

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING SEPTEMBER 28, 2012

## State Prosecution Support Staff

**Charles A. Spahos**  
Executive Director

**Chuck Olson**  
General Counsel

**Joe Burford**  
State Prosecution Support Director

**Laura Murphree**  
Capital Litigation Director

**Fay Eshleman**  
Traffic Safety Resource Coordinator

**Gary Bergman**  
State Prosecutor

**Al Martinez**  
State Prosecutor

**Clara Bucci**  
State Prosecutor

**Todd Hayes**  
Traffic Safety Resource Prosecutor

## THIS WEEK:

- **Search & Seizure**
- **Right to Counsel**
- **Aggravated Battery; Severance**

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### Search & Seizure

*Williams v. State, A12A1116 (9/24/2012)*

Appellant was convicted of driving under the influence of alcohol and for violation of the open container law. Appellant did not challenge the trial court's factual findings, but instead contended that the trial court erred in denying his motion to suppress evidence obtained at a highway roadblock because he was stopped at a checkpoint implemented by a field officer rather than a supervisor acting at the programmatic level. The Court affirmed.

The evidence showed that the decision to implement the roadblock, which led to appellant's arrest, was made solely by Sergeant Jordan, a supervisory officer of the Bibb County HEAT unit, a state-funded patrol whose main purpose is conducting sobriety checks. Captain Colbert, the HEAT unit's commanding officer, gave Jordan supervisory authority of the unit and its two field officers in 2009. Appellant however contended that the roadblock was unconstitutional because the State failed to show that the decision to implement the roadblock was made by a supervisor rather than by a field officer. Appellant did not dispute Colbert's delegation of his authority to implement roadblocks to Jordan. Rather, he argued that Jordan failed to qualify as "supervisory personnel" because he participated directly in roadblocks, including the one at issue in the instant case.

The Court disagreed with appellant and noted that an officer may be a supervisor even if he or she screens a motorist at a roadblock. The Court noted that the State has the burden of proving that a highway roadblock was implemented at the programmatic level for a legitimate primary purpose, i.e., proof that the roadblock was ordered by a supervisor and implemented to ensure roadway safety rather than as a constitutionally impermissible pretext aimed at discovering general evidence of ordinary crime. However, the Court determined that the evidence supported the trial court's finding that the officer was acting in his duly authorized supervisory capacity when he authorized the roadblock, in advance of implementation, and that he authorized the roadblock for the legitimate primary purpose decreed by his Captain and the stated mission of the HEAT unit to establish a sobriety checkpoint. Thus, the Court found after an examination of the totality of the circumstances that the roadblock was not unreasonable under the Fourth Amendment and noted that appellant failed to present any evidence that the roadblocks placed an unreasonable burden on the citizens of Bibb County, or that the roadblock was arbitrary or oppressive.

### Right to Counsel

*Cox v. State, A12A1096 (9/21/2012)*

Appellant was convicted of three counts of aggravated assault, two counts of terroristic threats, and one count of false imprisonment. He asserted that his waiver of the right to be represented at trial by counsel was not knowing and intelligent. Specifically, appellant contended that he did not knowingly and intelligently

waive his right to counsel because he “was not sufficiently made aware of the inherent dangers of self-representation at trial.”

The Court disagreed. The Court noted that a criminal defendant facing imprisonment has a Sixth Amendment right to assistance of counsel at trial, but the defendant also has a fundamental right to represent himself when he voluntarily and intelligently elects to do so. In order to determine whether a defendant has validly waived his right to an attorney, the Court generally inquires into whether the trial court advised the defendant of (1) the nature of the charges against him, (2) any statutory lesser included offenses, (3) the range of possible punishments for the charges, (4) possible defenses, (5) mitigating circumstances, and (6) any other facts necessary for a broad understanding of the matter. The trial court is not required to address each of these points with the defendant; “[r]ather, the record need only reflect that the accused was made aware of the dangers of self-representation and nevertheless made a knowing and intelligent waiver.” The trial court “must apprise the defendant of the dangers and disadvantages inherent in representing himself so the record will establish that he knows what he is doing and his choice is made with eyes open.” The Court further noted that the trial court was not required to probe the defendant’s case and advise him as to legal strategies to ensure that a waiver was intelligently made. Moreover, the burden is on the State to demonstrate that the defendant received sufficient information and guidance from the trial court to make a knowing and intelligent waiver of the right to counsel. In the present case, appellant asserted that the court failed to discuss with him each of the six factors listed, and did not discuss available defenses, the indictment, pre-trial motions, discovery, hearsay or sentencing issues, lesser-included offenses, or his education, background and experience.

However, the trial court was not required to address with appellant each of the six factors and further stated that “no magic words or particular questions [were] required to effect a valid waiver.” Here, the Court found that the trial court cautioned appellant specifically and at great length about the dangers of representing himself and the limits on assistance that would be provided to him by standby counsel and the court, the benefits of being

represented by experienced counsel, and the lengthy sentences he faced if convicted. Appellant indicated, without equivocation, that he understood the court’s warnings and accepted the dangers of representing himself. Thus, the record reflected that appellant was made aware of the dangers of representing himself at trial and nevertheless knowingly and intelligently waived his right to trial counsel.

### **Aggravated Battery; Severance**

*Garmon v. State, A12A1368 (9/18/2012)*

Appellant was convicted of aggravated battery, burglary, and criminal attempt to commit armed robbery. The Court found that the evidence was sufficient to authorize appellant’s convictions and the trial court did not abuse its discretion in denying his motion to sever his trial from that of his co-defendant. Accordingly, the Court affirmed.

Appellant challenged the trial court’s denial of his motion to sever his trial from that of his co-defendant. Where, as here, defendants are jointly indicted for a non-capital felony, they “may be tried jointly or separately in the discretion of the trial court.” O.C.G.A. § 17-8-4 (a).

In exercising that discretion, the court must consider the following factors: (1) Will the number of defendants create confusion as to the law and evidence applicable to each? (2) Is there a danger that evidence admissible against one defendant will be considered against the other despite the court’s instructions? (3) Are the defenses of the defendants antagonistic to each other or to each other’s rights? Appellant asserted that the trial court was required to expressly address in its ruling each of the above three factors. The Court disagreed.

The Court noted that the requirement that a trial court consider certain factors in making a discretionary ruling does not necessarily mean that the court must expressly articulate in its ruling its specific findings on those factors. Furthermore, the Court found that appellant cited no authority requiring the trial court to make express findings on each factor to be considered in ruling on a motion to sever. The Court explained that the statute authorizing the defendants to be tried jointly required only that the trial court exercise its

discretion without specifying any specific findings that the court must make in that regard. Moreover, the Court found no cases requiring express findings on the factors pertaining to a motion to sever.

Appellant also argued that “the trial court should have granted a severance in order to achieve a fair determination of [his] guilt or innocence.” Appellant asserted that he suffered prejudice because “the number of defendants created confusion as to the law and evidence applicable to each.” He contended that the evidence against his co-defendant was stronger than that against him, suggesting that a jury may have, simply upon finding his co-defendant guilty, also found appellant guilty. In addressing this issue, the Court stated that “it is not enough for the defendant to show that he would have a better chance of acquittal at a separate trial or that the evidence against a co-defendant is stronger.” The Court noted that appellant did not argue that he suffered prejudice by way of the other two factors pertinent to a motion to sever nor did he point to any evidence that he contended was not admissible against himself but was admissible against co-defendant, and he did not claim that his defense was antagonistic to that of his co-defendant. Thus the Court found that appellant did not meet his burden of showing clearly that the joint trial prejudiced his defense.