Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MAY 16, 2014

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THIS WEEK:

Abandonment of Dependent Child; Void Sentences

Little v. State, A14A0590 (4/30/14)

Appellant appealed from the denial of his motion to correct void sentence. The record showed that appellant was found guilty of three counts of felony abandonment of dependent child at a bench trial in 2009 and sentenced to three years on each count to be served concurrently. But, the trial court withheld adjudication of guilt under the provision of the First Offender Act and ordered the sentence be suspended on the condition appellant pay child support in the amount of $1,200 per month. In 2012, appellant was found in violation of his suspended sentence and the trial court revoked the suspension and ordered that he serve the three year sentence. In May of 2013, appellant filed a motion to correct void sentence; which the trial court denied.

Appellant argued that the trial court did not have the authority to revoke his suspended sentence. The Court agreed. A sentence is void if the court imposes punishment that the law does not allow. The Court noted that O.C.G.A. § 19-10-1(j)(1) provides that in an abandonment prosecution and conviction, "the trial court may suspend the service of the sentence imposed in the case, upon such terms and conditions as it may prescribe for the support, by the defendant, of the child or children abandoned during the minority of the child or children." However, under § 19-10-1(j)(2), "Service of any sentence suspended in abandonment cases may be ordered by the court having jurisdiction thereof at any time before the child *or children reach the age of 18* or become emancipated, …" (emphasis added). Here, the Court found, when the trial court ordered appellant serve the three-year sentence, appellant's youngest child was 8 days from reaching his 19th birthday. Because none of the children that appellant was found guilty of abandoning were under the age of 18 at the time of the revocation of the suspended sentence, the court was without authority to order that he serve the sentence. The sentence was therefore void because it imposed a punishment that the law does not allow. Thus, the trial court erred in denying appellant's motion to correct void sentence.

Inconsistent Verdict Rule; Collateral Estoppel

Taylor v. State, A14A0021 (5/7/14)

Appellant was convicted of aggravated assault and possession of a firearm during the commission of a felony. He contended that the verdicts were inconsistent with the jury finding him not guilty of malice and felony murder. Although he acknowledged that Georgia abolished the inconsistent verdict rule, he nevertheless contended that his case fell into the rare exception that reversal of an

inconsistent verdict may occur where, instead of being left to speculate as to the jury's deliberations, the appellate record makes transparent the jury's rationale. Specifically appellant argued that the jury found him not guilty of malice and felony murder because they felt his actions were justified. Appellant concluded the jury's rationale was transparent from a question that was sent to the judge by the jury asking if self- defense negated felony murder.

However, the Court held, the jury's question to the trial court during its deliberations was not sufficient to make its reasoning transparent, and the Court will not engage in speculation or unauthorized inquiry regarding its deliberations. Moreover, the Court noted, at the time they were discussing proposed responses to the jury's question, defense counsel, the prosecutor, and the court all acknowledged that the question did not elucidate the jury's rationale. Therefore, the Court concluded, this case did not fall within the rare exception to the inconsistent verdict rule.

Appellant also argued that the jury's not guilty verdicts conclusively decided the question of whether he committed an aggravated assault with a firearm. Consequently, he argued, collateral estoppel barred his convictions of aggravated assault and possession of a firearm during the commission of a felony. But, the Court found, collateral estoppel was inapplicable because it required a previous action between the same parties, and the not guilty verdicts came in the same action now on appeal.

Forfeitures; O.C.G.A. § 16-13-49(n)

State v. Alonso, A14A0302 (5/5/14)

The State initiated forfeiture proceedings pursuant to O.C.G.A. § 16-13-49(n) against various personal property valued less than $25,000 owned by Jacqueline M. Alonzo and Brandy N. Espiritu. The seizure occurred on May 1, 2013. Alonzo and Espiritu filed timely claims setting forth their interest in the property on June 17, 2013; and the State filed its in rem complaint on July 10, 2013. The trial court dismissed the State's complaint because it was not timely filed within 60 days from the date of seizure as required by O.C.G.A. § 16-13-49(h)(2).

The State appealed and the Court reversed. O.C.G.A. § 16-13-49(n) sets forth an alternative to immediately filing a civil complaint where the seized property is worth less than $25,000. In such a case, the State may simply provide notice of the seizure and wait for a claimant to file a claim. Then, if a claim to the seized property is filed within 30 days of the notice, the State must file a civil complaint within 30 days of actual receipt of the claim. Here, the State complied with O.C.G.A. § 16-13-49(n)(5) because its complaint was filed within 30 days of receipt of the claims made by Alonzo and Espiritu. Therefore, the trial court erred by dismissing the complaint.

