

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JULY 4, 2014

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Todd Ashley
Deputy Director

Chuck Olson
General Counsel

Lalaine Briones
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

Jenna Fowler
State Prosecutor

THIS WEEK:

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- **Probation Revocation**
- **Failure to Report Child Abuse; O.C.G.A. § 19-7-5(c)**
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- **Right to Counsel; Knowing and Intelligent Waiver**
- **Confessions; Hope of Benefit**
- **Judicially Coerced Jury Verdicts**

Voir Dire

Chambers v. State, A14A0655 (6/19/14)

Appellant was convicted of robbery and theft by taking. He contended that the trial court erred in preventing him from asking a voir dire question. The record showed the following exchange between defense counsel and a juror: “[Q]: Once a person has admitted to breaking the law in any way, and it could have been years ago or whatever, can that person ever be trusted again? [A]: I think if they can prove themselves to be trusted, I think so. [Q]: So you think if something happened in the past that they admitted to, whether it be a violation of the law in some way or a broken trust—.” The trial court then sustained the State’s objection as prejudging credibility of witnesses.

The Court stated that Georgia law allows both the State and the defense the right to an individual examination of prospective jurors from which the jury is to be selected.

Nevertheless, the single purpose for voir dire is the ascertainment of the impartiality of jurors, their ability to treat the cause on the merits with objectivity and freedom from bias and prior inclination. Questions of a technical legal nature and questions that call for prejudgment are improper in a voir dire examination. Prejudgment questions are those that require a prospective juror to assume facts that are yet to be proved and to prejudge the case based on those assumed facts. Hypothetical questions involving evidence or requiring a response from a juror which might amount to a prejudgment of the case are improper and should be excluded from the examination of prospective jurors. Since there is often a fine line between asking potential jurors how they would decide the case and questions that merely seek to expose bias or prejudice, the scope of the voir dire examination, of necessity, must be left to the sound discretion of the trial court.

Here, the Court found, the trial court did not abuse his discretion in sustaining the State’s objection. At the time of the objection, appellant’s counsel was posing a hypothetical question about the trustworthiness of a person who previously had violated the law or broken a trust. That question could be construed to ask the prospective juror to prejudge the case based on assumed facts not yet proved, namely appellant’s past criminal history, which the State intended to introduce as similar transaction evidence and for impeachment purposes. Moreover, the trial court already had allowed some inquiry into the prospective juror’s thoughts on the trustworthiness of a person who had admitted to breaking the law. Furthermore, the Court stated, although appellant contended that

the trial court's ruling limited his ability to rehabilitate the prospective juror on the issue, the prospective juror's answer to the earlier voir dire question on the issue—that she thought a person could “prove themselves to be trusted” notwithstanding prior criminal history—did not reveal a bias requiring rehabilitation.

Probation Revocation

Hunt v. State, A14A0073 (6/24/14)

The Court granted appellant's petition for discretionary review after the trial court revoked his probation. The record showed appellant was sentenced to five years, one to serve and the remainder on probation, for theft by shoplifting. On August 28, 2012, a petition to revoke appellant's probation was filed, which alleged that appellant had committed child molestation on July 19, 2012, and had also failed to pay court-ordered monies. Following a hearing, the trial court revoked the remainder of appellant's probation—two years, five months, and twenty-six days.

O.C.G.A. § 42-8-34.1(b) provides that “[a] court may not revoke any part of any probated or suspended sentence unless the defendant admits the violation as alleged or unless the evidence produced at the revocation hearing establishes by a preponderance of evidence the violation or violations alleged.” Subsection (c) further provides that “at any revocation hearing, upon proof that the defendant has violated any general provision of probation or suspension other than by commission of a new felony offense, the court shall consider the use of . . . any . . . alternative to confinement deemed appropriate by the court or as provided by the state or county. In the event the court determines that the defendant does not meet the criteria for said alternatives, the court may revoke the balance of probation or not more than two years in confinement, whichever is less.”

Here, the State conceded that there was not sufficient evidence, under a preponderance of the evidence standard, to support the trial court's finding that appellant committed child molestation. Thus, the Court found, the trial court manifestly abused its discretion by revoking appellant's probation on that basis and in revoking the remainder of his probation, because it could not revoke more than two years of probation due to the remaining technical violation.

