

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 31, 2007

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THIS WEEK:

- **Evidence- Opinion**
- **Evidence – Hearsay**
- **Search and Seizure**
- **Right to Public Trial**

Evidence- Opinion

[Pineda v. State, A07A0957 \(08/10/07\)](#)

Appellant was convicted of armed robbery, aggravated assault, and making harassing phone calls. On appeal, appellant argues that the trial court erred when it allowed a translator to become an opinion witness against him during the Jackson-Denno hearing. The record shows that while appellant's girlfriend was driving a car he chased her down with his car, forced her to pull over, and stole her purse while brandishing a knife. That same night, appellant called her and threatened to have her killed. At trial, the State introduced appellant's custodial statement to rebut appellant's trial testimony. The trial court held a Jackson-Denno hearing which showed that appellant was read his rights in English and Spanish. Also, a translator was present for him. Appellant also signed a document waiving his rights. The trial court found that the statement was voluntary. During the hearing, a translator translated the Spanish on the video tape for the court. The court asked the translator if he heard any threat or promise of benefit to appellant. The translator responded by stating absolutely not. Appellant claims that this was improper because the translator became an opinion witness against him. The Court of

Appeals found that appellant failed to object at trial. Moreover, the trial court did not base its findings on the statement from the translator. Thus, the testimony was harmless and did not provide a basis for reversal.

Evidence – Hearsay

[Delgado v State, A07A1499 \(08/16/07\)](#)

Appellant was convicted of enticing a child for indecent purposes and attempted child molestation. The trial court admitted an audiotape of an interview of the child victim. Appellant claims that this was error because the trial court did not redact statements on the tape that the victim attributed to appellant's wife and daughter, who were subpoenaed but failed to appear for trial. Appellant claims that the statements were hearsay in violation of Crawford. The Court of Appeals concluded that even if it could be found that the declarants were unavailable, appellant did not have a prior opportunity to cross-examine them. Thus, appellant's right to confront the witnesses against him was violated by the admission of his wife's and daughter's statements through the audiotaped interview of the victim. However, the Court also found that the error did not contribute to the verdict. The statements were merely cumulative to and corroborative of appellant's own testimony. Therefore, the error was harmless and no basis for reversal.

Search and Seizure

[Davis v State, A07A1315 \(08/15/07\)](#)

Appellant was convicted of possession of methamphetamine with intent to distribute, reckless driving, and speeding in a construction

zone. On appeal, appellant claims that the trial court erred in denying his motion to suppress. After receiving a call about an eighteen wheeler being driven recklessly on I-16, Sheriff's deputies pulled it over after witnessing multiple traffic violations. Appellant, the driver of the truck, was asked to get out of the truck. Appellant was nervous, sweating, and unsteady on his feet. Appellant consented to a search of the truck. Deputies located 24.75 grams of methamphetamine. Appellant argues that his consent was involuntary in light of the State's evidence showing that he was under the influence. Although the State presented evidence that indicated the appellant was under the influence, the Court of Appeals also found that the evidence demonstrated that appellant gave his consent only after convincing the officer that he was in full possession of his faculties. Therefore, the Court affirmed the denial of appellant's motion to suppress.

State v Jones, A07A0831 (08/15/07)

The State sought to revoke appellee's probation asserting that he had committed various drug offenses. Appellee moved to suppress the drug evidence that formed the basis for the new offense which caused the State to seek the revocation. The trial court granted the motion and the State appealed. The record shows that a deputy with the Floyd County Sheriff's Department received a call from a confidential informant (hereinafter CI). The deputy had worked with this particular CI for four years. The CI had provided accurate information in the past which had resulted in several drug arrests. The informant stated that an individual driving a two-tone gray, Chevy truck, with a "Devon Jones Pressure Washing" placard on the door would be leaving south Rome with cocaine. The deputy went to the area and located the described truck in the parking lot of a gas station. The deputy observed the appellee enter the truck and drive away. The deputy asked another officer in the area who had a K-9 to stop the truck. The truck was pulled over and the K-9 performed a free air search. The dog alerted and cocaine was found inside appellee's vehicle. Appellee moved to suppress the evidence claiming that the CI's tip did not authorize a warrantless search. Although the trial court found the

CI to be reliable, it concluded that the tip lacked detail and did not furnish probable cause for a warrantless search. The Court of Appeals reversed the trial court noting that the officers did not need probable cause. A brief investigatory stop of a vehicle is justified by specific, articulable facts sufficient to give rise to a reasonable suspicion of criminal conduct. The information provided by the CI and the deputy's confirmation of those facts gave the officer reasonable suspicion to briefly detain appellee for investigative purposes. The subsequent alert by the drug dog provided probable cause for the warrantless search of the truck and authorized the seizure of the drugs.

Thomas v State, A07A1062 (08/15/07)

Appellant was convicted of one court of trafficking in marijuana. On appeal, appellant argues that the trial court should have granted his motion to suppress evidence on the basis that the search warrant used to search his home was for a different address. The record shows that appellant was shot on February 1, 2005. Police responded to the 911 call and smelled a strong odor of marijuana. The appellant's residence was located at "3958 Bailey Castle Court". The police subsequently submitted an affidavit and a search warrant application to search for marijuana and drug paraphernalia at "3958 Bailey Castle Court". The magistrate granted the warrant, but the warrant listed the address for the search as "5365 Williams Road". The warrant did not mention appellant or any other owner or occupant. A search of appellant's home yielded forty-two pounds of marijuana. Appellant claimed that the warrant was constitutionally defective. The trial court disagreed and opined that the search warrant, when read in conjunction with the affidavit and application, made it clear where the search would be conducted. The Court of Appeals held that the search warrant was invalid and reversed. When the name of the owner or occupant of the property is not provided in the warrant, the description of the premises must be exact. Thus, where the residence is described by street and number alone, that description will not authorize the search of a residence at another street or number. Such a search is unauthorized under Georgia law, even if the officers were acting under good faith. Because

the search warrant in this case contained an address entirely different from the residence that was searched and failed to identify an owner or occupant, it was unconstitutional under both federal and state constitutions.

Right to Public Trial

Delgado v State, A07A1499 (08/16/07)

Appellant was convicted of enticing a child for indecent purposes and attempted child molestation. On appeal, appellant claims that the court violated O.C.G.A. § 17-8-54 as well as his right to a public trial. Appellant argues that the court exceeded the statute by excluding his parents from the courtroom when it was cleared pursuant to O.C.G.A. § 17-8-54. Appellant failed to object at trial and therefore waived his ability to raise the matter on appeal. Relying on Hunt v. State, 268 Ga. App. 568 (2004), in which the Court of Appeals recognized that a violation of a person's right to a public trial is a structural error, appellant urged the Court to extend the "plain error" doctrine and review the matter. The Court of Appeals declined to extend the "plain error" doctrine where there is a partial violation of O.C.G.A. § 17-8-54. In this case, the press remained in the courtroom during the child's testimony. Thus, the impact of the closure was not as great, and not as deserving of such a rigorous level of constitutional scrutiny.