

## THIS WEEK:

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## Disorderly Conduct; Sufficiency of the Evidence

*Mays v. State, A19A0744 (6/25/19)*

Appellant was convicted of three misdemeanor offenses: disorderly conduct, obstruction of a law enforcement officer, and simple battery on a police officer. The evidence showed that appellant was admitted to the emergency room after complaining of pain. She was given medication and slept for approximately four hours. Around 2:00 a.m., appellant's attending nurse informed her that she would be discharged. Upon learning she was going to be released, appellant became irate and verbally abusive towards the nurse. She then tore the blood pressure cuff off her arm. She also ripped out her IV and threw it at the nurse, striking him in the leg and splattering blood on the door. Police were dispatched and found appellant outside on the curb. When the officers attempted to arrest her, she fought with them.

Appellant argued that the trial court erred in denying her motion for directed verdict. The Court noted that appellant was charged with violating OCGA § 16-11-39 (a) (2), which provides that “[a] person commits the offense of disorderly conduct when such person ... [a]cts in a violent or tumultuous manner towards another person whereby *the property of such person* is placed in danger of being damaged or destroyed.” (Emphasis supplied). In count 1 of the accusation, the State alleged that appellant: “did act in a violent and tumultuous manner towards another person, to wit: [attending nurse], whereby the property of another person, to wit: medical equipment, was placed in danger of being damaged, contrary to the laws of said State, the good order, peace and dignity thereof.”

Appellant argued that under the statute and the indictment, the State was required to show that the medical equipment at risk of being damaged was owned by the nurse, and that the evidence only established that it belonged to the hospital. The State contended that the nurse testified that his stethoscope, as well as “other items” belonged to him personally, and regardless, actual ownership is irrelevant because the nurse was “responsible” for all the equipment in the room, as it was under his dominion and control.

The Court first found that there was no specific testimony that any equipment personally belonging to the nurse was at risk of being damaged. The record showed that only an IV and blood pressure cuff — both belonging to the hospital — were at risk based on appellant's behavior.

Next, the Court held that a natural reading of the phrase "property of such person" means that in order to prove disorderly conduct under OCGA § 16-11-39 (a) (2), the State must show the victim's interest in the property was more than mere control over the property of someone else. Thus, the Court stated, while the State did not have to prove the nurse actually owned the property at risk of being damaged, it could have satisfied this element by proof of ownership. However, the evidence failed to show that any property owned by the nurse was at risk of being damaged. While proof of ownership is not necessarily required, the State did not establish that the hospital granted the nurse any authority to use, enjoy, dispose of, or exclude others from the use of the medical equipment as he saw fit. In short, the evidence only showed that the hospital owned equipment and that the nurse was authorized to use it in order to administer medical care to patients. But, the hospital's authorization of the nurse to exercise control over its property did not transform said property into "property of [the nurse]." Accordingly, because the State failed to present any evidence that the nurse had more than permission of the owner to exercise control over the medical equipment at risk of being damaged by appellant, the Court concluded that the evidence was insufficient to sustain her disorderly conduct conviction. Therefore, the trial court should have granted appellant's motion for a directed verdict.

## **DUI; Probable Cause to Arrest**

*State v. Culler, A19A0244 (6/25/19)*

Culler was charged with DUI (per se), DUI (less safe) and driving without headlights. The evidence, very briefly stated, showed that Culler was stopped for driving without his headlights illuminated. Almost all of the stop and the events leading up to the arrest were caught on video and played for the trial court. The officer testified that he relied on six facts to find probable cause to arrest Culler. These facts included: the odor of alcohol coming from Culler's person; Culler's bloodshot and watery eyes; Culler's slurred speech; the fact that Culler was positive for six out of six clues on the HGN test; the fact that Culler was positive on one clue on the walk-and-turn test; and the results of the Alco-Sensor, showing the presence of alcohol on Culler's breath. Although the trial court acknowledged these six facts, based on the evidence and its independent review of the video recording of the traffic stop, the trial court granted the motion to suppress. The State appealed.

