

THIS WEEK:

- **Miranda; Formal Arrest**
- **Jury Charges; Hearsay**
- **Self-Defense; Opinion Testimony**
- **Waiver of Right to Trial by Jury; Right to Testify**
- **Other Acts Evidence; Rule 404 (b)**

Miranda; Formal Arrest

Haney v. State, A22A0831 (8/3/22)

Appellant was convicted of hindering the apprehension or punishment of a criminal pursuant to OCGA § 16-10-50 (a) (1). He argued that the trial court erred by admitting his statement to the arresting officer that he knew there were outstanding warrants for Aycock's arrest. Specifically, he contended that when he made the statement, he had been restrained to the degree associated with a formal arrest, so law enforcement officers should have informed him of his rights under *Miranda*. Because they did not, he argued, the trial court should have excluded his statement to the officer. The Court disagreed.

The evidence showed that law enforcement had received information that a fugitive named Aycock was on appellant's property and that Aycock was armed and dangerous. Four or five officers approached appellant's property to clear a mobile home on the property before the other officers advanced. About eight officers waited nearby. While the mobile home was being cleared, a "shots fired" warning was called out to the officers waiting nearby. The waiting officers rushed to the property. Appellant was inside the mobile home. Officers walked him out and forced him to the ground, face down. An officer sat appellant up and handcuffed him. The officer informed appellant that he was being detained for the safety of officers and for his own safety, but that he was not under arrest. The officer asked appellant whether anyone else was on the property, and appellant responded that Aycock and his girlfriend were in another structure on the property, a dilapidated house, from which the gunshots had been fired. The officer asked appellant whether he knew that Aycock had outstanding felony warrants. Appellant responded that he knew that there were warrants for Aycock's arrest, but that he "was just trying to help him out." The officer then arrested appellant for hindering the apprehension of a criminal.

The Court stated that *Miranda* warnings must be administered to an accused who is in custody and subject to interrogation or its functional equivalent. A person is considered to be in custody and *Miranda* warnings are required when a person is (1) formally arrested or (2) restrained to the degree associated with a formal arrest.

And here, the Court found that based on these facts, a reasonable person would not have felt that he was under formal arrest at the time he made the incriminating statements. Therefore, the Court concluded, any statements made by appellant between the time he was placed in handcuffs and the point when the officer arrested him were admissible even in the absence of *Miranda* warnings.

Jury Charges; Hearsay

Sarmiento-Naranjo v. State, A22A0992 (8/5/22)

Appellant was convicted of child molestation, rape, incest, and aggravated sexual battery concerning his daughter. Appellant first contended that the trial court erred in refusing to give the pattern charge on grave suspicion. The Court disagreed.

The Court noted that the victim gave extensive testimony of the attacks, which amounted to direct evidence of the abuse and thus raised more than a bare suspicion of appellant's guilt. Furthermore, the trial court gave complete instructions on reasonable doubt and presumption of innocence. Consequently, the trial court did not err by refusing to give the requested charge on grave suspicion.

Next, appellant argued that the trial court erred in giving a prior difficulties charge over his objection. But, the Court found, there was ample evidence to justify the giving of the charge, including evidence of appellant's developing habit of sleeping in the victim's bed with the victim prior to any sexual abuse. The victim testified that she remembered feeling uncomfortable when her father came into her bedroom and got on the bed with her. The victim also testified that it made her uncomfortable when her father would make her lie on top of him on the couch "stomach to stomach" while the family watched movies. In addition, evidence was presented at trial that appellant had inappropriate conversations with the victim about orgasms. Consequently, by giving the charge, the trial court was not commenting on the evidence nor was the charge unsupported by the evidence. Accordingly, there was no error.

Finally, appellant contended that the trial court erred when it allowed the examining nurse to testify that the mother told her that her daughter "had been raped" on the ground that it was admissible to explain the nurse's course of conduct. The Court again disagreed. As the State argued, the statement was offered not to prove "the truth of the matter asserted" (OCGA § 24-8-801 (c)) — i.e., that the daughter had been raped — but rather to explain why the nurse performed a specific type of examination. As such, the mother's statement was not hearsay, and there was no error.

