

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING SEPTEMBER 16, 2011

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THIS WEEK:

- **Venue; Sufficiency of Evidence**
- **Search & Seizure**
- **Juveniles; Jurisdiction**

Venue; Sufficiency of Evidence

In the Interest of E. C., A11A1606 (8/30/11)

Appellant was adjudicated delinquent for acts which, if committed by an adult, would have constituted theft by taking (motor vehicle), OCGA § 16-8-2. He contended that the evidence was insufficient to support his adjudication and that the State failed to prove venue. The Court agreed with both arguments and reversed. The evidence showed that an officer responded to a complaint of motor vehicle theft at 1646 Fresno Street. The officer spoke to appellant's sister, and the officer testified, without objection, that she told him that appellant had taken her car without her permission. When the officer arrived at the sister's house, appellant was present, having returned home from a trip to the store in the sister's car. He admitted to the officer that he drove the car. However, there was no evidence in the record that he admitted that he took the car without permission. The sister did not testify. There also was no evidence in the record establishing that 1646 Fresno Street was in either a particular city or in the County, and the juvenile court did not take judicial notice of any fact which could be construed as establishing venue.

As to venue, the Court found that because there was no direct evidence establishing

the county where the incident occurred and because the court did not announce its intention to take judicial notice, the State failed to prove venue beyond a reasonable doubt, and the evidence was insufficient to support the adjudication. Moreover, the police officer testified that appellant's sister told him that she owned the car and that she did not give her permission for appellant to drive it. These hearsay statements were offered to prove that the property of another was unlawfully taken. But, hearsay evidence has no probative value even when it is admitted without objection. Furthermore, even if the officer's hearsay testimony concerning the sister's statements had been admitted to explain his conduct, the statements could not be used as original evidence establishing appellant's delinquency. Consequently, the evidence adduced was insufficient to support appellant's conviction of theft by taking beyond a reasonable doubt, and the juvenile court's judgment was reversed.

Search & Seizure

State v. Woods, A11A1199 (9/1/11)

The State appealed from the grant of Lee's and Woods' motion to suppress. The evidence showed that six (6) officers went to a motel to execute a warrant for Katherine Lee for aggravated assault. They went to a Room 214 which was registered to Lee's sister and knocked on the door. One of the officers testified that the manager told him that he suspected that Lee stayed in the room. At least one of the officers had his weapon drawn. Woods opened the door. The officers asked Woods if Lee was in the room, and he said no. They asked if they could enter the room to look for her, and Woods gave permission. As they were completing the search, a passerby mentioned that Lee

was in Room 306. Most of the officers left the room, but one or two stayed with Woods to make sure he did not call Lee to warn her of the officers' arrival. At this point, the officers in the room holstered their guns. After Lee was apprehended upstairs, one of the officers recognized Woods as a convicted cocaine trafficker. In response to the officer's questions, Woods stated that that he had nothing illegal in the room, that clothes hanging next to the sink were his, and that he stayed in the room. The officer then asked Woods for permission to search the room. Woods consented. The officer then asked Woods if he could search the room safe, and Woods responded, "Go ahead. But I don't know the combination." The officer retrieved a device for opening the safe from the manager's office. Crack cocaine and drug paraphernalia were found inside. Lee allegedly admitted after she was arrested that there was marijuana and crack in the safe and that it was hers.

The trial court ruled that Lee and Woods had standing to challenge the search of Room 214 because Lee was a resident and Woods was Lee's frequent overnight guest and kept personal items there. The court then ruled that the officers had no reason to detain Woods once they determined Lee was not in the room or at least once they had arrested her. Either way, the court held, the encounter between Woods and the police never de-escalated to a tier one encounter, so his consent to search the room, the safe and his car was not voluntary.

As to Lee, the State first argued that the trial court's finding that Lee was a resident of the motel room, and therefore had standing to object to the search, was not supported by competent evidence. Specifically, the testimony that Lee was staying in Room 214 was hearsay. The Court disagreed. Since the manager testified and was available for cross-examination, the testimony was not hearsay. The State's second argument was that even if the detention of Woods was illegal, that does not require the suppression of the evidence from the safe as to Lee because she cannot vicariously assert a violation of Woods's Fourth Amendment rights. The Court noted that this was merely another way of arguing that Lee lacked standing to challenge the search of the safe. But, the Court found, because Lee was staying in the room, she had a reasonable expectation of privacy in the room and the safe within it, and can assert that she was aggrieved

by the search within the meaning of OCGA § 17-5-30 (a) and the Fourth Amendment. The State next argued inevitable discovery because Lee admitted the crack in the safe was hers. However, the Court found that the State failed to make this argument before the trial court and the trial court made no ruling upon it. Thus, it was not properly presented on appeal.

