

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JANUARY 21, 2011

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THIS WEEK:

- **Statements; Jury Charges**
- **Severance; Newly Discovered Evidence**
- **Motion for New Trial**

Statements; Jury Charges

Crawford v. State, S10A1559 (1/10/11)

Appellant was convicted of the murder of a teenaged girl. The evidence showed that after she was beaten and strangled, appellant killed her by drowning her in a bathtub. Appellant contended that his statements were inadmissible because he requested an attorney. According to the evidence, appellant asked the interrogating officers if he (appellant) needed an attorney; the lead interrogator responded “something to the effect of I can’t tell you whether you need a lawyer or not, that’s up to you”; and then read appellant his *Miranda* rights, after which appellant voluntarily agreed to continue talking to the officers. The Court found that neither appellant’s question nor the circumstances surrounding the question suggested a request for an attorney. The trial court therefore correctly concluded that appellant’s question to the officers did not rise to the level of an unequivocal request for counsel.

Appellant contended that the trial court erred in failing to give his requested jury charge on voluntary manslaughter. Appellant contended that the evidence showed that he became enraged upon discovering the teenaged victim on the telephone with her ex-boyfriend; appellant tried to take the phone from her over her resistance; and, to stop her from hitting him, he grabbed and then choked her until she went limp. Appellant argues that

this evidence showed he “snapped” because the teenager was “speaking to a rival for her affections.” Premitting the impact on appellant’s argument of the evidence that appellant then moved the body to the bathroom, filled the tub with water and put her face down in it, the evidence still did not warrant the charge. Voluntary manslaughter occurs when a person “causes the death of another human being under circumstances which would otherwise be murder and if he acts solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person.” OCGA § 16-5-2 (a). While adulterous conduct can be the provocation sufficient to warrant a conviction for manslaughter, and such conduct can supply the required provocation even if the defendant and the victim are not married, in the absence of any evidence of a romantic relationship between appellant and the teenaged victim, there could be no “serious provocation” created by the victim’s call to her ex-boyfriend that could have aroused “passion in a reasonable person.” OCGA § 16-5-2 (a). Here, the evidence showed that appellant had never been alone with the victim and, at best, could have had only the occasional, casual conversation with her in a family setting, making them, as the trial court noted, “near strangers.” Therefore, the trial court did not err in refusing to give the charge.

Severance; Newly Discovered Evidence

Brinson v. State, S10A1644 (1/10/11)

Appellant was convicted of malice murder, conspiracy to murder, and other related offenses. He contended that the trial court erred in denying his motion for severance from his

co-defendant. The factors to be considered in ruling on such a motion include (1) the likelihood of confusion of the evidence and law; (2) the possibility that evidence against one defendant may be considered against the other defendant; and (3) the presence or absence of antagonistic defenses. It is not enough for the defendant to show that he or she would have a better chance of acquittal at a separate trial or that the evidence against a co-defendant is stronger. Rather, the defendant must show clearly that a joint trial will prejudice his or her defense, resulting in a denial of due process. Appellant did not contend that there would be a likelihood of confusion but that some evidence that was admissible against his co-defendant would be considered against him. The Court found, however, that this evidence would have also been admissible against appellant as statements of a co-conspirator made during the concealment phase of the conspiracy. Also, the fact that appellant and his co-defendant had somewhat antagonistic defenses was insufficient to require severance unless there was a showing of resulting prejudice and consequent denial of due process. Here, appellant failed to carry this burden because, among other things, if he and the co-defendant had been tried separately, the co-defendant still could have testified at appellant's trial during the State's case or in rebuttal.

Appellant also contended that the trial court erred in not granting his motion for new trial on the basis of newly discovered evidence. At trial, appellant and his girlfriend each testified that they left her apartment around 8 p.m. to pick up dinner at a restaurant and that he was gone for about 30 to 40 minutes and then returned home and did not leave again. The newly discovered evidence was a receipt for dinner showing a purchase at 8:33 p.m. The Court stated that to obtain a new trial based on newly discovered evidence, a defendant must show, among other things, that the new evidence is so material that it would probably produce a different verdict and is not cumulative. Appellant failed to satisfy either of these requirements because the shooting occurred around 10:30 p.m. Thus, even if appellant was at a restaurant around 8:30 p.m. and returned to his apartment before 9:00 p.m. this did not impact whether he may have left again and traveled to the scene of the shooting in time to commit the crimes. The evidence therefore was not so material that it would probably produce

a different result. Moreover, the evidence was cumulative of appellant's and his girlfriend's testimony at trial. Thus, the trial court did not abuse its discretion in denying the motion.

Motion for New Trial

Alvelo v. State, S10A1662 (1/10/11)

Appellant was convicted of malice murder and other crimes. He filed a motion for new trial in which he specifically asked the trial court to re-weigh the evidence, make credibility choices and grant him a new trial. The trial court explicitly refused, finding that it would not usurp the function of the jury.

The Court reversed. The trial court on motion for new trial may weigh the evidence and consider the credibility of witnesses. If the court reaches the conclusion that the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted, the verdict may be set aside and a new trial granted. "It has been said that on such a motion the court sits as a thirteenth juror." The motion, however, is addressed to the discretion of the court, which should be exercised with caution. Only the trial court is authorized by law to conduct such an assessment. Therefore, the Court found, the trial court, when it explicitly declined to consider the "credibility of witnesses," failed to apply the proper standard in assessing the weight of the evidence as requested by appellant in his motion for new trial. Accordingly, the judgment was vacated and remanded to the trial court for consideration of appellant's motion under the proper legal standard.