

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING OCTOBER 19, 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
- Special Demurrers; Jury Charges
- Child Abuse Accommodation Syndrome
- *Garza*; Habeas Corpus
- *Padilla v. Kentucky*; Habeas Corpus
- Prosecutorial Misconduct; Closing Arguments
- Search & Seizure; Thermal Detection Devices
- First Offender; Sentencing
- Evidence Tampering
- Ineffective Assistance of Counsel
- Family Violence Battery; Merger
- Rules of Evidence; Retroactive Application

Search & Seizure

Rocha v. State, A12A1313 (10/9/12)

Appellant was convicted of trafficking in cocaine. He contended that the trial court erred in denying his motion to suppress, arguing that his consent to the search of his vehicle and the resulting seizure of cocaine was the product of an impermissibly prolonged traffic stop. The Court affirmed.

The record showed that a deputy observed a large commercial passenger bus that did not bear an operating company's trade name or the Federal Motor Carrier Safety Administration ("FMCSA") identification number as required

by the United States DOT. The deputy then began following the bus, ran a computer check on the bus's Texas license tag number as he followed, and determined that the tag had expired in 2003. Consequently, the deputy initiated a traffic stop. After the bus stopped, the driver exited the vehicle, and the deputy asked him for his driver's license and whether there were any passengers on board. The driver stated that there were no passengers and that his license was on the bus. Subsequently, both the deputy and the driver entered the bus, and the driver retrieved his license. When asked about the lack of passengers and the expired license tag, appellant responded that he had transported hurricane Katrina evacuees the previous day from and was currently traveling to pick up additional evacuees. The deputy then spoke to a woman traveling with appellant and noted that she gave an inconsistent explanation of where the bus had been traveling. The deputy then requested to look at the driver's log books that they were required to maintain. Based on the inconsistencies in statements and their log books, the deputy became suspicious and asked appellant if there was any contraband on the bus. Appellant said no. The deputy then asked if he could search the bus, and both appellant and the woman consented. Shortly after beginning the search, and approximately ten minutes after the deputy initiated the traffic stop, a black duffle bag was found in a compartment under the driver's seat that allowed one to access the bus's engine. Inside the duffle bag, the officer found over 14 kilograms of cocaine.

Appellant contended that his consent to the search of the bus was the product of an impermissibly prolonged traffic stop. The Court disagreed. The Fourth Amendment is not violated when, during the course of a valid traffic stop, an officer questions the driver or

occupants of a vehicle and requests consent to conduct a search. Further, the Court noted that if a driver is questioned and gives consent while he is being lawfully detained during a traffic stop, there is no Fourth Amendment violation. The Court found that because the deputy asked for and received consent approximately ten minutes after he first stopped appellant for driving with an expired license tag and failing to display a logo for the bus's operating company or its FMCSA identification number, the deputy's conduct did not unreasonably prolong appellant's detention and therefore the consent to the search was valid.

Special Demurrers; Jury Charges

Clemens v. State, A12A1146 (10/12/12)

Appellant was convicted of child molestation. He contended that the trial court erred in denying his special demurrer to the indictment. Specifically, that the indictment failed to specify whether he performed an immoral or indecent act to, with, or in the presence of I. M. and that he therefore, did not know what allegations he was required to defend against. The Court found this argument was meritless. The Court noted that the indictment charged that appellant masturbated while straddling I. M., which "apprised [appellant] of the charge against him, and when and how it was committed." Accordingly, the Court found that the indictment was sufficient to withstand a special demurrer.

Appellant also alleged that the trial court erred by charging the jury that it could convict him of child molestation if it determined that he committed an indecent act merely in the presence of a child under 16, instead of instructing the jury that it had to prove the material allegation that he masturbated while straddling I. M. The Court again found that this enumeration provided no basis for reversal. The Court noted that the trial court charged the jury that, "a person commits the offense of child molestation when that person does an immoral and indecent act in the presence of a child less than 16 years of age with the intent to arouse and satisfy the sexual desires of the person." Nevertheless, appellant argued this charge was error because it omitted any reference to the allegation that he masturbated while straddling I. M. Here, the Court found, the trial court read the indictment to the jury at the beginning of

the charge, sent the indictment out with the jury, and instructed that the State bore the burden of proving every material allegation of the indictment beyond a reasonable doubt. The Court reviewed the charge as a whole and concluded that a jury of average intelligence would not have been confused by the charge, and that the trial court's charge properly set forth the basis on which the jury was authorized to convict appellant of child molestation.