Because the trial court based its decision on both the technical grounds and the child molestation alleged in the petition, and the evidence was insufficient to find that appellant was guilty of the felony offense, the only offenses remaining under which his probation could be revoked were the technical violations. Because the trial court could not revoke more than two years of probation on the remaining technical violations, the revocation of appellant's probation of two years, five months, and twenty-six days was in error. Therefore, the Court vacated the trial court's order to the extent that it found the evidence of child molestation sufficient, and remanded the case to the trial court for resentencing in accordance with O.C.G.A. § 42-8-34.1(c).

Failure to Report Child Abuse; O.C.G.A. § 19-7-5(c)

May v. State, S14A0309 (6/30/14)

Appellant was charged under O.C.G.A. § 19-7-5 with failure to report child abuse. The evidence showed that appellant was a high school teacher. She spoke to a sixteen year old former student at the high school who was at the time enrolled in another county school system. As they spoke, the student disclosed that she had a prior sexual relationship with a paraprofessional at appellant's high school. Appellant made no report of the sexual abuse.

Appellant filed a demurrer and plea in bar arguing that because the student was not then enrolled in the high school, appellant had no duty to report under O.C.G.A. § 19-7-5(c)(1). The trial court denied both and the Court of Appeals denied the petition for immediate review. However, the Supreme Court granted a petition for writ of certiorari to consider whether the obligation to report abuse under O.C.G.A. § 19-7-5(c)(1) extends to all children or instead is limited to children to whom the reporter has a duty to attend.

The Court conducted an extensive review of the statute. First, the Court applied the rules of statutory construction to interpret the text and structure of the statute. Next, the Court looked at the legislative history of the statute. The Court then concluded that considering the words of subsection (c)(1) and their legal context, the statutory obligation to report the abuse of a child is most reasonably understood as one limited to the abuse of a child to whom

the mandatory reporter “attends . . . pursuant to [her] duties” in the profession, occupation, employment, or volunteer work by which she is identified in subparagraphs (c)(1)(A)-(O) as a mandatory reporter.

Having identified the extent of the statutory obligation, the Court found that by the time appellant learned of the sexual abuse, the student was no longer her student, no longer was enrolled in the school at which appellant taught, and no longer enrolled at any school in the same school system. Under these circumstances, the Court concluded, it could not conceive any set of facts by which the State might prove that appellant—when she learned of the sexual abuse—was attending to the student pursuant to her duties as a school teacher at the high school. Accordingly, appellant had no legal obligation to report the sexual abuse, and the trial court erred when it sustained the accusation.

Equal Protection; Rule of Lenity

State v. Nankervis, S14A0513 (6/30/14)

After the jury returned guilty verdicts on methamphetamine trafficking and manufacturing methamphetamine, the trial court held that the methamphetamine trafficking statute was unconstitutional and sentenced Nankervis for manufacturing a controlled substance pursuant to the rule of lenity. The State appealed and the Court reversed.

The trial court held that § 16-13-31(g)(2), which allows for a reduced sentence if a defendant provides substantial assistance to the State, violated Nankervis' right to substantive due process and equal protection under the United States and Georgia Constitutions. The trial court concluded that all persons convicted under § 16-13-31(f)(1) were similarly situated, but Nankervis was treated differently because he could not provide assistance and therefore was ineligible for a reduced sentence under § 16-13-31(g)(2).

The Court first determined that unless governmental action infringes upon a fundamental right or the complaining party is a member of a suspect class, a substantive due process or equal protection challenge is examined under the rational basis' test. Under such a test, a court must uphold

the statute if, under any conceivable set of facts, the classifications drawn in the statute bear a rational relationship to a legitimate end of government not prohibited by the Constitution.

Applying this test, the Court stated that even assuming that defendants convicted of methamphetamine trafficking who provide substantial assistance are similarly situated and treated differently than those who cannot provide assistance, there is a rational basis for doing so: the legislature intended to reward individuals with a reduced sentence in exchange for information that is useful in assisting law enforcement officials with identifying, arresting, or convicting other individuals involved with illegal drugs and shutting down drug networks. Accordingly, O.C.G.A. § 16-13-31(f)(1), (g)(1), and (g)(2) do not violate Nankervis' substantive due process or equal protection rights because these provisions bear a rational relationship to a legitimate objective of the government.

