

THIS WEEK:

- **Law of the Case; Double Jeopardy**
- **Statute of Limitations; Person Unknown Exception**
- **Rule 404 (b); Intrinsic Evidence**
- **Consent to Search; Sentencing**
- **Ineffective Assistance of Counsel; Merger**
- **Statute of Limitations; Person-Unknown Tolling Provision**

Law of the Case; Double Jeopardy

McElrath v. State, S22A0605 (11/2/22)

In 2017, a jury found appellant guilty but mentally ill as to felony murder but not guilty by reason of insanity as to malice murder following a single, continuous encounter between appellant and the victim. The trial court did not recognize the verdicts as repugnant and accepted them. On appeal, the Court held that the verdicts were repugnant and thus, vacated the verdicts and remanded appellant's case for retrial. See *McElrath v. State*, 308 Ga. 104 (2020). On remand, appellant filed a plea in bar, alleging that retrial was precluded on double jeopardy grounds. The trial court denied the motion.

Appellant initially argued that the Court erred in his prior appeal when it determined that the jury's verdicts should be vacated because they were repugnant. He argued that, instead, the Court should have allowed the jury's verdict of not guilty by reason of insanity on the malice murder count to stand and should have reversed the guilty but mentally ill verdict on the felony murder count (and the underlying aggravated assault on which it was predicated). However, the Court stated, its decision on appellant's prior appeal is the law of the case. Under the "law of the case" rule, any ruling by it or the Court of Appeals in a case is binding in all subsequent proceedings in that case in the lower court and in the Supreme Court or the Court of Appeals as the case may be. Therefore, the Court held, the questions of whether appellant's conviction for felony murder should have been reversed rather than vacated and the not guilty verdict allowed to stand have already been decided in this case by the Court, and the decision was binding on the trial court when it considered appellant's plea in bar upon remand.

Furthermore, the Court noted, appellant could have filed a motion for reconsideration contesting that decision during the reconsideration period for the prior appeal, but he did not do so. Accordingly, the Court refused to reconsider its earlier ruling that the jury's repugnant verdicts must be vacated.

Next, appellant argued that the trial court erred in denying his plea in bar. Specifically, he contended, because the jury found him not guilty by reason of insanity on the malice murder count, he could not be retried on any of the counts in the indictment because of the constitutional prohibition against double jeopardy and the doctrine of collateral estoppel. The Court disagreed.

The Court stated that under the general principles of double jeopardy and viewed in isolation, the jury's purported verdict of not guilty by reason of insanity would appear to be an acquittal that precludes retrial, as not guilty verdicts are generally inviolate. But, when viewed in context alongside the verdict of guilty but mentally ill, the purported acquittal loses

considerable steam. Because the verdicts were repugnant, both are rendered valueless. There is no way to decipher what factual finding or determination they represent, and appellant could not be said with any confidence to have been found not guilty based on insanity any more than it could be said that the jury made a finding of sanity and guilt regarding the same conduct. Thus, the Court concluded, the repugnant verdicts failed to result in an event that terminated jeopardy, akin to a situation in which a mistrial is declared after a jury is unable to reach a verdict. Accordingly, the general principles of double jeopardy did not bar appellant's retrial on the malice murder charge.

Nevertheless, appellant argued, the doctrine of collateral estoppel, which is encompassed by the prohibition against double jeopardy, would also bar retrial. The Court noted that the bar against double jeopardy also encompasses the doctrine of collateral estoppel, which precludes the re-litigation of an ultimate fact issue that was determined by a valid and final judgment. In other words, collateral estoppel means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.

And here, the Court found, this case did not call for a straightforward application of the collateral estoppel rule. Appellant argued that the issue of his insanity at the time he stabbed the victim to death was an issue the jury actually and necessarily decided in his favor when it found him not guilty by reason of insanity on the malice murder count. However, the Court found, the jury spoke through both an acquittal by reason of insanity and convictions of guilty but mentally ill - finding appellant both insane and sane at the time of the stabbing. The whole collateral estoppel analysis is premised on the proposition that the jury acted rationally and lawfully. Where it did not, as here, the Court stated that it could not infer facts, such as the defendant's sanity (or lack thereof), that must have been decided for the jury to return the verdicts it reached. Because it could not be said with any confidence that the jury made a finding of innocence based on insanity any more than it can be said that it made a finding of sanity and guilt, the doctrine of collateral estoppel did not bar retrial.

Accordingly, the Court concluded, neither the doctrine of collateral estoppel nor the more general principles of double jeopardy bar appellant from being retried as to all counts of the indictment.

