

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING FEBRUARY 26, 2016

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State Prosecutor

**Austin Waldo**  
State Prosecutor

## THIS WEEK:

- **Negotiated Pleas; Rights of State**
- **Search & Seizure**
- **Obstruction; Sentencing**
- **Inconsistent Verdict Rule**

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### *Negotiated Pleas; Rights of State*

*State v. Kelly, S15G1197 (2/22/16)*

Kelly was indicted for felony murder and other crimes for his participation in an armed robbery attempt that resulted in the death of a participant in the crime. In October 2012, the parties reached the following plea agreement: Kelley would plead guilty to the reduced charge of voluntary manslaughter, he would testify truthfully against his co-defendants, and the State would nolle prosequere the remaining charges and recommend a 20-year sentence. The trial court accepted the negotiated plea, but sentenced him to a term of only ten years, with five to be served in prison and the balance on probation. The State objected, asked that the plea be withdrawn and that the case against Kelly proceed to trial. The court denied the request.

The State filed a motion to set aside the judgment and the trial court then granted the motion. Kelly appealed. The Court of Appeals reversed the trial court's grant of the State's motion and ordered the trial court to re-enter the original judgment of conviction and sentence. The Supreme Court granted certiorari to address what authority the State has when a trial court rejects a material term of a negotiated plea in favor of a defendant.

The Court found that the State has the authority and discretion to decide how

to charge a defendant and whether to plea bargain with him and, further, that the trial court lacks the authority to accept a guilty plea to a reduced or mitigated charge without the State's consent. Therefore, where the State has agreed to a reduced charge in exchange for a specific sentence, the State has the authority to withdraw from that negotiated plea and demand a trial if the trial court rejects that sentence in favor of one to which the State does not consent. In other words, the trial court's authority to accept a plea agreement to a lesser charge flows from the State's consent to that agreement; as such, the State has the authority to withdraw that consent and demand a trial when the trial court announces its intention to reject the negotiated sentence on which the State's consent is premised.

Accordingly, the Court held, where a trial court intends to reject a sentence recommended as part of a plea agreement to a lesser charge, the trial court must, on the record and before sentencing, inform the State of its intention and allow the State to exercise its authority to withdraw its consent to the plea and demand a trial. If the State does not object, it will be presumed to have consented to both the defendant's plea to the lesser charge and the imposition of the lighter sentence. And here, the Court found, the record established that the first time the State learned that the trial court was going to impose a lighter-than-recommended sentence was at the moment the trial court pronounced Kelley's sentence from the bench; in such cases the State must promptly object, as it did in this case, to preserve its authority to withdraw its consent from the negotiated plea and demand a trial. The trial court here should have heeded the State's initial objection and granted the State's request to withdraw the plea agreement; but, the trial court correctly set aside the original

judgment of conviction and sentence, and the Court of Appeals erred by reinstating it.

## Search & Seizure

*Gomillion v. State, S15A1617 (2/22/16)*

Appellant was convicted of murder and other related charges. He contended that the trial court erred in denying his motion to suppress the evidence seized from the car he was driving. The record showed that appellant was not the owner of the car he was driving. On the day appellant was arrested, the police impounded the vehicle and then contacted the owner of the car and obtained her consent to search it.

Appellant argued that despite the owner's consent, his expectation of privacy in the car required that the police obtain his consent to justify the warrantless search. Even assuming that the owner's interest was not superior to appellant's and that if appellant had been present and objected to the search, the police would have had to honor his objection, the Court nevertheless disagreed. The Court noted that *Fernandez v. California*, \_\_\_ U.S. \_\_\_ (134 S.Ct. 1126, 1129, 188 L.E.2d 25) (2014) firmly established that police officers may search jointly occupied premises if one of the occupants consents. And, although *Georgia v. Randolph*, 547 U.S. 103 (126 S.Ct. 1515, 164 L.E.2d 208) (2006), recognized a narrow exception to this rule, holding that the consent of one occupant is insufficient when another occupant is present and objects to the search, the *Fernandez* Court declined to extend the rule of *Randolph*, holding that it is limited to situations when an objecting resident is physically present. Therefore, the Court held, under the principles of *Fernandez* and *Randolph*, because appellant was not present and objecting at the time of the search of the vehicle he was driving, the owner's consent was all that was required for the search to be lawful.

