Prosecuting Attorneys' Council of Georgia
CaseLaw UPDATE
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THIS WEEK:

- Ineffective Assistance of Counsel; Preservation of Errors for Review
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- Theft by Receiving; Valuation of Stolen Property
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Ineffective Assistance of Counsel; Preservation of Errors for Review

Bell v. State, A21A1708 (2/11/22)

Appellant was convicted of four counts of elder exploitation. The record showed that appellant worked as a live-in caretaker for the victim, a woman in her late seventies who had suffered a stroke resulting in loss of movement on her right side and speech difficulty. The victim's son testified that she sometimes had difficulty "getting the right word to come out" and that while he had noticed "some issues" with her short-term memory, she was able to "form some" and her memory loss was not a daily issue. After her stroke, the victim continued to play bridge three times a week and win.

Appellant contended that her trial counsel rendered ineffective assistance of counsel. Specifically, that trial counsel should have challenged the competency of the victim to testify based on the victim's "failed memory and inability to properly communicate." The Court noted that while appellant did not assert this ground of ineffective assistance in her written motion for new trial, as amended, she did raise it in the hearing on her motion for new trial. In its written order denying the motion for new trial, the trial court did not address this specific ground of ineffective assistance. Instead, it addressed each specific ground raised in the written motion for new trial, as amended, and its order concluded by stating: "Therefore, for the reasons set forth, the Defendant's MOTION FOR NEW TRIAL and AMENDED MOTION FOR NEW TRIAL are hereby DENIED."

Thus, the Court found, based upon the language and structure of the trial court's order in this case, it could not construe it as a ruling on the ground of ineffective assistance raised for the first time in the motion for new trial hearing. And therefore, in the absence of such a ruling, this ground of ineffective assistance of counsel was not preserved for review.

Ineffective Assistance of Counsel; Intrinsic Evidence

Smith v. State, A21A1483 (2/11/22)

Appellant was convicted of two counts of aggravated assault and one count of aggravated battery. The evidence showed that appellant, Abby Shetter and M. M. all lived in the same neighborhood and went to the same high school. Appellant and M. M. had been friends, but the friendship ended after an incident in the high school parking lot involving all three individuals. M. M. testified that appellant had pulled up next to her car with Shetter in the passenger seat. M. M. and Shetter started yelling at each other, and Shetter punched M. M. in the face. M. M. felt humiliated by this incident and

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ultimately changed high schools. Appellant texted M. M. to apologize for his role in the incident, and M. M. responded that she no longer wanted him to message her and wanted him out of her life. M. M. testified that appellant was interested in her romantically, but when she did not return those feelings, appellant became aggressive and mean.

In July 2018, Shetter and appellant came to M. M.'s house and during the course of this incident, appellant used his vehicle to strike M. M.'s father, which led to the charges for which appellant was convicted

Appellant contended that his counsel provided ineffective assistance in failing to object to bad character and bolstering evidence, specifically with respect to testimony from M. M.'s father and appellant's father regarding the parking lot incident. The Court noted that the limitations and prohibition on "other acts" evidence set out in OCGA § 24-4-404 (b) do not apply to "intrinsic evidence." Evidence is intrinsic when it is (1) an uncharged offense arising from the same transaction or series of transactions as the charged offense; (2) necessary to complete the story of the crime; or (3) inextricably intertwined with the evidence regarding the charged offense. Evidence that explains the context of the crime is admissible if it forms an integral and natural part of an account of the crime or is necessary to complete the story of the crime for the jury.

And here, the Court found, the evidence regarding the parking lot incident was intrinsic to the offense: it explained the prior difficulties between M. M. and Shetter, why M. M. and her parents were upset with Smith, and the context surrounding the fight at M. M.'s residence. Thus, trial counsel was not deficient for failing to object to this testimony. Additionally, appellant cannot show prejudice, as testimony regarding the parking lot incident from victim's father and appellant's father was cumulative of already admitted testimony from M. M., and when appellant testified in his own defense, he testified to the parking lot incident as well.

Theft by Receiving; Valuation of Stolen Property

Carswell v. State, A22A0131 (2/15/22)

Appellant was convicted for felony theft by receiving stolen property. The indictment charged that appellant "did unlawfully receive and retain stolen property, to wit: 2008 Ford Econoline, of a value of at least $5,000 but less than $25,000 and the property of [the victim]; said property having been stolen from [the victim] and said accused should have known said property was stolen[.]" Appellant contended that because the State failed to prove the van had a value exceeding $5,000, the trial court should have sentenced him for the misdemeanor offense of theft by receiving stolen property instead of the felony offense. The Court agreed.

OCGA § 16-8-7 (a) provides that "[a] person commits the offense of theft by receiving stolen property when he receives, disposes of, or retains stolen property which he knows or should know was stolen unless the property is received, disposed of, or retained with intent to restore it to the owner." While value is not an element of theft by receiving, it is relevant for the purpose of distinguishing between a misdemeanor and a felony for sentencing. The applicable sentence for theft by taking is governed by OCGA § 16-8-12 (a), which pertinently provides that a person convicted of that offense will be punished as for a misdemeanor except: "If the property which was the subject of the theft was at least $5,000.00 in value but was less than $25,000.00 in value, by imprisonment for not less than one nor more than ten years and, in the discretion of the trial judge, as for a misdemeanor." OCGA § 16-8-12 (a) (1) (B).