The State also contended that the trial court erred in applying the rule of lenity. The Court stated that the rule of lenity comes into play only to resolve ambiguities that remain after applying all other tools of statutory construction. However, where there is a specific and a general criminal statute, the rule of lenity is not implicated, and a specific statute will prevail over a general statute, absent any indication of a contrary legislative intent. Here, Nankervis was indicted for violating O.C.G.A. § 16-13-31(f)(1), which provides that “[a]ny person who knowingly manufactures methamphetamine . . . commits the felony offense of trafficking methamphetamine” and sets the punishment for such an offense at a mandatory minimum of ten years of imprisonment and a fine of \$200,000, if the quantity of methamphetamine is less than 200 grams. O.C.G.A. § 16-13-30(b) and (d) make it unlawful to “manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance” and set the punishment at between five and 30 years of imprisonment. The Court found that the clear language of these statutes demonstrates that § 16-13-31(f) is a specific law criminalizing “trafficking methamphetamine” while § 16-13-30(b) is a general law criminalizes the manufacturing of any “controlled substance.” Furthermore, the most reasonable interpretation of the

legislative intent in enacting O.C.G.A. § 16-13-31(f)(1) was to supplant the general punishment provision of O.C.G.A. § 16-13-30(b) with a specific and potentially more harsh punishment provision for trafficking methamphetamine. Thus, because a more specific law applies to trafficking methamphetamine, the general provisions of § 16-13-30(b) for manufacturing controlled substances do not apply and, there being no uncertainty as to which statute applies, the rule of lenity is not implicated.

Search & Seizure

Rodriguez v. State, S13G1167 (6/30/14)

Appellant was charged with possession of marijuana with intent to distribute. She contended that the trial court erred in denying her motion to suppress. The evidence showed that appellant, and her female passenger, Williams, were in a vehicle that was stopped after an automatic license plate recognition system, which an officer had equipped to his patrol car, alerted. Specifically, the system alerted the officer that the vehicle was known to have been driven by Enrique Sanchez, who was wanted on an outstanding warrant. When the officer approached the vehicle, he asked appellant and Williams for identification. Appellant produced her driver's license, and Williams produced no identification card, but she gave her name and date of birth to the officer. At that point, the officer explained the reason for the stop, and appellant responded that Sanchez is her son and that he was in prison. The officer asked if there were any weapons or contraband in the vehicle and both women responded no, but appeared nervous. The officer also noticed an “unusually strong” odor of air freshener from the passenger compartment of the car, which he knew to be frequently associated with attempts to mask the odor of narcotics. The officer then returned to his patrol car to verify the identities of appellant and Williams and to ascertain whether either had outstanding warrants, and in the course of that verification, the officer determined—approximately four minutes after he had initiated the stop—that Williams was the subject of an outstanding arrest warrant in Florida. By that time, a second officer had arrived at the scene, and the two officers awaited information about whether Florida desired the extradition of

Williams. As they waited, appellant and Williams were ordered out of the car, and the officers spoke with them separately. About ten minutes after the stop was initiated, appellant gave the second officer consent to search her vehicle. The officers searched the vehicle, and in the center console and trunk, they found marijuana.

Appellant argued that her detention was unreasonably prolonged. The officer had sufficient reason to stop her car and ascertain whether Sanchez was in it. And, once the officer realized that the car was occupied by two women, the officer still had authority to briefly inquire whether the women knew of Sanchez and his whereabouts. But, the officer had no reasonable basis to ask about the identities of appellant and Williams, to ask about weapons and contraband, to verify their identities, and to check whether they had warrants.

The Court first noted that appellant conceded in the trial court that the stop was originally unlawful (appellant attempted to argue the unlawfulness of the stop on appeal, but the Court found the argument was not preserved for review). Appellant also acknowledged that her detention for at least a portion of those four-or-so minutes—including the time it took the officer to initially approach the stopped car, observe its occupants, and inquire about Sanchez and his whereabouts—was reasonable. Thus, the Court noted, the only question presented was whether the detention was unreasonably prolonged by the inquiry into the identities of appellant and Williams, the question about weapons or contraband in the car, the verification of their identities, and the check for warrants.

