

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 24, 2007

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THIS WEEK:

- **Search and Seizure**
- **Evidence- Hearsay and Telephone Conversations**
- **Evidence- Character**



Search and Seizure

Hicks v. State, A07 A1796

Appellant's neighbor called the police when two shots from a shotgun were fired from the appellant's house towards the neighbor's residence. Police arrived within fifteen minutes and were informed by the neighbor that the appellant had fired a shotgun several weeks before and had written him a threatening letter. The officers were aware that appellant was a convicted felon and that appellant had been involved in violent altercations with police in the past. The officers went to appellant's residence and spoke with him. The appellant denied shooting or possessing any guns, and consented to a search of his home. In the appellant's kitchen, officers found two spent shotgun shells on top of the garbage in a trash can. When appellant observed the officers locate the spent shells he revoked his consent to the search. Appellant was handcuffed and placed outside of the residence where an officer watched over him continuously. Once appellant was removed from the house the officers began a second search. The subsequent search yielded a shotgun, a box of unspent shotgun shells, and some loose unspent shotgun shells.

On appeal, appellant argued that the trial court erred when it refused to suppress the evidence located during the second search. The trial court found that exigent circumstances existed which justified the second search. Exigent circumstances which justify the warrantless entry of a private home exist when the officer reasonably believes that such action is a necessary response on his part to an emergency situation. The Court of Appeals opined that when the appellant was handcuffed, removed from the residence and placed under the continuous watch of a law enforcement officer, all exigent circumstances involving danger to the officers or the public were removed. Therefore, the trial court erred in denying appellant's motion to suppress and the conviction was reversed.

Evidence- Hearsay and Telephone Conversations

Patterson v. State, A07A1659

The record shows that a male driver in a maroon Honda Accord pulled behind the victim's car on Highway 41 and began honking his horn, flashing his lights and making obscene gestures at her when he was unable to pass her car. When the male driver eventually was able to pass her, he threw an object at her car. The object hit the victim's car and caused a small dent in the passenger door. The victim wrote down the Honda's license plate number and drove to a gas station where she called police. The responding officer made a report of the incident and ran the license plate number provided by the victim. The Honda was registered to appellant's sister. The officer went to the address provided and spoke to a

woman who identified herself as appellant's mother. At trial, the officer testified that the appellant's mother stated that the appellant had been driving the Honda all day and that appellant's sister, the registered owner, had not been driving it. The officer left a message with appellant's mother for appellant to call the officer. The officer further testified that approximately thirty minutes later he received a phone from an individual who identified himself as Shawn Patterson, the appellant. The caller admitted to being the driver of the Honda and explained that he was in a hurry and that the victim's Acura Integra was only going thirty miles per hour. The officer had never met appellant, had never spoken to appellant before, and would not recognize him by sight or voice. Neither the appellant nor his mother testified at trial. Prior to trial, appellant filed a motion in limine to exclude the officer's testimony regarding the telephone conversation with "Shawn Patterson" as inadmissible hearsay. The trial court denied the motion.

On appeal, appellant argued that the trial court erred when it denied appellant's motion in limine. The Court of Appeals agreed. The Court held that there was insufficient evidence to identify the appellant as the caller. One way to authenticate the identity of the speaker in a telephone conversation is direct testimony of voice recognition. Here, there was no evidence presented that the officer recognized the voice on the telephone as that of the appellant. To the contrary, the officer testified that he had never met the appellant and would not recognize him by sight or voice. Therefore, the officer's testimony regarding the call he received from someone who identified himself as the appellant was inadmissible hearsay. The Court also found that the officer's testimony regarding the mother's statement that appellant was driving the car all day was also inadmissible hearsay. The only evidence which remained regarding the driver's identity was the victim's description of the driver as a male with a dark complexion, and the fact that the car was registered to appellant's sister. The Court of Appeals held that the remaining evidence was insufficient to demonstrate beyond a reasonable doubt that appellant was the driver. Therefore, the appellant's conviction was reversed.

Evidence- Character

Doyal v. State, A07A0902

Appellant was convicted of possession of methamphetamine and possession of drug related objects. At trial, a police officer was permitted to testify over objection that he went to the appellant's place of business and stated to her, "the reason we're here is because I've got allegations against you for selling methamphetamine". On appeal, appellant contends that the trial court erred in admitting the officer's testimony regarding the complaints that he had received concerning the appellant selling methamphetamine. The Court of Appeals concluded that the evidence impermissibly placed the appellant's character into evidence. The Court further found that the evidence was not relevant to explain the officer's conduct. The Court opined that the hearsay was not cumulative of other evidence and was extremely prejudicial to the appellant. The Court held that because the evidence of appellant's guilt was not overwhelming they could not conclude that the evidence did not contribute to the verdict. Therefore, the appellant's conviction was reversed.