

# Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING MARCH 27, 2015

## State Prosecution Support Staff

**Charles A. Spahos**  
Executive Director

**Todd Ashley**  
Deputy Director

**Chuck Olson**  
General Counsel

**Lalaine Briones**  
State Prosecution Support Director

**Sharla Jackson**  
Domestic Violence, Sexual Assault,  
and Crimes Against Children  
Resource Prosecutor

**Todd Hayes**  
Sr. Traffic Safety Resource Prosecutor

**Joseph L. Stone**  
Traffic Safety Resource Prosecutor

**Gary Bergman**  
State Prosecutor

**Leah Hightower**  
State Prosecutor

**Kenneth Hutcherson**  
State Prosecutor

**Nedal S. Shawkat**  
State Prosecutor

**Austin Waldo**  
State Prosecutor

## THIS WEEK:

- **Right of Self-Representation; Mental Incompetency**
- **Written Witness Statements; Identification**
- **Jury Charges; Mistake of Fact**
- **Criminal Contempt**
- **Right to be Present; Plea Negotiations**

---

---

---

---

### ***Right of Self-Representation; Mental Incompetency***

*Duckett v. State, A14A2187 (3/5/15)*

Appellant was convicted by a jury of aggravated assault, making terroristic threats, and criminal trespass, but acquitted of simple battery, following an incident at a hair salon at which appellant was working on her first day on the job. Prior to trial, appellant declared that she wished to represent herself. The trial court held a *Faretta* hearing to advise appellant of her rights as required by state and federal law and thereafter allowed her to represent herself. At the sentencing hearing, appellant revealed for the first time that she suffers from schizophrenia, was bipolar, and had been receiving disability benefits for 13 years. The trial court questioned appellant concerning her mental illness, and then noted on the record, among other observations, that “from beginning, middle to end of these proceedings, [the defendant] presented herself as someone who obviously suffered from mental illness, which explains the attitude she took toward the Court, and to the other parties in this case, and her single-minded approach of refusing assistance of counsel, and refusing imprecations of the Court to

do certain things for her own benefit. [And] I think a lot of both your behavior during the legal process, and your behavior at the hair salon, was due to your mental illness.”

Appellant contended that the trial court should have made a finding regarding her competency before allowing her to represent herself at trial and further that the trial court erred when it failed to sua sponte investigate her competency after it allegedly became apparent that she suffered from a mental illness. The Court stated that it is impermissible as a matter of constitutional law for a mentally incompetent person to be subjected to trial, regardless of whether that person is tried while represented by counsel or while acting pro se. A trial court has the duty to inquire into a defendant’s competence when information becomes known to it, prior to or at the time of the trial, sufficient to raise a bona fide doubt regarding the defendant’s competence. Moreover, after conviction, a defendant may seek a hearing regarding the issue of competency at the time of trial. In this regard, a defendant may argue that he was denied procedural due process based on the trial court’s failure to resolve the issue of competency before or during trial or he may argue that his substantive due process rights were violated because he was tried while incompetent.

As to appellant’s procedural due process arguments, the Court noted that the focus of the inquiry is whether the trial court received information prior to or during trial which, objectively considered, should reasonably have raised a doubt about the defendant’s competency and alerted the trial court to the possibility that the defendant could neither understand the proceedings, appreciate their

significance, nor rationally aid his attorney in his defense. This information includes any evidence of the defendant's irrational behavior, the defendant's demeanor at trial, and any prior medical opinion regarding the defendant's competence to stand trial.

Here, the Court found, while it is obvious that the trial court had some justifiable concerns about appellant's ability to proceed without counsel, the particular circumstances here showed that appellant was not entitled to a new trial due to the trial court's failure to conduct a competency hearing prior to allowing appellant to represent herself at trial. Moreover, the trial court made a specific finding in its order denying appellant's motion for new trial that appellant's mental illness was not so severe that she should be denied her right to represent herself. For example, the trial court noted that appellant was acquitted of the charge of simple battery, raised reasonable points in her defense, presented an alternative explanation for the incident, and succeeded in admitting numerous items of evidence over the State's objection. The fact that appellant took some missteps at trial and remained intransigent in her defense did not require the trial court to halt the trial and inquire into her mental state or to sua sponte conclude that appellant was not mentally competent to represent herself.

As to her substantive due process claim that she was not, in fact, competent to represent herself, the Court stated under *Indiana v. Edwards*, 554 U.S. 164 (2008) an accused who is competent to stand trial and insists on representing herself may nonetheless be required to accept the services of counsel on the ground that she lacks the mental capacity to conduct her own defense at trial. However, *Edwards* does not impose a higher level of scrutiny of an accused's competence to self-represent at trial or create any additional duty on the part of the trial judge to inquire into an accused's competence. Instead, *Edwards* holds that it is constitutionally permissible for a state to deny a defendant the right to proceed without counsel at trial on the grounds that the defendant, though competent to stand trial, is not sufficiently competent to represent herself at trial because of a severe mental illness. The trial judge will often prove best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant.

