

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING NOVEMBER 8, 2013

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THIS WEEK:

- **Inconsistent Verdicts; Mutually Exclusive Verdicts**
- **Cross-examination; Bias**
- **Confessions; Waiver of Right to Counsel**
- **Special Purpose Grand Juries; Prosecutorial Misconduct**
- **Evidence Implicating Another**
- **Military Uniforms; Courtroom Attire**
- **Loitering; Justification Defense**
- **Severance; Street Gang Activity**

Inconsistent Verdicts; Mutually Exclusive Verdicts

Kipp v. State, S13A1251 (11/4/13)

Appellant was convicted of four counts of felony murder, one count of involuntary manslaughter, two counts of cruelty to children in the first degree, one count of concealing the death of another, and two counts of making false statements in connection with the abuse and resulting death of her 18-month old daughter, and the abuse of her two other minor daughters. The evidence showed that emergency responders appeared at appellant's apartment and found the body of the deceased toddler lying in her crib, cold to the touch. After being placed in foster care, appellant's two daughters informed their foster mother that they heard the deceased toddler being spanked on the night of the murder, the toddler being thrown into the crib "like a basketball," and that the next morning when appellant told the oldest daughter to go check on the victim, she was

cold to the touch. Evidence also showed that appellant had knowledge that her boyfriend repeatedly abused the victim and appellant's other two daughters.

Appellant contended that the verdict of involuntary manslaughter and the verdicts on each count of felony murder are mutually exclusive. The Court disagreed. The Court noted that it is unnecessary that there be consistency in the jury's verdicts, for each count in an indictment is regarded as if it were a separate indictment. And, verdicts of guilty of felony murder and involuntary manslaughter are not mutually exclusive as a matter of law. However, both felony murder, O.C.G.A. § 16-5-1(c)(2), and involuntary manslaughter, O.C.G.A. §16-5-3(a)(3), are predicated upon the commission or omission of another offense or act; mutually exclusive verdicts may occur where the offenses or acts alleged in the indictment underlying the felony murder and involuntary manslaughter counts reflect that the jury, in order to find the defendant guilty on both counts, necessarily reached two positive findings of fact that cannot logically mutually exist. Appellant argued that this occurred in her case, that is, that the verdicts reflected that the jury may have found that she acted with both criminal intent and criminal negligence in connection with the victim's death.

First, the Court examined Counts One and Two. In Count Two, appellant was found guilty of felony murder while in the commission of aggravated assault by use of a blunt object or instrument, which caused the victim's brain to swell. Felony murder requires that the accused have the criminal intent to commit the underlying felony, in this case, aggravated assault. Appellant was charged with and found guilty of aggravated assault

with an instrument used offensively against a person, as set forth in O.C.G.A. § 16-5-21(a) (2). However, the simple assault, O.C.G.A. § 16-5-20(a), encompassed within aggravated assault may be committed in two ways: when a person attempts to commit a violent injury to the person of another, or when a person commits an act which places another in reasonable apprehension of immediately receiving a violent injury. The presence of criminal intent is required for an assault under O.C.G.A. § 16-5-20(a)(1). In contrast, a conviction for reckless conduct, which was the basis for the involuntary manslaughter verdict, requires criminal negligence. Appellant argued that the language of the indictment was broad enough to charge her with felony murder based upon an aggravated assault premised on a simple assault under either subsection (a) (1) or (a)(2) of O.C.G.A. § 16-5-20, that the evidence was sufficient to support a verdict under either subsection and that the jury was instructed on both provisions; therefore, it is impermissible to make the finding that the felony murder verdict rested solely upon subsection (a)(2), and thereby eliminate the reasonable possibility that the jury found that she acted with both criminal intent and criminal negligence in the conduct causing the toddler's death.

