Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING SEPTEMBER 11, 2009

Legal Services Staff Attorneys

David Fowler
Deputy Executive Director

Chuck Olson
General Counsel

Lalaine Briones
Legal Services Director

Joe Burford
Trial Services Director

Laura Murphree
Capital Litigation Director

Fay McCormack
Traffic Safety Coordinator

Gary Bergman
Staff Attorney

Tony Lee Hing
Staff Attorney

Donna Sims
Staff Attorney

Jill Banks
Staff Attorney

Al Martinez
Staff Attorney

Clara Bucci
Staff Attorney

Brad Rigby
Staff Attorney

THIS WEEK:

Statements; Independent Source Rule

Stidham v. State, A09A1456

Appellant was convicted of two counts of burglary. He contended that the trial court should have suppressed as fruit of the poisonous tree the testimony of his two co-defendants implicating him in the burglaries. The evidence showed that investigations were going on in five counties concerning burglaries in each county. Appellant was questioned concerning the burglary of his grandparents' home in Berrien County. The Sheriff made a deal with appellant that if he would tell all he knows, he would only be charged with the Berrien County burglary. Appellant told all, implicating the two co-defendants. Appellant was subsequently charged with burglaries in Pulaski County. His two co-defendants were subsequently arrested and gave statements implicating appellant and at appellant's trial, testified against him. The trial court suppressed appellant's statements to the Berrien Sheriff, but held that the testimony was admissible because of the independent source rule.

The Court held that evidence obtained as a direct result of an illegal confession is subject to exclusion as "fruit of the poisonous tree." But, not all evidence must be excluded as poison fruit simply because it would not have come to light but for the illegal actions of the police. The question is whether the evidence has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint. Here, in view of the multiple investigations which were ongoing contemporaneously in the several counties, the Court held that there was evidence to support the trial court's decision and accordingly, affirmed the trial court's denial of appellant's motion to suppress the testimony of his co-defendants.

False Swearing

Spillers v. State, A09A1175

Appellant was convicted of false swearing, OCGA § 16-10-71 (a). He argued that the evidence was insufficient to support his conviction. The Court agreed and reversed. The evidence showed that in 1986 appellant pled nolo contendere to aggravated assault. Thereafter in 2004, appellant sought a seat on the county commission. In conjunction with his candidacy, he filed a form affidavit swearing as follows: " I have never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude or conviction [sic] of domestic violence under the laws of this State, any other State, or of the United States, or, if so convicted, that my civil rights have been restored; and at least 10 years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude[.]"

The Court held that although a judgment imposing sentence following a plea of nolo contendere is considered a "conviction" for some purposes, such a conviction does not disqualify one from holding public office

or otherwise deprive him or her of any civil or political rights. OCGA § 17-7-95 (c). The purpose and overall content of the affidavit appellant signed, which closely tracked OCGA § § 21-3-132 (f) and 21-2-153 (e), suggested that the statements in the form affidavit were all aimed at establishing a candidate's qualification to run for office. Although there was evidence that appellant knew he was a "convicted felon," the evidence was undisputed that he believed that, when he executed the 2004 affidavit, he was swearing only that he was not disqualified from holding public office by reason of a felony conviction —which was subjectively true and was objectively correct under the applicable law. Furthermore, there was no evidence that appellant intended to deceive the election board or the voters, as he believed that his 1986 conviction was generally known in the county. Therefore, there was no evidence supporting an inference that, in executing the 2004 affidavit, appellant knowingly and willfully made a false statement.

Search & Seizure

Sims v. State, A09A0895

Appellant was convicted of DUI. She contended that the trial court erred in denying her motion to suppress. The evidence showed that a police officer was dispatched to an address regarding a drunken woman. En route, he received a BOLO stating that the woman had left the address. He was given a description of the woman, the truck she was driving and the tag no. The officer went to the residential address listed for her license plate. She was not there, so the officer waited near the entrance to the subdivision. Appellant drove into the subdivision and was stopped by the officer. She was subsequently arrested for DUI.

Appellant argued that the officer did not have a reasonable articulable suspicion to stop her because he not seen any improper driving and the information from the dispatcher had come from a source of unknown reliability. The Court held, however, that a dispatcher's report of a suspected intoxicated driver, containing details about the driver, the driver's vehicle, the driver's behavior, and the location where the behavior occurred, has been held to provide articulable suspicion authorizing a responding officer to detain the driver, even if the source of the report is a citizen or unidentified informant. Under such circumstances, the responding officer is not required to question the dispatcher about the source of the information or to wait until he actually observed the driver committing a crime. Here, the dispatcher's report provided the officer with a description of appellant and her vehicle, including its tag number. The dispatcher's report further informed the officer that appellant was suspected of driving while intoxicated; it gave the location where she had been seen driving; it indicated that she had left that location; and it provided the address of another location (appellant's residence) where she might reasonably be found still engaged in this criminal activity. This information was sufficient to authorize the officer to stop appellant.