

THIS WEEK:

- **Mistrials; Double Jeopardy**
- **Juror Misconduct; Extraneous Information**
- **Inconsistent Verdict Rule; *Turner***
- **Mental Competency; Use Immunity**
- **Hearsay; Right to a Complete Defense**
- **Objection to Trial Transcripts; OCGA § 5-6-41**
- ***Trombetta* Evidence; Closing Arguments**
- **Alford Pleas; Claims of Innocence**

Mistrials; Double Jeopardy

Sanders v. State, A20A1619 (2/1/21)

Appellant appealed from the denial of his double-jeopardy plea in bar, arguing that the trial court erred when, during Sanders's jury trial for vehicular homicide, DUI (drugs) and related charges, the court declared a mistrial instead of making an evidentiary ruling.

The record showed that prior to trial, the parties deposed appellant's orthopedist, Dr. Tobin, with the understanding that at least some of his deposition testimony would be introduced into evidence at trial. The State did not file a motion in limine with respect to Dr. Tobin's deposition. Additionally, when the trial court contacted the parties a few days before trial and asked if there were any known evidentiary issues, the State did not respond. At the close of the first day of trial, however, the prosecutor sought to have the trial court exclude Dr. Tobin's testimony that appellant had a history of seizures; that appellant had a seizure on the day of the accident; and that, in Tobin's opinion, the collision had been caused by the seizure. After argument, and with the court declining to make a ruling, and following a brief recess, the prosecutor and defense counsel agreed to exclude Dr. Tobin's statements on causation. However, the following morning, before the jury was brought in to hear the second day of trial testimony, defense counsel moved to withdraw his stipulation. Counsel explained that he had entered into the stipulation only because he could not immediately locate the document in the voluminous medical records that supported both Dr. Tobin's statement that appellant had a history of seizures and opinion that a seizure had caused the collision. During the recess, however, defense counsel had located the document in question, which had been authored by appellant's treating physician at the hospital. The State objected to the defense motion to withdraw the stipulation. Rather than ruling on that motion or deciding whether any portion of Dr. Tobin's deposition was inadmissible, however, the trial court sua sponte declared a mistrial.

Thereafter, appellant filed a plea in bar, arguing that because there was no manifest necessity for the mistrial, his retrial was barred by double jeopardy. The trial court denied the motion, reasoning that the parties' failure either to stipulate as to the portions of Dr. Tobin's testimony that would be admitted or bring the matter to the court's attention prior to trial

had essentially forced the court to declare the mistrial rather than make the jurors wait until the court could review the entirety of the deposition and make a ruling as to which parts were admissible.

First, the Court looked to whether appellant consented to the mistrial. The Court found that neither party moved for a mistrial, and the record showed no discussion at all between the court and the parties about the possibility of a mistrial. Moreover, at no point before the court made its declaration of a mistrial did the court ask appellant or his attorney for the defense's position on the matter. Instead, as the parties were discussing how to handle an evidentiary issue, the court declared a mistrial sua sponte and without consulting either of the parties. Immediately after the court declared a mistrial, the court reporter ceased recording, indicating the proceedings had ended. No more than 20 seconds later, an outburst occurred. Nothing in the record disputes appellant's assertion that he and his attorney were then escorted from the courtroom. Given these circumstances, the Court could not conclude that appellant impliedly consented to the mistrial.

Next, the Court reviewed whether there was a manifest necessity for the mistrial. And here, the Court found, there was an obvious alternative to declaring a mistrial — the trial court could have performed one of its essential and routine functions, and ruled on the admissibility of the disputed testimony. Moreover, the trial court's desire not to keep the jury waiting while it reviewed Dr. Tobin's testimony and made a ruling did not affect the feasibility or appropriateness of the obvious alternative to the mistrial. Requiring the jury to wait while the parties argue over an issue and the trial court makes a ruling is not unusual. Such an alternative, even if it involves sending the jury home for a day, is preferable to a mistrial.

Thus, the Court concluded, given that the trial court had an obvious, feasible alternative to declaring a mistrial, and given that it gave no consideration to appellant's double-jeopardy rights before declaring a mistrial, the court abused its discretion in terminating appellant's trial, and it further erred in denying his plea in bar. Accordingly, the Court reversed the order of the trial court.

Juror Misconduct; Extraneous Information

State v. Melly, A20A1871 (2/1/21)

Melly was convicted of numerous sexual offenses against various minors. The State contended that the trial court erred in granting Melly's motion for new trial pursuant to OCGA § 24-6-606 (b). The Court agreed.