The State argued that the trial court failed to consider the "totality" of the facts and circumstances. Instead, the State contended, the trial court committed legal error by assessing each fact or circumstance individually, and in isolation. The Court disagreed. The Court found that the trial court's order reflected that in assessing probable cause, the court considered all of the facts and circumstances on which the officer claimed he based his decision to arrest Culler. The trial court also considered that Culler was operating his vehicle without headlights and admitted to consuming alcohol before driving. The court then found the evidence as to several of those facts was either not credible or not reliable. Specifically, the court explicitly rejected the officer's testimony that Culler was slurring his speech and implicitly rejected the officer's testimony concerning Culler's bloodshot and watery eyes. Additionally, the trial court gave no weight to the fact that Culler's headlights were not illuminated. Nor did the trial court give any weight to the results of the HGN test, based on its finding that at least a portion the test was not administered properly. The court's weighing of the evidence and assessing the

credibility of the witnesses was clearly within the province of the court, as the trier of fact, and therefore did not constitute legal error.

The Court also noted that based on its determination as to the weight and credibility to be assigned the evidence, the trial court concluded that the only facts which could have provided the officer with probable cause for Culler's arrest were the presence of alcohol, Culler's admission that he had consumed alcohol, and Culler's positive result on one out of eight clues on the walk-and-turn test. The trial court then considered these facts in conjunction with the additional facts known to the officer that would lead a reasonable person to believe Culler was not impaired. These additional circumstances included the fact that Culler exhibited no outward signs of impairment, completed the one-leg stand test with ease, and was observed driving the car in a safe manner. Finally, the trial court found that all of these facts, considered as a whole, failed to establish a probability that Culler was driving while impaired. Thus, the Court found, the record showed that the trial court properly considered the totality of the circumstances in assessing probable cause. Thus, the Court held, in light of the facts as found by the trial court, the trial court did not err as a matter of law in concluding that the officer lacked probable cause to arrest Culler for DUI less safe.

Nevertheless, the State contended, the trial court erred by findings that the smooth pursuit component of the HGN test was not administered according to the applicable guidelines and that this failure could produce a false positive result. It also challenged the trial court's refusal to give any weight to those portions of the test that were performed correctly.

The Court stated that for the results of an HGN test to have any evidentiary value, the State must prove that the person performing the test substantially performed the same in an acceptable manner — i.e., in such a manner that the results are reliable. The trial court found the results of the HGN test performed on Culler “to be unreliable” because the video showed that the officer did not perform a portion of the test within the applicable guidelines. The court stated: “Specifically, in relation to the ‘lack of smooth pursuit’ portion of the test, [the officer] performed the passes significantly more quickly than the required two seconds out and two seconds back, which may induce nystagmus.”

The Court found that the lack of testimony about the specifics of the HGN test and the proper technique for performing the same prevented it from determining whether the trial court properly inferred that a failure to administer the test in accordance with the prescribed guidelines could trigger a false positive result. Given this fact, and given that the Court could not discern from the record whether the officer administered the test properly, the Court vacated the trial court's order and remanded for further proceedings. Specifically, the Court ordered the trial court to address three questions: (1) whether the officer performed the HGN test properly; (2) whether failure to perform the test within the applicable guidelines could trigger a false positive result; and (3) whether, if one portion of the HGN test was performed incorrectly, that fact renders the entire test unreliable. Any new order entered by the trial court should address these issues, as well as any credibility determinations affecting the court's decision to accept or reject the results of any field sobriety tests.

## **Motions in Limine; Prosecutorial Misconduct**

*McAllister v. State, A19A0613 (6/25/19)*

Appellant was convicted of rape, incest, and making a false statement to law enforcement. The record showed that after the trial court concluded that it would permit the admission of prior act evidence, appellant filed a motion in limine in

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anticipation of calling his expert witness to—as the trial court suggested in its order—“blunt the prejudicial effect of the evidence.” This motion sought to limit the State's cross-examination of the expert witness as to the “additional prior acts which the State does not intend to introduce at trial,” which the State had been permitted to inquire about over objection on cross-examination at the prior hearing. However, when the trial court denied appellant's motion, he elected to not call the expert to testify at trial.