Evidence Tampering

McMillan v. State, A14A0124 (5/5/14)

Appellant was convicted of trafficking in cocaine. He contended that the trial court erred by admitting the cocaine evidence in light of the evidence-custodian's admission to tampering with the evidence. The record showed that at appellant's trial, the evidence custodian testified and admitted that she had been charged with and pled guilty to three counts of theft by taking U. S. currency from the evidence room, including from the evidence in appellant's case.

The Court found no error. Here, the State presented evidence to show that the evidentiary bags containing suspected contraband that were sealed and initialed by an officer on the scene of the arrest and were not tampered with or cut open until they were opened for the purpose of testing in the GBI lab. The State also presented evidence of the entire chain of custody of those bags from the scene of the traffic stop to trial.

Although the evidence custodian stole currency, the procedure for handling currency was different from the procedure for other evidence, the currency was contained in separate evidence bags, the evidence custodian denied tampering with any drugs, and the investigation into her conduct revealed no evidence of such tampering with drugs. Therefore, the State established with reasonable certainty that objected-to exhibits contained the substances confiscated from appellant at the traffic stop and that there was no tampering or substitution. Accordingly, the trial court did not abuse its discretion by admitting the exhibits over appellant's objection.

Hearsay; Explaining Officer's Conduct

Williams v. State, A14A0347 (5/6/14)

Appellant was convicted of two separate burglaries of commercial properties occurring within six days of each other in the same neighborhood. The evidence showed that Rankins, an employee of the first business burglarized, saw appellant as he fled. Six days later, he saw appellant again, this time entering the second burglarized commercial property. Officer Smith responded and arrested appellant.

Appellant argued that the trial court erred in allowing Officer Smith to testify that, when he met Rankins, Rankins identified appellant as the man who had burglarized the first property six days earlier. Officer Smith testified that Rankins told him the first property had been "burglarized on a past date and time, and that that day [six days later] he saw the suspect and he pointed out the suspect to me." The trial court allowed this testimony because it provided "the reason he responded" to the 911 call.

The Court stated that admission of evidence is a matter committed to the sound discretion of the trial court, and the trial court's evidentiary decisions will not be disturbed absent an abuse of discretion. Former O.C.G.A. § 24-3-21 provided that "[w]hen, in a legal investigation, information, conversations, letters and replies, and similar evidence are facts to explain conduct and ascertain motives, they shall be admitted in evidence not as hearsay but as original evidence." Such evidence may be admitted under that Code section if the conduct and motives of the actor are relevant to the issues on trial. Under this rule, an officer may explain his or her conduct in responding to and investigating allegations of criminal behavior. While only in rare instances will an officer's conduct need to be explained in this way, one such instance is where the defense at trial raises questions and concerns about police conduct in the case.

Here, the Court found, the defense argued at trial that Officer Smith determined appellant was the culprit without adequately investigating the burglaries. Because appellant

challenged the adequacy of the police investigation, the State was allowed to present evidence to explain the reasonableness of the investigation's focus on him, including testimony of out-of-court conversations. But, the Court added, even if Officer Smith's testimony was hearsay rather than original evidence, it is well-settled that, although hearsay, a witness' testimony regarding another person's out-of-court identification of the accused may be admissible where the declarant testifies and is available for cross-examination. Rankins testified and was cross-examined about his identification of appellant as the burglar of the first property. Therefore, the Court held, the trial court did not err in overruling appellant's objection.

Similar Transactions

Ricks v. State, A14A0218 (5/7/14)

Appellant was convicted of burglary. The evidence showed that the home was entered during the day on September 10, 2009. He contended that the trial court erred in admitting similar transaction evidence. Specifically, he challenged the admission of an unindicted burglary offense that occurred on November 9, 2009. He argued that the unindicted offense was not similar to the present offense and the relevance of the similar transaction was far outweighed by its prejudicial effect.

The Court stated that before evidence of another crime may be admitted as a similar transaction, the trial court must hold a hearing where the State bears the burden of showing that the evidence of similar transactions is admissible under the three-prong test. Specifically, the State must show that it is seeking to introduce the evidence for a permissible purpose; there is sufficient evidence that the accused committed the independent offense or act; and there is a sufficient connection or similarity between the independent offense or act and the crime charged so that proof of the former tends to prove the latter.

The Court held that the trial court properly concluded that the November 9, 2009 burglary was admissible to show appellant's bent of mind, intent, and motive given that he claimed to have received the stolen items. First, there was sufficient evidence that he committed the November 9, 2009 burglary because the stolen items were recovered from his vehicle after he was found to have burglarized another residence on November 10, 2009. Additionally, both burglaries occurred during the day while the victims were away, entry was made through a doorway by the use of force, and items were strewn about the residences. Given the similarities between the two burglaries, the Court concluded that the trial court did not abuse its discretion in admitting the similar transaction evidence.