The record showed that four jurors testified at the hearing. Briefly stated, the evidence showed that Juror A testified that during deliberations, Juror B, a lady that sat across from him at the table, pulled out her phone to show him statistics on child molestation. Juror A did not look at the phone, but asked the foreperson, if this was allowed. When the foreperson stated that he didn't think so, Juror B put down the phone and stated, "it's here if you want it." Juror B testified that on the day after deliberations commenced, she had a screenshot on her cell phone which contained a list of "characteristics . . . of sexual abusers." She testified that she attained the screenshot as "authority." Juror B testified that Juror A did not look at her phone, nor did any other juror. She further explained that she previously knew the information that was contained in the screenshot and that she did not use the Internet during deliberations. Juror C testified that "[t]here was a lady that pulled her phone out and said, according to my phone on this and such. And [the foreperson] said, wait, wait. We can't use any of that. And that's as far as it went." Juror C confirmed that she did not see what information was contained on the phone; she did not recall what the information pertained to; and the foreperson "put an end to it before any information

really got out." Lastly, the foreperson testified that he did not recall any juror speaking about "outside" information concerning the case; that he did not see a juror attempting to use information from a phone; and that he did not remember telling any juror to stop trying to use information from a phone. He stated that "there could have been something that somebody said," but he could not remember any specific instance of someone attempting to discuss extrinsic information, and that if a juror had tried to do so, he would have told the juror that such an action was not allowed.

OCGA § 24-6-606 (b) provides that "[u]pon an inquiry into the validity of a verdict or indictment, . . . a juror may testify on the question of whether extraneous prejudicial information was improperly brought to the juror's attention [or] whether any outside influence was improperly brought to bear upon any juror[.]" On the question of what constitutes "extraneous prejudicial information," information is deemed extraneous if it derives from a source external to the jury. And any evidence that does not come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel is presumptively prejudicial. In order to give rise to this presumption, a defendant need only demonstrate that jurors had contact with extrinsic evidence. In other words, a rebuttable presumption of prejudice arises whenever a jury is exposed to external information in contravention of a trial court's instructions.

However, a jury verdict will not be upset solely because of irregular juror conduct, unless the conduct is so prejudicial that the verdict must be deemed inherently lacking in due process. To this end, even where a presumption of prejudice arises due to irregular juror misconduct, a new trial is not warranted if the State meets its burden of establishing beyond a reasonable doubt that no harm occurred.

And here, the Court noted, as the trial court found, none of the jurors other than Juror B saw the contents of the screenshot or discussed its contents with Juror B. The evidence that Juror B told Juror A that she possessed a screenshot of statistics related to child molesters merely showed that Juror A knew of the general nature of the information Juror B possessed, as opposed to the specifics of its substance. Pertinently, there was no discussion of what the statistics were, their significance, or how they related to the evidence in the case, if at all. The Court further found untenable the trial court's suggestion that the presumption of prejudice remained because Juror B "was attempting to influence the deliberations" and because she represented to the jurors that she possessed statistics "to support a particular position." Instead, the Court found, although Juror B may have intended to use the screenshot as authority for a particular viewpoint, the jurors never actually discussed the statistics in connection with either Melly or the evidence presented at trial. Additionally, Juror B never stated to any juror that the contents of the screenshot supported or lent credence to any stance that she had taken during the deliberations or that the contents pertained to anything that the jurors had discussed. Lastly, Juror B unequivocally testified that she had prior knowledge of the information contained in the screenshot, and nothing in the record evinced that her decision-making was influenced by the information. After examining all these circumstances, the Court stated that it could not find a reasonable probability that Juror B's conduct contributed to the conviction such that the verdict is inherently lacking in due process.

Accordingly, the Court concluded, because Melly was not harmed by any extraneous information brought to the jury's attention, Melly was not entitled to a new trial. Therefore, the Court reversed the trial court's grant of Melly's motion for a new trial.