However, the Court noted, the rule against mutually exclusive verdicts applies only where the convictions result from the same act involving the same victim at the same instant. Where the victim sustains several injuries, convictions for both intentional and negligent crimes are not mutually exclusive. And here, the verdicts at issue were supported by evidence of separate acts, committed at separate moments during the night the toddler was killed. Thus, the jury could have found that the victim's death was caused by innumerable injuries occurring at various moments on the night of the murder, and that some of appellant's conduct regarding her boyfriend's behavior amounted only to criminal negligence. As the abuse escalated, the jury could have then found that appellant's conduct increased to criminal intent.

The Court next examined Counts One and Four. In Count Four, appellant was found guilty as a party to felony murder based on cruelty to children in the first degree, by inflicting on the victim cruel and excessive physical and mental pain by application

of force causing swelling of the brain. Appellant argued that the finding of guilt on this count, which cannot be committed by criminal negligence, as well as that for involuntary manslaughter, reflected that the jury necessarily reached two positive findings of fact that could not logically mutually exist. Again, the Court disagreed. The verdicts for involuntary manslaughter and felony murder while in the commission of cruelty to children in the first degree were not mutually exclusive as the evidence authorized the jury to conclude that appellant aided her boyfriend, by omission or commission, to perpetrate various and numerous acts of abuse against the victim at different moments during the time preceding her death. Indeed, the evidence authorized the jury to conclude that appellant committed both non-felony acts of abuse that inadvertently led to or contributed to her daughter's death and others that constituted felony cruelty to children, which would have provided the foundation for the felony murder conviction on Count Four.

Finally, the Court examined Count Six and Count Eight. In these counts, appellant was found guilty of felony murder based on her failure to seek medical care for the victim. Appellant asserted that these verdicts were both legally and logically mutually exclusive because Count Six's felony murder conviction was based on child cruelty in the first degree for maliciously failing to seek medical care for the victim, while Count Eight's felony murder conviction was based on child cruelty in the second degree for negligently failing to seek medical care for the victim. However, here again, the Court found, the assertion that the verdicts were mutually exclusive was unavailing. The evidence showed that the victim's death was caused by multiple injuries from various forms of abuse during the night of her death. A rational trier of fact could conclude that appellant's initial behavior in failing to seek out medical attention for her daughter following some of the abuse was criminally negligent but that as the night progressed, and more physical abuse occurred, her independent and ultimate decision not to call for help rose to the level of criminal intent.

Nevertheless, the Court found, while appellant's claims regarding mutually inconsistent verdicts was unavailing, the Court noted that the trial court sentenced appellant on each felony murder count.

But, the prohibition against double jeopardy does not permit a defendant to be punished on multiple murder counts for a single homicide. When a defendant is found guilty on multiple murder counts for a single victim, the additional counts are rendered as surplus and must be vacated. Thus, the trial court erred in sentencing appellant for involuntary manslaughter in light of the conviction for felony murder, for one homicide.

Cross-examination; Bias

Jackson v. State, S13A0937 (11/4/2013)

Appellant was convicted of felony murder, armed robbery, and numerous other felonies in connection with a drug deal. The evidence showed that appellant contacted her cousin to broker a deal for her to buy cocaine from the victim. Appellant met her friend and drug business cohort at a hotel, and shortly thereafter left without her friend, picked up her cousin, and proceeded to the pre-arranged gas station to meet the deceased for the drug deal. Appellant parked behind the victim's truck, and both she and her cousin got out of the vehicle and entered the victim's vehicle. During the drug deal, a vehicle pulled in front of the victim's truck, and two gunmen jumped out of the car, advancing on the truck. Both appellant and her cousin exited the truck. Appellant jumped into the driver's seat of her car, while her cousin was apprehended at gunpoint and robbed by one of the gunmen. The other gunman apprehended the victim and robbed him. Once appellant's cousin was let go, he heard a gunshot and saw one of the gunmen run towards appellant's car. The gunmen's vehicle was then seen following appellant's car as both vehicles sped from the scene. Later that night, appellant was accused of setting up the robbery by her cousin. In response, appellant made incriminating statements to him and later, sent him the money that was taken from him.