Child Abuse Accommodation Syndrome

Canty v. State, A12A1103 (10/12/12)

Appellant was convicted of child molestation and aggravated sexual battery. He argued that the trial court erred by allowing testimony and prosecutorial comment on evidence of child abuse accommodation syndrome, which constituted impermissible opinion evidence. The Court affirmed.

The record showed that a forensic interviewer testified regarding her interview of T. M. after the child's outcry and about the description of the abuse given by T. M. during that interview, namely that after "papa" gave T. M. a bath, he put his finger in her vagina and it hurt. Appellant argued that the trial court erred by admitting the testimony of the forensic interviewer that T. M.'s inability to testify at trial was based on her suffering from child abuse accommodation syndrome and that such testimony improperly invaded the province of the jury by concluding that T. M. had been abused by appellant. The Court disagreed and noted that in addition to the interviewer's testimony concerning her specific forensic interview of T. M., the interviewer testified about forensic interviews generally of children alleging abuse, the procedures used, and her general experience with children during the process of disclosing abuse and the normal behavior of those children. The State also questioned the forensic interviewer about child abuse accommodation syndrome and to explain the syndrome to the jury. The interviewer provided only general testimony concerning child abuse accommodation syndrome and the behavior abused children often exhibit as a result of having been abused. The Court noted that the forensic interviewer did not testify that in her opinion T. M. had been abused or that T. M.'s inability to take the stand to testify against appellant was a result of having been abused by him. Moreover,

even when taken together with the prosecutor's argument to the trial court that such testimony was relevant in light of T. M.'s behavior during trial the previous day, it was not erroneous to allow the testimony. The Court noted that the forensic interviewer did not testify that in her opinion this behavior was consistent with child abuse accommodation syndrome. Rather, she testified about the features of the syndrome, her general experience with abused children and their demeanors, and her interview with T. M. The Court found such testimony was available for the jury to accept or reject for consideration in its determination of the ultimate issue. Thus, the Court held that the trial court did not err by denying the motion for mistrial or motion for new trial based on this testimony.

Garza; Habeas Corpus

Upton v. Hardeman, S12A0854 (10/15/12)

The warden appealed from the partial grant of Victor Hardeman's application for a writ of habeas corpus. The habeas court granted the writ and overturned Hardeman's conviction for kidnapping with bodily injury. However, the Court reversed and remanded with direction.

The facts showed that Hardeman petitioned for habeas relief and raised a single ground for relief claiming that the evidence of asportation was insufficient to sustain his conviction for kidnapping pursuant to the Court's decision in *Garza v. State*, 284 Ga. 696 (2008). The Court noted that to determine whether the asportation requirement has been met, *Garza* required the following four factors to be considered: (1) the duration of the movement; (2) whether the movement occurred during the commission of a separate offense; (3) whether such movement was an inherent part of that separate offense; and (4) whether the movement itself presented a significant danger to the victim independent of the danger posed by the separate offense. In the present case, the habeas court overturned Hardeman's conviction and voided his life sentence for kidnapping with bodily injury because it concluded that the fourth prong of the *Garza* test was not met. Specifically, it determined the movement of the victim did not "substantially" isolate the victim from rescue because Hardeman and his cohorts did not know the victim was expecting a repairman to arrive at the time they committed their crimes.

However, the Court reviewed the record and noted that while the victim was waiting for a repairman, Hardeman and two other men entered the victim's home, and forced her into the kitchen where they bound her hands and covered her face with duct tape. Movement upstairs to the laundry room occurred thereafter. Examining these facts under *Garza*, the Court found the movement of the victim constituted asportation. The Court disagreed with the habeas court's finding in addressing the fourth prong of the *Garza*. Specifically, the Court noted that this test was met because moving the victim to a more confined space like an upstairs laundry room served to give the perpetrators more control over the victim. The Court stated that fact that Hardeman and his cohorts did not know the victim was expecting a repairman was irrelevant to establishing the element of asportation. Thus, the Court found that the habeas court erred and directed it to reinstate Hardeman's conviction and sentence for kidnapping with bodily injury.