Appellant argued that the trial court erred by denying his motion in limine as to the State's anticipated cross-examination of his proposed expert witness. But, the Court stated, because appellant did not call the expert to testify at trial, he waived this alleged error. Specifically, without the benefit of the witness's testimony, the Court stated that its review would be entirely speculative when (1) it could not know what the trial testimony would have been; (2) the trial court might have altered its initial ruling as the case unfolded; (3) the State might not have cross-examined the expert as planned; and (4) even without these other difficulties, it would be unable to conduct “harmless error” review because of the inability to discern the impact any allegedly erroneously admitted evidence would have had. In other words, having a full factual context is essential to meaningful appellate review of the trial court's evidentiary ruling. Thus, in the absence of testimony from the expert, the Court held that there was nothing for it to review.

Appellant also contended that his counsel was ineffective by failing to object to the State's argument during closing that it does not have a client, represents the people, and pursues justice. He argued that this argument injected extrinsic prejudicial evidence into the case. Specifically, the prosecutor argued as follows: “Prosecutors that represent the State of Georgia [are] different. Our responsibility is not just to insure that when the laws are broken people are held accountable. We represent the people, but we have a higher calling. We don't have a client. And in fact we are held to standards where we are pursuing justice. That's the pursuit. That's the goal. We don't have an actual client.”

Appellant contended that this argument referred to extraneous, prejudicial evidence that was not before the jury, as there was no evidence “about any oaths the prosecutor may have taken, nor was there any evidence about the duties of a prosecutor.” Thus, he asserted, his counsel should have objected or moved for a mistrial.

The Court stated that a prosecutor is granted wide latitude in the conduct of closing argument, the bounds of which are in the trial court's discretion, to argue reasonable inferences from the evidence. Nevertheless, the Court agreed that there were no facts in evidence to support the State's argument and, as is obvious, it did not even relate to the charges at issue. But more than arguing facts not in evidence, the Court found the comments by the prosecutor during closing to be more akin to an argument that unnecessarily impugns the integrity of opposing counsel, even if obliquely, which our Supreme Court has concluded are “distasteful.” Nevertheless, the Court stated, even if counsel should have objected to the foregoing comments during closing argument, there was no reasonable probability that they affected the jury's decision because they did not actually refer to anything relevant to the case before the jury. Accordingly, the Court held, appellant failed to establish that he was prejudiced by the lack of an objection.

## Commercial Gambling; Sufficiency of the Evidence

*Bartlett v. State, A19A0426 (6/25/19)*

Appellant was convicted of commercial gambling in violation of OCGA § 16-12-22 (a) (1), possession of a gambling device or equipment in violation of OCGA § 16-12-24, and keeping a gambling place in violation of OCGA § 16-12-23 (a). The evidence, very briefly stated, showed that appellant owned a restaurant in which included both a dining area and a separate game room that contained nine coin operated amusement machines (“COAMs”). These machines were “nudge games,” meaning a game in which wheels spin and stop on a non-winning combination before the player identifies whether a winning combination is possible by moving one of the available wheels up or down to align the symbols in a winning pattern. An undercover officer went into the restaurant and played the machines on three separate occasions. On two occasions, in which she won more than she put into the machines, she was paid out with a few dollars of lottery tickets and the remaining amount of money in cash. She also testified that she was able to win without “nudging” the lines up or down to create a winning combination.

Appellant contended that the evidence was insufficient to support his convictions. The Court agreed. The Court stated that commercial gambling is illegal in Georgia, but OCGA § 16-12-35 creates an exception to Georgia's criminal laws against gambling for certain coin operated games and other devices designed and manufactured for bona fide amusement purposes only. OCGA § 50-27-70 (b) (2) (A) defines a bona fide coin operated amusement machine as “every machine of any kind or character used by the public to provide amusement or entertainment whose operation requires the payment of or the insertion of a coin, bill, other money, token, ticket, card, or similar object and *the result of whose operation depends in whole or in part upon the skill of the player*, whether or not it affords an award to a successful play pursuant to subsections (b) through (g) of Code Section 16-12-35, and which can be legally shipped interstate according to federal law.” (Emphasis added).

