

# Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING MAY 21, 2010

## Legal Services Staff Attorneys

**Lalaine Briones**  
Legal Services Director

**Chuck Olson**  
General Counsel

**Joe Burford**  
Trial Services Director

**Laura Murphree**  
Capital Litigation Director

**Fay McCormack**  
Traffic Safety Coordinator

**Gary Bergman**  
Staff Attorney

**Tony Lee Hing**  
Staff Attorney

**Donna Sims**  
Staff Attorney

**Jill Banks**  
Staff Attorney

**Al Martinez**  
Staff Attorney

**Clara Bucci**  
Staff Attorney

**Brad Rigby**  
Staff Attorney

## THIS WEEK:

- Probation Revocation
- Plea In Bar; Collateral Estoppel
- Statements; Impeachment
- Juveniles; Jurisdiction

---

---

---

### Probation Revocation

*Barnes v. State, A10A0781*

Appellant was convicted of burglary. He was sentenced to 20 years, 10 in confinement, and the remaining 10 on probation. He was paroled before his 10-year prison term was completed. He then committed more burglaries and came before the trial court on a probation revocation hearing. The trial court revoked his probation and sentenced him to serve the balance of his 20-year sentence in confinement (13 years, three months and one day). He contended that the trial court erred in revoking his probation for a term longer than permitted by his original sentence. The State conceded that the trial court erred.

The Court agreed and reversed. OCGA § 42-8-34.1 (d) provides: "If the violation of probation or suspension alleged and proven by a preponderance of the evidence or the defendant's admission is the commission of a felony offense, the court may revoke *no more than the lesser of the balance of probation or the maximum time of the sentence authorized to be imposed for the crime constituting the violation of the probation.*" (Emphasis supplied.) Here, the maximum sentence for burglary is 20 years. Because the balance of appellant's probation period was ten years, this lesser amount of time was therefore the maximum amount the

trial court could revoke under OCGA § 42-8-34.1 (d). Accordingly, the trial court's order revoking probation was vacated and the case remanded to the trial court.

### Plea In Bar; Collateral Estoppel

*Coney v. State, A10A0167*

Appellant was convicted of aggravated stalking. He contended that the trial court erred in denying his plea in bar based upon an earlier decision by the court declining to revoke his probation on the basis of the same offense. Appellant contended that collateral estoppel barred his trial because of the decision in his probation revocation hearing that the State did not prove the aggravated stalking. The Court disagreed. A probation revocation hearing is not a criminal trial, and therefore the trial court's ultimate decision in that matter does not constitute res judicata or collateral estoppel. Moreover, this case is distinguishable from *Talley v. State*, 200 Ga. App. 442, 443(3)(a) (1991) in which the Court affirmed the denial of a motion to suppress based on the earlier denial of a motion to suppress evidence from the same search. *Talley* has no application to an assertion of collateral estoppel or double jeopardy on the basis of the ultimate outcome of a probation revocation hearing, which involves a different proceeding with different rules of evidence and burden of proof.

### Statements; Impeachment

*Delarosa v. State, A10A0566*

Appellant was convicted of aggravated assault, aggravated battery, possession of a firearm during the commission of a felony, and possession of a pistol by a person under the age

of 18. He contended that the trial court erred in not suppressing his statements following an illegal arrest. The evidence showed that appellant followed the victim in his car until the car in which the victim was riding pulled over. Appellant then shot the victim twice as the victim was getting out of the victim's car. The victim's friends then drove him to his mother's house where the victim's girlfriend called 911. The police subsequently located appellant, arrested him and took him to the station where he gave a statement.

There was some issues concerning the extent or fact of a "BOLO" on appellant which questioned the legality of his arrest and hence the admissibility of his statements. However, even if there was some illegality, the Court found that an exception to the exclusionary rule permits prosecutors to introduce illegally obtained evidence to impeach the credibility of the defendant's own testimony. Here, appellant elected to testify, and while he admitted involvement in an altercation with the victim, he claimed that he felt he had no choice but to shoot the victim in self-defense. Under the circumstances, appellant's prior inconsistent statements denying involvement in an altercation with the victim were admissible for purposes of impeachment even if they resulted from an illegal arrest. As such, the prosecutor properly referred to them in cross examining appellant.

Moreover, while the two officers who interviewed appellant were permitted to testify regarding his statements during the State's case in chief and would not have been allowed to do so had the motion to suppress been granted, the State could have called the officers as rebuttal witnesses. Since the jury inevitably would have learned of appellant's statements even if the trial court had granted the motion to suppress, the Court found that any error in allowing the State's witnesses to testify regarding such statements during the State's case in chief was harmless beyond a reasonable doubt.

## ***Juveniles; Jurisdiction***

*In the Interest of H. E. B., A10A0980*

Appellant was adjudicated a delinquent for running away from home when she was 17 years old. Appellant contended that the juvenile court lacked jurisdiction because OCGA § 15-11-28 (d), states that "[t]he juvenile court shall not have jurisdiction to

initiate any new action against an individual for acts committed after he or she has reached the age of 17 years." However, the Court found, OCGA § 15-11-2 (2) defines a "child" as "any individual who is: (A) Under the age of 17 years; (B) Under the age of 21 years, who committed an act of delinquency before reaching the age of 17 years, and who has been placed under the supervision of the court or on probation to the court; or (C) Under the age of 18 years, if alleged to be a 'deprived child' or a 'status offender' as defined by this Code section." A "status offender" is defined as a child who is charged with or adjudicated of an offense which would not be a crime if it were committed by an adult, in other words, an act which is only an offense because of the perpetrator's status as a child. Running away from home is such a status offense. Therefore, because the legislature intended to extend the juvenile court's jurisdiction to initiate actions against "status offenders," such as runaways, who are under the age of 18 years when they commit the offensive act, the juvenile court had jurisdiction over appellant.