Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING NOVEMBER 13, 2009

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THIS WEEK:

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Search & Seizure

Brown v. State, A09A1796

Appellant was convicted of possession of cocaine. He contended that the trial court erred in denying his motion to suppress. The Court agreed and reversed his conviction. The evidence showed that an officer responded to a domestic call at an apartment complex that was located in an area known for heavy drug and criminal activity. He noticed appellant walking through the parking lot. He was walking towards the officer, and upon seeing him, dropped his head and started to walk faster away from the officer. The officer knew appellant and knew he was not a resident. The officer decided to stop appellant and ask him why he was in the complex. The officer called out to him, but appellant appeared to ignore the officer and walked away. The officer called to him a second time, and he stopped. The officer asked appellant where he was going, and he replied that he was "cutting through" the parking lot. The officer then asked him to take his hands out of his pockets, but he did not comply. The officer asked him to take his hands out of his pockets a second time, and then immediately asked him if he had any weapons. Appellant replied "Yes," but quickly changed his answer to "No." When the officer drew his weapon and specifically asked him if he had a gun, he replied "No." The officer ordered appellant to remove his hands from his pockets, and then told him to walk to the officer's patrol car. Appellant removed his left hand from his pocket and threw an object to the ground. It was determined to be a crack pipe.

The Court held that what began as a first-tier encounter escalated into a second-tier stop when the officer told appellant to remove his hands from his pockets. During a second-tier encounter, a police officer may stop a person and briefly detain him or her if the officer has a particularized and objective basis for suspecting the person is involved in criminal activity. Therefore, the continued detention had to be supported by articulable suspicion. The Court held that the above facts, when taken together with their rational inferences, did not amount to articulable suspicion of criminal activity because there was no objective manifestation that appellant was either committing, or was about to commit, a crime. None of appellant's described activities, i.e., walking faster away from the police officer, ignoring the police officer, or being present in an area known for

its propensity for drugs and criminal activity, are crimes in and of themselves, nor are they enough to make an objective determination that appellant was about to be engaged in criminal activity. Furthermore, it is not a crime to cut through a parking lot, to be present in an apartment complex where you do not live, nor to wear both a hooded sweatshirt and a jacket during the month of February. Thus, no evidence was introduced that such activity violated any local ordinance or other applicable law, or that there was any other basis for the stop. Even when considering the totality of the circumstances, the facts did not amount to an objective, articulable suspicion of criminal activity. At best, they represented an officer's well-honed intuition, or "hunch." As such, the second-tier encounter between appellant and the officer was unlawful for lack of articulable suspicion and the trial court erred in denying his motion to suppress.

Opinion Testimony; Value

Perdue v. State, A09A2316

Appellant was convicted of felony theft by taking. The evidence showed that he stole eight or nine aluminum tire rims. Appellant argued that the evidence of value was insufficient to warrant a felony sentence because the victim was not qualified as an expert on wheel rims and did not state the reasons for his valuation of the rims at $150 to $175 each. The Court held that one need not be an expert or dealer in the article in question but may testify as to its value if he has had an opportunity for forming a correct opinion. While the mere statement that the value of a thing is a certain sum without stating the reasons for this conclusion lacks probative value, the 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. The testimony of the owner of the value of stolen items based upon his 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. Pretermitting whether wheel rims are "everyday objects," the Court found that the victim's testimony that he had a "shop" attached to his house and that the rims were used on a specific brand of truck permitted an inference that he had experience in buying such rims. Such an inference, coupled with his testimony that the rims cost $300 new but were worth $150 to $175 in their used condition, provided evidence that he had an opportunity for forming a correct opinion. Accordingly, the testimony concerning the type of rims and their value if purchased at a salvage yard was sufficient for the jury to determine the fair cash market value of the rims at the time and place of the theft.

Habitual Violator; Intoxilyzer 500 Certification Evidence

West v. State, A09A2069

Appellant was convicted of DUI and Habitual Violator. He contended that the trial court erred in allowing the officer to testify concerning information in the certificates of inspection regarding the Intoxilyzer 5000. Specifically, he argues that the officer should not have been allowed to testify that since the certificates showed that the unit was in good operating order on August 10, 2005 and November 3, 2005, "it still would have been in good working condition" between those dates. The officer testified that he had a valid permit issued by the GBI that certified him to operate the Intoxilyzer 5000, that the machine had been inspected approximately two months prior to appellant's arrest and one month after his arrest and found to be in good working order on both occasions, that the machine appeared to be operating properly on the day of his arrest, and that the machine completed the appropriate self-diagnostic tests on the day of his arrest. Therefore, the officer's opinion that the machine was in good working order on the dates between the certificates of inspection was based on his observation of the certificates of inspection as well as his own observations of the machine and its self-diagnostic tests on the day of appellant 's arrest. Thus, the officer's testimony concerning the machine being in good working order was not speculative and the trial court did not err in allowing the testimony.

