

# Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING JANUARY 26, 2018

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State Prosecutor

## THIS WEEK:

- **Sufficiency of the Evidence; Jury Instructions**
- **ALS Stipulations; Prior Bad Acts**
- **Guilty Pleas; Duress**
- **Double Jeopardy; Prosecutorial Misconduct**

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### ***Sufficiency of the Evidence; Jury Instructions***

*Taylor v. State, A17A1619 (12/20/17)*

Appellant was convicted of numerous crimes involving a home invasion of an apartment residence. He argued that the evidence was insufficient to support his conviction for criminal damage to property in the first degree. OCGA § 16-7-22 (a) provides, in relevant part, that "[a] person commits the offense of criminal damage to property in the first degree when he . . . [k]nowingly and without authority interferes with any property in a manner so as to endanger human life[.]" The evidence established that the apartment door was violently forced open by appellant and his accomplices and that it struck the victim, immediately causing her head to swell. The Court noted that the phrase "in a manner so as to endanger human life" means reckless endangerment rather than actual endangerment. The largest share of cases construing OCGA § 16-7-22 (a)'s endangerment requirement have involved 1) the firing of guns or similar acts which result in some type of projectile entering or being directed at a dwelling or motor vehicle; or 2) defendants who set fire to buildings or objects within a building or who took steps to do so. However, the Court stated, the statute's reach is not limited to these narrow circumstances. Instead, it proscribes any conduct that simultaneously damages property of another while creating a risk to human life. And here, the Court found, a rational trier of fact was authorized to find that the collective act of appellant and his accomplices, all adult men, of breaking down the door to the victim's apartment was taken

without regard to any harm that such an act could cause to anyone in the path of the door. Moreover, the jury was authorized to find that the door was broken down with a measure of force sufficient enough that the life of anyone struck by the door could have been jeopardized. Thus, the Court concluded, there was sufficient evidence to support appellant's conviction for criminal damage to property in the first degree. Appellant also contended that the trial court erred by providing an erroneous definition of the offense of possession of a weapon during a crime when it instructed the jury. The record showed that the jury as instructed as follows: "A person commits the offense of a possession of a firearm during the commission of a crime, when the person has on or within arms reach of his person, a firearm during the commission of or any attempt to commit a felony, which is any crime against or involving the person of another. Appellant argued that, by designating this offense as the "possession of a *firearm* during the commission of a felony" rather than as "possession of a *weapon* during the commission of a felony" the trial judge's instruction misstated the law. The Court disagreed. Jury instructions must be tailored to fit the allegations in the indictment and the evidence admitted at trial. If a jury charge recites the entire definition of a crime and the indictment does not, there is a reasonable probability that the deviation violated the accused's due process rights by resulting in a conviction of a crime committed in a manner not charged in the indictment. Here, because neither the indictment nor the evidence presented by the State suggested that appellant had been in possession of any type of weapon other than a firearm, the trial court's charge was properly tailored to the indictment and the evidence presented. That the judge referred to the offense as "possession of a firearm" only reinforced to the jury that the State's theory of the charges was based solely on appellant's alleged possession of a handgun, as testified to by the victim. Accordingly, the Court found no error.

## **ALS Stipulations; Prior Bad Acts**

*Adams v. State, A17A1977 (12/27/17)*

Appellant was convicted by a jury of DUI (less safe). The evidence showed that he refused to take a blood test. At the ALS hearing, the officer and appellant stipulated that appellant would enter a guilty plea to the DUI charge in the criminal case in exchange for the officer withdrawing his sworn report and suspending the ALS proceeding. Appellant subsequently reneged on the agreement and went to trial. Appellant contended that the trial court erred in permitting the State to introduce evidence of the ALS Stipulation. The Court disagreed, finding that the issue was controlled by *Flading v. State*, 327 Ga. App. 346, 348-351 (1) (2014). Here, like *Flading*, there was no evidence of fraud or mistake in reaching the stipulation and no evidence that the defendant ever repudiated his counsel's authority to make the stipulation. Appellant also contended that the trial court erred in allowing evidence of a prior driving incident in which he was arrested for DUI, but ultimately pled guilty to reckless driving. Appellant argued that OCGA § 24-4-417 ("Rule 417"), requires that a criminal defendant have been convicted of DUI for the prior driving incident to be admissible. The Court again disagreed. Rule 417 expressly provides that "evidence of the *commission* of another [DUI offense] on a different occasion by the same accused shall be admissible," rather than evidence of a *conviction*. Thus, the Court concluded, by choosing the word "commission" rather than "conviction" in Rule 417 (a) (1), the General Assembly intended for a prior driving incident to be admissible where there is evidence that a DUI was committed by the criminal defendant, even if the defendant was not convicted of that offense. Finally, appellant argued that the prior DUI incident was inadmissible under Rule 417 (a) (1) because it was not relevant to prove knowledge and plan. The Court noted that a prior DUI is admissible under Rule 417 (a) (1) only if it is relevant to prove knowledge, plan, or absence of mistake or accident. However, Rule 417 is a "rule of inclusion" that creates a presumption in favor of the admission of such evidence, given that Rule 417 (a) (1) speaks of evidence that "shall be admissible." Here, the Court found, the State proffered the officer's testimony about the prior driving incident for the purpose of proving that appellant had acquired knowledge of the testing procedures used by the State to secure a DUI conviction and had developed a similar plan to refuse consent in the present case as part of an effort to avoid a DUI conviction. In light of the State's proffer, the Court concluded that the trial court did not abuse its discretion in finding

that the prior DUI incident was relevant for proving knowledge and plan.