Statute of Limitations; Person Unknown Exception

Jones v. State, S22A0425 (11/2/22)

Appellant was convicted of felony murder and influencing a witness. Briefly stated, the relevant evidence showed that sometime in May 2004 appellant, a convicted felon, bought on credit a stolen .38-caliber revolver from 16-year-old Bigham. In the early morning hours of May 29, 2004, Bigham witnessed appellant attempt an armed robbery of the victim. When the victim resisted, appellant shot and killed him. Two days later, Bigham asked appellant for the money he owed her for the gun. Appellant said that he would go get some money, borrowed a car, and had Bigham drive him downtown. Along the way, appellant pulled out his gun and threatened to kill Bigham if she told anyone that he had killed the victim.

A month later, a detective interviewed Bigham, who confirmed she had been with appellant when he shot someone during a robbery. However, the murder case went cold at that point. Years later, the case again became active because appellant, who was in federal custody, told several of his fellow inmates about the murder. Bigham was reinterviewed on January 31, 2012, and she stated for the first time that appellant had threatened her.

Appellant contended that the statute of limitation barred his prosecution from starting in 2017 for allegedly influencing a witness in 2004. The Court agreed.

The Court noted that the statute of limitation for influencing a witness ordinarily is four years. However, because Bigham was under the age of 18 at the time of the alleged crime, the statute of limitation was seven years. The indictment alleged

that on or about June 1, 2004, appellant knowingly threatened Bigam with the intent to prevent her from communicating to a Georgia law enforcement officer information relating to the commission of a crime, i.e., the shooting of the victim. The State had until June 1, 2011, to indict appellant for influencing a witness. But the State did not indict appellant until December 27, 2017. Thus, the statute of limitation expired more than six years before the State started its prosecution of appellant for that offense.

Nevertheless, the State argued, the statute of limitation was tolled for more than seven-and-a-half of the years between the alleged threat on June 1, 2004, and appellant's indictment on December 27, 2017, because until Bigam first revealed appellant's threat to a law enforcement official on January 31, 2012, the crime was unknown under OCGA § 17-3-2 (2). But, the Court stated, the fatal flaw in the State's argument was that it is well established that the actual knowledge of a crime victim about the crime is imputed to the State for purposes of applying the tolling provision of OCGA § 17-3-2 (2). And, contrary to the trial court's understanding, the Court's recent decision *in Riley v. State*, 305 Ga. 163 (2019), does not undermine this well-established rule. In *Riley*, the trial court ruled that the statute of limitation for burglary and possession of a knife tolled when investigators had a single fingerprint tying someone to a murder scene, but no idea to which of the "12 to 15 possible suspects" it belonged. *Id.* at 165 (1). Because the trial court did not consider whether the State had sufficient information to establish probable cause to arrest Riley on the nonmurder charges — thus making Riley known to the State — the Court remanded the case for the trial court's consideration of that issue. Here, by contrast, Bigam knew about the crime the moment it was committed, so her knowledge was imputed to the State. Thus, OCGA § 17-3-2 (2) did not toll the statute of limitation. Accordingly, the Court reversed appellant's conviction and sentence for influencing a witness.

Rule 404 (b); Intrinsic Evidence

Roberts v. State, S22A0420 (11/2/22)

Appellant was convicted of malice murder and other crimes in connection with the shooting death of Pettway. The circumstantial evidence showed that on the night of November 1, 2016, appellant shot and killed Pettway in Gwinnett County. Relevant to the issue presented, when the body was discovered the next day, investigators recovered five .40-caliber shell casings from the scene.

Pursuant to Rule 404 (b), the State presented evidence of appellant's commission of a prior crime, which the trial court admitted solely for the purpose of proving identity. Mendoza testified that on October 23, 2016, appellant attacked and robbed her at gunpoint after the two had engaged in a brief sexual encounter. Mendoza testified that she had connected with appellant on a dating app. On the night in question, he contacted her and arranged to come to her DeKalb County apartment. Shortly after he arrived, the two began a sexual encounter, which she stopped after appellant tried to have intercourse without a condom. At that point, she believed he was preparing to leave, but when she turned away, appellant put a gun to her head and told her he was not leaving without the money in the house. They struggled, and appellant hit Mendoza with the gun and began choking her. The gun discharged, and the bullet grazed her head. The gunshot prompted a neighbor to knock on her door. Appellant then fled. The responding police officer observed furniture in disarray and blood stains in the apartment, and he recovered a single .40-caliber shell casing from the apartment floor. Although Mendoza did not know who appellant was at that time and could offer police only a description of her attacker, she saw a social-media post about Pettway's murder the next week and immediately recognized appellant, who was pictured in the post, as her assailant. The shell casing recovered from Mendoza's apartment was sent for forensic testing along with the five .40-caliber shell casings from the site where Pettway's body was found. A GBI firearms examiner testified that his testing showed that all six had all been fired from the same Smith & Wesson .40-caliber pistol.