Appellant also argued that the trial court erred in allowing the State to introduce into evidence the certified copy of his notice that he was a habitual violator because the State did not prove that it was sent to his last known address. OCGA § 40-5-58 (b) provides that when a person becomes a habitual violator, notice shall be given by certified mail, with return receipt requested. "For the purposes of [the Code Section], notice given by certified mail or statutory overnight delivery with return receipt requested mailed to the person's last known address shall be prima-facie evidence that such person received the required notice." OCGA § 40-5-58 (b). Since the State provided evidence that notice was sent to appellant at his last known address and the return receipt clearly had his printed name and signature under the "received by" section of the return receipt, and since he failed to rebut this evidence, the jury was authorized to conclude that the Department of Public Service complied with the statutory requirements. The trial court therefore did not abuse its discretion in allowing the State to introduce the evidence.

Habeas Corpus; Ineffective Assistance of Counsel

Williams v. Hall, S09A0973

The State appealed from the grant of habeas corpus relief to Hall. The trial court found that trial counsel provided ineffective assistance by inadequately investigating Hall's case. The Court reversed. It found that in 2008, Hall filed a habeas corpus petition, claiming that the indictment was faulty, that his plea was not knowing and voluntary, that the amount of restitution and costs was altered after he signed the final disposition, and that his trial counsel was ineffective in failing to move to suppress evidence and in leading him to believe that his entire sentence would be probated. Trial counsel's purportedly deficient investigation was not raised as a ground for relief either in the petition or at the habeas hearing. The Court found that while a habeas court may consider matters sua sponte, the parties must be given an opportunity to address them in a meaningful way. Because the adequacy of counsel's pretrial investigation was not raised in the petition or at the hearing and instead, appeared in the case for the first time in the habeas court's final order, the State was denied the opportunity to address the matter in a meaningful way. The Court therefore reversed the improper grant of habeas relief and remanded the case to the habeas court for consideration of Hall's unresolved claims.

Fatal Variance

Cooper v. State, S09A1150

Appellant was convicted of felony murder, burglary and robbery. He was acquitted of arson. The evidence showed that appellant and an accomplice broke into the home of an elderly man, assaulted and robbed him and then the accomplice set the house on fire to destroy the "dead" victim. Appellant contended that the trial court should have directed a verdict of acquittal as to the felony murder charge because there was a fatal variance between the allegations in the indictment and the proof at trial. The felony murder count of the indictment alleged that he and his accomplice, while in the commission of the felony of aggravated assault, caused the victim's death by beating and choking him. However, expert testimony showed that the cause of death was not beating and choking, but was smoke and soot inhalation. The Court first held that there was not a variance between the allegations in the felony murder indictment and the proof as to the cause of death because there is no requirement that the victim must die during the commission of the underlying felony under a felony-murder indictment. OCGA § 16-5-1 (c), defining felony murder, requires that the death need only be *caused* by an injury which occurred during the res gestae of the felony. Here, the evidence showed that the victim sustained a broken neck bone and lost consciousness as a result of the beating and choking. Therefore, the aggravated assault by beating and choking directly and materially contributed to the death by smoke and soot inhalation by rendering him unable to leave the burning house. Accordingly, as alleged in the indictment and as proved by the evidence, the death was proximately caused by beating and choking.

Secondly, even if the evidence that the victim died from smoke and soot inhalation were considered to be a variance from the allegations in the felony murder count of the indictment, it would not be a fatal variance. Georgia no longer employs an overly technical application of the fatal variance rule, focusing instead on materiality. The true inquiry, therefore, is not whether there has been a variance in proof, but whether there has been such a variance as to affect the substantial rights of the accused. It is the underlying reasons for the rule which must be served: 1) the allegations must definitely inform the accused as to the charges against him so as to enable him to present his defense and not to be taken by surprise, and 2) the allegations must be adequate to protect the accused against another prosecution for the same offense. Only if the allegations fail to meet these tests is the variance fatal. Here, the indictment sufficiently informed appellant of the charges so that he was able to put on a defense, and he has not shown that he was surprised by any evidence at trial. Moreover, there was no danger that he could be prosecuted again for the same offense. Therefore no fatal variance between the allegations and the proof occurred, and the trial court correctly refused to direct a verdict of acquittal.