The Court noted that the State's theory at trial was that the COAMs in the restaurant were effectively converted into illegal gambling devices for two reasons. First, the State relied upon the undercover officer's testimony that she was able to complete a winning spin without having to nudge the wheels, thus removing the element of player skill required of a bona fide COAM. However, the Court noted, the State conceded at oral argument that there was no evidence that appellant tampered with the COAMs or otherwise did anything to remove the element of player skill. The commercial gambling offenses appellant was charged with are not strict liability crimes. Rather, they require that the defendant *intentionally* operate or participate in the earnings of a gambling place (OCGA § 16-12-22 (a) (1)), *knowingly* own or possess a device that he *knows* is designed for gambling purposes (OCGA § 16-12-24 (a)), and *knowingly* permit his property to be used as a gambling place (OCGA § 16-12-23 (a)). Thus, the Court held, viewing the evidence in the light most favorable to the verdict, the State's evidence, at most, supported that the COAMs malfunctioned in some way to allow the officer to win without “nudging” the wheels. But, this was not sufficient to show that appellant acted with the requisite criminal intent to support the commercial gambling charges.

Second, the State argued that because cash payments were given to patrons in exchange for winnings earned from the COAMs, the COAMs should be treated as illegal gambling devices. The Court disagreed. OCGA § 16-12-35 (e) through (g) expressly governs the consequences for making cash payouts instead of the authorized rewards listed in OCGA § 16-12-35 (d) (1). And OCGA § 16-12-35 plainly states that the misuse of a COAM by paying cash for winning plays

constitutes a misdemeanor. Nowhere in OCGA § 16-12-35 does the General Assembly provide that a cash payout would convert an otherwise legal COAM into an illegal “gambling device” that would have subjected appellant to prosecution under OCGA §§ 16-12-22 (a) (1), 16-12-24 (a), or 16-12-23 (a).

Thus, the Court held, because the State chose not to charge appellant with a misdemeanor under OCGA § 16-12-35 (e), (f), or (g), but instead elected to charge him under the commercial gambling statutes that COAMs are specifically exempted from, the evidence was insufficient as a matter of law to convict him.

### **Rule 404 (b); Public Funds for Expert Witnesses**

*Bonner v. State, A19A0168 (6/27/19)*

Appellant was convicted of three counts of aggravated assault on which he was found guilty but mentally ill, one count of criminal damage to property in the first degree, one count of possession of a firearm during the commission of a felony, and one count of discharge of a firearm on the property of another. He contended that the trial court improperly admitted evidence of a prior act under OCGA § 24-4-404 (b) for the purposes of intent, identity, absence of mistake or accident, and consciousness of guilt. Specifically, he argued that by virtue of pleading not guilty by reason of insanity, he admitted to the act of shooting into the victim's trailer, and therefore, his intent was not at issue during trial.

However, the Court stated, if it were to adopt appellant's argument, Rule 404 (b) evidence would never be admissible to show intent when an accused pleads not guilty by reason of insanity. Instead, citing *Blake v. State*, 239 Ga. 292, 295 (1) (1977), the Court held that when a defendant pleads not guilty by reason of insanity, prior act evidence is admissible insofar as it aids in identification or shows the state of mind of the accused. And here, appellant placed his intent at issue during trial by pleading not guilty by reason of insanity. Therefore, the Rule 404 (b) evidence was relevant and the State was permitted to use it to show appellant's intent at the time of the shooting.