Padilla v. Kentucky; Habeas Corpus

State v. Sosa, S12A1130 (10/15/12)

Sosa filed a petition for writ of habeas corpus contending that his attorney was ineffective for failing to advise him that his guilty plea would subject him to removal or deportation. The State moved to dismiss the petition as untimely. The habeas court denied the motion and granted habeas relief on the ground that Sosa received ineffective assistance of counsel at his plea hearing. However, the Court found that Sosa's habeas petition was untimely under the four-year statute of limitations in O.C.G.A. § 9-14-42, and therefore reversed.

The record showed that on May 9, 2002, Sosa entered a plea of guilty to child molestation in violation of O.C.G.A. § 16-6-4. At the time, he was a permanent resident of the United States; his wife and four children are citizens. In November 2010, Sosa was detained under the Immigration and Nationality Act as an immigrant who had committed an aggravated felony. He was deported a month later to Mexico. On January 12, 2012, Sosa filed a habeas petition challenging his conviction under the U.S. Supreme Court decision in *Padilla v. Kentucky*. Specifically, he maintained that his attorney at the plea hearing

was ineffective for failing to advise him of the effect that his guilty plea might have on his immigration status and, further, that he did not knowingly enter the guilty plea with the understanding that he was likely to be deported. However, the Court noted that in this case, Sosa's felony conviction was final prior to July 1, 2004, and he was required under subsection (c)(1) to bring his habeas action by July 1, 2008, unless the exception in subsection (c)(3) applies. To toll the statute of limitations under that exception, the right must be both newly recognized and made retroactively applicable to cases on collateral review. The Court noted that in *Padilla v. Kentucky*, the United States Supreme Court held that the Sixth Amendment right to effective assistance of counsel requires an attorney to inform a client when a guilty plea carries a risk of deportation. However, to determine whether a constitutional rule of criminal procedure applies retroactively to judgments in criminal cases that are final before the new rule is announced, the Court must apply the analysis set out in *Teague v. Lane*, 489 U. S. 288 (1989). Under *Teague*, a rule of criminal procedure applies to all cases on direct and collateral review if it is an old rule applied to new facts, but a new rule generally applies only to cases that are still on direct review unless it falls within one of two exceptions. A new rule applies retroactively in a collateral proceeding only if (1) the rule is substantive or (2) the rule is a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding. The Court found that even if *Padilla* announced a new rule, it did not fall within either exception for retroactive application under *Teague* as it was neither a change in substantive criminal law nor a watershed rule of criminal procedure. Thus, the Court held that Sosa's habeas petition was barred by the four-year statute of limitations period because he could not show that he was entitled to relief based on a newly recognized right that was retroactively applicable to cases on collateral review.

Prosecutorial Misconduct; Closing Arguments

Powell v. State, S12A1311 (10/15/12)

Appellant was convicted of murder and possession of a firearm during the commission of a felony. He argued that the prosecuting at-

torney made improper and prejudicial remarks in her closing argument. The record showed that in her closing argument, the prosecutor said that prosecutors do not seek the indictment of persons whom they believe to be innocent. She stated, "If we think it's a bad arrest, if we think there's not enough evidence, what happens to that case? It goes. We don't bring it to indictment if we think the person is innocent, if there is not enough evidence." In reviewing these remarks the Court agreed with appellant that they were improper. Nevertheless, the Court found that the improper remarks of the prosecuting attorney formed no basis for a reversal of the judgment. Appellant contended that the trial court should have rebuked the prosecutor for her improper remarks and should have given a curative instruction to the jury. But, the Court noted, defense counsel did not object to the now challenged comments by the prosecutor. Thus, the Court stated, in an appeal of a non-capital case, the defendant's failure to object to the State's closing argument waives his right to rely on the alleged impropriety of that argument as a basis for reversal. Moreover, the Court noted that a trial judge has no obligation under O.C.G.A. § 17-8-75 to rebuke a prosecuting attorney or give a curative instruction in the absence of a timely objection.