Appellant argued that that the trial court erred in prohibiting her from fully exploring her cousin's bias in favor of the State. The trial court allowed evidence of her cousin's four prior felony convictions and two pending felony charges, but the court did not allow appellant to cross-examine her cousin on details of the stiff recidivist penalties he possibly faced for the two pending cases. The Court stated that the potential bias or

partiality of a witness may always be explored on cross-examination. Where the witness has obtained a concrete benefit for his testimony, the witness's credibility may be challenged by exploring possible penalties for pending criminal charges as a way of gauging the impact of the benefit upon the witness. However, where the witness has not obtained such a benefit, and the accused is permitted broad scope in exposing the potential for bias in the witness's testimony, the accused may not bring out the potential penalties faced by the witness. Here, the Court found, the record revealed that appellant's cousin had no deal with the State to exchange his testimony for a reduced sentence. Although appellant was not allowed to question her cousin on the potential penalties he faced for his pending charges, appellant was nevertheless allowed to amply explore her cousin's potential for bias or partiality, and thus, his credibility. Accordingly, the Court found no error.

Confessions; Waiver of Right to Counsel

Dixon v. State, S13A0954 (11/4/2013)

Appellant was convicted of malice murder and related offenses. He contended that the court erred in the refusal to suppress statements appellant made during an interview. The evidence showed that appellant and a co-defendant robbed and killed the victim. After appellant was apprehended, his cousin contacted the detective working the case, and informed him that appellant wanted the detective to know that he did not shoot the victim, and that he would talk to the detective if he went to the jail to speak with him. The next day, the detective went to the jail to speak with appellant, and informed him that his cousin said that he wished to speak with him, and he asked appellant if in fact he did. Appellant responded by asking whether his co-defendant gave a statement implicating appellant. The detective repeated his inquiry, and appellant gave a similar response. The detective informed appellant that he would answer his questions, but he must first be informed of his rights. The detective then read appellant the *Miranda* rights and appellant agreed to talk to the detective.

Appellant argued that the trial court erred in failing to suppress his statements to the detective, contending that it was conducted

in violation of his previously-involved right to counsel. However, the Court found, appellant failed to show anywhere in the record that he had previously invoked his Fifth Amendment right to have counsel present during custodial interrogation. Moreover, the fact that counsel was appointed for appellant at a prior appearance before the trial court did not afford him relief under the Sixth Amendment in this circumstance. But, even assuming that appellant had invoked his right to counsel prior to the interview, an accused may waive the previously invoked right by initiating further communication with the police. Accordingly, the Court found, the evidence supported the trial court's determination that the interview was at appellant's instigation, and it was not error to refuse to suppress the statements appellant made during that interview.

Special Purpose Grand Juries; Prosecutorial Misconduct

State v. Lampl, A13A1071. A13A1072 (10/28/13)

The State and Lampl cross-appealed from an order of the trial court regarding an indictment against Lampl. The record showed that a grand jury indicted Lampl for the offenses of conspiracy in restraint of free and open competition (Count I), false statements and writings (Counts II-VII), and perjury (Count VIII). The grand jury's indictment stemmed from an earlier investigation by a special purpose grand jury which had been impaneled pursuant to O.C.G.A. § 15-12-100 for the purpose of investigating public corruption and various crimes allegedly committed by currently or previously elected county officials and county employees. The perjury charge was based on a portion of Lampl's testimony to the special purpose grand jury.

As Lampl was neither a county official nor a county employee, he moved to dismiss all counts of the indictment, contending that he was the "target" of an unlawful investigation by the special purpose grand jury and that he should not have been compelled to testify at the special purpose grand jury proceedings.

