

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING JULY 28, 2017

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## THIS WEEK:

- **Judicial Commentary**
- **Search & Seizure**
- **Statements; Request for Counsel**
- **Statutory Speedy Trial Demands**
- **DUI; Justification**

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### Judicial Commentary

*Reid v. State, A17A0481 (6/7/17)*

Appellant was convicted of rape, aggravated sodomy, kidnapping, false imprisonment, aggravated assault, and possession of a firearm during the commission of a felony. He argued that the trial court improperly invited a hearsay objection to his testimony about his coercion defense. By doing so, appellant contended, the trial court made it appear that the court was advising the prosecutor, was biased in favor of the State, and was commenting on appellant's credibility. The Court disagreed.

The record showed that appellant testified at trial that someone named "Mike" and two other men coerced him to commit the crimes for which he was convicted. While testifying at trial, appellant gave a lengthy, uninterrupted narrative about his interaction with the victim, the man who had allegedly threatened him ("Mike"), and the two other men who he claimed accosted him on the night at issue. Appellant repeatedly testified, without objection, about what the men said to him and to each other, but then started testifying about what he heard "Mike" say to the victim. The court interrupted, asking, "Is there an objection to hearsay?" The prosecutor responded

with a hearsay objection, and the court told appellant, "Don't tell us what anybody else said." Appellant then testified that "Mike" took information about where he lived and then threatened him. Although the State objected to this hearsay, the court allowed it because the evidence was relevant to appellant's claim of coercion.

The Court noted that former OCGA § 17-8-57 provided, in part, as follows: "It is error for any judge in any criminal case, during its progress or in his charge to the jury, to express or intimate his opinion as to what has or has not been proved or as to the guilt of the accused." However, the trial judge is more than a mere moderator of a debate, he is a minister of justice, whose duty it is to govern the progress of the trial and, where possible, to prevent introduction of redundant or inadmissible matters. Because of the trial court's broad discretion in regulating and controlling the business of the court, the reviewing court should never interfere with the exercise of that discretion unless it is made to appear that wrong or oppression has resulted from its abuse, or the court in some manner takes away the rights the parties have under the law.

Here, the Court found, the trial judge did not express or intimate his opinion as to appellant's guilt or what had or had not been proven, nor did he demean or admonish appellant or his counsel or suggest any bias toward the State. Also, the trial court instructed the jury that "By no ruling or comment that the court has made during the progress of the trial has the court intended to express any opinion upon the facts of this case, upon the credibility of the witnesses, upon the evidence, or upon the guilt or innocence of the defendant." Finally, appellant was not prevented from testifying

about what the men purportedly said to him, explaining how their statements and actions affected him, and otherwise presenting his defenses. Under these circumstances, the Court found no error.

## **Search & Seizure**

*State v Holtzclaw, A17A0148 (6/8/17)*

Holtzclaw was charged with multiple counts of VGCSA. Briefly stated, the evidence showed that police received a complaint of drug activity at Holtzclaw's home. Although she was not home when the police arrived, a man named Shannon greeted the officers. The officers asked for consent to walk through the house to see if anyone else was there. Shannon told them that 1) he was Holtzclaw's cousin; 2) he did not live there; 3) he did not have a key to the house; and 4) in response to the officers' request, "that's fine with me, but like I said, this is not my house." The officers found a marijuana pipe in the house. While the officers were going through the house, Holtzclaw arrived home. She saw the police inside her house. Upon request thereafter, she gave them consent to search her house.

Holtzclaw subsequently moved to suppress the evidence found in her home. The trial court granted the motion and the State appealed.

First, the State contended that the trial court erred by ruling that the police lacked a reasonable, good faith belief that Shannon had authority to let them into Holtzclaw's house. The Court disagreed. Here, the Court found, it was undisputed that the police knew that Holtzclaw owned the home, and Shannon explained to them that "this is not my house." Shannon told the officers that he did not have a key, and he was waiting for the owner, who would be there soon. Based on this evidence, the trial court was authorized to find that it was clear from the circumstances that Shannon was merely a visitor to the home and had no actual or apparent authority over it. The mere presence of a third party who opens the door is insufficient to show the type of authority required to consent to a search in the absence of the homeowner. Accordingly, the trial court's ruling was upheld.