Search & Seizure; Thermal Detection Devices

Brundige v. State, S11G1821 (10/15/12)

The Georgia Supreme Court granted a writ of certiorari in *Brundige v. State*, 310 Ga. App. 900 (2011), to determine whether the definition of "tangible evidence," as that term is used in O.C.G.A. § 17-5-21 (a)(5), included evidence gained by thermal imaging. The Court found that the Court of Appeals was incorrect in determining that the term "tangible evidence" encompassed the evidence at issue, but nonetheless affirmed that Court's judgment.

The record revealed that an officer assigned to a drug task force, after receiving a tip from a confidential informant, investigated an individual who was suspected of growing marijuana. The informant told the officer that the suspect had sold marijuana and growing paraphernalia to him, and offered to help the informant begin his own grow operation, and that the informant had been in a car with the suspect when marijuana was present. Investigation revealed that the suspect had been convicted

of manufacturing marijuana and possession with intent to distribute in connection with an earlier incident. The officer conducted a “trash pull” at the suspect’s house, removing trash bags from trash cans located at the edge of the roadway, and found “an amount of green leafy material that field tested positive for marijuana” and items consistent with an operation devoted to growing marijuana indoors. The officer then resolved to gain further information regarding activity in appellant’s residence by using a thermal detection device that would remotely sense the differing temperatures of the surface of the home, and of the immediate area around it; this would allow an inference to be made about the heat inside the various areas of the house, which might indicate an operation to grow marijuana. In light of the United States Supreme Court’s holding in *Kyllo v. United States*, 533 U. S. 27 (2001), the officer sought and obtained a warrant to conduct a thermal imaging search of appellant’s residence, citing the results of his investigation as the basis for probable cause. Pursuant to that warrant, the officer and another detective used a thermal imaging device to examine the exterior of the house and detected an amount of heat coming from appellant’s garage considered to be abnormal, especially when compared with the heat loss from a nearby similar house. The officer then sought and obtained a second search warrant for a physical search of the interior of appellant’s home. The second search warrant was executed, and officers seized items alleged to be evidence of a marijuana growing operation. As a result, appellant was charged with multiple crimes and filed a motion to suppress all evidence from the two warrant supported searches.

The Court initially stated that under *Kyllo*, a scan of a person’s home with a thermal imaging device is a Fourth Amendment search that ordinarily requires a warrant. However, appellant claimed that securing such a warrant was not authorized under O.C.G.A. § 17-5-21(a) (5). The Court noted that the statute provides that a judicial officer may issue a search warrant upon a showing of probable cause for the seizure of “[a]ny item, substance, object, thing or matter ... which is tangible evidence of the commission of the crime for which probable cause is shown. “ However, while the Court of Appeals determined that thermal imaging evidence was “tangible evidence” within the meaning of the statute, the Court found such

an interpretation went astray of the legislative intent. The Court stated that the word “tangible” must be given some effect, or become mere surplusage. The Court further asserted that in giving the word “tangible” full effect, it appeared that the General Assembly intended “tangible evidence” to mean evidence that is essentially an object with material form that could be touched by a person. Thus, the thermal images were not tangible within the meaning of the statute.

However, the Court noted that the fact that the initial thermal imaging warrant was not authorized by O.C.G.A. § 27-5-21(a) (5) did not necessarily warrant reversal of the judgment. The Court noted that the second warrant, which authorized the entry of appellant’s home and the seizure of physical, tangible evidence relating to the manufacture and sale of marijuana, was supported by the same information as that which was in the first warrant, with the only additional information being that gained from the thermal imaging search. The Court noted that other evidence was, by itself, enough to establish probable cause for a search of the premises and accordingly, the evidence seized under the second warrant was admissible. The Court therefore affirmed the judgment.

First Offender; Sentencing *McCullough v. State, A12A1253 (10/9/12)*

Appellant was convicted of cruelty to children and reckless conduct. He contended that the trial court erred by refusing to exercise its discretion and consider his request to be sentenced as a first offender pursuant to O.C.G.A. § 42-8-60. The Court noted that in reviewing appellant’s claims, refusal to consider first offender treatment as part of a sentencing formula or policy of automatic denial constitutes an abuse of discretion and constitutes reversible error. However, the Court further stated that there must be a clear statement in the record that constituted either a general refusal to consider such treatment or an erroneous expression of belief that the law does not permit the exercise of such discretion.