The Court stated that claims regarding prolonged detentions fall into two categories. First, a detention is prolonged beyond the conclusion of the investigation that warranted the detention in the first place, and in those cases, the courts generally have concluded that such a prolongation—even a short one—is unreasonable, unless, of course, good cause has appeared in the meantime to justify a continuation of the detention to pursue a different investigation. Second, the detention is not prolonged beyond the conclusion of the investigation that originally warranted it, but it is claimed that the investigation took too long, perhaps because the officer spent too

much time inquiring about matters unrelated to the investigation. In these cases, the courts examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. Even when an officer poses inquiries into matters unrelated to the justification for the traffic stop, they do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop. The question is whether the detention was appreciably prolonged, considering the detention as a whole, and keeping in mind that the touchstone of the inquiry is reasonableness.

Appellant argued that her case fell within the first category, arguing that the investigation of Sanchez necessarily concluded when the officer observed two women in the car, asked about Sanchez, and was told that Sanchez was in prison. At that point, appellant argued, there was nothing more for the officer to do to investigate Sanchez and his whereabouts. The Court disagreed.

The Court noted that the only information about Sanchez that had been provided to the officer at the time of the stop by the automatic license plate recognition system was his name and date of birth. Although the officer may have assumed from the name that “Enrique Sanchez” likely was a man, names do not always conform to common gender stereotypes, and the officer was not absolutely required to accept immediately that Sanchez was not in the car. So, although the officer said that the occupants of the car “appeared to be females,” and even if he subjectively thought it unlikely that either was named “Enrique,” it was not altogether unreasonable for the officer to inquire about and verify their identities. Thus, the investigation was not necessarily at an end when the officer observed two women in the car and was told that Sanchez was in prison, and this was not a prolongation case of the first sort. The question instead was whether the officer extended his investigation too long by inquiring about the identities of the women, asking about weapons or contraband, verifying their identities, and checking for warrants.

Given that the detention had been underway for only about four minutes when the officer discovered that Williams was a

fugitive, and given that appellant conceded that she was reasonably detained for a portion of those four minutes, the inquiries to which appellant objected prolonged the detention for only a couple of minutes at most. Although the short duration of the prolongation was not dispositive, it was a relevant factor to be considered. Also, the police are not constitutionally required to move at top speed or as fast as possible. At a traffic stop, the police can occasionally pause for a moment to take a breath, to think about what they have seen and heard, and to ask a question or so. So long as an officer pursues his investigation with reasonable diligence, the Fourth Amendment is not offended.

Second, the additional inquiries to which appellant objected were not altogether unrelated to the investigation of Sanchez and his whereabouts. Ascertaining and verifying the identities of the women in the car were minimally intrusive means of confirming that neither was the “Enrique Sanchez” for whom the officer was looking. Verifying that appellant was, in fact, who she claimed to be would have provided the officer with at least some additional reason to believe that, despite her nervous appearance, appellant was being truthful with him about Sanchez’s whereabouts. And taking a couple of minutes to verify identities and check for warrants offered a brief opportunity for the officer to think about what he had seen and heard and to consider whether any further investigative steps were warranted before the detention concluded.

Equally important, the Court found, inquiring about the identities of appellant and Williams, inquiring about weapons in the car, verifying their identities, and checking for warrants are activities reasonably directed toward officer safety. Generally speaking, when an officer lawfully stops and detains an individual for a brief investigation, the officer is entitled to take reasonable steps to make the scene safe for his investigation. Therefore, even though the additional inquiries made by the officer and the subsequent identity verification and warrant check may have added a minute or two to the traffic stop, they were justified for officer safety, as well as for their investigative value.

Accordingly, the Court concluded, the process of inquiring about the identities of appellant and Williams, asking about

weapons in the car, verifying their identities, and determining if appellant and Williams were the subjects of outstanding warrants did not unreasonably expand the scope or duration of the stop, was minimally intrusive, was justified by the investigation into the whereabouts of Sanchez, and was a reasonable part of the officer’s efforts to ensure his safety. And given that appellant acknowledged that the stop itself and other parts of the detention were reasonable, the detention as a whole was reasonable in duration. The trial court therefore did not err when it denied appellant’s motion to suppress.

Search & Seizure; Confidential Informants

Barlow v. State, A14A0340 (6/24/14)

Appellant was convicted of trafficking in cocaine and possession of marijuana with intent to distribute. The evidence showed that officers used a CI to make a couple of controlled buys from appellant at a residence. The officers then used the two buys as probable cause to obtain a search warrant for the residence. When the officers executed the search warrant, appellant was not there, but his brother was. Shortly thereafter, other officers stopped appellant’s vehicle based on a description of the vehicle given by the CI. Appellant then made a statement that the drugs found in the residence were all his.