## Obstruction; Sentencing

*Lidy v. State, A15A2398 (1/25/16)*

Appellant was convicted of two counts of felony obstruction and one count each of aggravated battery and criminal trespass. He contended that the trial court erred in not merging the two felony obstructions for sentencing purposes. The Court agreed.

The indictment charged appellant with two counts of obstruction, one against the chief of police and one against a lieutenant, for "knowingly and willfully resist[ing] . . . by offering violence to the person of such officer by struggling with said officer." The Court stated that although a defendant may be tried on multiple counts arising out of the same conduct, the rules of merger permit only one conviction and sentence for a single crime and all included offenses.

The State argued that because appellant's resistance affected both officers, the obstruction counts did not merge. But, the Court found, appellant's act of resistance lasted only a few seconds and affected both the lieutenant and the chief simultaneously. The identical facts and identical allegations are relied on to establish the commission of the crime against each officer. There was no clear distinction here between the way appellant struggled with the lieutenant and the way he struggled with the chief, although the struggle resulted in an injury to the chief only. In so holding, the Court distinguished the cases cited by the State holding that the merger doctrine does not apply if each of the charged crimes was committed against a different victim. The crime of obstruction involves resisting a law enforcement officer in the lawful discharge of his or her duties. Oftentimes, those duties are identical and officers carry out those duties as a group simultaneously and are therefore obstructed or met with resistance simultaneously (e.g., when a suspect flees from the joint hold of more than one officer). Unless the evidence shows that each officer was obstructed in a different way or at a different point in time, multiple obstruction charges against multiple officers should merge for purposes of sentencing.

Therefore, the Court concluded, because the same conduct established the commission of the multiple crimes here, those offenses must merge for purposes of sentencing. The Court therefore vacated appellant's sentence and remanded for resentencing.

## Inconsistent Verdict Rule

*Muttalib v. State, A15A2358 (1/25/16)*

After a bench trial, appellant was found guilty of possession of methamphetamine, possession of tools for the commission of a crime, possession of less than one ounce of marijuana, two counts of giving false information to a law enforcement officer, and speeding. Appellant

argued that the evidence was insufficient to support his conviction for possession of tools for the commission of a crime because it was inconsistent with the trial court's acquittal on the charge of possession of methamphetamine with intent to distribute. The State conceded the issue and the Court reversed.

The trial court found that because the State failed to present any evidence as to the normal amount of methamphetamine an addict consumes in a day as compared to the amount discovered in the vehicle, as the factfinder, it determined that the State had not proved beyond a reasonable doubt that appellant possessed the methamphetamine with intent to distribute. The trial court therefore found him guilty instead of the lesser-included charge of possession of methamphetamine. The indictment charged that appellant "unlawfully ha[d] in his possession a set of digital scales, a device commonly used in the commission of Possession of Methamphetamine with Intent to Distribute, with the intent to make use of said tools in the commission of said crime . . ."

As a general rule, the Court stated, a guilty verdict cannot be challenged on the ground that the jury's verdict of guilty on one count of an indictment is inconsistent with an acquittal on another count. Such verdicts are deemed constitutionally tolerable because they may reflect an exercise of lenity by the jury that is not necessarily grounded in its view of the evidence. And the Court stated, it found no case law establishing that bench trials are excepted from the general rule allowing inconsistent verdicts. Nevertheless, as indicted here and based on the trial court's explicit statements in the record, the guilty verdict for possession of tools with the intent to distribute methamphetamine cannot stand because an exception to the inconsistent verdict rule exists when the appellate record makes transparent the factfinder's reasoning why it found the defendant not guilty of one of the charges. And here, the Court noted, the trial court specifically found that the State failed to prove beyond a reasonable doubt that appellant possessed the methamphetamine with intent to distribute, thereby making it clear that the State also failed to establish beyond a reasonable doubt that appellant possessed the digital scale with the intent to commit the crime of possession of methamphetamine with intent to distribute and requiring reversal of the conviction for possession of tools for the commission of a crime.