Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 26, 2011

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THIS WEEK:

Gang Activity

In the Interest of A. D., A11A1097; A11A1195 (8/11/2011)

The juvenile appellants, A. D. and J. W., were adjudicated delinquent based on charges of battery and of violating the Georgia Street Gang Terrorism and Prevention Act, OCGA § 16-15-1 et seq. (the "Act"), arising out of a fight involving the two boys and a third person. Neither appellant challenged his conviction of the predicate offense of battery. Rather they contended the State failed to show both that their gangs fit the definition of "criminal street gang" and that a nexus existed between the battery and their gang affiliation. At the hearing, a detective, who was a member of the "Gang Task Force," easily established that both boys were members of related gangs. He testified that J. W. admitted that he was a member of gang named "Nine Trey Blood," part of the "Blood Gang." The Detective observed that J. W. had tattoos, and J. W. said that he got them "while he was in boot camp," but boot camp was never explained. The detective recognized one of the tattoos as indicating membership in the Blood Gang, and J. W. explained that other tattoos meant that relatives or friends of his had died, although he did not explain the circumstances. The detective testified that A. D. admitted being a member of a gang named "Piru," "another Blood group." He also was tattooed in "boot camp," and he had tattoos similar to J. W.'s. Based on these conversations with appellants, along with the tattoos and other police work, the detective testified that he had "documented" appellants as being members of a local gang. He testified that although the appellants were in separate groups, they were both part of the Blood gang and therefore could associate together. He testified the victim reported that A. D. said the term "blatt" as he walked away after the fight, which, the officer testified was a Blood Gang term used as a greeting or warning, either that police or others are coming. The detective admitted that he had no information suggesting that the victim was a gang member.

The detective did not, however, describe the Blood gang or testify about any of their activities. The Act defines a "criminal street gang" as "…any organization, association, or group of three or more persons associated in fact, whether formal or informal, which engages in criminal gang activity as defined in paragraph (1) of this Code section. . . . Such term shall not include three or more persons, associated in fact, whether formal or informal, who are not engaged in criminal gang activity." OCGA § 16-15-3 (2). And "[c]riminal gang activity" is defined as "the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit any of the [enumerated] offenses." OCGA § 16-15-3 (1).

First, the Court determined, the battery committed in this case cannot serve as proof of the necessary gang activity. If it were sufficient, the nonsensical result would be that a member of any legitimate group could violate the Act merely by committing an enumerated offense. Second, the Court found, there was simply no evidence in the record about the named gangs' activities, let alone their involvement in any criminal activities. The

detective never testified that any of the named gangs committed, attempted to commit, conspired to commit, or solicited, coerced, or intimidated another person to commit any of the offenses enumerated in OCGA § 16-15-3 (1). Although the detective testified about the gangs' tattoos, similar names, "boot camp," and the use of the term "blatt," this type of information merely established the existence of a gang, not its activities. The Act plainly states that an organization is not a "criminal street gang" unless its members are "engaged in criminal gang activity." Since the State failed to establish that a "criminal street gang" was involved in the battery, the Court found that it did not need not address the appellants' second argument, that the State failed to establish a "nexus between the [battery] and an intent to further street gang activity. The judgments were therefore reversed in both cases.

Statements; Miranda

Bone v. State A11A0983 (8/15/2011)

Appellant was convicted of possession of methamphetamine, misdemeanor obstruction and giving a false name. He contended that his statements were inadmissible because they were the product of custodial interrogation without the benefit of *Miranda* warnings. The evidence showed that an officer stopped appellant for a taillight violation. As appellant was getting out of the car, he tucked something in the waistband of his pants. He then shut his door and took off running. The officer tackled him, a struggle ensued and eventually the officer was able to subdue appellant after pepper spraying him. The officer found a pill bottle containing methamphetamine near the area of the struggle. After appellant was handcuffed and placed in the back of a patrol car, he voluntarily started a conversation with the officer by admitting that he was not who he previously stated he was. The officer then asked appellant, who was then only suspected for fleeing a police officer and possession of contraband found at the scene: "Well, whose vehicle is this?" Appellant replied that he did not know whose vehicle it was, but that he gave somebody drugs so that he could use the car. When asked what he was expecting to learn in response to his question, the office testified that he just wanted to know who the car belonged to. Appellant testified at trial and denied that he told the officer that he gave somebody drugs.

A statement made by a defendant is voluntary when it is made without being questioned or pressured by an interrogator. Such statement is admissible despite the absence of *Miranda* warnings. Thus, a defendant's voluntary and spontaneous outburst not made in response to custodial questioning or interrogation is admissible at trial. The Court agreed with the trial court's determination that appellant was in custody at the time he made his statement, but that the officer's question about the ownership of the car was not designed to lead to incriminating evidence. Rather, the question was merely to garner information needed to most efficiently remove the car from the side of the road. Appellant's statements were not solicited and therefore were not protected under *Miranda*.