As to Woods, the State first argued that Woods was merely a visitor to the motel room and therefore lacked a reasonable expectation of privacy warranting standing to challenge the search of the room. But, the Court found, given the evidence that Woods stayed in the room and had belongings there, the trial court's ruling that Woods had an expectation of privacy in the room was not clearly erroneous. The State next argued that Woods abandoned any interest in the safe and therefore lacked any expectation of privacy in it. However, the Court found, the officer's asking for permission to search the safe indicated that he did not believe Woods had relinquished his interest in it. In fact, the officer testified that he believed Woods had authority to consent to a search of the safe.

Finally, the State argued that Woods validly consented to the searches. The Court stated that in order to prove valid consent, the State must prove both that the consent was voluntary and that it did not result from an illegal detention. Focusing on the detention component, the State contended that once most of the officers left the motel room to arrest Lee and the remaining officer or officers holstered their weapons, the situation de-escalated into a first-tier encounter with no Fourth Amendment implications. In any event, the State argued, the officers could ask Woods for his consent even if their encounter had not de-escalated to a first-tier encounter. The Court disagreed. There was no evidence indicating that the detention of Woods de-escalated to a first-tier encounter once the police had arrested Lee. There was no clear endpoint to the initial detention that would indicate to Woods that he was free to end the interaction with the police; once Lee was arrested, nothing changed except that more officers entered the motel room and began questioning Woods. Further, the encounter continued in the place it began, Woods's motel room. Finally, there was no evidence that the police advised Woods that he was free to decline the request for consent to search. Under these circumstances, the Court

concluded that the trial court did not err in finding that the encounter did not de-escalate and that the consent was the product of an unlawful detention.

Juveniles; Jurisdiction

Nunnally v. State, A11A1159 (9/1/11)

Appellant appealed the trial court's denial of his motion to quash his indictment and to transfer his case to the juvenile court for disposition. The record showed that appellant was arrested on October 2, 2009, for aggravated assault, armed robbery with a firearm, and possession of a firearm during the commission of a felony. Although he was 16 years old at the time, the superior court had jurisdiction over his case because he allegedly committed armed robbery with a firearm. On May 4, 2010, 214 days after his arrest, appellant was indicted for aggravated assault, armed robbery with a firearm, and possession of a firearm during the commission of a felony. On July 6, 2010, appellant moved to quash the indictment and transfer his case to the juvenile court because he was not indicted within 180 days of his detention as required by OCGA § 17-7-50.1. The State then successfully sought a retroactive extension of time in which to file the indictment.

Citing *Hill v. State*, 309 Ga. App. 531 (2011), the Court stated that the plain language of OCGA § 17-7-50.1 provides that a child within superior court jurisdiction "shall within 180 days of the date of detention be entitled to have the charge against him or her presented to the grand jury." Thus, where a child was not indicted within 180 days of his detention, under the plain language of the statute, it was mandatory that the child's case be transferred back to the juvenile court. The Court found that this appeal differed from *Hill* because here, the State sought and obtained an after the fact extension of time. Thus, the question became whether this can be done. Interpreting the statute, the Court found that the only natural and reasonable construction of OCGA § 17-7-50.1 (b) is that if an indictment is not returned within 180 days after the child was detained and no extension had been granted *before* that period expired, the child's case must be transferred to the juvenile court. Because no indictment was returned within 180 days after appellant's arrest and detention, the grand jury lost authority to indict appellant

before the indictment was returned. The indictment returned 214 days after his detention, was void. Consequently, the trial court erred by granting the State's untimely motion for an extension and denying appellant's motion to quash the indictment and transfer the case.

The State nevertheless argued also that appellant's motion was properly denied because he ultimately was indicted for armed robbery, a crime punishable by death or imprisonment for life or by imprisonment for not less than ten nor more than 20 years, under OCGA § 16-8-41 (b) and the superior court was therefore prohibited from transferring to juvenile court cases in which the offense charged is punishable by "loss of life, imprisonment for life without possibility of parole, or confinement for life in a penal institution." OCGA § 15-11-28 (b) (2) (B). But, the Court determined, because it found in that appellant's indictment was void, OCGA § 15-11-28 (b) (2) (B) did not apply and this contention was without merit.