In reviewing the trial court’s remarks during sentencing, the Court found that there was no indication of either a lack of awareness that the court had the discretion to sentence appellant under the first offender statute, that the court was applying a mechanical policy that prevented proper consideration of the request,

or that there was an outright refusal to consider the request. Rather, the Court noted that in considering the judge’s remarks as a whole, it believed that the trial court did consider all sentencing options, including first offender treatment, and decided, in the exercise of his discretion, that he would not grant appellant first offender status because the jury had found him guilty of domestic violence toward his wife in the presence of his children. Thus, the Court held, the trial court, in the proper exercise of its discretion, declined to grant appellant’s request for first offender treatment, and discerned no basis for reconsideration of appellant’s sentence.

Evidence Tampering *King v. State, A12A1151 (10/9/12)*

Appellant was convicted of failure to maintain lane, fleeing and attempting to elude, tampering with evidence, and misdemeanor obstruction. She argued that the evidence was insufficient as to failure to maintain lane, fleeing and attempting to elude, and tampering with evidence. The Court affirmed appellant’s convictions for all but tampering with evidence.

The basis for the conviction was that appellant destroyed marijuana evidence by placing it in her mouth. In reviewing the evidence, the Court noted that although the officers testified that they smelled burned marijuana on appellant’s person and that the substance in appellant’s mouth was consistent with raw or fresh marijuana, the officers 1) did not see appellant place the substance in her mouth; 2) did not attempt to recover the substance; 3) did not command her to remove the substance; 4) did not test appellant’s blood or urine for marijuana; and 5) did not recover any drugs or drug paraphernalia from her person or vehicle. Additionally, the Court observed that the videotaped stop showed appellant repeatedly complying with the officers’ request that she open her mouth for inspection with a flashlight. Furthermore, the State’s only evidence was the officers’ testimony that the substance in appellant’s mouth was consistent with marijuana, but the Court stated that this was insufficient to establish that fact beyond a reasonable doubt. The Court stated that without some other evidence to show that the substance in appellant’s mouth was physical evidence and placed there with the intent to prevent her apprehension or prosecution, the State’s circumstantial evidence failed to exclude all other

reasonable hypotheses except that of guilt, as required by Georgia law. Accordingly, while the Court affirmed appellant's convictions for misdemeanor obstruction, failure to maintain lane, and fleeing and attempting to elude, it reversed appellant's conviction for tampering with evidence and remanded for resentencing.

Ineffective Assistance of Counsel

Owens v. State, A12A0881 (10/9/12)

Appellant was convicted on two counts of robbery by sudden snatching. He contended that his trial counsel rendered ineffective assistance of counsel by failing to object to improper opinion testimony as to the identity of the perpetrator. The Court agreed and found that appellant's trial counsel should have objected to testimony by a probation officer who opined that appellant was the perpetrator in the surveillance video. The record showed that the witness testified that she had "no question" that appellant was the individual in the surveillance footage, but when questioned as to why, she responded that she had seen appellant about two weeks prior and recognized his face, although she denied that there was anything distinctive or characteristic about his face. She also did not recall the individual in the surveillance footage wearing anything that obscured his hair, head, face, or neck; although the perpetrator in the surveillance video was wearing sunglasses and a hat.

Appellant argued that his trial counsel was ineffective for failing to object to the testimony because it was inadmissible opinion evidence concerning the identity of the perpetrator in the surveillance tape. The Court agreed and noted that it was improper to allow a witness to "testify as to the identity of a person in a video or photograph when such opinion evidence tended only to establish a fact which average jurors could decide thinking for themselves and drawing their own conclusions." Indeed, the Court opined that such identification testimony should be admitted for the jury's consideration only if there is some basis for concluding that the witness is more likely to correctly identify the defendant than is the jury, as when the witness is familiar with the defendant's appearance around the time a surveillance was taken and the defendant's appearance has changed prior to trial, or when the witness knows about some other distinctive

