Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 29, 2008

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THIS WEEK:

Search and Seizure

State v. Fisher, A08A1828

The State appealed from the trial court's decision to suppress evidence as illegally obtained. A police officer noticed Crawford standing next to the passenger door of a vehicle occupied by Fisher. The vehicle was parked along the side of a convenience store. As the officer approached in his cruiser, Crawford began to walk away and then started running. The officer chased him down without ever telling him to stop and then arrested him for obstruction. The officer then went back to the vehicle and approached Fisher, who was sitting in the driver's seat. Although Fisher stated that he did not own the vehicle and did not know who did, a check of the vehicle did not come back as stolen and there was no evidence of illegal activity with regard to it. Nevertheless, Fisher was forcibly removed from the vehicle, handcuffed and placed in the back of the cruiser. Cocaine was then discovered in "plain view" during an inventory subsequent to the arrest.

As to Crawford, the officer admitted that his only basis for arresting him was because he ran. *State v. Dukes*, 279 Ga. App. 247 (2006), expressly held that merely running from a first-tier encounter does not, as a matter of law or fact, constitute obstruction of an officer and thus can not provide police with probable cause to arrest the person. The trial court correctly granted Crawford's motion to suppress the evidence discovered as a result of that unlawful arrest.

The evidence against Fisher also was properly suppressed. Even assuming there might have been articulable suspicion justifying a brief detention, a reasonable person in Fisher's position would have believed that he was under arrest and there was no probable cause for such an arrest. The trial court further found that the officer's statement that the evidence was in "plain view" to be equivocal. Since the testimony supported this finding, the evidence was properly suppressed.

Habeas Corpus; Waiver of Counsel

Jones v. Walker, Eleventh Circuit Court of Appeals, No. 04-13562 (Aug. 20, 2008)

Petitioner was convicted of felony murder and cruelty to children. Prior to trial, he argued with the judge about having the public defender represent him. The judge said, "You're going to have either her (referring to public defender) or represent yourself. So you can make up your mind about what you want to do."…and "She is your lawyer, or you don't have a lawyer." Petitioner said, "…I do not wish to proceed pro se." Petitioner eventually proceeded pro se, then asked the court to reappoint the public defender – which the court did. However, Petitioner started complaining about his public defender again. The Judge gave Petitioner the same options as before. Petitioner said he did not want that particular public defender to represent him. Petitioner went to trial pro se and was convicted.

A unanimous panel of the Court granted the Habeas petition concluding that Petitioner's Sixth Amendment rights were violated because he had not clearly and unequivocally asserted

his desire to waive counsel and proceed pro se. The Court then granted an en banc review to determine whether: (1) the waiver was valid and (2) whether Petitioner was entitled to habeas relief under 28 U.S.C. §2254. Petitioner argued he was forced to represent himself in violation of his Sixth Amendment right to counsel. The trial court did not err when it found that Petitioner, by rejecting appointed counsel, voluntarily chose to proceed pro se as surely as if he had made an affirmative request to do so and therefore voluntarily waived his right to counsel by his conduct. The issue was whether Petitioner "knowing and intelligently" waived that right. Neither the trial court nor Petitioner's attorney warned him on the record of the perils associated with proceeding pro se. The State has the burden of showing a waiver was voluntary and knowing. The State can satisfy this burden by presenting evidence that a defendant was warned by the trial court or from another reliable source (e.g., his lawyer or some other independent source of information). If this case were being heard on direct appeal, the State would by unable to establish that Petitioner's waiver was voluntarily made since there is nothing in the record to support that such warnings were given.

However, different standards are applied to a Petition for a Writ of Habeas Corpus. The burden shifts to the petitioner to establish he did not competently and intelligently waive his constitutional right to counsel. The failure of the court to provide on the record warnings to Petitioner is not conclusive proof that his waiver of counsel was unknowingly made. The ultimate test of whether a defendant's choice is knowing is not the adequacy of the trial court's warning but the "defendant's understanding." If the defendant understood the consequences of proceeding pro se, the waiver of counsel is valid. Here, the record indicated that Petitioner, in all the on-the-record hearings that preceded this decision, never indicated that he did not understand the dangers of proceeding pro se. Due to the amount of circumstantial evidence which indicated that Petitioner knew the consequences of waiving counsel, the Court found that Petitioner did not meet his burden of showing by a preponderance of the evidence that his waiver of counsel was made unknowingly and unintelligently. Therefore, the en banc court upheld the denial of the Petition for a Writ of Habeas Corpus by the district court.