

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING APRIL 22, 2011

Legal Services Staff Attorneys

Stan Gunter
Deputy Executive Director

Chuck Olson
General Counsel

Joe Burford
Trial Services Director

Laura Murphree
Capital Litigation Director

Fay McCormack
Traffic Safety Resource Coordinator

Gary Bergman
Staff Attorney

Al Martinez
Staff Attorney

Clara Bucci
Staff Attorney

Todd Hayes
Traffic Safety Resource Prosecutor

THIS WEEK:

- **Jury Charges**
- **Insanity; Sentencing**
- **Relevance; Reopening Evidence**

Jury Charges

Hughes v. State, A11A0127 (4/6/2011)

Appellant was convicted of trafficking in methamphetamine. He argued that the trial court erred in instructing the jury that their verdict should not be influenced by sympathy or prejudice. The record showed that appellant failed to object at trial. Under OCGA § 17-8-58 (a), "Any party who objects to any portion of the charge to the jury or the failure to charge the jury shall inform the court of the specific objection and the grounds for such objection before the jury retires to deliberate." Since appellant did not raise any objection to the jury instructions before deliberation, he waived his right to object to the instructions unless they contained "plain error." The Court used the "highly probable test" laid out in *Leverette v. State*, 303 Ga. App. at 852 to determine that it was not highly probable that the verdict would have come out differently if the alleged "error" in the instructions was fixed. Therefore, the Court saw no basis on which to reverse the conviction and the judgment was affirmed.

Insanity; Sentencing

Nelor v. State, A11A0011 (4/7/2011)

Appellant appealed from an order which denied a recommendation filed by the Department of Behavioral Health with Developmen-

tal Disabilities that appellant be moved to a facility for outpatient involuntary treatment. Appellant argued that the trial court erred in concluding that he still met the criteria for inpatient involuntary treatment.

OCGA § 37-3-1 (9.1) provides that mentally ill persons require inpatient involuntary treatment if they present a substantial risk of imminent harm to themselves or others, or are so unable to care for their own physical health and safety as to create an imminently life-endangering crisis. If, during a hearing, a person who has been involuntarily committed for inpatient treatment is able to overcome the rebuttable presumption that he or she no longer requires inpatient involuntary treatment, however, then a trial court may order the person be conditionally released pursuant to OCGA § 17-7-131 (e) (5). During such a hearing, the trial court must determine whether the person has shown by a preponderance of the evidence that inpatient treatment is no longer required. In addition, "overwhelming opinion evidence of a medical condition may not be summarily rejected by the factfinder. When proof of [a defendant's mental state] is overwhelming, [the factfinder] may not rely on the rebuttable presumption [that the defendant's] prior mental state has continued." *Nagle v. State*, 262 Ga. 888, 891 (1993).

The trial court had denied appellant's request for outpatient involuntary commitment because it found that appellant continued to present a risk of imminent harm to himself and others. However, the Court found, because appellant's psychiatrist and other professionals testified, and the record showed, that appellant had never behaved violently or threatened the safety of himself or anyone around him since his commitment, the trial court's concerns were entirely unsupported by the record.

Therefore, the Court concluded, the preponderance of the evidence supported a finding that appellant had overcome the presumption of a continued need for inpatient involuntary treatment. Accordingly, the Court reversed the order of the trial court.

Relevance; Reopening Evidence

Hall v. State, A11A0546 (4/11/2011)

Appellant was convicted on three counts of permitting a child to be present during the manufacture of methamphetamine. Appellant argued that the trial court had erred when it barred her from presenting evidence and argument concerning the guilt of another couple, the Moores, as other parties to the crime. The Court stated that although a defendant is entitled to introduce relevant and admissible testimony tending to show that another person committed the crime for which the defendant is tried, the proffered evidence must raise a reasonable inference of the defendant's innocence, and must directly connect the other person with the corpus delicti, or show that the other person has recently committed a crime of the same or similar nature. A reasonable inference of the defendant's innocence is raised by evidence that renders the desired inference more probable than the inference would be without the evidence.

Even though the couple in question both had recent convictions for crimes involving methamphetamine, and even assuming that this relieved appellant of establishing any link between them and the corpus delicti, the presence of Mrs. Moore's fingerprints on the digital scales found in appellant's bedroom did not tend to make any "more probable" an inference that the Moores rather than appellant were responsible for any of the crimes for which appellant was tried. Even less did this evidence have any bearing on the crime of which appellant was actually convicted – that is, permitting children in a place where methamphetamine was being manufactured. Therefore, the Court ruled, the trial court had not abused its discretion when it barred appellant from introducing further evidence and argument concerning her theory that the Moores rather than she were responsible for those crimes.

Appellant also argued that the trial court abused its discretion when it denied her motion to reopen the evidence. The record showed

that on the day before the close of evidence, defense counsel discovered potentially damaging evidence to the State's case. On the morning after the close of evidence, appellant moved to reopen the evidence or in the alternative, for a mistrial. After noting that counsel had failed to bring the matter to its attention before the close of evidence, the trial court held a proffer hearing, including examination of witnesses by both sides, and then denied both motions. The Court found that because counsel knew of the evidence at issue before the close of its case and did not bring the matter to the attention of the trial court, and because it appeared highly improbable that the evidence would have led to a different verdict, the trial court had not abused its discretion when it denied the motion.