Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING SEPTEMBER 28, 2007

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THIS WEEK:

Reconstructed Transcript

Williams v State, A07A0913 (09/11/07)

Pursuant to OCGA § 5-6-41(g), where a trial is not reported a transcript of evidence and proceedings can be prepared from recollection, and if the parties and counsel agree the narrative can be filed as part of the record in the same manner and with the same binding effect as a transcript filed by the court reporter. But, where the parties cannot recollect the proceedings, "the decision of the trial judge thereon shall be final and not subject to review, and if the trial judge is unable to recall what transpired, the judge shall enter an order stating that fact."

While the Court of Appeals may consider a narrative prepared by one side when the trial court approves the narrative, or may consider a narrative prepared by the trial court, where no narrative is agreed to, as in this case, the trial court's decision that no narrative would be created is not subject to review.

Jury Charges

Pitts v State, A07A1242 (09/13/07)

Appellant was convicted of rape, aggravated battery, kidnapping with bodily injury, aggravated child molestation, and aggravated assault. On appeal, appellant argued that the trial court's instruction to the jury on the offense of aggravated child molestation failed to charge the jury on the essential elements of the crime. The trial court charged the jury "A person commits the act of aggravated child molestation when that person does an immoral or indecent act to or with a child less than 16 years of age with the intent to arouse or satisfy the sexual desires of the child or the person." The trial court left out the essential element that the acts must either be accompanied by an act of sodomy or an act which physically injures the child.

Due to the failure to completely charge the jury as to the crime of aggravated child molestation the trial court as a matter of law authorized a conviction for aggravated child molestation upon proof of only the elements of child molestation. Therefore, the conviction for aggravated child molestation was vacated and the sentence for that charge was also vacated.

Search and Seizure

Lane v State, A07A1287 (09/11/07)

Detectives were called to an auto dealership in reference to a stolen four-wheeler brought to the dealership by the appellant and his companion. The detective requested that the appellant accompany him to the police station and bring the four-wheeler so it could be impounded and to discuss the matter. Appellant drove with his companion to the police department. Upon arriving, the appellant asked to use the restroom. The detective testified that the restroom was in a secure area and that he was obligated to keep

the appellant in eye contact. The detective followed the appellant into the restroom and asked if he could check the appellant for weapons. The appellant agreed. The only item found was a large wad of cash consisting of all $20 bills. Detectives then interviewed appellant. The detective read the appellant his Miranda warnings and he signed a waiver acknowledging that he understood his rights. The appellant was not coerced, threatened, made any promises, or given any hope of benefit. Neither detective carried a weapon. The detectives then interviewed the appellant's companion. They left the appellant in the interview room unsupervised. The appellant had his cell phone in his possession and the door to the interview room remained unlocked. Upon returning to the appellant, detectives noticed that he had spun his baseball cap from facing backwards to facing forwards. The detectives then requested that appellant first remove his hat and then they asked him to remove his shoes. Nothing was found in the hat. A single bag of cocaine was found in each of the defendant's shoes.

The Court held that the search of the appellant's shoes was completely voluntary by the defendant. The appellant had been given the Miranda warning. Further, the appellant consented to the search. The Court explained that while the appellant was not under arrest the detectives had a right to detain the appellant while they gained further information about the four-wheeler. The detective testified that based on his knowledge training and experience, the appellant's behavior was suspicious. This behavior included turning around the baseball cap and carrying the large wad of cash.

The Court determined that the appellant's consent to the search was voluntary.

Double Jeopardy

Davis v State, A07A1530 (09/12/07)

Appellant was arrested for breaking into an automobile. After the arrest, a laptop computer was found in the appellant's car. The laptop had been stolen from a car on a previous night. The appellant pled guilty to the charges arising from the stolen laptop. Appellant was then charged by indictment for the events that led to the initial arrest. The appellant claims that the trial court erred in failing to find double jeopardy for not trying the two cases as one. The Court of Appeals held that in order for prosecution to be barred by the double jeopardy standard (OCGA § 16-1-8(b)(1)) the charges must arise from the same transaction. This does not mean that the identical crimes that occurred in different transactions must be tried together. For these reasons, the conviction was affirmed.