Inconsistent Verdict Rule; *Turner*

Presley v. State, A20A1928 (2/2/21)

Appellant was indicted for voluntary manslaughter, involuntary manslaughter, and violation of oath by a public officer. The evidence, very briefly stated, showed that appellant, an on-duty police officer working the overnight shift, attempted to stop a vehicle driven by the victim, who appellant believed was driving on a suspended license. The victim's vehicle was travelling approximately 20 mph over the posted speed limit and crashed into some trees. The victim initially fled but immediately returned to the vehicle to retrieve "a small dark object" that appellant could not see clearly in the darkness. The victim ran, appellant gave chase, and tried to taser the victim. The taser malfunctioned. The victim fell and appellant attempted to subdue and handcuff the victim. A struggle ensued during which appellant was tased in his arm. Appellant tried again to use his taser, but the victim knocked it from appellant's hand. The victim then ran away again at which point appellant shot him four times, killing him.

A jury acquitted appellant of the manslaughter counts, but convicted him of violating his oath of office. Appellant filed a motion in arrest of judgment which the court denied following a hearing.

Citing *Watson v. State*, 293 Ga. 817 (2013), appellant contended that the trial court erred in denying his motion because the oath of office count was necessarily premised on the manslaughter counts, so he could not be convicted of that count after being acquitted of those counts. The Court disagreed.

The Court stated that the issue is not whether an acquittal on one charge would logically necessitate acquittal on another charge on which the jury convicted the defendant; rather the sole question is whether the evidence viewed in favor of the conviction was sufficient to support the guilty verdict. And here, the Court found, there was evidence that appellant shot the victim after the victim had disengaged appellant and had begun retreating back to the area where the vehicles were parked. This evidence authorized a guilty finding even in the face of appellant's asserted justification defense, so it was entirely possible that the jury found that the shooting was unlawful but out of lenity or compromise due to appellant's status as a police officer, the jury as a whole agreed to acquit him of the more serious manslaughter offenses. On the other hand, it was also possible that the jury simply erred. But, the Court stated, engaging in this type of speculation is exactly the type of epistemological futility that precedent forbids. Accordingly, in light of the evidence supporting the guilty verdict as to the violation of oath count, the fact that the jury in this case acquitted appellant on the predicate manslaughter offenses did not require reversal of his violation of oath offense.

Nevertheless, appellant contended, the inconsistent verdicts mandated reversal in accordance with *Turner v. State*, 283 Ga. at 20-21 (2) 2008). The Court noted that *Turner* stated an exception to the inconsistent verdict rule when instead of being left to speculate about the unknown motivations of the jury the appellate record makes transparent the jury's reasoning why it found the defendant not guilty of one of the charges, and there is no speculation. But, the Court found, *Turner* is distinguishable because in *Turner*, the verdict form contained express findings as to justification. But here, there was no such verdict form and thus, the Court stated, it would not engage in speculation or unauthorized inquiry regarding the jury's deliberations. Accordingly, the Court concluded, the record did not require reversal based on an allegedly inconsistent verdict.

Mental Competency; Use Immunity

Jefferson v. State, A20A2108 (2/3/21)

Appellant was convicted of family violence aggravated assault and family violence battery. At trial, the victim invoked her right against self-incrimination when questioned by the State about her encounters with appellant. The State asked the trial court to grant the victim "use immunity" from prosecution under OCGA § 24-5-507 and to order her to testify. The trial court granted the State's request over appellant's objection, and the victim then testified about her violent encounters with appellant. During her testimony, the victim explained that she suffered from bipolar disorder and received disability benefits from the military, but that she took medication so that she could live a normal life. The victim testified that she took Prozac for her depression and anxiety and Seroquel for her agitation and to help her sleep. She also testified that she was undergoing chemotherapy for breast cancer and felt sick to her stomach, but did not want to risk going to jail for not appearing at court and then missing her next chemotherapy appointment. The victim denied experiencing paranoia, hearing voices, or having psychotic episodes.

Appellant argued that the trial court erred by not conducting a sufficient examination into whether the victim was competent to testify as a witness under OCGA § 24-6-601 ("Rule 601") of Georgia's current Evidence Code. He contended that the victim's diagnosis of bipolar disorder, drug abuse, cancer treatment, and certain comments she made during her trial testimony reflected that she was incapable of testifying in a competent fashion. The Court disagreed.

Rule 601 provides: "Except as otherwise provided in [Title 24, Chapter 6], every person is competent to be a witness." Embodied in Rule 601 is the presumption that witnesses are competent to testify. And here, the Court found, there was nothing in the record that would rebut that presumption. While appellant noted that the victim had been diagnosed with bipolar disorder, the victim testified that she took medication to control her condition. In any event, suffering from a mental health condition is not one of the statutory exceptions to Rule 601. Indeed, Rule 601 allows one not mentally competent to testify, and it assumes that jurors are capable of evaluating a witness's testimony in light of the fact that she is not mentally competent. Thus, the Court stated, the fact that the victim had been diagnosed with bipolar disorder, standing alone, did not require the exclusion of her testimony, but rather was a matter that the jury could consider in weighing her testimony and assessing her credibility.