Self-Defense; Opinion Testimony

Taylor v. State, A22A0770 (8/5/22)

Appellant was charged with multiple crimes including murder. At trial, he argued that he acted in self-defense. Although the jury acquitted appellant of murder, it found him guilty of the lesser included offense of voluntary manslaughter.

Appellant contended that the trial court committed plain error in allowing a detective to testify regarding the “ultimate issue” of whether he acted in self-defense. The record showed that when the State asked the lead detective why the investigation continued after appellant raised the claim of self-defense, the detective responded that the police had to ensure that the claim of self-defense was supported by the evidence. The detective was then asked about how the autopsy report factored into his decision to continue the investigation, and he replied that after looking at the report concerning the gunshot wounds, “I, personally, ... working homicides, going to hundreds of scenes, working them over the years, I just - I've never seen that kind of injury in a self-defense situation[.]”

The Court stated that the admission of opinion evidence is governed by OCGA § 24-7-704, which provides that, as a general matter, “testimony in the form of an opinion or inference otherwise admissible shall not be objectionable because it embraces an ultimate issue to be decided by the trier of fact.” OCGA § 24-7-704 (a). Although OCGA § 24-7-704 (b) prohibits an expert witness from testifying regarding certain ultimate issues, the detective in this case testified as a lay witness rather than an expert. Appellant contended that the testimony should be treated as that of an expert because the detective “leveraged his status as an experienced detective” to offer an opinion jurors “may have believed unassailable because of [its] esteemed source.” But, the Court stated, lay witnesses may draw on their professional experiences to guide their opinions without necessarily being treated as expert witnesses. Therefore, under these circumstances, the detective's testimony was unobjectionable.

Furthermore, the Court stated, it was unlikely that appellant was harmed by the detective's testimony. The detective's continued investigation of appellant demonstrated that he did not believe appellant's self-defense claim, and comments upon the patently obvious generally pose little, if any, danger of prejudice.

Waiver of Right to Trial by Jury; Right to Testify

Merchant v. State, A22A1153 (8/12/22)

Appellant was convicted of simple battery following a bench trial. He contended that the trial court deprived him of his right to a trial by jury. The trial court's order on his motion for new trial showed that appellant waived his right to a trial by jury because he: (1) was directly questioned in open court three separate times about the right to a trial by jury and declined to exercise his right each time; (2) had been advised by his trial counsel of his right to a jury trial but was “adamant” that he wanted to proceed with a bench trial; (3) was advised by the court of the maximum penalties for each count for which he was charged, as well as the State's pretrial offer — which he rejected, again stating that he wanted to

proceed with a bench trial; and (4) “possesse[d] the requisite intelligence to make such a waiver” given his age and employment.

Nevertheless, appellant argued that the trial court's inquiry was insufficient to show that he knowingly, voluntarily, and intelligently waived his right to a jury trial. Specifically, he contended that the trial court did not educate him about issues such as the number of jurors empaneled or the requirement that any jury verdict be unanimous. However, the Court stated, it has declined to find that a defendant must be informed by the trial court of all the complexities of the jury process in order to waive the right to jury trial. Rather, the record only must affirmatively show that the defendant made the decision to waive his right to a jury trial, or at least that he agreed with the decision. And, in this regard, a defendant's consent need not be in a particular, ritualistic form. Thus, since form is unimportant, the only real issue is whether a defendant intelligently agreed to a trial without a jury. And here, the Court concluded, the record established that the trial court asked appellant if he understood and waived his right to trial by jury and accepted the waiver only after appellant demonstrated that he was cognizant of the right being waived. Accordingly, viewing the totality of the circumstances, the State met its burden of proving that appellant made a voluntary, intelligent, and knowing waiver of his right to a jury trial.