The Court stated that to establish the proper measure of value under OCGA § 16-8-12, the State must prove the fair cash market value either at the time and place of the theft or at any time during the receipt or concealment of the property. Direct proof of value is not essential in prosecutions for theft by taking, but proof of value may be shown by inference. In other words, circumstantial evidence is sufficient to establish value." Cost price, if coupled with other evidence, may be admitted as an element upon which an opinion may be formed as to the item's value. Examples of other evidence combined with the purchase price to support valuation include condition of the property, use history, and photographs. And the testimony of the owner of the value of stolen items based upon her experience in buying them, coupled with the jury's awareness of the value of "everyday objects," is sufficient to allow the jury to consider such opinion evidence and make reasonable deductions exercising their own knowledge and ideas. And here, the Court noted, the victim testified that she purchased the van for $8,000, two-and-a-half years before appellant was arrested while in possession of the van, and the State presented documents showing the van was valued at $2,990 at the time of trial, seven months after appellant was arrested. The State presented no other testimony or evidence at trial about the value of the van at the time it was stolen. Nor did it submit photographs of the van or "other evidence" regarding its condition or value.

Nevertheless, the State argued, it presented evidence that the van cost $8,000 when it was purchased in 2015, that it was not damaged when it was recovered on November 24, 2017, and that it had a valuation of $2,990 in May 2018. According to the State, this evidence "was sufficient for a reasonable trier of fact to find [appellant] guilty beyond a reasonable doubt of theft by receiving stolen property, and the State presented sufficient evidence from which the jury was authorized to determine that the fair market value of the stolen van was at least $5,000." However, the Court held, the State's evidence failed to prove the fair cash market value either at the time and place of the theft or at any time during the receipt or concealment of the property. And, as appellant contended, the State did not explain how a valuation of $2,990 tends to prove that a vehicle is worth at least $5,000." Instead, the Court stated, it would require pure guesswork and speculation on the part of the jury to conclude that a vehicle purchased in April 2015 for $8,000 and valued in May 2018 for $2,990 would have a fair market value of at least $5,000 in November 2017. Nevertheless, the Court held, while the State's evidence as to value was insufficient to support a felony theft by receiving conviction, it did support a misdemeanor theft by receiving. Accordingly, the Court vacated the felony conviction and remanded with direction that a conviction and sentence be entered for the misdemeanor offense.

Search & Seizure; Collective Knowledge of Officers

Louallen v. State, A21A1418 (2/17/22)

Appellant was convicted of trafficking in methamphetamine. He contended that the trial court erred in denying his motion to suppress. The Court disagreed.

Briefly stated, a trooper was on patrol in his vehicle when he received a radio contact from agents of the DEA regarding a suspect who had just picked up what the agents thought was illegal narcotics. The agents gave the trooper a description of the vehicle and stated that the agents were following the suspect. The trooper located the vehicle and the agents asked that the trooper stop the vehicle, which the trooper did after observing two traffic violations. Appellant was the sole occupant of the vehicle. After filling out a written warning, the trooper checked appellant's driver's license on his car computer and

prepared and printed a consent to search form. The trooper obtained both oral and written consent to search the vehicle from appellant. The subsequent search revealed the methamphetamine.

Appellant conceded that the trooper was authorized to initiate the traffic stop due to a brake light violation. He argued, however, that the trooper unlawfully expanded the scope of the traffic stop when he asked appellant for permission to search his vehicle and that the evidence seized as a result of the improper search should have been suppressed. Specifically, appellant contended that the documented mission of the stop was complete when the trooper finished writing the warning for the brake light and signal violations.

The Court stated that it is well established that when an officer observes a traffic offense, the resulting traffic stop does not violate the Fourth Amendment even if the officer has ulterior motives in initiating the stop, and even if a reasonable officer would not have made the stop under the same circumstances. However, a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution. And, after the tasks related to the investigation of the traffic violation and processing of the citation have been accomplished, an officer cannot continue to detain an individual without reasonable articulable suspicion. Reasonable articulable suspicion requires a particularized and objective basis for suspecting that a citizen is involved in criminal activity.

Here, the Court found, the trooper had reasonable articulable suspicion that appellant was involved in criminal activity — other than mere traffic violations — when the trooper initiated the traffic stop because reasonable articulable suspicion need not be based on an arresting officer's knowledge alone. Instead, it but may exist based on the collective knowledge of the police when there is reliable communication between an officer supplying the information and an officer acting on that information. In this instance, before the trooper stopped appellant's vehicle, DEA agents informed the trooper that the driver of appellant's vehicle was suspected of engaging in a drug transaction shortly before the traffic stop. This collective knowledge gave the trooper reasonable articulable suspicion, which justified the trooper's request for permission to search appellant's vehicle. From its inception, the investigation that warranted the detention in the first place encompassed both the traffic violation *and* the suspected drug transaction. Consequently, the mission of the traffic stop was not complete until, at the earliest, appellant either gave or denied permission to search the vehicle. Thus, the Court concluded, contrary to appellant's argument, the trooper's request for permission to search the vehicle did not improperly expand the scope of the traffic stop. Accordingly, the trial court did not err in denying appellant's motion to suppress the evidence seized from his vehicle.