Appellant argued that the trial court erred by allowing the State to introduce evidence of the armed robbery of Mendoza. Specifically, he argued that the armed robbery was not similar enough to the murder to qualify as evidence relevant to showing identity under Rule 404 (b). However, the Court found, the evidence, in part, was admissible as intrinsic evidence and thus, Rule 404 (b) did not apply.

The Court stated that the line between extrinsic and intrinsic evidence is not always a bright one. Evidence is considered intrinsic to the charged offense when it is (1) an uncharged offense arising from the same transaction or series of transactions as the charged offense; (2) necessary to complete the story of the crime; or (3) inextricably intertwined with the evidence regarding the charged offense. And here, the Court found, the armed robbery of Mendoza, as a whole did not fall on the intrinsic side of the line. The robbery of Mendoza itself was not related to Pettway's murder in any of the ways that make a past crime intrinsic: that crime as a whole was neither a part of a series of transactions related to that charged crime, nor part of the story of that crime, nor inextricably intertwined with the evidence of it. Indeed, many of the details of the armed robbery were simply irrelevant to Pettway's murder.

However, the Court found, a limited portion of the evidence of the armed robbery was properly considered intrinsic. The evidence from that incident included a .40-caliber shell casing that testing showed was discharged from the same gun as the casings from the scene of Pettway's murder, and testimony that appellant possessed and shot that gun during the incident. This physical evidence and testimony directly placing the murder weapon in appellant's hands in the days leading up to Pettway's murder was reasonably necessary to complete the story of that charged crime.

Next, the Court stated, as intrinsic evidence, this limited evidence from the armed robbery was admissible as long as it satisfied Rule 403 and there was little question that it did. Physical evidence and testimony placing the murder weapon in appellant's hands just nine days before the murder had substantial probative value, particularly given the lack of eyewitnesses to Pettway's murder and the fact that appellant denied he was involved. And although the evidence was surely prejudicial to appellant's defense, Rule 403 requires exclusion only when unfair prejudice substantially outweighs probative value. And here, the Court found, given its strong probative value, the intrinsic evidence was not the evidence of scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect, that Rule 403 contemplates excluding.

Finally, the Court addressed the admission of the rest of the evidence of the armed robbery. The Court found that evidence that did not directly relate to the shell casing or identify appellant as the person who possessed, shot, and left with the gun was not admissible as intrinsic evidence. But under these circumstances, any error in admitting the rest—like the details of the sexual encounter, the fact that Mendoza was injured during the incident, and the state of Mendoza's apartment after appellant left—was harmless given that the evidence that was properly admitted against appellant, although circumstantial, was quite strong.

Consent to Search; Sentencing

Winslow v. State, S22A0498 (11/2/22)

Appellant was convicted on four counts of sexual exploitation of children in connection with his possession of two videos depicting children engaged in sexually explicit conduct. The evidence, very briefly stated, showed that the police were called when appellant was at a Walmart to purchase five printed photos from the self-serve printing kiosk, and each photo depicted different children, and one computerized depiction of a child, presented in a manner that is fairly described as sexualized in nature. A police sergeant, who knew appellant, spoke with him. The sergeant asked if appellant had more photos of children and appellant said no. The sergeant asked to check appellant's bag and appellant said yes. The bag contained a laptop, which the sergeant attempted to access, but was unable to do so. Continuing his search of the bag, the

sergeant found seven thumb drives. Appellant allowed the sergeant to check them. The sergeant plugged them into his own laptop and the third one he checked had images of naked children. After viewing these photos, the sergeant ended his search of the thumb drives and arrested appellant for sexual exploitation of children. The laptop was forensically searched 14 months later by the GBI following the issuance of a search warrant.

Appellant contended that the trial court erred in denying his motion to suppress the electronic evidence. A divided Court disagreed.

The Court stated that it is well settled that a valid consent to a search eliminates the need for either probable cause or a search warrant. To justify a warrantless search on the grounds of consent, the State has the burden of proving that the consent was freely and voluntarily given under the totality of the circumstances. And here the Court found, the evidence in the record supported the trial court's finding that appellant consented to the search of his bag and all its contents, including digital information contained on the laptop, and that this consent was never withdrawn. Specifically, the evidence showed that appellant knew that the sergeant was searching for photographs of children and appellant gave him permission to check his bag, which contained his laptop. When searching the bag in the presence of appellant, the sergeant attempted to search the digital contents of appellant's laptop, and there was nothing in the record that indicated that appellant ever complained or told the sergeant that he could not search the laptop itself. The record also showed that, moments later, in response to the sergeant's query concerning the contents of the thumb drives, appellant gave express permission to search the drives, which had also been in the bag. The laptop was searched by the police roughly 14 months later. There was no evidence that appellant made any attempt to withdraw or revoke his consent at any point during the roughly 14 months that the State had custody of the laptop before it was searched or that he ever indicated to the sergeant or anyone else that he had not consented to a search of the laptop. Thus, in light of appellant's consent for the sergeant to search all of the contents of his bag, containing the laptop, for pictures of children; appellant's express consent for the sergeant to search the thumb drives contained within the bag; and the lack of evidence that appellant objected or did anything while the sergeant attempted to search his laptop in his presence, it was not error for the trial court to determine that a reasonable officer would have understood appellant's statements and actions to constitute consent to a search of his laptop.

