

THIS WEEK:

- **Controlled Substances; Victims**
- **Mistrials; Juror Misconduct**
- **Statements; *Miranda***

Controlled Substances; Victims

Bennett v. State, S18A1157 (12/10/18)

Appellant was convicted of felony murder, arson, and concealing a death in connection with the shooting death of his ex-wife, Shirley Bennett. Appellant contended that he shot the victim in self-defense and then set fire to her residence in a panic to cover up her unintended death. Appellant contended that the trial court improperly excluded evidence that two drugs were found in Shirley's system during her autopsy — Phentermine, a diet supplement, and Hydrocodone, a pain reliever. On the first day of trial, the State moved to exclude any evidence of the drugs. Appellant opposed the motion, arguing that the drugs made Shirley more aggressive, which would support his claim that she lunged at him, causing him to raise the shotgun he was holding to protect himself. The State countered that the drug evidence was irrelevant, and thus inadmissible, unless appellant called an expert to testify about how the drugs would have affected Shirley's behavior at the time of her death. The trial court granted the State's motion but explained that if Appellant had a witness who could testify as to the effects of the drugs, the court would reconsider its ruling. Appellant did not elicit any such testimony during trial.

The Court stated that in decisions under the old Evidence Code — which governed the trial of this case in 2009 — it consistently held that evidence that a murder victim ingested drugs or alcohol was inadmissible without corresponding competent evidence explaining how the substance affected the victim's behavior at the pertinent time. Thus, because appellant did not produce any evidence indicating how the two drugs in Shirley's system may have affected her behavior during her fatal encounter with appellant, the drug evidence was inadmissible and consequently, was properly excluded by the trial court.

Mistrials; Juror Misconduct

Blake v. State, S18A1162 (12/10/18)

Appellant was indicted on malice murder and other offenses. The trial court declared a mistrial — over appellant's objection — of his trial during jury deliberations. Prior to retrial, appellant filed a plea in bar alleging double jeopardy. In its order denying appellant's plea in bar, the court determined that “jury-wide discussion of improper information about legal terminology compromised the integrity of a verdict and manifestly necessitated a mistrial.”

The Court stated that in cases like this one, where there is no prosecutorial misconduct and the basis for a mistrial is the effect of outside influences on the jury, a trial court has “broad discretion” in deciding whether to grant a mistrial and “great deference” is accorded to a decision that a mistrial was necessary. Here, the Court found, Juror 17 had consulted with a police detective about the meaning of malice murder and felony murder; the information Juror 17 gathered included legally inaccurate examples about the charged crimes; and Juror 17 shared that information with the rest of the jury, which discussed it during deliberations. The foreperson also stated that Juror 17 conducted independent research on sentencing for the charged crimes and shared that information with the jury.

Faced with these allegations of juror misconduct, the trial judge separately questioned Juror 17 on the record and with the parties present. Although Juror 17 flatly denied discussing the case with non-jurors, she admitted conducting Internet research about the legal differences between malice murder and felony murder and that she shared her findings with the other jurors. She also asserted that other jurors conducted outside research, including one juror who consulted with a lawyer about legal terminology, and discussed that “new information” with the rest of the jury.

The Court also noted that the trial judge identified a significant likelihood that the jury had been exposed to outside information during deliberations, and that she recognized the threat that posed to appellant’s right to a fair and impartial trial. She also acknowledged that the jury’s exposure to outside information would be “a major issue on appeal.” The trial judge, however, did not immediately declare a mistrial; instead, she deliberately exercised her discretion by first questioning the foreperson who made the allegations of juror misconduct, and then questioning the juror accused of the misconduct, to better understand the full set of circumstances. And although Juror 17 denied discussing the case with anyone outside of the jury, she asserted that she — along with “everybody” else on the jury — conducted independent, outside research and discussed those findings, a claim that raised even more concerns than the jury foreperson initially presented to the court.