Furthermore, the Court found, the record reflected that the victim was able to coherently describe the incidents leading to the charged crimes based on her personal knowledge of those matters and was responsive to the questions asked to her. Likewise, the record was devoid of any evidence reflecting that her history of drug and alcohol abuse or her chemotherapy treatment for her cancer affected her competency to testify in any manner whatsoever. Therefore, the Court concluded, under these circumstances, the trial court committed no error in allowing the victim to testify at trial.

Appellant also contended that the trial court erred by granting the State's request for the victim to be given "use immunity" from prosecution under OCGA § 24-5-507 and be required to testify at trial. Specifically, he argued, the immunity granted to the victim was defective such that her Fifth Amendment right against self-incrimination was violated. Appellant further contended that the victim's Sixth Amendment right to counsel was violated because she was not advised to consult counsel about the scope of her "use immunity."

The Court stated that generally speaking, and particularly outside the First Amendment context, a criminal defendant will not be heard to complain of the violation of another person's constitutional rights. And Georgia courts have specifically held that a criminal defendant has no right to raise alleged violations of another individual's right against self-incrimination. Likewise, a criminal defendant has no right to raise a claim that another person's Sixth Amendment right to counsel was violated because the rights guaranteed by the Sixth Amendment are personal. Therefore, the Court held, appellant lacked standing to challenge any alleged violation of the victim's Fifth Amendment right against self-incrimination or her Sixth Amendment right to counsel.

Hearsay; Right to a Complete Defense

Kendricks v. State, A20A1954 (2/3/21)

Appellant was convicted of rape and aggravated sexual battery. He argued that the trial court erred by allowing a journal entry from the child victim into evidence. Specifically, he contended that the journal entry was inadmissible hearsay because it was transcribed by an anonymous therapist who did not testify at trial. The Court disagreed.

The Court noted that the journal in question was a book that the victim created during therapy sessions. The therapist typed what the victim said. The State initially introduced the journal during its direct examination of the victim as a document to refresh her memory as to what a condom was and whether appellant used a condom. On cross-examination, appellant questioned the victim about the creation of the journal and whether she had told others about the details of what she discussed in therapy and wrote in the journal. On re-direct examination, the State sought to introduce the journal into evidence, which the trial court allowed over appellant's objection. The State then used the journal to question the victim as to whether she was aware of the meaning of the term "cum" and then questioned the victim as to some of the pictures that she drew in the journal.

First, the Court found, the trial court correctly concluded that the victim was the declarant of the information of the journal. The victim testified that, when writing the journal as part of her therapy classes, "I said it and my therapist typed it." The victim thus had personal knowledge about the creation of the journal, and her testimony alone was competent and sufficient to establish the circumstances of its creation under OCGA § 24-14-8. Also, the Court saw no indication from the evidence that the therapist had any role in creating the journal or the content of the journal outside of memorializing the victim's statements by typing them. Thus, the victim was the declarant of the information in the journal, she testified at trial, and appellant was able to cross-examine her about the statements she made in the journal.

Finally, the Court found that the journal was admissible as a prior consistent statement. Generally speaking, unless a witness's veracity has affirmatively been placed in issue, the witness's prior consistent statement is pure hearsay evidence, which cannot be admitted merely to corroborate the witness, or to bolster the witness's credibility in the eyes of the jury. A witness's veracity is placed in issue so as to permit the introduction of a prior consistent statement only if affirmative charges of recent fabrication, improper influence, or improper motive are raised during cross-examination. Where such an attack occurs, evidence is admissible that the witness told the same story before the motive or influence came into existence or before the time of the alleged recent fabrication. In those circumstances, the prior consistent statement is defined as not hearsay and thus is admitted into evidence.

And here, the Court found, during appellant' cross-examination of the victim, he extensively questioned her about whether the details of her story were consistent each time she told someone what happened, and he asked her whether, before trial, she had mentioned certain details that she testified to on direct-examination, such as whether appellant had penetrated her with a Coke bottle. Under these circumstances, the Court found that defense counsel's questioning placed the victim's veracity at issue, by implying that she had changed her story for trial. Accordingly, the Court concluded, the journal was properly admissible.

