

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JUNE 1, 2012

State Prosecution Support Staff

Chuck Olson
General Counsel

Joe Burford
State Prosecution Support Director

Laura Murphree
Capital Litigation Director

Fay McCormack
Traffic Safety Resource Coordinator

Gary Bergman
Staff Attorney

Al Martinez
Staff Attorney

Clara Bucci
Staff Attorney

Todd Hayes
Traffic Safety Resource Prosecutor

THIS WEEK:

- **Hijacking a Motor Vehicle, Jury Charges**
- **Search & Seizure**

Hijacking a Motor Vehicle, Jury Charges

Gordon v. State, A12A0547 (5/22/2012)

Appellant was convicted of aggravated assault, motor-vehicle hijacking and possession of a firearm during the commission of a crime. The evidence showed a young man approached the victim in a gas station parking lot, pointed a handgun at the victim's face, and ordered him to drop his car keys. The victim complied and ran back into the gas station convenience store. The gunman got into the victim's SUV and attempted to start the engine, but could not do so. The gunman exited the SUV, fired two shots to scare the victim, and ran toward the parking lot of a shopping center behind the gas station. The incident was witnessed by a person who also saw that upon reaching the shopping center's parking lot, the gunman got into a white Ford Crown Victoria, which appeared to have been waiting for him. The employee didn't get a good look at the driver, but was able to see the vehicle's tag number. Based on the tag number, police determined that the vehicle was registered to appellant's mother. Shortly thereafter, officers went to appellant's mother's residence and met with appellant. During the interview, appellant admitted that he was the exclusive driver of the Crown Victoria, but he denied any involvement in the gas-station hijacking and claimed that he had been with his girlfriend on the night in question. Police eventually learned that the actual gunman was the 13-year-old

cousin of appellant's girlfriend. Police interviewed the 13-year-old and his mother, during which time the 13-year-old admitted that he was the gunman and specifically confessed that he and appellant decided to hijack the victim's SUV after seeing it near the gas station and noticing that it contained a custom television and DVD player.

Appellant argued that the evidence was insufficient to prove that the 13-year-old gunman actually "obtained" the SUV, as required by the motor-vehicle-hijacking statute. The motor-vehicle-hijacking statute, OCGA § 16-5-44.1 (b), provides that "[a] person commits the offense of hijacking a motor vehicle when such person while in possession of a firearm or weapon obtains a motor vehicle from the person or presence of another by force and violence or intimidation or attempts or conspires to do so." Appellant argued that the word "obtain" as it is used in the statute entails some movement of the subject vehicle and that, here, no such movement occurred because the 13-year-old gunman was unable to start the SUV's engine. In applying the ordinary meaning of "obtain," the Court explained that the offense of hijacking a motor vehicle is concluded when possession of the motor vehicle is acquired. The Court held that because the appellant's 13-year-old accomplice pointed a handgun at the victim, demanded the keys to his SUV, entered the vehicle and attempted to start its engine, he *obtained* the vehicle within the meaning of the statute.

Appellant also argued that the trial court erred in charging the jury on the full text of the motor-vehicle-hijacking statute because it allowed the jury to convict him for conspiring to hijack a motor vehicle despite the fact that he was not indicted on conspiracy charges. The Court concluded that this contention lacked

merit because a conspiracy may be proven and a jury charge may be given on conspiracy even though a defendant is not indicted under that theory. The specific statutory inclusion of conspiracy as a method of committing the crime of hijacking a motor vehicle does not alter the general rule that a conspiracy can be proven and charged without being indicted. Accordingly, the trial court did not err in charging the jury on the entirety of the motor-vehicle-hijacking statute.

Search & Seizure

Mwangi v. State, A12A0748 (5/23/2012)

Appellant was convicted of burglary and other related crimes. Appellant contended that the trial court erred in denying his motions to suppress. The evidence showed that two officers responded after a caller to 911 reported that the motion-sensor lights on the front and back of her house came on after a man she did not know parked his truck in her driveway, blocking it, and walked away. As the officers approached the house where the 911 call originated, they observed appellant riding a toy scooter down a hill toward the police car at about 2:00 a.m. One of the officers testified that he and appellant each stopped at approximately the same time, about 100 to 150 feet apart. The officer identified himself and his companion as police officers. Appellant allowed himself to be patted down and no weapons were found. Appellant consented to a search of his pockets, in which a pair of gloves and a key was located. Once the officers determined that the key fit the suspicious truck in the driveway of the 911 caller, they detained appellant. At the scene, appellant told another officer that he had been walking in people's yards and looking into cars; that the truck did not belong to him; but that he had parked it in the driveway.

Appellant contested his initial stop as unlawful. The Court disagreed. The Court explained that the initial stop was a first-tier police-citizen encounter, which is simply verbal communications involving no coercion or detention. The police in the instant case did not turn on their blue lights. There was no evidence that this initial encounter involved coercion or detention. Therefore, the trial court did not err in finding the initial encounter lawful.

Appellant also challenged the pat-down and pocket search as unlawful. However, the

Court found the officers had a particularized and objective basis for suspecting that appellant was involved in criminal activity, because they knew that within the preceding hour, a woman had called 911 after the motion-sensor lights on her home came on and after a strange truck had blocked her driveway. They knew that an unidentified male had walked away from the truck; and that in this neighborhood there recently had been a number of "entering auto" incidents involving items stolen from unlocked cars. Based on these facts, the officers believed that the driver of the truck was probably on foot in the neighborhood. When the officers encountered appellant, he was alone, it was late at night, only about six blocks from the home where the 911 call originated. The officer who first approached appellant testified that appellant was nervous and shaking and looked very shocked to see them. Thus, the officers had a particularized and objective basis for suspecting that appellant was involved in criminal activity. The officer additionally testified that he patted down appellant to check for weapons, for his own safety because of the nature of the original complaint, the time of night, and the fact that there was nobody else in the neighborhood that was out on foot. The Court held that there was therefore evidence to support the trial court's ruling that the State met its burden of proving the lawfulness of a pat-down search for weapons.