In its ruling on the motion to dismiss, the trial court found that the special purpose grand jury was not authorized to conduct an investigation of Lampl, who was an employee

of the City of Morrow, and was not authorized to investigate Lampl's involvement with "Olde Towne Morrow," a real estate development project for the City of Morrow. The trial court further found that the special purpose grand jury was not authorized to subpoena Lampl to testify regarding matters which exceeded the scope of its investigation. Accordingly, the trial court granted Lampl's motion to dismiss with regard to the perjury count (Count VIII) of the indictment, and it also granted his motion to suppress the statements that he made to the special purpose grand jury. However, the trial court denied Lampl's motion to dismiss with regard to the remaining counts of the indictment, finding that the indictment was brought by a properly constituted grand jury which was authorized to indict Lampl for these offenses.

The State contended that the trial court erred in dismissing the perjury count because the special purpose grand jury was authorized to investigate the Olde Towne Morrow project since it potentially involved corruption at the county level, and that the special purpose grand jury did not exceed the scope of its investigative authority when it subpoenaed Lampl and questioned him with regard to his involvement in the city project. The Court disagreed.

Under O.C.G.A. § 15-12-100(a), a special purpose grand jury may be impaneled "for the purpose of investigating any alleged violation of the laws of this state or any other matter subject to investigation by grand juries as provided by law." Although a special purpose grand jury is limited to investigative purposes and has no power to return an indictment, the law otherwise relative to regular grand juries applies to special purpose grand juries. With respect to regular grand juries, their duties "shall be confined to such matters and things as [they are] required to perform by the Constitution and laws or by order of . . . the superior court of the county [in which they are impaneled]." O.C.G.A. § 15-12-71(a). Here, the Court found, the superior court entered an order impaneling the special purpose grand jury "for the purpose of investigating public corruption and various crimes allegedly committed by currently or previously elected county officials and county employees." It was undisputed that Lampl was an employee of the City of Morrow, and that he was neither a currently or previously elected county official

or county employee. Furthermore, the Court found, the investigation focused on Lampl and the contracting irregularities related to the Olde Towne Morrow project, a matter that did not involve county officials or county employees. Accordingly, the special purpose grand jury did not have the authority to investigate Lampl or the Olde Towne Morrow project.

Furthermore, the special purpose grand jury lacked the authority to subpoena Lampl for the purpose of investigating the Olde Towne Morrow project and his involvement in it. While a special purpose grand jury may subpoena witnesses and compel evidence, its power to do so is limited to matters which relate directly or indirectly to the authorized investigation. Here, the special purpose grand jury was not authorized to investigate Lampl or the Olde Towne Morrow project. As Lampl's perjury charge arose out of his testimony during this unauthorized investigation, the trial court did not err in dismissing the perjury count.

Lampl contended in his cross-appeal that the trial court erred in failing to dismiss the remaining counts of conspiracy in restraint of free and open competition (Count I) and false statements and writings (Counts II-VII). Specifically, he argued that the trial court erred in denying his plea in bar because the district attorney had orchestrated the unauthorized investigation of him and the Olde Towne Morrow project and thus, had engaged in prosecutorial misconduct that was so outrageous and fundamentally unfair that it violated due process of law, warranting dismissal of the indictment in toto. The Court disagreed.

A plea in bar is one which goes to bar the State's action and typically involves some legal impediment which precludes the State from prosecuting its case, such as the prohibition against successive prosecutions for the same crime (double jeopardy), the violation of a defendant's right to a speedy trial, or the expiration of the statute of limitations. Here, however, Lampl's argument was that the district attorney engaged in prosecutorial misconduct during the unauthorized investigation by the special purpose grand jury, which violated his due process rights. Although federal and state courts possess the authority to dismiss an indictment for governmental misconduct, dismissal is an extreme sanction which should