Statements; Miranda

State v. Folsom, S09A1423, S09X1520

This case was a review after remand by the Supreme Court. See *State v. Folsom*, 285 Ga. 11 (2009). The State and Folsom filed cross appeals. The State contended that the trial court erred by suppressing statements made by Folsom during the period of his questioning that preceded the giving of his *Miranda* rights. Specifically, the State argued that the trial court erred by determining that Folsom was in custody at the time, thereby triggering *Miranda*. 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. Unless a reasonable person in the suspect's situation would perceive that he was in custody, *Miranda* warnings are not necessary. The Court held that the evidence supported the trial court's findings that: (1) Folsom was never told that he was free to leave; (2) Folsom was kept either under surveillance or in a closed interrogation room for the entire six hours; (3) Folsom was explicitly told that the evidence pointed towards him; and (4) Folsom was, in essence, required to come to the police station for questioning by officers who waited at his home and ensured that he arrived at the police station for questioning by following him. Under these circumstances, in which Folsom was sequestered for hours, asked incriminating questions repeatedly, and was never given any indication that he was free to leave or terminate the interview, the trial court did not err in its determinations that a reasonable person in Folsom's situation would believe that he was in custody and, concomitantly, that Folsom's pre-*Miranda* statements had to be suppressed.

Folsom contended that the trial court erred by failing to suppress incriminating statements made by him following the administration of *Miranda* rights, arguing that this case was controlled by *State v. Pye*, 282 Ga. 796 (2007). In essence, Folsom argued that the State intentionally employed the type of two-stage "question first" technique forbidden in *Pye*, which, in turn, relied on *Missouri v. Seibert* , 542 U. S. 600, 124 S.Ct. 2601, 159 L.E2d 643 (2004). The Court found that the Supreme Court's decision in *Seibert* dealt with what the Supreme Court referred to as a "two stage" or "question first" interrogation procedure in which police first question a suspect without administering *Miranda* warnings, gain a statement from the suspect, then administer *Miranda* warnings, and have the suspect repeat that which the suspect has already related, often with little interruption in time. The Court noted that in such circumstances, it is unlikely that the *Miranda* warnings will effectively advise a suspect of his rights. The Court found that here, the facts are quite different. Pre-*Miranda*, Folsom was questioned about his ownership of a gun, and, although Folsom admitted that he had once owned such a gun and pawned it, he consistently maintained that he had no involvement in the murders. Post-*Miranda*, the questioning related specifically to Folsom's connection to the crime that had been committed, and Folsom admitted his direct connection with the crimes. Therefore, the record supported the trial court's determination that Folsom had not been subjected to an inappropriate two-stage questioning technique which destroyed the purpose of *Miranda*. Thus, Folsom was not enticed to admit to the crime, given *Miranda* rights, and asked to repeat the pre-*Miranda* admission. At the time that *Miranda* rights were given in *Seibert* and *Pye*, in contrast, "there was little, if anything, of incriminating potential left unsaid."

Vehicular Homicide; Involuntary Manslaughter

Taylor v. State, S09G0881

Appellant was indicted on seven counts, including involuntary manslaughter, first

degree homicide by vehicle, and serious injury by vehicle. She was acquitted of the homicide by vehicle count, following too closely count, and convicted on all remaining counts. Despite the acquittal on the homicide by vehicle charge, however, the trial court decided to treat the involuntary manslaughter charge as a second count of first degree vehicular homicide, and thereafter sentenced appellant to 15 years for first degree homicide by vehicle. The Court of Appeals reversed the trial court's entry of a conviction for first degree homicide by vehicle and remanded the case to the trial court for re-sentencing on the charge of serious injury by vehicle. The Supreme Court granted appellant's petition for a writ of certiorari to determine whether the Court of Appeals erred in directing the trial court to re-sentence her for the offense of serious injury by vehicle where the trial jury acquitted her of homicide by vehicle, but also found her guilty of involuntary manslaughter based on the same set of facts involving a single victim. The Court held that because the record revealed that the involuntary manslaughter count of the indictment was not merely a second count of first degree homicide by vehicle, the Court of Appeals correctly determined that the trial court improperly treated the jury's finding of guilt on the involuntary manslaughter count as a finding of guilt on an additional homicide by vehicle count.

