of acquittal because she took possession of the vehicle before the sales documents were signed in the victim's name. Appellant asserts that because the dealership gave her possession of the car before completing the sale, it did not rely on the victim's identifying information, and the State failed to prove fraudulent intent. The record shows that appellant attempted to purchase a car from an automobile dealership but lacked adequate credit to support the financing. Appellant proposed that her grandfather co-sign the loan documents. A third party, alleging to be appellant's grandfather, provided the victim's personal information and the loan was approved. After the sale, the victim received a notice that he had purchased a car and contacted the dealership.

The Court of Appeals found that because the dealership approved the car sale based on the victim's credit history, which it accessed through identifying information provided by appellant's alleged grandfather, and because appellant knowingly used the victim's information to secure the credit rating necessary to purchase the car, the jury was authorized to find her guilty as a party to the crime of identity fraud. Judgment affirmed.

Consent to Search

Allison v. State; A08A1242

A jury convicted appellant of possession of methamphetamine. On appeal, appellant contends that the trial court erred in denying his motion to suppress because he withdrew his consent to be searched before the officer discovered the contraband, or, in the alternative, that his consent to search did not extend to the pocket where the contraband was located. The record shows that a police officer was dispatched to the site of a possible burglary in process at a business. Appellant worked at the business. The officer called the owner who indicated that appellant was not allowed there at that time of night. The officer asked appellant for permission to search him. Appellant removed some contents of his right pocket but would not take his hand off his pocket. Appellant then agreed to the officer's request to pat him down. The officer felt a bulge in appellant's pocket which he could tell was a plastic bag. The officer reached into appellant's pocket and removed a bag containing a white crystal substance which a field test showed to be methamphetamine. According to the officer, appellant did not withdraw his consent to search, nor did he imply that he no longer wished to be searched.

The Court of Appeals found that because appellant agreed to a general request by the officer to search his person, agreed to a pat down, and the officer did not indicate that the search was for the officer's safety or otherwise limit the request for a search, a reasonable person would have understood that appellant agreed to a search which extended to all contents of his pants pockets. The Court held that although consent to search may be withdrawn, any action that purports to be a withdrawal of consent must be recognizable as such based upon an objective standard of reasonableness. Here, the Court found that appellant took no action that could be objectively viewed as a withdrawal of consent; that by agreeing to the pat down, appellant knew that the officer would sense any additional contents that could be detected by touch. Judgment affirmed.