be infrequently utilized. Dismissal is only favored in the most egregious cases. The remedy for an alleged constitutional violation involving governmental misconduct should be tailored to the injury suffered from the violation. Furthermore, the dismissal of an indictment is not the appropriate remedy when the case may proceed with full recognition of the defendant's right to a fair trial. Thus, the Court stated, even assuming that the unauthorized investigation of Lampl and his involvement in the Olde Towne Morrow Project involved prosecutorial misconduct which violated Lampl's due process rights, the dismissal of the indictment was not appropriate because Lampl was afforded an adequate remedy, i.e. the suppression of his statements. Accordingly, since the trial court granted Lampl's motion to suppress the statements he made to the special purpose grand jury, there was no actual prejudice to Lampl which would affect his ability to receive a fair trial. Under these circumstances, the remedy of dismissing the indictment was not warranted.

Evidence Implicating Another *Matthews v. State, S13A1170 (11/4/2013)*

Appellant was convicted of malice murder, armed robbery and other crimes in connection with a drug deal. The evidence showed appellant met the victim and two other individuals in an apartment complex parking lot, to allegedly sell them six pounds of marijuana. Once he saw the money, appellant lured the three into an apartment breezeway where he pulled a gun and shot the victim. The other two individuals fled.

Appellant argued that the trial court erred in precluding him from presenting evidence implicating one of the buyers in the crimes. The Court disagreed. At trial, appellant sought to introduce testimony of the buyer's former roommate that the buyer was involved in setting up the fake drug deal. However, the witness admitted that her knowledge of the buyer's alleged involvement was gathered from another individual. Thus, the Court found, the trial court correctly sustained the State's hearsay objection.

Furthermore, evidence implicating another person in crimes being tried must at least raise a reasonable inference of the defendant's innocence for its exclusion

to harm appellant. Here, there were two witnesses, other than the buyer, that testified to appellant being the shooter. Therefore, assuming the buyer's involvement, it would not make appellant innocent of the crimes for which he was convicted. Thus, the trial court properly refused to allow appellant to present evidence implicating another person in the crime, since the testimony was not based on personal knowledge and did not raise a reasonable inference of his innocence.

Military Uniforms; Courtroom Attire

Carver v. State, A13A1190 (10/31/2013)

Appellant was convicted of pointing firearm at another and reckless conduct. In a case of first impression in Georgia, she contended that the trial court erred by denying her motion in limine seeking to prohibit the victim from wearing his military uniform at trial. The record showed that at the beginning of trial, appellant made an oral motion in limine, noting that the victim, on active duty with the Navy, was wearing his military uniform. Appellant stated her concern about the victim appearing and testifying while in full uniform and that it might have a prejudicial effect on the case. The court asked the victim to leave during voir dire, but after researching the issue, denied the motion, but offered to give an instruction to the jury regarding the victim's attire. Appellant declined the court's offer.

Appellant argued that the trial court erred in denying her motion in limine seeking to prohibit the victim from wearing his military uniform. Specifically, that it was not unreasonable that during a time when the nation is actively at war, the jury would accord a witness in military uniform greater trust and credibility than a person on trial. The Court disagreed. Citing cases from other states, the Court stated that if a party is a member of the armed services, a firefighter, a police officer or a priest, when appearing in court he or she should be entitled to dress in a manner ordinary to him or her. The rationale equally applies to a victim in a criminal prosecution. Furthermore, the Court stated, one cannot automatically assume that the jury will weight the victim's testimony more credible solely based on his appearance in uniform. Moreover, evidence that the victim was a

member of the military on active duty was known to the jurors through other relevant evidence properly admitted at trial. Thus, the impact of the uniform itself on the jurors' perception of the witness that they already knew to be actively in the military was even more speculative. Accordingly, the trial court did not abuse its discretion by denying the motion in limine.