Citing *State v. Foster*, 141 Ga. App. 258, 260 (1), *aff'd* , 239 Ga. 302 (1977), the Court held that "[t]he difficulty arose from the fact that the conviction for involuntary manslaughter was for an offense that should never have been charged. The proper charge, under these circumstances, would have been for vehicular homicide only, the charge for which [appellant] was acquitted." Although the State sought to justify the trial court's ruling by concluding that the trial court was allowed to treat the indicted involuntary manslaughter charge as a de facto charge of homicide by vehicle resulting from reckless driving, the Court disagreed for the following reasons: (1) it was clear that all charges were indicted, tried, and charged as distinct and separate offenses; (2) by re-casting the impermissible involuntary manslaughter charge as an ostensibly proper vehicular homicide charge, the trial court allowed and gave life to an inappropriate prosecution for both involuntary manslaughter and vehicular homicide; and (3) by re-casting the involuntary manslaughter charge as a second charge for vehicular homicide *after the verdict*, the trial court usurped the role of the jury.

Jury Instructions; Reasonable Doubt

Anderson v. State, S09A0676

Appellant was convicted of murder and other offenses. He argued that the trial court erred in giving its instruction on reasonable doubt by lowering the burden of the State. The trial court charged as follows: "[T]he State is not required to prove the defendant guilty beyond all doubt or to a mathematical certainty. A reasonable doubt means just what it says. It is not an imaginary, fanciful, or arbitrary doubt. *It is not a best possibility of doubts.* It is the doubt of a fair minded, impartial juror honestly seeking the truth. It may arise from the evidence, from a lack of evidence, from a conflict in the evidence, or from the defendant's testimony."

The Court held that viewing the charge as a whole, it was not reasonably likely that the jury misapprehended the State's burden of proof. The language of the charge, excluding the italicized portion, either matched verbatim or was virtually synonymous with the pattern jury instruction as to reasonable doubt. As to the "best possibility of doubts" language, when read in the context of the full charge, it could not be construed as prescribing a lower burden of proof than is required. However, the Court stated, "[a]ny time extraneous statements are added to the pattern charge on a concept as fundamental as reasonable doubt, trial courts run the risk of sabotaging the entire trial. The risk is particularly acute where the charge on reasonable doubt is involved, given that error therein may be deemed structural error requiring automatic reversal." Thus, the Court "again urge[d] trial courts in the future to hew closely to the pattern instruction on reasonable doubt."

Interlocutory Appeals; OCGA § 5-7-1

State v. Lynch, S09A1402

The State appealed from interlocutory rulings by the trial court denying its motion to present similar transactions and to reconsider and reopen the evidence at a Jackson-Denno hearing. The Court held that neither of these rulings is directly appealable. The similar transaction evidence was not excluded on the ground that it was obtained illegally and OCGA § 5-7-1 (a) does not authorize an appeal where, as here, the order is the result of the exclusion of evidence based upon some general rule of evidence. Nor is the denial of the motion for reconsideration directly appealable, citing *State v. White*, 282 Ga. 859, 860 (1) (2008).

The State argued that it could appeal under OCGA § 5-6-34 (d). The Court held that this was a question of first impression. Unfortunately, it was not impressed by the State's arguments. It held that this general statute governing interlocutory appeals is applicable whenever the defendant seeks review of an interlocutory order. But where, as here, the State seeks review of interlocutory orders, such appeals are governed soley by OCGA § 5-7-1 et seq. Moreover, OCGA §§ 5-7-1 et seq. must be construed strictly against the State and liberally in favor of the interests of defendants. The State may not appeal *any* issue in a criminal case, whether by direct or [interlocutory] appeal, unless that issue is listed in OCGA § 5-7-1. Accordingly, where the State appeals from one or more orders listed in OCGA § 5-7-1 (a), OCGA § 5-6-34 (d) does not authorize appellate review of any other ruling in the case. Therefore, the Court held, it "cannot review the trial court's denial of the motion to allow similar transaction evidence and the motion for reconsideration."