## **Guilty Pleas; Duress**

*Hall v. State, A17A2009 (1/3/18)*

In 2015, appellant was indicted for aggravated sexual battery, child molestation, criminal attempt to commit rape, and aggravated stalking. Several days before trial, appellant contended that the chief jailer, whom appellant had known for 10 years and called "chief", approached him outside the booking area. The chief allegedly told him that "the odds are stacked against you" and "[i]t would be a good point now for you to take a plea." The jailer also stated that appellant "was innocent until proven broke" and if he could not afford an attorney, he was "going to lose." The chief further admitted to saying to appellant that he was "innocent until proven broke." But, the chief denied making any comment about the deck being stacked against appellant, and further denied trying to influence appellant in any way. Three days after this conversation between appellant and the chief, appellant entered a negotiated plea. Thereafter, he filed a timely motion to set aside his plea which the court, after a hearing, denied. Appellant argued that he should have been allowed to withdraw his guilty plea because the chief's statements were improper and unduly influenced his decision to plead guilty. The Court disagreed. First, the Court found that the State met its burden by showing from the record, which contained a transcript of the guilty plea hearing, that appellant was cognizant of the rights he was waiving and of the possible consequences of his plea. Second, appellant's conversation with the chief did not render his plea involuntary. The Court noted that appellant and the chief gave different accounts regarding who initiated the conversation, as well as its length and content. However, conflicts in testimony are a matter of witness credibility, which the trial court was authorized to decide against appellant. And while ill-advised and inaccurate, the statement that the chief admitted to making to appellant - that appellant was "innocent until proven broke" - did not compel a finding of duress. Accordingly, the Court affirmed the denial of appellant's motion to withdraw his guilty plea.

## **Double Jeopardy; Prosecutorial Misconduct**

*Harris v. State, A17A1941 (1/3/18)*

Appellant was indicted on one count of child molestation. Before the jury was selected, the trial court heard pretrial motions. Appellant successfully presented a motion in limine asking that a portion of

his video-recorded interview by a state investigator be redacted - specifically, where the state investigator requested that appellant take a voice stress test. During trial, the judge granted appellant's motion for mistrial made after the prosecution played the unredacted video of the defendant's interview with the state investigator. Appellant subsequently filed a plea in bar/motion in *autrefois* convict contending that the Double Jeopardy Clause barred his further prosecution. The trial court denied the motion, finding that the prosecutor had accidentally forgotten to redact the video and had no reason to induce a mistrial intentionally. The Court stated that generally, when a defendant makes a motion for a mistrial, he waives any claim of double jeopardy. But, where the prosecutor has goaded the defense into making a motion for a mistrial in order for the prosecution to avoid reversal of the conviction because of prosecutorial or judicial error or to otherwise obtain a more favorable chance for a guilty verdict on retrial, the Double Jeopardy Clause will stand as a bar to retrial. The inquiry is whether the prosecutor intended to goad the defendant into moving for a mistrial and thus terminate the trial. What is critical is the objective of the prosecutor's conduct. The Court found that the record supported the trial court's finding that playing the unredacted video was not for the purpose of subverting the protections afforded by the Double Jeopardy Clause. The prosecutor maintained that she was not trying to subvert the outcome of the trial because she thought the witnesses had testified well and she was confident appellant was going to be convicted. Also, the Court found, the fact that the prosecutor argued against a mistrial and requested that the trial court give curative instructions and allow the trial to go forward provided further evidence that the prosecutor was prepared to try the case immediately and did not intend to cause a mistrial to gain delay. Absent some persuasive evidence of improper motive or benefit to the State upon retrial of the case, the trial court was authorized to find, as it did, that the prosecutor's failure to redact the video was not made purposefully to subvert double jeopardy protections. Moreover, the Court rejected appellant's contention that the prosecutor's conduct was "so blatant and so contrary to the most basic rules of prosecutorial procedure" as to give rise to a presumption of unlawful intent. The bar of double jeopardy is such an extreme sanction against the interest of the state in prosecuting one who has been indicted for a crime that it should be applied strictly and only when the circumstances clearly show the prosecutor intended to subvert the protections afforded by the Double Jeopardy Clause. And here, the Court concluded, appellant failed to make the requisite showing.