Loitering; Justification Defense

Isenhower v. State, A13A1165 (10/28/13)

Appellant was convicted of loitering under O.C.G.A. § 20-2-1180 and criminal trespass arising from two separate incidents at her son's school. As to the loitering conviction, the evidence showed that appellant came to the high school's main office on May 1, looking for the principal, Russell Sowell, and for State School Superintendent Cathy Cox, who was there to tour a new school building that was under construction. The school was not issuing visitor passes on this day, and appellant did not have an appointment to see Cox. The receptionist told appellant that she did not know where Cox and Sowell were. She testified that she did not tell appellant that visitors were not allowed that day. Appellant then left the old school building and went to the building that was under construction, where she found Cox and Sowell on the third floor. Sowell asked her to leave, and she did. Sowell then called the assistant principal, Christopher Edwards, to report an "unauthorized visitor" in the building. Edwards found her on the second floor of the new building. He told her that she was not supposed to be there and that she needed to leave. She told him that she was supposed to be there and did not need to leave. It was undisputed that when he again told her to leave, she did so. As she crossed the parking lot with Edwards, he told a police officer, who had been called because of appellant's presence, that she needed to leave. The officer told appellant to leave. She then left the campus.

Appellant argued that the evidence was insufficient to convict her for loitering under O.C.G.A. § 20-2-1180. The Court agreed and reversed. The Court noted that O.C.G.A. § 20-2-1180, has rarely been cited by our appellate courts and has never been substantively construed. Nevertheless, the Court found,

the literal text of the statute is plain, and must be applied it as written. In pertinent part, O.C.G.A. § 20-2-1180(a) provides that "[i]t shall be unlawful for any person to remain upon the premises" and gives the principal or a designee, absent the defendant's legitimate need or cause to be present, the authority to prevent "loitering upon such premises." The Court found that Edwards estimated that from the time he first spoke with appellant on the second floor and walked out of the building with her, two to four minutes had elapsed. He testified that his conversation with appellant and her conversation with the police officer took place only seconds apart, and then she left. Appellant first had to be given some reasonable amount of time to remove herself from the second floor of the building, reach her vehicle in the parking lot below, and drive off the school grounds. To sustain a conviction, the person charged must be given a reasonable amount of time to leave and must fail to do so. The undisputed testimony showed that appellant spent approximately two to four minutes walking from the second floor of the building to the parking lot. No testimony indicated that she intentionally delayed in leaving the school premises, nor did any testimony show that she resisted leaving. Accordingly, the Court held, no rational jury could have found that appellant remained or loitered upon the premises to such an extent that she willfully or intentionally failed to remove herself in violation of the statute. Appellant's conviction pursuant to O.C.G.A. § 20-2-1180 was therefore reversed.

Appellant also contended that the trial court erred in failing to instruct the jury on justification as a defense to the criminal trespass charge. She based her argument on O.C.G.A. § 16-3-20(6), which provides that "[t]he fact that a person's conduct is justified is a defense to prosecution for any crime based on that conduct. The defense of justification can be claimed: . . . In all other instances which stand upon the same footing of reason and justice as those enumerated in this article."

The evidence showed that appellant was on campus on February 3, 2010, despite previously having been banned via an August 2009 letter that stated that she "should not be on campus or at any school sponsored event unless you have advance written authorization from the Superintendent of Schools or his designee." Appellant argued that her presence

on campus was justified because school administrators had verbally agreed to meet with her and her son at the school, and because the purpose of the meeting was to discuss her son's welfare. School officials testified that although they had met with appellant off-campus on February 2, 2010, they had not invited her to attend any on-campus meeting on February 3, 2010.

At trial, appellant made an oral request for a charge on justification, which the court denied. Appellant contended that even though the request was not in written form as required, the trial court was nevertheless mandated to give it because it was her sole defense. However, the Court stated, a premise underlying all the defenses specified in O.C.G.A. § 16-3-20 is that the defendant faced circumstances created by external events that demanded prompt, if not immediate, action and here, appellant was banned from campus through her own actions, and no evidence indicated that her need to advocate for her son's welfare was so immediate that she was prevented from double-checking with school authorities to ensure that she had permission to be on campus, particularly given the ban's requirement that she have written permission. Thus, even if justification was her sole defense, it is not error to refuse a justification charge when there is no evidence to support.

