

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING APRIL 24, 2015

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State Prosecutor

## THIS WEEK:

- **Financial Transaction Card Fraud**
- **Void Sentences; Aggravating Circumstances**
- **Search & Seizure; Prolonged Stop**
- **Sentencing; Mutual Combat**

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### **Financial Transaction Card Fraud**

*Streeter v. State, A14A1981 (3/19/15)*

Appellant was convicted of burglary, two counts of financial transaction card fraud, three counts of financial transaction card theft, and one count of attempt to commit financial transaction card fraud. The evidence showed that she entered a corporate office building, went into the victim's office and stole a wallet from the victim's purse. Appellant then used the credit cards in the stolen wallet to purchase goods and services.

Appellant contended that the evidence was insufficient to convict her of Count 2 of the indictment charging her with financial transaction card fraud based on her unauthorized use of the victim's BB&T card to purchase a car wash. The Court agreed. Although the video recording showing appellant using some type of financial transaction card to purchase the car wash was introduced and played for the jury at trial, and the victim testified that appellant did not have her permission to use her BB&T card at the car wash, no evidence was presented showing that the victim's BB&T card was the card appellant actually used to pay for the car wash transaction. The name of the card was not visible on the recording and a receipt for

the car wash transaction was not introduced into evidence at trial. The investigating officer testified the card used there was the "card that was reported stolen," but the evidence showed that the victim had several credit cards stolen from her wallet, and the officer could not recall the name of the card used at the car wash, which he said was written in a case file he had left at his office. Accordingly, appellant's conviction for financial transaction card fraud as alleged in Count 2 of the indictment was reversed.

### **Void Sentences; Aggravating Circumstances**

*Cordova v. State, S15A0110 (4/20/15)*

Appellant appealed from the denial of his motion to vacate void sentences. The record showed that in 1997, he was indicted for malice murder, armed robbery and kidnapping with bodily injury. The State filed a notice of intent to seek the death penalty. In May of 1999, appellant entered negotiated pleas of guilty to all three charges and was sentenced to life in prison without the possibility of parole for malice murder, a consecutive term of life in prison without the possibility of parole for the armed robbery, and a third term of life in prison without the possibility of parole for the kidnapping, the sentence to be served concurrently with the sentence for malice murder. In 2014, appellant filed a "motion to vacate void sentence," contending that his sentences were void "as a result of the trial court's failure to make a contemporaneous specification, beyond a reasonable doubt, the statutory aggravating circumstance required by O.C.G.A. § 17-10-32.1(b) authorizing imposition of a life sentence without

possibility of parole.” The trial court denied the motion, but the Supreme Court reversed.

The Court stated that it was clear that under former O.C.G.A. § 17-10-32.1(b), a defendant who pleads guilty in a death penalty case could not be sentenced to life without parole unless the judge contemporaneously made a specific finding of a statutory aggravating circumstance beyond a reasonable doubt. Here, the Court found, this did not happen; the plea court did not specify an aggravating circumstance at the time of sentencing, so the statutory requirement was not met. Consequently, appellant’s imposed sentences of life without the possibility of parole were void and must be vacated. Accordingly, the Court remanded the case to the trial court with the directions that his sentences of life in prison without the possibility of parole be vacated and that appellant be resentenced according to the applicable law at the time of his plea.

### **Search & Seizure; Prolonged Stop**

*Griffith v. State, A14A2181 (3/19/15)*

Appellant was charged with VGCSA. After the trial court denied his motion to suppress, the Court granted him an interlocutory appeal. The evidence showed that appellant was stopped for a window tint violation. The officer immediately radioed dispatch to check appellant’s out-of-state tag. After the officer finished writing the warning, but before he had received the results of the tag check from dispatch, the officer made a comment to appellant about the prevalence of crime on that stretch of highway and then asked appellant if he had anything illegal in his vehicle. Appellant admitted that he had a meth pipe and methamphetamine in the vehicle, and the officer arrested him. A search of the vehicle revealed methamphetamine.

Appellant did not dispute the validity of the stop, but argued that the officer unreasonably prolonged it. The Court stated that an investigatory stop of a vehicle cannot be unreasonably prolonged beyond the time required to fulfill the purpose of the stop. Such claims are of two sorts. In some cases, a detention is prolonged beyond the conclusion of the investigation that warranted the detention in the first place, and in those cases, the courts generally have concluded that such a

prolongation, even a short one, is unreasonable, unless, of course, good cause has appeared in the meantime to justify a continuation of the detention to pursue a different investigation. In other cases, the detention is not prolonged beyond the conclusion of the investigation that originally warranted the detention, but it is claimed that the investigation took too long, perhaps because the officer spent too much time inquiring about matters unrelated to the investigation. In these cases, the courts examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.

Here, the Court found, the facts presented the second sort of claim. The Court noted that less than 13 minutes elapsed between the start of the traffic stop and appellant’s arrest. The video recording of the stop reflected the officer actively engaging in tasks related to the purpose of the stop during those 13 minutes. As he talked with appellant, the officer obtained appellant’s driver’s license from him, tested the tint of appellant’s windows, discussed the window tint violation with him, and wrote a warning for that violation. Moreover, the officer initiated the check of appellant’s tag at the very beginning of the stop and determined that the check would be needed to verify appellant’s insurance. While a delay in the response time to a check would not justify appellant’s detention indefinitely, the police are not constitutionally required to move at top speed or as fast as possible. At a traffic stop, the police can occasionally pause for a moment to take a breath, to think about what they have seen and heard, and to ask a question or so. Under the circumstances, the Court determined, it agreed with the trial court that the detention was not unreasonably prolonged beyond the time required to fulfill the purpose of the traffic stop. Accordingly, the motion to suppress was properly denied.

### **Sentencing; Mutual Combat**

*Tepanca v. State, S15A0045 (4/20/15)*

Appellant was convicted of malice murder, felony murder, aggravated assault, and possession of a firearm during the commission of a felony. Appellant argued that the trial court erred in merging his conviction for malice murder into his conviction for

felony murder. The Court disagreed. When the jury returns guilty verdicts on both felony murder and malice murder charges in connection with the death of one person, it is the felony murder conviction, not the malice murder conviction that is “simply surplusage” and stands vacated by operation of law. But, since appellant’s sentence of life imprisonment was appropriate for both felony murder and malice murder, appellant suffered no harm from the trial court’s action in vacating the malice murder conviction and retaining the felony murder conviction.

Appellant also argued that the trial court erred by denying his request to charge the jury regarding the law of mutual combat as a basis for finding he committed only voluntary manslaughter. But, the Court noted, appellant’s own testimony was that he did not want to fight the victim. So, even if there was evidence that the victim wanted to fight, there was no evidence that appellant wanted to fight also. As such, the evidence did not warrant such instructions since appellant testified he acted in self-defense in the fight and did not intend to kill the victim. Moreover, the unlawful killing of one who has given the slayer no provocation other than the use of words, threats, menaces, or contemptuous gestures, cannot, in this State, be graded to voluntary manslaughter, under the doctrine of mutual combat. Under either of these precepts, the trial court did not err by refusing to charge the jury regarding mutual combat.