Similar Transactions

Pareja v. State, S09G0960

Appellant was convicted of child molestation. The Court granted certiorari to determine whether the Court of Appeals erred in ruling that the trial court properly admitted, as a similar transaction, evidence of an act of molestation that appellant committed 26 years before his conviction in this case. Before evidence of prior crimes is admissible, the trial court must determine that the State has affirmatively shown that: (1) the State seeks to admit evidence of the independent offenses or acts for an appropriate purpose; (2) there is sufficient evidence that the accused committed the independent offenses or acts; and (3) there is sufficient connection or similarity between the independent offenses or acts and the crimes charged so that proof of the former tends to prove the latter. In cases in which the similar transaction evidence is remote in

time, however, additional considerations are required. As a general rule, the lapse of time generally goes to the weight and credibility of the evidence, not to its admissibility. Nonetheless, where similar transactions are particularly remote because they were committed decades in the past, the passage of time is one of the more important factors to weigh in considering the *admissibility* of the evidence in question, although it is not wholly determinative. Using these guidelines, the Court held that the trial court did not abuse its discretion in admitting the similar transaction in this case.

Right to Remain Silent

Grissom v. State, A09A1503

Appellant was convicted of possession of three different controlled substances. The evidence showed that the police went to the home of a third person on a Fourth Amendment waiver and found appellant lying on the bed with the third person. The drugs were found in a hide-a-key box found on appellant and a black bag in the room. Appellant contended that the trial court erred in allowing the State to repeatedly and improperly comment on his pre-arrest and post-arrest silence regarding his disclaimer of the hide-a-key container and the black bag in the bedroom. The Court agreed. With respect to the hide-a-key container, appellant took the stand and denied knowing what was in the container and testified that the third person had shoved it to him, telling him to "do something with this" just as the police arrived. There was corroborating testimony from an officer that police specifically knew the third person had a practice of hiding narcotics in a hide-a-key container. With respect to the black bag in the bedroom, appellant testified that he did not know which of several bags in the room police had asked permission to search, that his bag was actually in his truck, and that he did not know who owned the bag that the police searched or what was in it. The testifying officer was unsure whether appellant actually claimed ownership of the bag containing the controlled substances. The State, over objection, was allowed to repeatedly ask appellant questions concerning why he never told law enforcement any of this and to argue that this was the first time anyone had ever heard about this defense. The Court held that allowing the State to repeatedly question appellant about his silence and to emphasize the point in closing argument was an "error of constitutional dimension." The Court also held that because the evidence was not overwhelming, the error was not harmless.

Discovery; DUI

Stetz v. State, A09A1474

Appellant was convicted of DUI. He contended that the trial court erred in denying his motion for discovery concerning the Intoxilyzer 5000. Appellant filed a motion seeking numerous documents, tests, graphs, books, manuals, and assorted other documents concerning the machine. OCGA § 40-6-392 (a) (4) provides that "[u]pon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney." The Court held that it must decide the scope of "full information" under OCGA § 40-6-392 (a) (4) when the "test or tests" of a person's blood alcohol concentration is determined by an intoxilyzer. Unlike a gas chromatography test, which produces data that has to be interpreted by a chemist to determine blood alcohol level, an intoxilyzer does not produce raw data but rather prints out the actual test result showing the person's blood alcohol level. In other words, the machine computes the test result. Therefore, the Court held, "the only discoverable information from an intoxilyzer test under OCGA § 40-6-392 (a) (4) is the computer printout of the test result." Moreover, the Court held, the trial court did not abuse its discretion by denying appellant's discovery request because it was overbroad.

Reciprocal Discovery; Witness Lists

Webb v. State, A09A0789

Appellant was convicted of cruelty to children in the second degree. She contended that the trial court erred by refusing to allow testimony by a witness whom she failed to identify on her witness list without a showing of bad faith and harm to the State and where the witness was identified as a potential witness by the State on the State's supplemental witness list. The record showed that at trial the defense attempted to call Dr. Jordan. The State objected because the witness was not on the defense's list of witnesses and the defense had opted-in to discovery. OCGA § 17-16-10 states:

"The defendant need not include in materials and information furnished to the prosecuting attorney under this article any material or information which the prosecuting attorney has already furnished to the defendant under this article. The prosecuting attorney need not include in materials and information furnished to the defendant under this article any material or information which that defendant has already furnished to the prosecuting attorney under this article. Either party may call as a witness any person listed on either the prosecuting attorney's or defendant's witness list." The State had the report of this doctor and had listed the doctor on its supplemental witness list. The Court held that the trial court erred because 1) under OCGA § 17-16-10, appellant was not required to also list Dr. Jordan on her own witness list in order to call him as a witness at trial; and 2) the trial court did not require the State to make the requisite showing of prejudice and bad faith on the part of appellant as required by O.C.G.A. §17-16-6 and indeed, could not make such a showing in this case. Finally, the Court held that the error was not harmless because it could not be said that the testimony of the doctor, had it been heard by the jury, would not have influenced the verdict.

