

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MAY 2, 2014

State Prosecution Support Staff

Charles A. Spahos
Executive Director

Todd Ashley
Deputy Director

Chuck Olson
General Counsel

Joe Burford
State Prosecution Support Director

Laura Murphree
Capital Litigation Resource Prosecutor

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

Todd Hayes
Traffic Safety Resource Prosecutor

Gary Bergman
State Prosecutor

Lalaine Briones
State Prosecutor

Jenna Fowler
State Prosecutor

THIS WEEK:

- **Sentencing; Recidivist**
- **Guilty Plea; Recidivist**
- **Prior Bad Acts; Collateral Estoppel**

Sentencing; Recidivist

Robbins v. State, A14A0128 (04/03/14)

Appellant was convicted of armed robbery in addition to four other felonies and sentenced as a recidivist pursuant to O.C.G.A. § 17-10-7(c). He appealed the trial court's denial of his motion to set aside the sentences. He contended that the sentences are void because recidivist punishment was not authorized since one of the three convictions upon which the trial court relied to enhance his sentences had been discharged under the First Offender Act.

During the sentencing hearing, the State presented certified copies of three prior felony convictions in aggravation, all of which were admitted without objection. The evidence showed that the certified copy of appellant's conviction in issue did not indicate that the sentence was entered pursuant to the First Offender Act, and his probation sheet indicated "standard" as opposed to "first offender" punishment. Although appellant argued an uncertified computer printout titled "Court Case Summary" indicated that he received first offender treatment on the conviction at issue, the Court noted that the case number assigned to that conviction did not match the case number on the conviction that was presented to the sentencing court.

Thus, the Court found, the trial court correctly concluded that the State complied

with the law and that the record did not support appellant's claim that he pled guilty under the First Offender Act. Therefore, the trial court properly denied appellant's motion to vacate his sentences, since the sentences were within the maximums authorized by law.

Guilty Plea; Recidivist

Williams v. State, A14A0663 (04/02/14)

Appellant pled guilty to two counts of burglary. He contended that the trial court erred in denying his motion to withdraw his guilty plea because it was not knowingly and voluntarily made. Specifically, appellant argued that he was coerced into pleading guilty.

The Court found from the record that the trial court thoroughly questioned appellant under oath concerning his guilty plea, including whether he understood the charges against him and the rights he would be waiving, whether he had been induced to plead guilty and his ability to confer with his trial attorney before pleading guilty. The record also showed that appellant affirmatively stated that he was satisfied with his attorney's services, signed a guilty plea and waiver of rights form and did not dispute trial counsel's testimony that he decided to plead guilty.

The Court stated that making a knowing and voluntary plea requires an understanding of the nature of the charge, the rights being waived, and the consequences of the plea. When a defendant enters a plea of guilty, and subsequently challenges the validity of the guilty plea, the State may meet its burden of demonstrating that the plea was intelligently and voluntarily entered by showing on the record of the guilty plea

hearing that the defendant was cognizant of all of the rights he or she was waiving and the possible consequences of the guilty plea, or by use of extrinsic evidence that affirmatively shows that the guilty plea was knowing and voluntary. Here, the Court determined, the trial court properly denied appellant's motion to withdraw his guilty plea since it correctly determined that appellant knowingly, intelligently and voluntarily entered the plea.

Prior Bad Acts; Collateral Estoppel

State v. Oliver, A13A2394 (03/13/14)

Oliver was convicted of kidnapping with bodily injury, rape, and aggravated assault of his former girlfriend. The evidence showed that at trial, the State had elicited testimony from the victim about Oliver's earlier acquittal on charges of similar crimes against another person. In his motion for new trial, Oliver alleged that the trial court erred in allowing this testimony. A different trial judge considered the motion and granted a new trial.

The evidence showed that Oliver kept the victim hostage for four days and during that time, committed the crimes. During his cross-examination of the victim, Oliver's counsel questioned the victim about her failure to call the police during a previous occasion when Oliver beat her. Before re-direct, the prosecutor sought permission to ask the victim about her knowledge of a prior incident against another woman for which Oliver was acquitted. The trial court held that defense counsel "opened the door" to such testimony and allowed it. The witness then testified that the fact that Oliver told her he got away with beating another woman and the fact that he also told her he threatened that other woman had affected her.

In determining whether the trial court erred in ruling on the motion, the Court stated that it must consider the nature of the trial error that a defendant claimed warranted him a new trial. Here, that claimed error involved the trial court's admission of evidence, a matter that was within the trial court's discretion.

The Court noted that generally, the State is estopped from offering proof that a defendant committed a specific crime which a jury of that sovereign has concluded that he did not commit. Here, however, the State did

not offer proof that Oliver actually committed the specific crimes for which he had been acquitted. Rather, the State offered proof that Oliver made comments to the witness that led her to think that he had committed those crimes and gotten away with them. Whether he actually committed the crimes was not dispositive of the issues in this case. Whether the witness was led to believe Oliver had committed those crimes, on the other hand, was relevant. Accordingly, the fact that the State sought to prove through the witness' testimony about the acquittal was not guilt of the prior crimes, but the witness' belief regarding his guilt. Because the acquittal did not adjudicate the issue of the witness' belief, the State was not collaterally estopped from introducing this testimony.

Oliver also argued that the evidence was inadmissible because the State placed his character into evidence. The Court agreed that the questions posed by the prosecutor negatively reflected on Oliver's character. However, evidence that is relevant and material to an issue in the case is not made inadmissible because it incidentally places the defendant's character in issue. And as the State argued, the challenged testimony was relevant to explain the victim's conduct in the period leading up to the events in question, after Oliver's counsel on cross-examination questioned her failure to notify law enforcement about Oliver's prior violent acts against her. Thus, the trial court did not abuse its discretion in allowing the testimony.