but presently inaccessible characteristic of the defendant's appearance. Thus, a witness's familiarity with the defendant, in and of itself, "does not make his or her identification testimony based on a video or photograph admissible." Here, the Court found, the probation officer did not offer any basis for her identification of appellant aside from general familiarity. Furthermore, the Court noted that no witness to the crimes could identify appellant; the shoe prints at the scene could not be definitively linked to appellant; fingerprint evidence could not be linked to appellant; the jacket discovered near the convenience store was not linked to appellant; and the firearm was not definitively linked to appellant. Thus, the Court concluded, if the probation officer's testimony regarding her certainty that appellant was the perpetrator had been excluded, there was a reasonable probability that appellant would have been acquitted. Appellant, therefore, was entitled to a new trial.

Family Violence Battery; Merger

Hernandez v. State, A12A1223 (10/9/12)

Appellant was convicted of attempted murder, family violence aggravated battery, false imprisonment, and giving a false name to officers. Appellant contended that the trial court erred in failing to merge the family violence aggravated battery offense with the attempted murder offense. Specifically, he argued that the offenses of family violence aggravated battery and attempted murder are analogous to the crimes of aggravated battery and murder and should merge under O.C.G.A. § 16-1-6(2).

The Court noted that O.C.G.A. § 16-1-6(2) pertinently provides that a crime is a lesser included offense where "[i]t differs from the crime charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest . . . suffices to establish its commission." The Court cited *Ledford v. State*, 289 Ga. 70, (2011), in which the Georgia Supreme Court found that O.C.G.A. § 16-1-6(2) recognized that a crime such as battery, which prohibits the intentional infliction of bodily injury, was included in a crime such as murder, which prohibits the intentional infliction of more serious bodily injury, i.e., death, despite the distinction between these two injury elements. Similarly, the Court noted that it is clear that

the only difference between aggravated battery and murder was that the former required a less serious injury to the person of the victim, as the injury to a bodily member specified in the aggravated battery statute is obviously less serious than death. Therefore, the Court found, premitting whether these two offenses met the "required evidence" test, convictions for both offenses established by the same conduct were prohibited by O.C.G.A. § 16-1-6(2). Indeed, the Court stated, similar to aggravated battery and murder, the family violence aggravated battery and attempted murder crimes in this case were based upon the same conduct—to wit, stabbing the victim with a knife. The Court noted that the only difference between the two crimes was that attempted murder required a less serious injury to the person, as personal injury is not a required element of attempted murder. Therefore, the Court held that the convictions for both offenses established by the same conduct were prohibited by O.C.G.A. § 16-1-6(2) and as a result, appellant's sentence must be vacated, and the case remanded for resentencing.

Rules of Evidence; Retroactive Application

Lambert v. Coonrod, 966 N.E.2d 583 (Ill.App. 2012)

In 2008, Mr. and Mrs. Lambert sued their friend, Coonrod, after Mr. Lambert fell and was injured while helping Coonrod on Coonrod's property. The evidence showed that while Mr. Lambert was in the hospital, Coonrod made an offer to pay Mr. Lambert's medical expenses. Such evidence arguably would have been admissible under Illinois law at the time of the injury. However, Illinois adopted new rules of evidence which took effect on January 1, 2011. Under new Rule 409, "evidence of furnishing or offering or promising to pay . . . hospital . . . expenses occasioned by an injury is not admissible to prove liability . . ." Trial commenced in February, 2011 and the jury returned a verdict in favor of Coonrod.

The Lamberts contended that the trial court erred in not allowing the testimony because the injury occurred in 2008 and the new rules did not become effective until 2011. The Court disagreed. First, the rules did not limit their applicability to only cases made after their date of promulgation. Second, "a change in a rule affecting matters of procedure, such as a

rule of evidence, and not substantive rights, applies retroactively to pending cases.” Therefore, Rule 409 applied and the trial court did not abuse its discretion in keeping the evidence out.

NOTE: Georgia also has held that changes in rules of evidence are to be applied retroactively for the same reason. *Mason v. Home Depot USA, Inc.*, 283 Ga. 271, 278 (2008); *McConville v. Cotton States Mutual Ins.*, 315 Ga.App. 11, 13 (2012).