Second, the State argued that the trial court erred by finding that Holtzclaw's subsequent consent to search her house was involuntary. The Court again disagreed. The

record showed that Holtzclaw arrived at her residence to see police "coming in and out of the front door of my house. They were already in there" before she was asked for consent to search her home. Although no overt threats were made by police, she was told that police already had found a marijuana pipe in her house, and "[e]ither way, we're gonna find it, so, search warrant or not, so, if you think the search warrant's gonna lessen the blow, I mean, it's not." Further, Holtzclaw was prohibited from going into her house until police were able to search her house with a warrant. Thus, the Court found, these circumstances authorized the trial court to conclude that Holtzclaw believed she had very little choice in the matter, particularly because she witnessed police already in her house. Police were able to leverage their discovery of the marijuana pipe during the earlier unauthorized search to convince Holtzclaw to consent to the search. Under these circumstances, the record supported the trial court's ruling that Holtzclaw's consent was the product of the earlier illegal search and therefore not voluntary.

## **Statements; Request for Counsel**

*Porter v. State, A17A0046 (6/8/17)*

Appellant was convicted of armed robbery. She contended that the trial court erred in admitting the portion of her custodial statement that she made after invoking her right to counsel. The Court disagreed.

The record showed that two detectives interviewed appellant. During questioning, she repeatedly denied knowing anything about the armed robbery at issue, claiming that she was not present. When the detectives continued to ask her about discrepancies in her statements, she stated, "I'll probably have to stop and let my lawyer handle the rest of it." The detectives left the room without asking further questions. About 30 minutes later, the detectives returned to the room, and one asked appellant if she wanted to tell them "what really happened?" Appellant continued to deny any knowledge about what had occurred. A detective asked her again, "Do you want to talk about what happened?" Appellant responded that she had already talked to them. The detectives then left, but one detective returned to the room about 90 minutes later. He told appellant that law enforcement officers had apprehended the

other people suspected of being involved in the armed robbery, and asked her "if their story [is] going to be the same as [hers]?" When appellant did not respond, the detective told her, "If you don't want to talk, just tell me." Appellant responded by repeating her claim of ignorance about the incident. The detective and appellant talked for a few minutes before the detective mentioned that someone was shot during the armed robbery. Appellant responded, "I didn't know anything about anybody getting shot." Then, after remaining silent for about six minutes, appellant said, "I need a lawyer. (unintelligible) don't want to put myself (unintelligible) you said somebody got shot. I need a lawyer." The detective immediately left the room, and the interrogation ended.

After reviewing the recording of the custodial interview, the Court found that appellant's initial statement, "I'll probably have to stop and let my lawyer handle the rest of it," was not an unequivocal assertion of her right to counsel. This conclusion was bolstered by her later statement, "I need a lawyer," which was clearly a request for counsel. Moreover, the Court found, even if her first statement was sufficient, the detectives ceased their interrogation, and the only statements by appellant afterward were redundant of her previous, unobjected-to statements. Thus, the Court concluded, as a matter of law, the trial court properly admitted appellant's custodial pre-trial statement.

## **Statutory Speedy Trial Demands**

*Gosline v. State, A17A0618 (6/13/17)*

In November, 2015, appellant was charged with aggravated battery and aggravated assault. In February 2016, he filed a statutory demand for speedy trial. Then, in May 2016, appellant filed a motion for discharge and acquittal pursuant to OCGA § 17-7-170, based on the State's failure to try him within two terms of court of his demand for speedy trial. The trial court held a hearing on the motion, during which the parties agreed that appellant was arrested in Michigan five days after the incident that led to the charges in this case. He remained incarcerated in Michigan until after the trial court's next term of court ended. Because of his incarceration in Michigan, the trial court denied appellant's motion for discharge.