Appellant contended that the trial court erred in denying his motion to suppress because he lacked standing to contest the search. The Court disagreed. A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person’s premises or property has not had any of his Fourth Amendment rights infringed. The burden is on the one claiming a violation of Fourth Amendment rights to demonstrate that he has standing to contest such violation, i.e., that he has a legitimate expectation of privacy in the premises searched.

Here, the Court found, there was evidence to support the trial court’s determination that appellant did not have a legitimate expectation of privacy in the residence. Appellant testified that only his mother, stepfather, and brother lived at the residence, and he denied currently living at the residence or having a bedroom there. Appellant also disavowed his prior

statements to the police in which he claimed ownership of the drugs and pistol found at the residence. Furthermore, appellant's girlfriend and mother similarly testified that he did not currently live at the residence and had not done so for several years. Based on this evidence, the trial court was entitled to find that appellant did not have a legitimate expectation of privacy in the residence and thus, was without standing to challenge the search.

Appellant also argued that the trial court erred in denying his motion to reveal the identity of the CI and any deals reached with the CI. The Court stated that the due process concept of fundamental fairness requires that the public interest in protecting the flow of information to law enforcement officials be balanced against the right of the accused to a full and fair opportunity to defend himself. Determining whether the State must reveal the identity of the confidential informant involves several steps. First, the defendant must make the following showing: (a) that the confidential informant allegedly participated in or witnessed the transaction and his testimony would be *material* to the defense on the issue of guilt or punishment; (b) that the informant's testimony would be *relevant* because testimony from witnesses for the prosecution and the defense will be in conflict; and (c) that the informant's testimony is *necessary* because he would be the only available witness who could amplify or contradict the testimony of these witnesses. If the defendant meets this threshold showing that the informant's testimony could be relevant, material, and necessary, the second step is for the trial court to conduct an in-camera hearing to determine whether that initial showing is supported by the informant's actual testimony. Additionally, due process requires that the State reveal any agreement, even an informal one, with a witness concerning criminal charges pending against that witness, if the witness testifies at the defendant's trial.

Here, the Court found, the CI's sole involvement in the case was providing an initial tip to the police officers and participating in the two controlled buys of cocaine from appellant at the residence. The officers then relied upon the tip and the controlled buys to obtain a search warrant for the residence. The State did not indict appellant for the sales of

cocaine to the CI. Rather, the State indicted appellant solely for the drugs found in the residence upon the execution of the search warrant. The CI was not present during the execution of the search warrant and was not a witness to the offenses forming the basis for the present prosecution. Furthermore, appellant was without standing to challenge the search warrant obtained for the residence based on the information provided by the informant. Under these circumstances, the Court concluded, appellant failed to make a threshold showing that the testimony of the CI would be material or relevant to his defense on the issue of guilt or punishment. The trial court therefore did not err in declining to conduct an in-camera hearing and in refusing to require the State to reveal the identity of the informant. Furthermore, because the CI did not testify at the suppression hearing or at trial, and because appellant did not have standing to challenge the search warrant that was obtained based on the information supplied by the informant, the trial court likewise did not err in refusing to require the State to reveal any deal reached with the informant.

Right to Counsel; Knowing and Intelligent Waiver

McDaniel v. State, A14A0674 (6/20/14)

Appellant was convicted of mortgage fraud and theft by taking. He contended that he was entitled to a new trial, because (1) he did not knowingly and intelligently waive his Sixth Amendment right to counsel, and (2) the trial court abused its discretion by denying his request for a continuance to hire counsel. The Court agreed and reversed his convictions.

Citing *Faretta v. California*, 422 U. S. 806 (1975) and *Clarke v. Zant*, 247 Ga. 194 (1981), the Court stated that while a criminal defendant has an absolute right to counsel in any prosecution which could result in imprisonment, the accused also has a fundamental right to represent himself in a state criminal trial when he voluntarily and intelligently elects to do so. In order to establish a valid waiver, such waiver must be made with an apprehension of 1) the nature of the charges, 2) the statutory offenses included within them, 3) the range of allowable punishments thereunder, 4) possible defenses to the charges and 5) circumstances

in mitigation thereof, and 6) all other facts essential to a broad understanding of the matter. While it would be helpful, it is not incumbent upon a trial court to ask each of these six questions. However, the record must at least reflect that the accused was made aware of the dangers of self-representation and nevertheless made a knowing and intelligent waiver.