Appellant also argued that his privately-retained trial counsel was ineffective for failing to request public funds to hire and present an independent psychiatric expert. The Court noted that under federal law (18 USCA § 3006A (e)), such funds are available to defendants with privately-retained counsel but financially unable to afford such experts. But, our General Assembly has enacted no analogous statute. In Georgia, an indigent person can apply for the services of the Georgia Public Defender Council to obtain representation in a criminal proceeding. Under this system, the “council shall be responsible for assuring that adequate and effective legal representation is provided ... to indigent persons who are entitled to representation[.]” OCGA § 17-12-1 (c).

Moreover, the Court stated, appellant cited no authority, and the Court found none, for the proposition that a criminal defendant with privately-retained counsel may apply for, and make use of, taxpayer money to aid in their defense. Thus, the Court held appellant's trial counsel did not perform deficiently because no clear line of authority existed in Georgia at the time of trial which would have allowed appellant to obtain public money to hire an expert. Counsel cannot be faulted for failing to raise every conceivable issue in a case, particularly where, as here, a theory of law is untested or unsettled. That would be both an unduly heavy and impractical burden. Accordingly, the Court concluded, because appellant did not meet the first prong of the *Strickland* test, his claim of ineffective assistance of counsel failed.

## Serious Disfigurement; Visible Injuries

*Weaver v. State, A19A0016 (6/28/19)*

Appellant was convicted of two counts of second degree cruelty to children, three counts of aggravated assault, two counts of first degree cruelty to children, and three counts of aggravated battery. The victim was her three-month-old son. Appellant argued that the evidence was insufficient to support her convictions for aggravated battery. Specifically, she argued that the State failed to prove that the victim's injuries constituted "serious disfigurement" under OCGA § 16-5-24 because they were not "visible." In a 2-1 decision, the Court disagreed.

OCGA § 16-5-24 (a), provides that "[a] person commits the offense of aggravated battery when he or she maliciously causes bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, or by seriously disfiguring his or her body or a member thereof." The Court stated that because the term "seriously disfiguring" is not defined in the statute, it must look to the ordinary meaning of the word. In an attempt to define disfigurement to support an aggravated battery conviction, the Court noted that it relied on Black's Law Dictionary which defines disfigurement as "[a]n impairment or injury to the appearance of a person or thing," and also defines impairment as "a condition in which a part of a person's mind or body is damaged or does not work well. ..." Black's Law Dictionary (10th ed. 2014). Webster's Dictionary defines "appearance" as an "outward aspect" or "a sense impression or aspect of a thing. ..." Webster's Third New International Dictionary at 103 (1981).

In light of these definitions and pursuant to OCGA § 16-5-24 (a), the Court found appellant's argument that the infant's injuries were not "visible" to be unavailing. "Serious disfigurement" may be proven where serious damage or injury occurred to a person's body or a part of a person's body, which affected the appearance of the body or body part. In so holding, the Court noted that appellant cited no case by it or our Supreme Court which holds that, to constitute serious disfigurement, the victim's injuries must be actually visible from the outside of a person's body. And, citing *Byrd v. State*, 251 Ga. App. 83, 84 (1) (2001), the Court found that it has not precluded the holding that serious internal injuries, which can be visible through such means as x-ray, cannot support a conviction for aggravated battery.

And here, the Court found, the State presented evidence from a child abuse pediatrician who testified that, upon reviewing the infant's x-rays and CT scans, he saw 16 fractures in the infant's ribs, legs, and pelvis. He testified that, based on the level of trauma to the infant's body, at least two different traumatic events occurred. As to the rib fractures, he testified that those fractures were most likely caused by a "squeezing force about the chest." He also testified that the leg fractures were likely caused by a yanking, jerking, or flailing motion that the infant could not have caused himself. Additionally, there was testimony that, to cause the pelvic fractures, direct trauma to the pelvis would have had to occur, such as punching or stomping the infant or by a heavy fall directly onto the infant's pelvis. While the State did not introduce the x-rays or other photographic evidence to demonstrate how badly the bones were damaged, the doctor testified as to what he saw, and he indicated on a diagram as to how and where the bones were fractured. Whether disfigurement is serious is best resolved by the factfinder on a case-by-case basis. Consequently, what constitutes serious disfigurement is almost always a question for the jury. Thus, the Court concluded, this evidence was sufficient for a reasonable jury to find that there was serious "impairment or injury to the appearance of" the infant's bones, which are "members" of the infant's body. See OCGA § 16-5-24 (a). Therefore, the State met its burden of establishing serious disfigurement to support appellant's aggravated battery convictions.

