

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JANUARY 2, 2015

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THIS WEEK:

- **Sexual Offender Registration; Sufficiency of Evidence**
- **Venue**
- **Forfeiture; Excessive Fines**

Sexual Offender Registration; Sufficiency of Evidence

Davis v. State, A14A1463 (11/21/14)

Appellant was convicted of kidnapping, aggravated assault and failure to register as a sexual offender. He contended that the evidence was insufficient to prove that he failed to register. The Court agreed and reversed his conviction. The record showed that to support this offense, the State called only the woman in the Sheriff's Office whose job was at the time to register sex offenders. The prosecutor asked the witness, "has [appellant] ever registered [his] address on Corps Airport Road with *you*" to which the witness replied, "No, sir, he has not."

The Court noted that the witness did not testify that she was working at the sheriff's office at the time appellant was required to register, or that she was the only person in that office with whom appellant could have registered; nor did the witness testify that if appellant had registered with the sheriff's office, his registration would be included in certain records and that she had reviewed such records, but that no such registration was included therein. Therefore, a rational trier of fact could not have found beyond a reasonable doubt from the evidence presented that appellant violated the sex offender registration requirements of O.C.G.A. § 42-1-12.

Venue

Cavender v. State, A14A1304, A14A1305 (11/20/14)

In January 2012, a Coweta County grand jury indicted appellant for two counts of aggravated child molestation and five counts of child molestation. Later that month, a Carroll County grand jury indicted him for two additional counts of child molestation and two counts of sexual battery. Appellant waived venue as to the Carroll County offenses and consented to have both indictments tried jointly in Coweta County. Following the trial, the Coweta County jury found appellant guilty of two counts of child molestation arising out of the Carroll County indictment and guilty of seven counts of child molestation pursuant to the Coweta County indictment.

Appellant argued that the evidence was insufficient to prove count four of the Coweta County Indictment. The Court agreed. At trial, the victim testified without equivocation that this incident occurred in Carroll County. Venue in Coweta County, therefore, was improper. Although the State argued that appellant waived the issue of venue by agreeing to join the Coweta and Carroll County indictments for trial, the record showed that he waived venue only as to the crimes indicted in Carroll County, not the Coweta County offenses. Accordingly, because the crime charged in count four of the Coweta County indictment did not take place in Coweta County, the Court reversed appellant's conviction as to this offense. Nevertheless, the Court noted, appellant may be retried for this crime because evidence of venue does not go to the guilt or innocence of the accused, and hence it does not invoke double jeopardy concerns.

Forfeiture; Excessive Fines

Mikell v. State of Ga., A14A1153 (11/20/14)

The State filed a forfeiture complaint against real and personal property. Appellant alleged his innocent ownership and that the forfeiture violated the Eighth Amendment because it was grossly disproportionate to the gravity of the offense. The trial court found after a hearing that appellant was not an innocent owner and summarily found that the forfeiture was not disproportionate to the gravity of the offense.

Appellant argued that the trial court erred by failing to perform the proper constitutional analysis for determining whether the forfeiture of his residence constitutes an excessive fine in violation of the Eighth Amendment. The Court agreed. In *Howell v. State of Ga.*, 283 Ga. 24 (2008), the Supreme Court found that trial courts are required to take into consideration the following factors when considering whether a forfeiture constitutes an excessive fine: (1) the harshness, or gross disproportionality, of the forfeiture in comparison to the gravity of the offense, giving due regard to (a) the offense committed and its relation to other criminal activity, (b) whether the claimant falls within the class of persons for whom the statute was designed, (c) the punishments available, and (d) the harm caused by the claimant's conduct; (2) the nexus between the property and the criminal offenses, including the deliberate nature of the use and the temporal and spatial extent of the use; and (3) the culpability of each claimant. In conducting the analysis adopted by the Court in *Howell* for determining whether a forfeiture is constitutionally excessive, trial courts must make findings of fact and conclusions of law on the record. On-the-record findings are necessary to provide an opportunity for meaningful appellate review of the trial court's decision. Here, however, the record did not show that the trial court made the findings of fact and conclusions of law required by that decision. Accordingly, the Court vacated the trial court's judgment of forfeiture and remanded the case for further proceedings in the trial court consistent with *Howell*.