

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING JULY 27, 2012

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## THIS WEEK:

- **Double Jeopardy; Lesser Included Offenses**
- **Terroristic Threats; Similar Transaction**

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### Double Jeopardy; Lesser Included Offenses

*Roesser v. State, A12A0135 (7/13/2012)*

Following the denial of his plea in bar asserting double jeopardy, appellant contended that the trial court erred in ruling that he could be retried for voluntary manslaughter after the jury deadlocked on this charge. Appellant argued that because the jury acquitted him of the indicted offenses of malice murder, felony murder, and aggravated assault, the State was barred from further prosecution on the lesser included offense of voluntary manslaughter. The Court concluded that, in this case, a retrial on the voluntary manslaughter charge following a mistrial due to a hung jury did not violate the Double Jeopardy Clause of either the federal or state constitutions and therefore affirmed the ruling of the trial court.

Appellant contended that in acquitting him of the murder charges, the jury necessarily determined that his conduct was justified because he acted in self-defense; and that, on retrial, the justification defense would be equally applicable to the voluntary manslaughter charge. Relying on *Yeager v. United States*, 557 U.S. 110 (2009), he argued that the collateral estoppel doctrine “embodied in the Fifth Amendment guarantee against double jeopardy” operated to prohibit his retrial on the mistrial charge of voluntary manslaughter. The Court in reviewing the record of prior

proceedings found that in acquitting appellant on the murder charges, the jury did not necessarily determine that appellant acted in self-defense, and concluded that the doctrine of collateral estoppel does not apply in this case. Specifically, the Court noted that the jury verdict did not necessarily decide the issue of justification in appellant’s favor. The Court addressed the jury’s verdict of acquittal of malice murder and stated that in order to convict appellant of “malice murder,” the jury would have been required to find beyond a reasonable doubt that he had the requisite intent—either express or implied malice. If the jury were unable to find that appellant acted with either express or implied malice, it would be obliged to acquit on the malice murder charge. Thus, the jury would not have had to decide whether appellant’s conduct was justified as self-defense. The jury also acquitted him of felony murder (predicated on the felony of aggravated assault) and aggravated assault with a deadly weapon. The Court further noted that the offense of voluntary manslaughter requires proof of an element not found in malice murder, felony murder, or aggravated assault, that is, that the accused acted under “a sudden, violent, and irresistible passion.” Thus, appellant’s acquittal on the felony murder and aggravated assault charges did not change the double jeopardy analysis and would not bar retrial on the voluntary manslaughter charge. Further, “under the double jeopardy provision in Georgia’s constitution, if a jury cannot agree upon a verdict in a criminal case, the trial judge may declare a mistrial, and the accused may then be tried a second time for the same offense.” The Court found that the case at bar was controlled by the Court’s decision in *State v. Archie*, 230 Ga. App. 253 (1998), where it held that an “acquittal

on the indicted offense of murder would not bar retrial on the lesser included unindicted offense of voluntary manslaughter using the same indictment, as long as the next jury did not know about the murder charge.”

roborated threats against R. C. Thus, because appellant’s threat to “hurt or kill” the victim’s children was uncorroborated, the evidence was insufficient to sustain his conviction for the offense of terroristic threats.

## Terroristic Threats; Similar Transaction

*Murrell v. State, A12A0225 (7/16/2012)*

Appellant was convicted of child molestation, two counts of sexual battery, four counts of stalking, aggravated assault, false imprisonment, terroristic threats, and public indecency. Murrell contended that the evidence was insufficient to support any of his convictions except public indecency. The Court reversed the terroristic threats conviction but affirmed the remaining ones.

Regarding the terroristic threats charge involving one of the victims, R. C., she testified that she was sleeping on the floor of the hotel room at the foot of one of the beds in which her children were sleeping. Appellant entered the room, lay on top of her, “put his hand over [her] mouth and turned [her] head to the side so he could get to [her] ear.” She testified that he told her that if she screamed or was loud he would hurt or kill her children, after which appellant had forcible intercourse with her, leaving when her daughter woke up. Appellant was charged with threatening “to commit a crime of violence against [R. C.]” with the intent to terrorize. The crime of making terroristic threats focuses solely on the conduct of the accused and is completed when the threat is communicated to the victim with the intent to terrorize. However, the Court noted that no person shall be convicted of the offense of terroristic threats based on the uncorroborated testimony of the person to whom the threat was communicated. The Court further noted that while only slight evidence may be sufficient for corroboration, in this case R. C.’s testimony was completely uncorroborated. Moreover, the Court stated that even though another of appellant’s victims, J. L., testified that appellant said that she would be “sorry” if she told anyone about appellant’s attack, and it has held that similar corroborated threats against one victim could be used to corroborate threats against another victim that in this case, J. L.’s threats were not corroborated by any other witnesses, and thus not sufficient to corroborate the uncor-