After setting out the lengthy procedural facts of the case, including facts that appellant alleged he had some knowledge of the law and had represented himself in prior cases, the Court concluded that the State had failed to meet its burden of demonstrating on the record that appellant was made aware of the dangers of representing himself. While it was clear from the record that the trial court intended at some point in the future to fulfill its obligation to ensure that appellant made a knowing waiver of his right to counsel, it did not follow through in subsequent hearings. The trial court's conclusory statement that it had previously warned appellant about the risks of self-representation failed to provide details about the information actually provided to appellant and therefore could not be used to satisfy the State's burden.

The Court further found that the error was not harmless. To establish harmless error, the State has the burden of showing beyond a reasonable doubt that the error did not contribute to the verdict. And such error cannot be harmless where the record shows that the defendant did not mount an able defense—even though the evidence of guilt was ample. Here, the Court found, appellant failed to make objections, including a facially valid foundation objection, presented a defense through cross-examination that the State's witness described as "crazy," submitted evidence showing that he failed to repay an unrelated loan and created another fraudulent document, and made an incriminating admission to the State after deciding to represent himself pro se without the benefit of a warning from the trial court about the dangers of representing himself. While a public defender—despite having been called immediately before the trial began and without any knowledge of the case—made an untranscribed closing argument on behalf of appellant, handled the charge conference on his behalf, and assisted appellant in the sentencing hearing, these efforts failed to

render the trial court's error harmless based upon the particular facts and circumstances of this case. The Court therefore reversed and remanded the case for a new trial. At that time, appellant could choose to be represented by counsel or waive his right to counsel, after being made aware of the dangers of proceeding pro se.

Confessions; Hope of Benefit

Johnson v. State, S14A0558 (6/30/14)

Appellant was convicted of two counts of felony murder and related offenses in connection with the beating deaths of two victims in separate incidents spanning five days. Appellant contended that his confession of involvement in both crimes was improperly induced by a "hope of benefit" under former O.C.G.A. § 24-3-50. Under Georgia law, only voluntary incriminating statements are admissible against the accused at trial, and the State has the burden of proving the voluntariness of a confession by a preponderance of the evidence. Former O.C.G.A. § 24-3-50 required that an admissible confession must have been made voluntarily, without being induced by another by the slightest hope of benefit or remotest fear of injury. The promise of a benefit that would render a confession involuntary under former O.C.G.A. § 24-3-50 must relate to the charge or sentence facing the suspect.

The evidence showed that after being arrested and being advised of his *Miranda* rights, appellant was interviewed by a police detective. The detective told appellant he wanted to hear appellant's side of the story regarding several recent attacks, because he had already spoken with appellant's two co-defendants, and one of the victims had died. Appellant initially denied any involvement in the attacks. After appellant admitted to owning brass knuckles, the detective told appellant that a pair of brass knuckles had been seized from his aunt's home and that a victim's DNA had been found on them; he also falsely claimed that appellant's DNA was detected on them as well. The detective then warned appellant not to lie and deny his presence at the attacks because there was evidence he was there, said he wanted to hear appellant's version of events, and further warned: "I can get up and walk out this door and send your a** to the county jail and change this charge

from aggravated assault to a f**ing murder charge." Appellant then began backpedaling, first admitting his presence during the attacks, and ultimately admitting his participation and recounting the events leading to both assaults.

Appellant contended that the detective's statements implied that, if appellant did not confess, he would be charged with murder, and that such an implication amounted to an improper hope of benefit, i.e., the promise of a lighter punishment if appellant did confess. The Court disagreed. The detective's statement that appellant could be charged with murder was a true statement that emphasized the gravity of the situation appellant faced. The admonition not to lie was not improper, as it is well established that exhortations to tell the truth do not constitute the giving of a hope of benefit that renders a confession involuntary. At no time did the detective indicate that a confession would result in lesser charges; rather, he merely suggested that appellant would be well served by offering his version of events as a means of justifying or mitigating his role in the assaults. Finally, the detective's false claim that appellant's DNA was found on the brass knuckles did not affect the admissibility of the confession, as deception by interrogating officers does not render a confession involuntary unless it is calculated to procure an untrue statement. Therefore, the Court concluded, appellant's statement was voluntarily given and properly admitted at trial.