Next, appellant argued that the trial court erred when it denied his motion in limine to introduce evidence of the victim's sister's forensic interview. He contended that the trial court violated his right to present a complete defense when it allowed the evidence of the victim's interview (in which victim accused appellant of molesting both her and her sisters) but not the sister's interview (where the sister denied that she had been molested).

The Court noted that the Due Process Clause in the Fourteenth Amendment guarantees criminal defendants a meaningful opportunity to present a complete defense. However, a defendant's right to present relevant evidence is not unlimited, but rather is subject to reasonable restrictions. The accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence. Only rarely has the Supreme Court of the United States concluded that the right to present a complete defense was violated by the exclusion of defense evidence under a state rule of evidence.

And here, the Court found, although the trial court denied appellant' motion to introduce video footage of the sister's interview, at trial, both the forensic interviewer and victim's sister testified that the victim's sister had denied that appellant had done anything to her. Appellant was allowed to extensively question both the sister and the forensic interviewer about the sister's interview and how the sister's statements contradicted the victim's statements. Appellant was thus able to present evidence to the jury to support his defense that the victim was either not being truthful or had mistaken him for the real perpetrator. Appellant did not identify any particular statement or fact that was not presented to the jury that was critical to his defense. Under these circumstances, the Court concluded that appellant had not demonstrated that the trial court abused its discretion by excluding this evidence.

Objection to Trial Transcripts; OCGA § 5-6-41

Lyons v. State, A20A2041 (2/3/21)

Appellant was convicted of six counts of armed robbery and one count of aggravated battery. Briefly stated, the record showed that after his convictions, appellant filed a timely motion for new trial and amended it several times. At the hearing on his motion, appellant asked to represent himself, which the court allowed. Appellant stated that he had not received a copy of the transcript and asked the court to provide one. The hearing on his motion for new trial was rescheduled for February 21, 2020. Appellant had to make repetitive requests for his transcript. Finally, on Jan 13, 2020, the trial court ordered the clerk to provide appellant with a certified copy of his transcript.

On February 18, 2020, appellant filed a motion objecting to the trial transcript. Appellant stated in his motion that he could not amend the grounds for his motion for new trial because of the errors in the trial transcript and requested that he be able to amend his grounds after the corrections of the transcript were made. The same day, appellant filed a motion

requesting a hearing on his objection to the trial transcript, citing OCGA § 5-6-41. In the motion, appellant requested that witnesses be subpoenaed if needed to supplement the record.

At the scheduled February 21 hearing, appellant informed the court that "a lot of the transcript was altered, a lot of things were omitted from the record." Appellant told the trial court that he was going to file a new motion with specific details so the district attorney would have notice of every error and could argue them with him under OCGA § 5-6-41. The court informed appellant that the motion for new trial would take place immediately and that the court presumed the transcript to be accurate. However, appellant was allowed to put on the record the errors he claimed were in the transcript and appellant described at least 21 instances in the transcript he believed were inaccurate. Appellant then argued his motion for new trial, repeatedly commenting that the hearing should be rescheduled until the transcript discrepancies were resolved. After hearing argument from the State, the trial court denied appellant's motion for new trial.

Appellant contended that the trial court failed to follow the proper OCGA § 5-6-41 procedures regarding his motions objecting to the trial transcript and requesting a hearing on his objections. Specifically, he argued that the trial court erred by not setting a hearing with notice to both parties. The Court agreed.

The Court noted that in his motion objecting to the trial transcript, appellant contended that there were errors in the trial transcript. And, clearly, the parties had not reached any agreement regarding appellant's claims of error in the transcript. When this occurred, the trial court was obligated under OCGA § 5-6-41 (f) to hold a hearing and resolve any discrepancies. The trial court's reliance on the presumption of a transcript's accuracy in OCGA § 15-14-5 was misplaced. The statute indicates that this presumption is subject to the "right of the trial judge to change or require the correction of the transcript[.]" Thus, the presumption can be rebutted during an OCGA § 5-6-41 (f) hearing. However, the trial court in this case never "set the matter down for a hearing with notice to both parties" as required by OCGA § 5-6-41 (f). Instead, the court required appellant to argue his motion objecting to the trial transcript at the previously scheduled February 21, 2020 hearing. Consequently, the trial court did not comply with OCGA § 5-6-41 (f).

