

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING JULY 25, 2008

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**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:

- **Juror Qualification**
- **Severance of Charges**

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### *Juror Qualification*

*Moran v. State*, A08A1525

Appellant contends the trial court abused its discretion in denying his motion for a new trial after he presented evidence that a juror was disqualified from serving because she was related to the victim. All trial jurors shall be disqualified to act or serve in any case or matter when such jurors are related by blood to the sixth degree as computed by civil law. See OCGA 15-12-135(a). After a verdict, a litigant cannot obtain a new trial on the ground that a juror was disqualified by relationship, unless litigant demonstrates that before the verdict neither he nor his counsel knew of the relationship and could not have discovered the relationship by the exercise of ordinary diligence. If the complaining party knew or could have discovered the relationship by the timely exercise of ordinary diligence and remained silent, the court will consider that party as having waived the disqualification. Here, the defendant bore the burden of establishing that he and his counsel did not have this knowledge, even if the prosecutor knew the disqualifying information. Appellant did not offer any evidence of his knowledge at the motion for new trial hearing. The trial court was therefore authorized to find that Appellant waived disqualification. The denial of the motion for new trial was proper.

### *Severance of Charges*

*State v. O'Neal*, A08A1491

The State appeals the judgment of the trial court which granted defendant's motion for a new trial based on the trial court's failure to grant defendant's motion to sever. Defendant was found guilty of armed robbery, aggravated assault, etc. The charges arose from two separate incidents: The theft of a motor vehicle from one victim and the armed robbery and aggravated assault of another victim. If several offenses are joined for trial solely because the crimes are similar in nature, the trial court is required to sever the trials if the defendant makes a motion to do so. However, when the separate offenses are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, the court has discretion to decide whether to sever the offenses. Also, a trial court does not abuse its discretion in denying a motion to sever where the evidence of one crime would be admissible in the trial of the other crime. *Davis v. State*, 287 Ga.App. 410,411 (2007). Defendant used the car he stole in the first incident in his second incident. The evidence of the stolen car was part of the res gestae of the robbery and would have been admissible even if the charges were tried separately. Thus, the trial court did err in denying the motion to sever and the judgment granting the motion for new trial was reversed.