Accordingly, the Court upheld the trial court's determination that although appellant apparently suffered from a mental illness, it was not so severe that the trial court should override her desire represent herself at trial.

### **Written Witness Statements; Identification**

*Harris v. State*, A14A1501 (3/6/15)

Appellant was convicted of aggravated child molestation. At trial, the victim's uncle testified on cross-examination that, at the request of the assistant district attorney, he "wrote [a] statement and turned it in." Defense counsel then asked the trial court, "may we approach regarding the statement that I never received?" The assistant district attorney objected to that characterization. The court responded, "There's no need to approach," and defense counsel answered, "Okay." She then continued cross-examination. Appellant argued that the failure to provide him with the uncle's written statement violated his due process rights because it was material impeachment evidence falling under *Brady*, and violated Georgia's reciprocal discovery rules.

As to the *Brady* contention, the Court held that because defense counsel never objected, any violation was waived. As to the alleged reciprocal discovery violation, the Court noted that appellant correctly argued that O.C.G.A. §17-16-4 (c) required the State to promptly notify him of this statement. However, appellant did not request any of the relief provided for in O.C.G.A. §17-16-6, but merely asked to approach regarding the statement which counsel never received. Since appellant did not request any relief, no reversal was required. In so holding, the Court noted that appellant conceded that there was no purposeful violation of the statute by the State.

Appellant also argued that the trial court erred by refusing to give two requested charges on identification. One of the charges concerned the reliability of identification and the other concerned the state's burden to prove beyond a reasonable doubt the identity of appellant as the person who committed the crime. Appellant argued that the victim was never reported to have identified him as the person she referred to as "Cash" regarding this incident. But, the Court noted, a witness did

testify that the victim called appellant by the name "Cash," and said that Cash had touched her.

Moreover, there is no requirement in Georgia law that a trial judge must warn the jury against the possible dangers of mistaken identification of an accused as the person committing a crime. And here, the trial court charged the jury on the state's burden of proof, the presumption of innocence, reasonable doubt, credibility of witnesses, and impeachment of witnesses. Thus, the jury was instructed on the general principles of law underlying a defense of misidentification. Accordingly, the trial court did not err in not giving appellant's two requested charges.

### **Jury Charges; Mistake of Fact**

*Paul v. State*, A14A1641 (3/6/15)

Appellant was convicted of burglary. The evidence showed that a victim came out of his bedroom, only to find appellant standing in the apartment living room. Appellant claimed the cat let him in and then left. The victim then noticed his wallet had been moved and that a dollar bill was missing. Appellant was arrested shortly thereafter. At trial, appellant testified that he thought the apartment was vacant and that he could rest there.

Appellant argued that the trial court erred in failing to charge the jury sua sponte on the defense of mistake of fact. The Court disagreed. A mistake of fact represents an affirmative defense under which a person shall not be found guilty of a crime if the act constituting the crime was induced by a misapprehension of fact which, if true, would have justified the act or omission.

Here, however, appellant claimed that he mistakenly thought the apartment was vacant and thus he was authorized to enter it. This was a mistake of law, not fact; a person is not authorized to enter the dwelling of another merely because it is vacant and such unauthorized entry may still constitute burglary. The failure to give a charge on mistake of fact is not error where the evidence shows that a party has made a mistake of law. It is axiomatic that everyone is presumed to know the law and ignorance thereof is not an excuse for its violation. Accordingly, because appellant's defense was based on mistake of law rather than mistake of fact, the trial

court did not err in failing to charge the jury appropriately.

## **Criminal Contempt**

*In re: Patterson, A14A1937 (3/6/15)*

Appellant, a defense attorney, was held in contempt of court for missing his client's arraignment and was sentenced to pay a \$100 fine. At the contempt hearing, the trial court found that the attorney's conduct was not "willfully contentious" but found the conduct instead to be "negligent." Appellant argued that his conviction should be overturned and the Court agreed.

The Court stated that the basis for a contempt action is a "willful" refusal to comply with a judgment or order of the court. Accordingly, to hold a party in contempt, the court must find that the disobedience was willful. Here, the trial court specifically found that appellant's failure to appear at the arraignment was negligent, not willful. In light of this finding, the trial court erred by holding appellant in contempt.

## **Right to be Present; Plea Negotiations**

*Hower v. State, A14A2293 (3/6/15)*

Appellant pled guilty to sexual offenses. He contended that his plea should be set aside because of his absence from plea negotiations. The Court disagreed.

The right to be present attaches at any stage of a criminal proceeding that is critical to its outcome if the defendant's presence would contribute to the fairness of the procedure. A critical stage in a criminal prosecution is one in which a defendant's rights may be lost, defenses waived, privileges claimed or waived, or one in which the outcome of the case is substantially affected in some other way. Because appellant's rights could not have been lost, his defenses waived, any privileges claimed or waived, or the outcome of the case substantially affected because of the plea negotiation from which he was absent – particularly when appellant himself had the absolute authority either to accept or reject the proposed plea deal – he failed to show that his absence violated his constitutional right to be present at all critical stages of his trial.