## **Rule 404 (b); Rule 403**

*Sloan v. State, A19A0123 (6/28/19)*

The State joined two indictments together for trial. In one, appellant was accused of robbing a worker at a Church's Chicken on Gresham Road. The evidence as to the first indictment showed that appellant had come into the restaurant an hour before closing seeking employment. Although there were no jobs, the manager and victim gave him free food. After the victim got off work and was standing at a nearby bus stop, appellant approached her and robbed her using a knife. This event occurred on Sept. 2, 2011. The evidence from the second indictment showed that on Sept. 6, 2011, appellant boarded the same bus the Sept. 2 victim was waiting for, and at around the same time that he robbed the first victim. Appellant robbed the bus driver. He was convicted of armed robbery, aggravated assault, and boarding a bus with a weapon. The jury was unable to reach a verdict as to the first indictment.

Appellant contended that the trial court erred by admitting evidence of a 2000 and 2005 armed robbery because they were not relevant to show identity and any probative value of the evidence was substantially outweighed by the danger of undue prejudice. The Court agreed.

The State presented evidence showing that on November 7, 2000 appellant and another man robbed the Church's Chicken on Gresham Road after 8:00 p.m. by pointing a gun, ordering everyone to the floor, and instructing an employee to open the cash drawer. Both men were wearing black masks over their faces, and it was clear from the moment they entered the store that they intended to commit a robbery. The State also presented evidence showing that on July 19, 2005, appellant robbed a store while wearing panty hose over his face. As he was exiting the store, he brandished a knife at a customer who was entering the store.

The Court stated that while it agreed with the State that the prior robberies qualified as relevant for the purpose of intent, they were not relevant for the purpose of showing identity, opportunity, or preparation. Specifically, as to identity, the Court found that appellant's prior robberies were so similar to the charged offenses that the charged offenses must have been his handiwork. Accordingly, the trial court erred by admitting evidence regarding the 2000 and 2005 robberies for this purpose.

As to opportunity, the Court noted that this purpose is probably the most rarely used under Rule 404 (b). The circumstances under which opportunity may be a proper purpose for admitting other act evidence, tends to establish opportunity, in the sense of access to, or presence at the scene of the crime, or in the sense of possessing distinctive or unusual skills or abilities employed in the commission of the crime charged. But here, the Court found, no special skills or abilities were used during the commission of the crimes, and the State presented no evidence showing where appellant lived at the time of the 2000 and 2005 armed robberies. The trial court therefore erred by admitting the other act evidence for the purpose of proving appellant's opportunity to commit the charged offenses.

As to preparation, the Court stated that acts in preparation leading up to the charged offense (e.g. theft of weapons used in subsequent robberies) may be used under Rule 404 (b). But here, the evidence did not show preparation and therefore, the trial court should not have admitted the other robberies based upon this ground.

Next, the Court analyzed whether the evidence was admissible under Rule 403. The Court found that the prosecutorial need for the other act evidence was minimal, as it was unlikely, based upon the particular facts and circumstances of this case, that any rational jury could find that the perpetrator lacked criminal intent when he committed both of the charged robberies. With regard to the other two factors considered when examining the probative value of evidence offered for the purpose of showing intent (similarity and temporal remoteness), the record showed that the other act crimes were not similar in the manner in which they were committed, although one took place at the same Church's Chicken where the bus-stop victim worked. And, while the time gap between the offenses spanned many years, the Court took into account that it was likely that appellant was incarcerated for a significant portion of the time. However, while the 2000 and 2005 crimes were not so remote as to be lacking in evidentiary value, the temporal proximity alone did not make them more appreciably probative. Thus, the Court concluded, the probative value of the other robberies was "quite low."

