

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING SEPTEMBER 21, 2007

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for Legal Services

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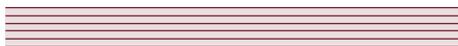
Al Martinez
Staff Attorney

Clara Bucci
Staff Attorney

Brad Rigby
Staff Attorney

THIS WEEK:

• Evidence — Value



Evidence – Value

Gorham v. State, A07A1247 (09/04/07)

Appellant was convicted of two counts of felony theft by taking. On appeal, appellant argued that the State failed to present sufficient evidence that the value of the merchandise alleged in Count 2 of the indictment exceeded \$500. The record shows that appellant was an employee of Borders Book Store. Appellant was charged in Count 2 of the indictment with taking books and digital video disks with a value in excess of \$500. At trial, the State presented testimony from Welch, the store's loss prevention officer. Welch testified that DVDs range in value from \$15 to \$24, and that "if" the box had been filled with DVDs the value would have exceeded \$500. The State argued that there was sufficient circumstantial evidence of value. Evidence was presented that each DVD box contained over \$1,000 worth of merchandise. Value can be established through circumstantial evidence. However, no evidence was presented regarding the number of DVDs taken by the appellant. Therefore, any conclusions regarding the value of the items taken were mere speculation and could not support a guilty verdict. The Court of Appeals vacated appellant's conviction with regard to Count 2 and remanded with direction that a conviction and sentence for a misdemeanor be entered.