Severance; Street Gang Activity

Morris v. State, S13A1020 (11/4/13)

Appellant was convicted of murder, aggravated assault, criminal street gang activity, and related offenses in connection with incidents involving two victims. The evidence showed that appellant was a member of the "International Robbing Club," (IRC) a loosely affiliated group of friends and associates who planned and executed robberies of individuals believed to possess significant amounts of cash, drugs, jewelry, and other high value items. The State produced at trial numerous witnesses against appellant and his co-defendants, including Easterling, a co-indictee who testified under an immunity agreement. Besides implicating appellant in the crimes involving the two victims, Easterling also implicated appellant and other IRC members in the murders of Hargrave and Osby.

However, at the close of the State's case, on motion for directed verdict, the trial court ruled that there was insufficient evidence to support a finding that appellant was involved in the Osby and Hargrave murders because the only evidence presented was the uncorroborated testimony of Easterling, an accomplice. Thus, the trial court ruled that those two crimes could not serve as the basis for convicting appellant of participation in criminal street gang activity. In a jury charge, the trial judge instructed that "you are not to consider the Osby or the Hargrave case in determining [Appellant's] guilt or innocence as to Count One [the criminal street gang activity count]."

Appellant contended that the trial court erred by "refus[ing] to grant a severance of the Hargrave and Osby counts." The Court stated that a decision whether to grant a severance lies within the discretion of the trial court. In considering whether severance is necessary where a pattern of similar offenses against different victims are charged in a single indictment, the trial court must assess whether in view of the number of offenses charged and the complexity of the evidence to be offered, the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense. As an initial matter, the Court noted that the specific counts involving the Hargrave and Osby murders were in fact severed prior to trial, and none of the ten counts on which appellant and his co-defendants were tried charged him or the others specifically with involvement in either of these murders. Thus, the Court viewed appellant's argument to be that he was unfairly prejudiced by the admission of evidence regarding the Hargrave and Osby murders and, in particular, the admission of Easterling's testimony placing him at the scene of those murders.

The Court found that the evidence regarding the Hargrave and Osby murders was admitted as relevant to Count One, alleging the co-defendants' participation in criminal street gang activity. Though the trial court ultimately found that the State had not adduced any evidence, apart from accomplice Easterling's testimony, connecting appellant with the Hargrave and Osby murders, there was corroborating evidence linking certain of appellant's co-defendants with these crimes. Therefore, the trial court properly admitted the

Hargrave/Osby evidence as relevant to both the IRC's existence as a "criminal street gang" and to certain co-defendants' participation in criminal street gang activity. In so doing, the Court also noted that the trial court carefully instructed the jury on several occasions during trial, including prior to Easterling's testimony, that evidence regarding crimes not specifically charged in the indictment was offered as proof of the gang activity count; that for purposes of the gang activity count, a particular defendant's involvement in such predicate offenses must be shown beyond a reasonable doubt; and that they should "listen carefully as to which defendants are named" in testimony pertaining to such offenses and not allow testimony regarding one co-defendant to "bleed over to somebody that was never mentioned." Moreover, after the close of evidence, the trial court specifically instructed the jury not to consider evidence regarding the Hargrave and Osby murders in their deliberations on appellant's guilt under Count One. Accordingly, in light of the obvious relevance of the Hargrave/Osby evidence to the gang activity count generally, the careful measures the trial court employed throughout the trial to prevent evidence pertaining to other defendants from unfairly tainting appellant, and the strong evidence linking appellant to the IRC and to the crimes against the victims, the Court found no abuse of discretion on the part of the trial court in allowing the admission of evidence regarding the Hargrave and Osby murders.