Moreover, the Court stated, the record showed that the trial judge considered other possible alternatives such as removing and replacing Juror 17, recharging the jury and allowing deliberations to continue, and conducting further inquiry of the remaining jurors. But in a reasonable exercise of her discretion, the trial judge rejected those alternatives and concluded, “I don’t know that I have much choice but to declare a mistrial.” Thus, the Court concluded, under these circumstances, the trial court did not abuse its broad discretion in determining that there was a high degree of necessity to declare a mistrial over appellant’s objection. Accordingly, retrial was not barred and the denial of appellant’s plea in bar was affirmed.

Statements; *Miranda*

Gray v. State, S18A1583 (12/10/18)

Appellant was convicted of murder and related crimes. The evidence, very briefly stated, showed that appellant and Odom went to the victim’s house to borrow money to buy drugs. After leaving the house, appellant told Odom he forgot something and went back inside. Odom went back into the house a few minutes later to find that appellant had stabbed the victim. There was a lot of blood everywhere. Eventually appellant and Odom left the house and then disposed of their weapons and their clothes. When the police arrived, they found, among other things, two trophies with

blood stains on the hardwood floor near the front door. Appellant's fingerprint was found on one of the trophies along with the victim's blood.

Appellant contended that the trial court erred in failing to suppress his in-custody statements to law enforcement. Specifically, he argued that Detective Walker violated his rights by having a conversation with him after he told Detective Harris that he did not wish to speak any longer. The Court disagreed.

The record showed that appellant was initially questioned by Detective Harris. After reading him his *Miranda* rights, appellant denied knowing the victim, hanging out with Odom, or being at the victim's house. However, when Detective Harris told appellant that his fingerprint was found on a trophy collected from the victim's house, appellant eventually claimed that he was with Odom on the night of the murder, but that he dozed off in Odom's car and woke up to Odom handing him the trophy. At this point, Detective Harris placed appellant under arrest, and appellant indicated that he no longer wished to talk. Detective Harris subsequently left the interview room, and sent Detective Walker in to watch over appellant. Detective Walker spoke with appellant about non-case-related topics, including where appellant was currently living and about his dog. During their conversation, without any prompting from Detective Walker, appellant stated that he was being "framed" for murder. Detective Walker then asked appellant if that is why he was there, to which appellant responded, "yes." Then, after appellant's third comment about being framed for murder, appellant also volunteered to Detective Walker that Detective Harris had previously indicated that his fingerprint was found on a trophy in the victim's home. At this point, Detective Walker said that if Detective Harris told appellant that information, it was not a lie, and he suggested that if appellant knew any information that might help him, he should speak with Detective Harris. Appellant then requested to speak with Detective Harris again. Detective Harris re-entered the room and read appellant his *Miranda* rights for the second time. After waiving his rights again, appellant admitted that he was with Odom on the night of the murder, that he and Odom discussed wanting money from the victim at some point during the night, and that he went into the victim's house and picked up the trophy while inside.

First, the Court found, it was undisputed that Detective Harris scrupulously honored appellant's invocation of his right to remain silent by immediately stopping his interview and physically exiting the interview room. Detective Walker's subsequent initial conversation with appellant about non-case-related matters did not constitute express questioning by law enforcement officers or its functional equivalent, and thus was not an improper interrogation. Further, to the extent that Detective Walker's later responses to appellant's comments about being framed and his fingerprint being on the trophy could be characterized as an interrogation, appellant initiated the renewed contact by speaking up first and thereby reflected a desire to discuss the investigation. And Detective Walker responded to appellant's three unsolicited statements about being framed by asking appellant if that is why he was there only after appellant brought up the case first. Finally, after appellant requested to speak with Detective Harris again, Detective Harris re-read appellant his *Miranda* rights, and appellant re-signed the *Miranda* form, validly waiving his rights. Thus, the Court concluded, appellant's subsequent admissions to Detective Harris were properly obtained and admissible in trial.