

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING DECEMBER 28, 2007

Legal Services Staff Attorneys

David Fowler
Deputy Executive Director
for Legal Services

Tom Hayes
Regional Offices Director

Chuck Olson
General Counsel

Joe Burford
Trial Services Director

Lalaine Briones
Trial Support

Laura Murphree
Capital Litigation

Fay McCormack
Traffic Safety Coordinator

Patricia Hull
Traffic Safety Prosecutor

Gary Bergman
Staff Attorney

Tony Lee Hing
Staff Attorney

Rick Thomas
Staff Attorney

Donna Sims
Staff Attorney

Jill Banks
Staff Attorney

Al Martinez
Staff Attorney

Clara Bucci
Staff Attorney

Brad Rigby
Staff Attorney

THIS WEEK:

- **Indictment**
- **Evidence- Photographic Line-up**
- **Evidence- Venue**
- **Search and Seizure**

Indictment

Beals v. State, A07A2182 (12/10/07)

Appellant was convicted of armed robbery, two counts of aggravated assault, two counts of kidnapping with bodily injury, and numerous other crimes. Appellant appeals arguing that his indictment for armed robbery did not allege the intent to commit theft. Appellant claims that his armed robbery conviction is void because the indictment failed to allege the essential element of intent to commit a theft. This argument amounts to a motion to arrest judgment. The Court notes that this should only be granted where the indictment is absolutely void. The indictment does not explicitly state that appellant intended to commit a theft. However, the intent to commit a theft is clearly inferred from the allegation that appellant used a firearm to take another's car. The Court rejected appellant's argument and found that he was sufficiently informed of the charges against him and protected from subsequent prosecution for the same crime.

Evidence – Photographic Line-up

Beals v. State, A07A2182 (12/10/07)

Appellant claims that the trial court erred in denying his motion to suppress the victim's

photographic lineup identification. The victim in this case was held hostage in his home for a period of time by the appellant and an accomplice. During this time, the lights in the victim's home were on, and appellant's face was visible. After seeing a photo of the appellant on television, the victim contacted police because he was sure it was the man who had robbed him. The Court looked at the totality of the circumstances and found that the trial court's decision to deny appellant's motion was proper.

Evidence – Venue

In the Interest of B.R., A07A1577 (12/14/07)

B.R. was found delinquent for committing an act, which, if he was an adult, would have resulted in a burglary conviction. B.R. appeals his conviction and alleges that the State failed to prove venue in the case. At trial, the State failed to give direct evidence that the burglary was committed in Liberty County. The victims were only asked their street address and not their county of residence. A street name alone is not enough to establish venue. The only other alleged evidence of venue was the testimony of Liberty County deputies that they were employed by the Liberty County Sheriff's Office. The Supreme Court of Georgia has held that the county of employment of a law enforcement officer is not sufficient to prove venue. Therefore, the State failed to prove venue as required.

Search and Seizure

Bryant v. State, A07A1779; A07A1780 (12/13/07)

The appellant was convicted of possession of methamphetamine. On appeal, appellant argues that the trial court erred in denying his

motion to suppress. After a traffic stop which resulted in an arrest, officers received information that 'Big Jim' was in possession of drugs at the local Super 8 Motel. The manager of the Super 8 showed officers the guest register that had a room rented to a Mr. Horton, who had paid in cash. The officers knocked on the door, and appellant Bryant answered. The appellant told officers that he was known as 'Big Jim' and allowed the officers into the room. Co-defendants O'Neill and Horton were lying on the bed. Officers observed two knives when they entered the room, one of which was within the reach of Horton. Horton and O'Neill were asked to stand up for purposes of officer safety. When Horton stood up, the officers saw two glass pipes and a ring box. Bryant and Horton consented to a pat down for weapons. One officer felt an object he identified as contraband in the pocket of Horton. The officer removed the bag and found suspected methamphetamine. Appellant Bryant gave officers a key to a box on the nightstand and permission to search. Twenty-eight grams of methamphetamine and less than a gram of ecstasy were found in the box. The trial court found that Horton was the renter of the room and Bryant and O'Neill were transient visitors. Therefore, when the officers knew that Bryant was not Horton and did not inquire as to Bryant's authority over the room; their entry violated Horton's constitutional rights. However, Bryant and O'Neill's motions were denied, and they were subsequently convicted. Appellant Bryant argues that the information provided at the traffic stop that led officers to the motel lacked sufficient detail to establish that he was engaged in criminal activity. Appellant Bryant claimed in the motion that he tried to exit the room when officers knocked, and that they prevented him from doing so.

The Court of Appeals found that the encounter between the police and appellant Bryant amounted to a first tier encounter and that the trial court was authorized to find that the State carried its burden of proving that appellant Bryant consented to the entry of the officers into the room. Therefore, the judgment was affirmed.