Judicially Coerced Jury Verdicts

Porras v. State, S14A0551 (6/30/14)

Appellant was convicted of murder and weapons charges. He contended that the trial court coerced a verdict by improperly charging the jury about its obligation to return a unanimous verdict. The record showed that deliberations commenced on a Thursday afternoon, but the trial court sent the jury home after only about two hours because a juror was sick. The jury returned the next morning, and after it deliberated for about three more hours, it reported early on Friday afternoon that it was deadlocked. With the consent of both the prosecuting attorney and defense counsel, the trial court directed the bailiff at that time to tell the jury to continue its deliberations. Not quite two

hours later, also on Friday afternoon, the jury reported that it remained at a "standstill." At that point, the trial court brought the jury back to the courtroom and charged: "Let me point out that this case has been on trial, if you include jury selection, for over a week, and you have just gotten the case as of yesterday afternoon. There are many, many issues that have to be discussed. And, of course, it is an extraordinarily important case. I am not going to excuse the jury today on this case. We will deliberate until we get a decision, if that's what you are supposed to do. I am going to let you retire to the jury room until 4:30, and assuming you have not arrived at a verdict, I will then allow the bailiff to excuse you, and you will be required to report back next Monday at 9:00 to continue with your deliberations." The Court noted that while appellant argued that this charge was coercive, he did not object to it at the time.

The jury deliberated for approximately another hour on Friday, and was then excused for the weekend. On the following Monday, the jury resumed its deliberations. Early on Monday afternoon, the jury reported that, "[a]fter careful deliberation, we are still 11 to 1 on convicting [appellant] as guilty. We agree that this won't change." At that point, although the jury was in its third day of deliberations, it had only deliberated for about twelve hours in all. Over the objection of appellant, the trial court then gave an *Allen* charge, and the jury continued its deliberations. A couple of hours later, the trial court excused the jury for the day and directed the jury to return on Tuesday. As it excused the jury on Monday afternoon, the trial court said, "[t]he length of the deliberations will be dependent upon you, as you have been selected for the purpose of arriving at a verdict, and that's what I expect." Appellant also contended that this final remark on Monday afternoon was coercive, but, the Court noted, again, appellant did not make a timely objection.

The jury returned on Tuesday morning, and it deliberated until early afternoon, when it asked several questions of the trial court. In response to these questions, the trial court gave a recharge on several subjects, and the jury reached a unanimous verdict soon thereafter. At the request of appellant, the trial court polled the jury, and each juror confirmed the verdict. In all, the jury deliberated about 18 hours.

The Court stated that when a defendant claims that the trial court coerced a verdict by its charge, the Court must look at to the totality of the circumstances, and consider whether the charge was coercive so as to cause a juror to abandon an honest conviction for reasons other than those based upon the trial or the arguments of other jurors. Here, the Court found, the first charge about which appellant complained did nothing more than inform the jury that, despite its perception of a “standstill,” the trial court would not discharge the jury on its first full day of deliberations, but the court instead would require the jury to continue its deliberations on the next business day. As for the second charge about which appellant complained, although the trial court suggested that it “expect[ed]” a verdict, this brief remark was made within a couple of hours of the *Allen* charge, and most certainly, the jury would have taken it in the context of that earlier and more extensive charge. As a part of the *Allen* charge, the trial court explicitly and repeatedly told the jury that a verdict was expected only “if possible,” that jurors were not to acquiesce simply to reach a verdict, that, if the jurors continued to have divergent views of the case, all of the jurors (not just the juror in the minority) should “scrutinize the evidence more closely and . . . reexamine the grounds of their opinion,” and that the jury would be required to deliberate only for “a reasonable time . . . to try to arrive at a verdict.” At no point did the trial court say or imply that any juror should abandon an honest conviction about the case, nor did the trial court comment on the evidence or express an opinion about whether appellant was guilty. To the extent that appellant argued that the charges were coercive simply because they compelled the jury to continue deliberating after it reported a deadlock, the trial court was not bound to accept the jury’s pronouncement of a deadlock, and the trial court instead was required to make its own determination as to whether further deliberations were in order. That the jurors individually confirmed their verdict when polled also suggested that the charges were not coercive. Thus, the Court concluded, considering the totality of the circumstances, even if appellant had made timely objections to the charges he contended were coercive, the objections would have been without merit.