

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING OCTOBER 31, 2014

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THIS WEEK:

- **Impeachment**
- **Continuing Witness**
- **Traffic Offenses**

Impeachment

Campbell v. State, A14A1464

Campbell argues that the trial court impermissibly restricted his cross-examination of victim Latrell Scott. Defense counsel sought to ask Scott why she had refused to meet with some police officers in the course of the investigation, to which Scott would have responded that she was on probation. The trial court ruled that defense counsel could elicit testimony about Scott's refusal to meet with the officers but not about the fact of her probation. Campbell argues that this was error, asserting that the fact that Scott was on probation implicated her credibility as a witness.

O.C.G.A. § 24-6-609(a) limits the convictions with which a witness other than the accused can be impeached. It pertinently states:

For the purpose of attacking the character for truthfulness of a witness: (1) Evidence that a witness other than an accused has been convicted of a crime shall be admitted subject to the provisions of Code Section 24-4-403 if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted. (2) Evidence

that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of such crime required proof or admission of an act of dishonesty or making a false statement.

In this case, Scott was on probation for the offense of misdemeanor shoplifting, and it does not appear from the record that Campbell made a showing that the shoplifting conviction involved fraud or deceit. Accordingly, the trial court did not abuse his discretion in limiting Campbell's cross-examination to prevent mention of Scott's probation.

Continuing Witness

Goggins v. State, A14A0905

The appellant was convicted of child molestation. He contends that the trial court erred by allowing a portion of L. G.'s diary to go out with the jury in violation of the continuing witness rule and by failing to allow the jury to see other portions of the diary. At trial, L. G.'s diary was tendered into evidence without objection. There was an entry in the victim's diary detailing an inappropriate act appellant committed against the victim. Many of L. G.'s diary entries described her sexual attraction to and encounters with various boys her own age. When it appeared during cross-examination of L. G. that defense counsel might delve into portions of the diary concerning L. G.'s sexual attraction and interest in boys, the trial court cautioned counsel that it was not going to allow any evidence that would violate the rape shield statute under O.C.G.A. § 24-4-412. The

parties agreed that the diary should not go out with the jury. During its deliberations, however, the jury requested to see the entry from L. G.'s diary concerning appellant's sexual misconduct. When the trial court asked if there was any opposition to sending the jury a photocopy of the specific page of the diary which contained the entry at issue, appellant's trial counsel stated that the defense had no objection. Later, the jury asked to see the entire diary. After the trial court discussed the issue with both parties, appellant's counsel agreed with the trial court that the entire diary should not go out with the jury.

The Court found that the trial court violated the continuing witness rule when it allowed the portion of the diary detailing the sexual misconduct to go out with the jury. However, appellant's trial counsel did not object to the single page being sent out with the jury during deliberations. Further, appellant failed to adequately demonstrate that the error likely affected the outcome of his trial, as other witnesses' testimonies corroborated the victim's testimony and statements to law enforcement, the sexual allegations in the diary entry were contained in one brief sentence and the allegations within that sentence were far less detailed than those elicited during the victim's trial testimony. Regarding appellant's argument that the trial court erred in failing to send the entire diary out with the jury, the Court noted that the parties agreed that the diary would not go out with the jury and the trial court did not violate any legal rule in this regard. Appellant's conviction was affirmed.

Traffic Offenses

Christian v. State, A14A1353

The Court of Appeals reversed Billy W. Christian's conviction for violating conditions of limited driving after he was convicted in probate court and the superior court affirmed, holding that the trial court erred in permitting the State to introduce into evidence Georgia Crime Information Center printouts without first laying the proper foundation. The State failed to properly lay the foundation for the GCIC printouts because its witness an employee of the probate court's clerk's office who was generally familiar with GCIC printouts and how to read criminal histories; did not personally obtain the GCIC printout

at issue; was not certified to access a GCIC terminal; and had no personal knowledge as to who accessed the GCIC terminal to acquire the relevant printout. Further, she provided no detail as to how she made the determination that the printout was obtained from a terminal located in that courthouse and, in fact, testified that because she was not certified to access GCIC reports, she could not identify unique GCIC operator numbers. Thus, this testimony was insufficient to satisfy the strict requirement of former O.C.G.A. § 24-3-17(b) that, prior to admission, the State must establish that the GCIC printout was obtained from a computer terminal lawfully connected to the GCIC. The testimony from the probate court employee as to the status of Christian's license at the time of his arrest was the only evidence the State presented that Christian was driving in violation of O.C.G.A. § 40-5-65, and because the State failed to lay the proper foundation, the evidence was inadmissible hearsay and there was therefore insufficient evidence to support Christian's conviction on that charge.