

May 22, 2014

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Flading v. State***Georgia Court of Appeals Upholds Admission of a Defendant's Agreement to Plead Guilty in Exchange for an Officer's Withdrawal of His Sworn Report in an Administrative License Suspension Proceeding in the Defendant's Criminal DUI Trial***

In *Flading v. State*, A14A0557 (May 22, 2014), the Court of Appeals of Georgia upheld the admission of what is known as a "Joint Withdrawal" agreement (referred to by the Court of Appeals as a "Final Decision") made during an Administrative License Suspension (ALS) hearing between the defendant and the officer that arrested him for Driving Under the Influence of Alcohol (DUI) in the defendant's criminal trial. The Court held that because the defendant acquiesced to the agreement and stipulation with the officer and did not show fraud or mistake, it was relevant and admissible against him. *Flading*, slip op. at 9-11. Further, evidence of the defendant's agreement to plead guilty to DUI at the ALS hearing was not substantially outweighed by the danger of unfair prejudice and therefore was not subject to exclusion under O.C.G.A. § 24-4-403. *Id.* at 11-14.

After being stopped and arrested for DUI, the defendant refused to consent to a state-administered chemical test of his breath under the Implied Consent statutes. As a result, the arresting officer sought to administratively suspend his driver's license, and he requested an ALS hearing. At the hearing, the officer and attorney representing the defendant entered into an agreement whereby the defendant would be permitted to keep his license in exchange for pleading guilty to DUI. This "Final Decision" agreement, which was signed by the officer and the defendant's attorney, included the following language:

This withdrawal is based on an agreement between the arresting officer and [the defendant]. In exchange for the arresting officer's withdrawal of this sworn report, [the defendant] shall enter a plea of guilty to the underlying charge of violating O.C.G.A. § 40-6-391. The parties agree that a copy of this final decision may be admitted into any subsequent legal proceeding involving the charge as an admission by [the defendant] of [the defendant's] guilt or nolo contendere in exchange for the rescission of the administrative license suspension. The parties further agree that if [the defendant] fails to enter the required plea, this order may be voided and the sworn report refiled with the [Department of Driver Services].

Id., at 3-4.



State Prosecution Support Division

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When the criminal case against the defendant proceeded to jury trial despite the “Final Decision” agreement, the defendant moved *in limine* to prevent admission of the agreement by the State. The trial court denied the motion, and the agreement was admitted. Following his conviction, the defendant appealed, arguing that the trial court erred. In support, he cited a number of cases prohibiting introduction of evidence from ALS hearings that were decided on the merits after a contested hearing or dismissed for some other reason (e.g., the officer fails to appear). The Court distinguished them, however, noting that none of the cases addressed the admissibility of an ALS “Joint Withdrawal” agreement at a subsequent criminal trial. Therefore, the Court found, it must examine the admissibility of the agreement under the “general law regarding a party’s admissions and stipulations in criminal proceedings.” *Id.* at 9.

Generally, admissions by agents or attorneys are not admissible in criminal cases as evidence against the defendant unless they are “shown to have been authorized by him.” *Id.* at 9 (citations omitted). However, a statement by defense counsel made in the presence of a defendant relating to the defendant’s conduct is considered a statement by the defendant himself unless the defendant repudiates the attorney’s authority to make the statement. Further, stipulations made in the course of judicial proceedings result in an estoppel unless the complaining party can show fraud or mistake. *Id.* at 9-10. Here, the defendant did not claim fraud or mistake, nor did he repudiate his ALS counsel’s authority to make the stipulation. Instead, the defendant’s trial counsel confirmed that the ALS counsel had been hired for that hearing and had signed the document, and the defendant never argued that the attorney was not permitted to enter into the agreement. Therefore, because the defendant accepted the benefit of the stipulation by retaining his license, did not show fraud or mistake, and acquiesced to the stipulation to plead guilty to the admissibility of the Final Decision in a subsequent legal proceedings related to the DUI charge, it was not error to admit the agreement in evidence.

The defendant also argued that admission of the agreement should have been precluded by O.C.G.A. § 24-4-403 because it was “extremely suggestive and prejudicial.” *Id.* at 11. Relying on Eleventh Circuit precedent, the Court held that O.C.G.A. § 24-4-403 is an extraordinary remedy which courts should invoke sparingly, with the balance being struck in favor of admissibility. *Id.* at 13. The major function of O.C.G.A. § 24-4-403 is to exclude evidence of scant or cumulative probative force, “dragged in by the heels for the sake of its prejudicial effect.” *Id.* at 13-14. And here, the Court found, the “Final Decision” agreement was neither of “scant or cumulative probative force” nor introduced for the sake of prejudice. As a result, its probative value was not substantially outweighed by its prejudicial effect, and thus, the Court concluded, it was properly admitted.