Appellant acknowledges that he was incarcerated in Michigan when he filed his statutory demand for speedy trial and during the next term of court. He insisted, however, that he was entitled to discharge because he would have waived his right to be present at trial if the court had set his trial on its trial calendar. The Court disagreed.

Relying on *McIver v. State*, 205 Ga. App. 648 (1992), the Court stated that under OCGA § 17-7-170, two circumstances must coexist before discharge occurs: two terms of juries impaneled and qualified to try defendant, and the availability of defendant. Where the accused is in the custody of a different sovereign and the Interstate Agreement on Detainers Act does not apply, the accused is not available for trial because there is no inherent authority in a court of this state to compel an accused's presence or in-court attendance where such defendant is incarcerated by or in the control of a different sovereign.

Here, appellant was in the custody of a different sovereign during the time relevant to his speedy-trial demand. Further, nothing in the record — except for appellant's motion for discharge and acquittal, which was filed after the relevant time period — reflected a desire to waive his right to be present at trial. Appellant acknowledged this fact, but maintained that the trial court's failure to place him on the calendar precluded him from voicing that waiver. However, the Court stated, appellant failed to cite any authority in support of his implicit contention that a waiver could be effected only during a calendar call or only after the trial was placed on the calendar, and the Court declined to impose such a rule. Thus, the Court concluded, under the circumstances, appellant's incarceration in Michigan extended the time for his speedy trial demand and because appellant was not available for trial, the State's failure to try him within two terms of his statutory demand for speedy trial did not render him entitled to a discharge. In so holding, the Court declined appellant's request to overrule or limit the holding in *McIver*.

## **DUI; Justification**

*Danley v. State*, A17A0634 (6/23/17)

Appellant was convicted of DUI and driving with a suspended license. He was acquitted of battery. The evidence showed that appellant was at the home of a husband and wife and

they were all drinking. Appellant attempted to grope the wife. The husband physically removed appellant from the house. In the course of this, appellant struck the wife twice in the face with his fist. The husband died prior to trial. At trial, after the State rested, appellant sought to introduce the deceased husband's two 911 calls as well as a return call from the sheriff's department in which police, who were pursuing appellant, asked the husband about the direction in which appellant was driving away from the scene. The trial court excluded the call from the sheriff's department as testimonial evidence and inadmissible hearsay.

Appellant argued that the trial court erred when it excluded the call from the sheriff's department to the victim's husband. The Court disagreed. The Court found the record supported both the trial court's factual determination that by the time the third call was placed by the sheriff's department to the victim's husband, any "ongoing emergency" posed by appellant to the victims was over and its legal conclusion that, in light of the husband's death, the call was hearsay and its admission would have been erroneous. Further, the Court noted, appellant was acquitted on the battery charge such that any possible error in excluding the third call was harmless. Accordingly, the trial court did not abuse its discretion in excluding the sheriff's return call as inadmissible testimonial and hearsay evidence.

Appellant also argued that the trial court erred in forcing him to "admit guilt" to the less-safe DUI charge before granting his request for a charge on justification. The Court again disagreed. The defense of justification is an affirmative defense, meaning that the defendant admits the act but seeks to justify, excuse, or mitigate it," and the defendant must admit the crime before he can raise the defense. Here, the Court noted, appellant requested a jury charge on the affirmative defense of justification by "duress or necessity" on the ground that the wife and husband had "kept bringing him drink after drink." Consistent with the above-quoted law, the trial court held that appellant would have to admit to the elements of less-safe DUI in order to receive a charge on justification. Appellant agreed, retook the stand, and admitted to the elements of less-safe DUI. The trial court then charged the jury on the affirmative defense of justification by reason of coercion, and appellant made no objection to this or any other portion of the charge.

The Court noted that appellant never asserted that the charge on justification was not adjusted to the evidence. Further, the trial court's accurate statement of the law did not "force" appellant to admit to the elements of DUI; rather, appellant made an informed and strategic choice to do so as the only means of placing his justification defense before the jury. Accordingly, the Court concluded, appellant's assertion lacked merit.