

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING SEPTEMBER 5, 2008

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THIS WEEK:

- **Brady Violation**
- **Search & Seizure;**
- **Child Molestation, Cruelty to Children**

Brady Violation

Alford v. State; A08A0812

A jury convicted appellant for trafficking in cocaine. On appeal, appellant contends that the trial court erred in (1) denying his motion for mistrial based on the state's failure to "reveal the deal" it had with a confidential informant ("CI") before trial. The record revealed that appellant knew the CI's identity prior to trial and had included him on the defense's witness list. Appellant stated that he expected the evidence to show that the CI was arrested and that the case against him was shortly thereafter dead-docketed. Appellant also introduced into evidence certified copies of the CI's indictment for trafficking in cocaine and the order dead-docketing the charges.

The Court of Appeals held that the trial court did not abuse its discretion in denying appellant's motion for mistrial. Under *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. U.S.*, 405 US 150 (1972). the state is under a duty to reveal any agreement, even an informal one, with a witness concerning criminal charges pending against that witness, and a failure to disclose such an agreement constitutes a violation of the due process requirements of Brady. In order to show that the state violated Brady by failing to reveal a deal with one of its witnesses, the burden is on the defendant to show that the state possessed

evidence of the deal; that the defendant did not possess the evidence nor could he obtain it himself with any reasonable diligence; that the state suppressed evidence of the deal; and that, had the evidence of the deal been disclosed to the defendant, there existed a reasonable probability that the result at trial would have been different. The Court concluded that appellant had not shown either (1) that he did not possess evidence of the CI's deal with the state, or could not have obtained it himself with reasonable diligence, or (2) that a reasonable probability of a different outcome existed had the state disclosed the deal sooner. Judgment affirmed.

Search & Seizure

Alford v. State; A08A0812

A jury convicted appellant for trafficking in cocaine. On appeal, appellant contends that the trial court erred in denying his motion to suppress. The record shows that a police officer received information from a reliable CI that appellant would be driving to a residential subdivision, carrying three to four ounces of cocaine. Investigators were posted at the entrance of the subdivision. A traffic stop was initiated after an officer noticed the tag decal on appellant's car was in the wrong place. After noticing a digital scale on the front seat of the car the officer called for a canine unit. The dog alerted on the vehicle. The vehicle was searched and several bags of cocaine were discovered.

The Court held that the trial court did not err in denying appellant's motion to suppress. The Court found that that specific information from a reliable, known informant is sufficient to authorize an investigatory traffic stop. In this case, the informant accurately described the kind of vehicle appellant would

be driving, the specific subdivision near a particular street, carrying a specific amount of cocaine. The police conducted surveillance and observed a vehicle matching the description given by the CI with a driver who also matched the CI's description. These circumstances were sufficient to give rise to a reasonable suspicion of criminal activity so as to authorize the investigatory stop. Judgment affirmed.

Child Molestation, Cruelty to Children

Murray v. State; A08A1050

Appellant was convicted of aggravated assault with intent to rape, child molestation, attempted aggravated child molestation, and cruelty to children for acts he committed against his 15-year-old stepdaughter. On appeal, appellant contends that the trial court erred in admitting photographs of the victim into evidence due to the state's discovery violation. Appellant further contends that the trial court erred in admitting evidence of his improper touching of an 18-year-old girl as a similar transaction because it was not sufficiently similar to the crimes for which he was on trial. The evidence shows that the victim, who lived in an apartment with her mother and appellant, was taking a shower when appellant came into the bathroom and ripped down the shower curtain. The victim ran and appellant came up behind her, tried to force her legs open, called her vile sexually repulsive names and beat her bloody when she refused. At trial, over appellant's objection, the Court allowed the introduction of seven photographs of the victim's injuries although the state failed to produce them 10 days before trial as required by OCGA § 17-16-4(a)(3).

The Court of Appeals concluded that pursuant to OCGA § 17-16-6, if the state fails to comply with reciprocal discovery requirements, the trial court may "order the state to permit the discovery or inspection, . . . grant a continuance, or, upon a showing of prejudice and bad faith, prohibit the state from introducing the evidence not disclosed." Here, appellant failed to make either showing. Appellant did not argue at trial that he was prejudiced because of the alleged discovery violation. Furthermore, appellant did not request a continuance, nor did he not demonstrate that the state acted in bad faith in

not producing the photos to defense counsel in a timely manner. Consequently, the trial court did not abuse its discretion, under OCGA 17-16-6 in denying appellant's motion to exclude the photographs from evidence at trial.

Additionally, the Court found that the trial court did not abuse its discretion in allowing the similar transaction evidence. The similar transaction evidence showed that a few months earlier, appellant tried to coax a different girl into a pool. When the girl refused, appellant tried to pull her in by grabbing her near her knee and then called her a bitch and a whore when she still didn't enter the pool. Appellant contended that this simple battery was not logically connected to the violent offense against the victim. However, the court held that the evidence was admissible because it showed appellant's bent of mind toward touching young girls inappropriately. Judgment affirmed.