Next, the Court stated that while the prejudicial impact of such evidence may be reduced by a trial court's limiting instruction, in this case, the trial court instructed the jury that the other act evidence could be used for the improper purposes of identity, opportunity, and preparation. Accordingly, the limiting instruction's effect on the evidence's prejudicial effect was irrelevant to the propriety of its admission. And as to harm, the Court found that the evidence was not overwhelming and therefore, the Court reversed his convictions.

### **Competency; OCGA § 17-7-130**

*Beach v. State, A19A0459 (6/28/19)*

Appellant was convicted of child molestation. Appellant contended that the trial court failed to properly assess his competence to stand trial. The Court agreed.

The relevant procedural history, briefly stated, showed that on October 1, 2013 the trial court ordered a mental evaluation regarding Beach's competency to stand trial, including whether he was capable of distinguishing right from wrong or whether he was suffering from a delusional compulsion. Sometime around June 23, 2014, the trial court entered an order directing 90 days of observation of appellant by the Department of Behavioral Health and Developmental Disabilities ("DBHDD") and the Department of Human Resources ("DHR") to determine his competency. On February 18, 2015, the court conducted a hearing to determine whether appellant was competent to stand trial and on whether to forcibly medicate appellant pursuant to *Sell v. United States*. On February 20, 2015, nunc pro tunc to February 18, 2015, the trial court found appellant incompetent to stand trial and directed DHR to reevaluate him in 90 days. On February 20, 2015, the trial court also entered an order directing the DBHDD to forcibly administer the psychotropic medications necessary to restore appellant's competency. On May 9, 2016, the trial court entered a nunc pro tunc order to June 19, 2015, finding that appellant was competent to stand trial based on a report from that date from Georgia Regional, presumably stating that appellant's competency had been restored. That same day, the court began the trial against appellant.

The Court noted that pursuant to OCGA § 17-7-129 (a), "[w]hen information becomes known to the court sufficient to raise a bona fide doubt regarding the accused's mental competency to stand trial, the court has a duty, sua sponte, to inquire into the accused's mental competency to stand trial. The court may order the [DBHDD] to conduct an evaluation of the accused's competency. If the court determines that it is necessary to have a trial on the issue of competency, *the court shall follow the procedures set forth in Code Section 17-7-130. ...*" (Emphasis supplied). And here, the Court found, the trial

court properly followed this procedure when it ordered appellant into the custody of DBHDD, DHR, and Georgia Regional for a determination of competency. Additionally, the trial court held a hearing after receiving the first evaluation of appellant, at which hearing treating physicians testified as to appellant's mental state, declared him incompetent to stand trial, and ordered a future evaluation after he was forcibly medicated. This was proper according to the procedure set forth in OCGA § 17-7-130 (c).

Nevertheless, the Court determined, after the DBHDD evaluation holding that appellant was competent after receiving treatment, the trial court failed to follow the procedure set forth in OCGA § 17-7-130 (d), which states that if, after treatment and evaluation of the accused under OCGA § 17-7-130 (c), the DBHDD finds that the accused is competent to stand trial, "the court *shall hold a bench trial to determine the accused's mental competency to stand trial within 45 days of receiving the [DBHDD's] evaluation* or, if demanded, shall conduct a special jury trial within six months of receiving the [DBHDD's] evaluation." (Emphasis supplied).

But here, the Court found, after the court received the June 2015 evaluation stating appellant's competency was restored, the trial court failed to hold the bench trial on competency as required by OCGA § 17-7-130 (d) (1). Because the statutory procedures of OCGA § 17-7-130 were triggered by the trial court's entry of the October 2014 order directing his evaluation and February 2015 order to forcibly medicate him, the court was bound to implement the remaining dictates of the statutory scheme.

Appellant argued that this failure required a reversal of his conviction. But, relying on *Baker v. State*, 250 Ga. 187 (1982), the Court remanded the case to the trial court to conduct the required procedure under OCGA § 17-7-130 (d) (1), but did not require a new trial on guilt or innocence.