Given the trial court's failure to properly address appellant's motion objecting to the trial transcript, and the necessity of a record that conforms to the truth before an appellate court can properly consider errors occurring at trial, the Court vacated the trial court's order denying appellant's motion for new trial, which includes the trial court's ruling on appellant's motion objecting to the trial transcript, and remanded the case to the trial court for the trial court to hold a hearing in compliance with OCGA § 5-6-41 (f). The Court stated that after that hearing is held and the trial court rules on appellant's motion objecting to the trial transcript, the trial court must give appellant an opportunity to amend his motion for new trial and hold a new hearing on the motion for new trial. The trial court must then enter a new order addressing appellant's motion for new trial.

Trombetta Evidence; Closing Arguments

Tyson v. State, A20A1662 (2/5/21)

Appellant was convicted of aggravated assault. The evidence showed that he pushed his 7-month pregnant girlfriend out of his truck and then beat her and kick her in the stomach. The attack occurred at a storage facility. Appellant contended that he was prejudiced by the State's failure "to procure evidence that could have been potentially exculpatory." Specifically,

that surveillance video would have supported his contention at trial that “the individual in the truck with [the victim] was not him.”

The Court noted that in *California v. Trombetta*, 467 U.S. 479 (104 SCt 2528, 81 LE 2d 413) (1984), the United States Supreme Court set down certain standards for determining whether the destruction of physical evidence amounted to a constitutional violation. First, it must be shown that the evidence was not destroyed in a calculated effort to circumvent the disclosure requirements established by *Brady v. Maryland* and its progeny.” Further, whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect’s defense. To meet this standard of constitutional materiality, evidence must both possess an exculpatory value that was apparent before the evidence was destroyed and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.

And here, the Court found, appellant failed to show that the purportedly destroyed evidence had exculpatory value that was apparent before it was destroyed. Instead, he showed only a bare speculation that the purported evidence might have exonerated him. He also failed to show that the evidence would have played a “significant role” in his defense and thus, he did not meet the standard for reversal of a conviction based on the destruction of evidence.

Appellant next contended that the trial court “erred in not sustaining defense counsel’s objection to improper and highly prejudicial statements . . . during closing arguments.” Specifically, he pointed to the State’s argument that “[t]he fact that he kicked her in the stomach, while she’s seven months pregnant – eight months pregnant, there could have been any number of complications arising from that. She could have hemorrhaged, the baby could have died. But luckily....”

Here, the Court found, the evidence showed that the victim was visibly pregnant, that appellant “beat[] the tar out of” the victim and kicked her in the stomach during the violent attack, that blood appeared to come from between her legs after the attack, and that one eyewitness feared the victim was “going to die.” Having reviewed the evidence, the Court stated that it could not say that the prosecutor drew unreasonable inferences from it. Thus, the trial court acted within its discretion in permitting the prosecutor’s argument and overruling appellant’s objection.

Alford Pleas; Claims of Innocence

Appellant v. State, A20A1999 (2/8/21)

Appellant entered an *Alford* plea to two counts of VGCSA. He contended that the pleas should be vacated because the trial court did not resolve the conflict between his claims of innocence and guilty plea. The Court disagreed.

The Court stated that when it comes to an *Alford* plea, the trial court may accept a guilty plea from a defendant who claims innocence if the defendant has intelligently concluded that it is in his best interest to plead guilty and the court has inquired into the factual basis for the plea and sought to resolve the conflict between the plea and the claim of innocence. Furthermore, the voluntariness and intelligence of an *Alford* plea is judged by the same standard as a routine guilty plea: whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MARCH 26, 2021

Issue 13-21

The Court noted that appellant was correct that the trial court may accept a guilty plea from a defendant who claims innocence only if the defendant has intelligently concluded that it is in his best interest to plead guilty and the court has inquired into the factual basis for the plea and sought to resolve the conflict between the plea and the claim of innocence. But, the Court found, that was exactly what happened here. The trial court specifically found that it was satisfied that the State provided a sufficient factual basis for his plea. The court also asked appellant about his reasons for pleading guilty despite his claims of innocence, and appellant confirmed he was making a “tactical decision” to plead guilty after reviewing the evidence because he believed he could receive a longer sentence if he proceeded to trial. Specifically, appellant testified that he was afraid to “lose at trial.” Under these circumstances, the trial court met its responsibility of ascertaining the factual basis for the plea and resolving any conflict between appellant’s claim of innocence and his guilty plea.