Identification; Jury Verdicts

Wesby v. State, A09A2233

Appellant was convicted of armed robbery and possession of a firearm during the commission of a crime. He contended that the trial court should have suppressed the identification testimony of the woman who witnessed the armed robbery because her identification was tainted by an impermissibly suggestive photographic lineup.

Specifically, that the lineup was suggestive because he was the only individual depicted with "twists" —spiky braids —in his hair, and that the victims said the robber had "twists." Testimony concerning a pre-trial identification of a defendant should be suppressed if the identification procedure was impermissibly suggestive and, under the totality of the circumstances, the suggestiveness gave rise to a substantial likelihood of misidentification. The taint which renders an identification procedure impermissibly suggestive must come from the method used in the identification procedure. An identification

procedure is impermissibly suggestive when it leads the witness to an all but inevitable identification of the defendant as the perpetrator, or is the equivalent of the authorities telling the witness, "this is our suspect."

Here, the black and white photographic lineup depicted six black males of a similar age, build, and complexion, wearing similar attire. Each man had braids in his hair, and all of the braids were different long, short, flat, raised, and spiky. While it was true that only appellant had "twists," the photographic lineup did not depict him as the only man with a distinctive, braided hairstyle. Moreover, the witness testified that no one suggested that she select a particular photograph. Further, she testified that she did not notice the robber's hairstyle, but was instead focused on his eyes. Moreover, she said she was familiar with appellant's face, having seen him in the neighborhood many times before, and had no doubt whatsoever about her identification of him as the robber. Under these circumstances, the Court held, even if appellant's photograph was somewhat suggestive because of his unique hairstyle, the identification procedure was not so impermissibly suggestive as to have led the witness to the "all but inevitable identification."

Appellant also argued that the trial court should have instructed the jury to continue its deliberations after a juror made statements during the poll of the jury that indicated the verdict was less than unanimous. Where a poll of the jury discloses other than a unanimous verdict, the proper procedure is for the trial court to return the jury to the jury room for further deliberations in an effort to arrive at a unanimous verdict. Here, the record showed only that a juror initially said the verdict was not hers but then immediately stated that it was. Upon further questioning by the court, she reiterated that she agreed with the verdict, that it was her verdict in the jury room, and that it remained her verdict. Given her subsequent affirmations of her verdict, the juror's initial "no" did not support an inference that the verdict was less than unanimous. Consequently, the trial court was not required to instruct the jury to continue its deliberations.

Circumstances of Arrest

Sheppard v. State, A09A1438

Appellant was convicted of felony theft by taking. He argued that the trial court erred in admitting evidence regarding his arrest. The evidence showed that the victim's suitcase of tools was stolen from him when he left them for a few minutes unattended. Officers reviewed a video surveillance tape of the incident and their review pointed them in the direction of appellant. A week later, the officers saw appellant again in the same neighborhood and after some observation, the officers stopped and arrested him.

The Court held that as a general rule, evidence of the circumstances surrounding an arrest is admissible if it is relevant to the crimes charged. Even where the evidence involves other crimes for which the defendant has not been charged, such evidence may be admissible where relevant to the crime of which the defendant is accused. The decision to admit this evidence lies within the sound discretion of the trial court.

Here, approximately one week after the theft, appellant was found with a co-defendant in the same area where the tools were stolen. Appellant was wearing the same clothing that he had worn in the surveillance video of the theft, and he was riding the bicycle that the co-defendant rode in the video. Immediately before his arrest, he and the co-defendant (who was also in the surveillance video) were walking up and down the street, making hand signals to each other and inspecting locked bicycles. The bicycle appellant was riding was stolen, and he was in possession of bolt cutters, a tool commonly used in the commission of thefts. Thus, the evidence regarding the events was consistent with stealing property, and was relevant to appellant's alleged theft of the tools. Therefore, the trial court did not err in admitting this evidence.