

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING AUGUST 27, 2010

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## THIS WEEK:

- **Objections; Jury Questions**
- **Voir Dire; Batson**

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### **Objections; Jury Questions**

*Morales v. State, A10A1058*

Appellant was convicted of aggravated assault. The evidence showed that he pushed the victim off a porch railing of a house, then walked downstairs and kicked the victim a couple of times in the head. The jury sent out a note, asking to see the homeowner's "testimony and the report he made to the police." Defense counsel raised an objection "to anything other than if you see fit to give the whole testimony, I understand that, but I wouldn't want to send out the reports of any kind." The trial court responded that "I'm not going to send the report out," but that if the jury wanted it read to them, "then I can give them that part of" their request. Appellant did not renew his objection, but repeatedly responded in the affirmative as the trial court outlined its intended course. The trial court then brought the jury into the courtroom and explained that the homeowner's testimony had not been transcribed and that it would not be practical to replay the recording of his testimony. After confirming that the jury wished to hear the homeowner's statement to police, it was read the statement to the jury.

Appellant argued that the trial court erred in allowing the jury to hear the homeowner's statement to police but not his trial testimony, and he asserted that the statement was read to the jury over his timely objection. The Court

found otherwise. "It is the rule in Georgia that objections should be made with sufficient specificity for the trial court to identify the precise basis. . . . Further, objections to irregularities must ordinarily be made at a time when they may be remedied, or they are waived." Here, defense counsel did not object to the procedure used by the trial court, but rather only to the statement being sent out with the jury. Moreover, it was also apparent that the trial court had no intention of allowing the jury to hear only a part of the homeowner's trial testimony which reasonably addressed defense counsel's objection to the jury hearing anything but the entire testimony. "If defense counsel had intended to object to the jury hearing [the homeowner's] statement to the police, or if he had intended to insist that the trial court agree to the jury's request to hear [the homeowner's] trial testimony, there was nevertheless no specific objection entered on these grounds." Therefore, the issue was waived on appeal.

### **Voir Dire; Batson**

*Franklin v. State, A10A1160*

Appellant was convicted of selling cocaine and distributing a controlled substance within 1000 feet of a park. He contended that the trial court erred in not striking for cause a potential juror who revealed that he was the CI's uncle. The Court held that the uncle's relationship to the CI did not, by itself, disqualify him as a juror. Nor did the relationship make the uncle biased toward the State, requiring a disqualification for favor. Before a juror can be disqualified for favor, it must be shown that an opinion held by the potential juror is so fixed and definite that the juror will be unable to set the opinion aside and decide the case based

upon the evidence or the court's charge upon the evidence. Here, the uncle was unable to state with certainty that he could reject his nephew's testimony. But, he believed that he could judge the testimony and the case impartially. He declared unequivocally that he would be fair, and he indicated that he could listen to the evidence and reach an impartial verdict. Therefore, nothing demonstrated that the uncle's opinions—particularly toward the CI—were so fixed and definite that they could not be changed by the evidence. Accordingly, the trial court did not abuse its discretion in this instance.

Appellant also argued that the trial court erred in rejecting his *Batson* challenge to the State's use of peremptory strikes. He asserted at trial that the State had exercised its peremptory strikes in a racially discriminatory manner, using eight of nine challenges against African-Americans (Jurors A-H). The prosecutor asserted that she struck Jurors A, B, and C based on their connection to either the CI or appellant. The Court held that a juror's acquaintance with a witness or the defendant is a race-neutral reason for a peremptory strike. Nevertheless, appellant argued that the stated reasons were pretextual because "various other people who reported that they knew the defendant were not struck by the State," and the State did not strike the CI's uncle. The Court found that it is true that failure to treat similarly situated jurors in a like manner may support a finding of discrimination. With the exception of the CI's uncle, however, appellant did not identify the "various other people" that he contended were similarly situated to the excused jurors, and, given the uncle's particular relationship to the CI, the trial court was authorized to find that he was not similarly situated to the jurors who were struck.

Similarly, the trial court did not err in rejecting the challenge to the remaining strikes. Jurors D and E were excused because the State learned that they had been involved with drugs, and Juror H had a prior drug conviction. Strikes based on these reasons are appropriate and race-neutral. Lack of employment, the basis for striking Juror F, is also deemed race-neutral. Finally, a juror's friendliness toward the defendant, the explanation given with respect to Juror G, was a proper ground for a strike.