

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 14, 2009

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THIS WEEK:

- **Bond Forfeiture**
- **Ineffective Assistance of Counsel**
- **Jury Charges; Coercion**

Bond Forfeiture

Anytime Bail Bonding Inc. v. State of Ga., A09A1011

Appellant argued that the trial court erred in forfeiting the \$55,100.00 bond of defendant Sanchez, appellant's surety, after Sanchez failed to appear for arraignment. The evidence showed that Sanchez was arrested for trafficking in methamphetamine. Appellant put up his bond. Sanchez was indicted and an arraignment date set. Sanchez failed to appear. Thereafter, the State, needing to clean up some language in the original indictment, re-indicted Sanchez for the exact same offense occurring on the exact same day. A new arraignment date was set. The State then nol pros'd the first indictment. The trial court found that appellant was not liable on the bond for the first indictment since it had been nol pros'd. Sanchez thereafter failed to appear for arraignment on the second indictment and the trial court ordered the bond forfeited.

The Court held that a bond is in the nature of a contract between the State, the accused, and the accused's surety, and a court must look to the language of that contract to determine what conditions the surety covenanted to perform. Once posted by the surety on behalf of the accused, a bond remains in force until the accused is sentenced, unless

the bond is revoked, forfeited, or the liability of the surety otherwise discharged. Here, the criminal appearance bond obligated appellant to forfeit \$55,100.00 to the State if Sanchez failed to appear before the trial court for his arraignment on "the offense of trafficking-methamphetamine or as charged in the [arrest warrant]" It was undisputed that the drug trafficking charge in the second indictment involved the identical criminal conduct referenced in the criminal appearance bond. Appellant, therefore, was obligated under the plain terms of the criminal appearance bond to forfeit the \$55,100.00 as a consequence of Sanchez's failure to appear for his arraignment on the second indictment. In so holding, the Court distinguished the Supreme Court case of *Lamp v. Smith*, 56 Ga. 589 (1876), because here, as opposed to the facts in *Lamp*, there never was a time during which the drug trafficking charge referenced in the criminal appearance bond was not pending against Sanchez, and thus never a point at which Sanchez was completely released from that charge.

Ineffective Assistance of Counsel

Grindle v. State, A09A1354

Appellant was convicted of robbery, aggravated battery, and battery in connection with a purse snatching. He argued that his trial counsel was ineffective for failing to object to the hearsay testimony of an accomplice who identified him as the robber. The Court agreed and reversed for a new trial. The evidence showed that appellant snatched the victim's purse while she and her daughter were walking to their car in a store parking lot. Appellant jumped into a vehicle in which his two accomplices were waiting and drove off. A witness got

the license plate. When the police traced the plates a couple of days later, they learned that appellant and his two accomplices were in jail on a similar purse snatching that they committed in an adjoining county the following day after the purse snatching at issue here. At trial, defense counsel failed to object when an officer testified that one of appellant's accomplices identified appellant as the purse snatcher. The Court held that the custodial statement to the officer was testimonial inasmuch as it was made during the course of an investigation, and appellant did not have an opportunity to cross-examine the accomplice because the accomplice did not testify. Also, nothing in the record showed that the statement would have been admissible under any exception to the hearsay rule. Defense counsel conceded that there was no reasonable strategic reason for not objecting to this testimony. Therefore, defense counsel should have objected to the admission of the accomplice's custodial statement to the officer and had he done so, the trial judge would have been required to exclude it.

The Court also found that the deficient performance was prejudicial to appellant. The accomplice was the only witness to identify appellant as the purse snatcher. The remaining evidence linking appellant to the crimes was circumstantial. The Court stated that even if the accomplice's statement to the officer had been excluded, the remaining circumstantial evidence would have been sufficient to prove appellant's guilt beyond a reasonable doubt. But, the absence of the statement would nevertheless have seriously weakened the State's case. Consequently, but for counsel's failure to object to or move to have this testimony excluded, there was a reasonable probability that the outcome of the trial would have been different.

Jury Charges; Coercion

Mathis v. State, A09A0215; A09A0308; A09A0358

Appellant was convicted of two counts of armed robbery. The evidence showed that appellant and his co-defendants committed an armed robbery at a bank. He argued that the trial court erred in failing to instruct the jury on his sole defense of coercion and duress. The Court agreed. Under OCGA § 16-3-26, which defines the defense of coercion, "[a] person is not guilty of a crime, except murder, if the act

upon which the supposed criminal liability is based is performed under such coercion that the person reasonably believes that performing the act is the only way to prevent his imminent death or great bodily injury." Coercion is an affirmative defense. In order to establish an evidentiary basis for a statutory affirmative defense, the defendant must admit all of the elements of the crime charged except intent. Here, the Court held, the evidence supported a jury instruction on coercion. Appellant admitted at trial that he exited the car, donned a stocking on his head, entered the bank, remained there while a co-defendant wielded a gun and demanded money from the teller, and then got into the getaway car. By such testimony, appellant admitted the elements of armed robbery as a party to the crime. Since appellant testified that he committed such acts because a co-defendant pointed a gun at him and threatened to shoot him or his family, he was entitled to a jury charge on coercion, and the trial court erred in failing to so instruct the jury, even in the absence of a request by him. The Court also concluded that under the facts, the failure to give the charge was not harmless.