

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING FEBRUARY 29, 2008

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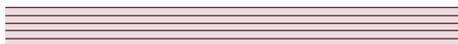
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THIS WEEK:

• Mutually Exclusive Verdicts



Mutually Exclusive Verdicts

Clark v State, A07A1817 A07A2125
(02/14/08)

Appellants were convicted of two counts of burglary and theft by receiving stolen property. On appeal, appellants argue that the verdict was illegal because their convictions for burglary and theft by receiving stolen property are mutually exclusive. “A verdict is mutually exclusive where a guilty verdict on one count logically excludes a finding of guilty on the other.” *Jackson v. State, 276 Ga. 408 (2003)*. “Mutually exclusive verdicts, which cannot both stand, result in two positive findings of facts which cannot logically mutually exist.” *Id.* In this case, the theft by receiving conviction involved property stolen from the residence which had been burglarized. By convicting the appellants of burglary, the jury must have found that the appellants were participants in that crime. The jury also must have concluded that the stolen goods found in the automobile, and which were in the appellants’ possession, were taken in the burglary of the residence. Therefore, the appellants were principals in the theft of the property. One cannot be a principal in the theft of property and at the same time be convicted of theft by receiving the same property. Therefore, the Court of Appeals reversed appellants’ convictions for burglary and theft by receiving stolen property, and remanded the case for a new trial.