Next, appellant contended that the trial court erred by failing to advise him, before he testified, of his rights to remain silent and to not have his refusal to testify held against him. The trial court found that appellant had been “properly advised of his right to remain silent, both by the Court and Trial Counsel, and that he alone elected to testify at trial after conferring with (and against the advice of) Trial Counsel.”

A review of the record showed that after appellant's trial counsel concluded his direct examination, the trial court took a lunch break before appellant's cross-examination. When the parties returned from lunch, the State informed the court that appellant's waiver of his rights to remain silent and to not incriminate himself had not yet been placed on the record. Before allowing appellant to return to the stand, the trial court instructed him that he had the right not to incriminate himself, the right to remain silent, and that he did not have “to put forth any evidence” because it was the State's burden “to prove [its] case beyond a reasonable doubt.” The court next asked appellant if it was “[his] decision to give up [his] right to remain silent and testify.” After appellant conferred with counsel, he stated that he was “going to complete [his] testimony.” And when the court made an additional inquiry, appellant affirmed that he had sufficient time to confer with his counsel about the decision. Appellant then returned to the stand and completed his testimony.

The Court stated that appellant failed to cite any authority – and it found none – to support his assertion that the trial court was required to advise him in this regard. And, because the decision to testify in one's own defense is a tactical decision to be made after consultation with counsel, the Court stated that it has declined to mandate that a trial court conduct an on-the-record inquiry of a defendant to

determine whether he has knowingly waived the right to testify. Therefore, the Court stated, it would likewise decline to mandate that a trial court conduct an on-the-record inquiry of a defendant to determine whether he has knowingly waived the right to remain silent at trial. And, after reviewing the specific circumstances of this case, the Court disagreed with appellant's assertion that the trial court erred because it did not question him on the record about the right to remain silent before he testified.

Other Acts Evidence; Rule 404 (b)

State v. Anderson, A22A0731 (8/19/22)

Anderson was charged with two counts of armed robbery of an O'Reilly Autoparts store in 2016 after he was caught following an armed robbery of an O'Reilly store in 2017. After he was indicted for the 2017 robbery, but before he was convicted of that crime, Anderson was charged in a separate indictment with robbing an O'Reilly store in December 2016. In prosecuting Anderson for the 2016 robbery, the State sought to admit the 2017 conviction as other acts evidence under Rule 404 (b). Specifically, the State argued that there had been a string of robberies committed in a similar way, with the perpetrator wearing similar clothing, and that in his second interview following the 2017 armed robbery, Anderson admitted that he committed the December 2016 robbery. Thus, the State contended that the evidence of the 2017 robbery conviction was relevant to show identity, motive, modus operandi, plan, and preparation. Following a hearing, the trial court ruled the evidence inadmissible. The State appealed.

The State first argued that the trial court erred in excluding the other acts evidence because the trial court did not consider all the purposes for which the evidence was submitted. The Court agreed. Under the first prong of this test, the trial court must consider whether the evidence is relevant under OCGA § 24-4-401. And here, the Court found, regarding the first prong, the trial court assumed the evidence could be relevant to identity or motive, but the trial court did not appear to have considered its admissibility to show modus operandi, plan, or preparation. Therefore, this required the Court to remand the case.

Next, the State argued that the trial court misapplied the balancing test by neglecting to find the prejudice substantially outweighed any probative value and failed to balance the Rule 403 factors in favor of admitting the evidence. The Court again agreed.

The Court found that the trial court abused its discretion when it applied an incorrect legal standard to its Rule 403 analysis. First, the trial court seemed to have ignored the prosecutorial need for this evidence, given Anderson's own concession at the hearing that the evidence was the only link between him and the 2016 robbery. Second, the trial court failed to consider whether the prejudice *substantially outweighed* the probative value, stating instead only that the prejudicial effect outweighed its probative value. The Court stated that although the trial court used the "common sense assessment" language from its case law, this alone did not enable the Court to defer to the trial court; instead, the trial court's

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failure to consider the other purposes for the extrinsic evidence and to properly apply the Rule 403 balancing test required the Court to remand the case.