Nevertheless, the Court stated, even though the trial court's determination that appellant consented to a search of his laptop is supported by the record, it must also consider whether the trial court properly considered the 14-month delay between when the sergeant seized the laptop and when the GBI forensically searched the laptop. The Court noted that the record did not reveal an explicit trial court finding either way with respect to whether the scope of the consent appellant provided extended beyond the initial encounter with the sergeant to include the following 14 months leading up to the actual search of the laptop by the GBI. Rather, in finding that the search was valid based on appellant's consent, the trial court stated when issuing its oral ruling at the hearing that appellant's "consent was never withdrawn."

Generally, the Court stated, once consent is legally obtained, it continues until it is either revoked or withdrawn. But, the Court added, that statement should not be understood to allow a potentially infinite duration whenever a person's consent to a search is obtained. Instead, the duration of the consent, as well as other factors like geographic and physical limitations and how extensive the search may be, is limited to what an objectively reasonable person would have understood the scope of the consent to include, based on the exchange between the officer and the suspect. And here, that inquiry required the trial court to determine whether a reasonable person would have understood from the circumstances of the interaction with the sergeant that the consent to search the laptop extended beyond that interaction, to include a forensic search of the laptop by the GBI 14 months later.

The Court noted that in conducting its review of the scope of appellant's consent, the trial court was not only authorized to consider the circumstances recounted above surrounding appellant's consent but also that appellant could reasonably be found to be aware that his laptop was already in the possession of law enforcement and could be in the State's

continuous possession from that point on. Therefore, there was evidence to support a finding that a reasonable person would have understood appellant's consent to include a delay for the laptop to be forensically searched. Additionally, once the trial court determined that the scope of appellant's consent encompassed a later search of the laptop, the trial court was authorized to consider that there was no evidence that appellant ever attempted to withdraw or revoke this consent and find that his consent was ongoing at the time the GBI searched the laptop 14 months later. Therefore, because the implicit finding that appellant consented to a subsequent forensic search of his laptop after it was seized was supported by evidence in the record, the Court could not say that the trial court erred in denying appellant's motion to suppress. And because the Court concluded that the trial court did not err in denying the motion to suppress based on appellant's consent to the search in question, it stated that it did need not consider the necessity or propriety of a valid search warrant.

Appellant also argued that the statutory sentencing scheme for possession of child pornography under OCGA § 16-12-100 (f) (1) is facially unconstitutional because the mandatory minimum and the maximum sentence provided for possession of child pornography under OCGA § 16-12-100 (f) (1) violate the prohibition against cruel and unusual punishment in the federal and state constitutions. Specifically, he contended, the punishment for possession of child pornography imposed under OCGA § 16-12-100 (f) (1) is grossly disproportionate because the statute does not make distinctions for sentencing purposes between possession offenses and those involving the sale, distribution, or manufacturing of child pornography. He argued that crimes involving possession of child pornography should carry a lighter sentence because they are nonviolent crimes and because other criminal statutes, such as OCGA § 16-13-30, provide for lesser sentencing parameters for possession crimes than crimes involving distribution and manufacturing.

However, the Court stated, even though there is no such distinction in OCGA § 16-12-100 (f) (1), the sentencing parameters are not grossly disproportionate to the crime of possession of child pornography, an offense it has long recognized a strong state interest in discouraging. And appellant did nothing to demonstrate that the General Assembly's choice to protect the State's significant interest in combatting the production, distribution, and possession of such materials with the range of sentences that can be imposed under OCGA § 16-12-100 (f) (1) or its decision not to distinguish between possession, production, and distribution offenses in any way "shocks the conscience." Therefore, given the requisite deference to the legislative branch's authority to impose punishment based on the mores of society at the time of the crime, the Court held that the sentencing parameters in OCGA § 16-12-100 (f) (1) are not grossly disproportionate.

Ineffective Assistance of Counsel; Merger

Franco-Arroyo v. State, A22A0854 (9/19/22)

Appellant was convicted of computer pornography, criminal attempt to commit a felony (child molestation) and fleeing or attempting to elude a police officer. The evidence showed that appellant arranged to have sex with "Stacy" a police officer posing as a 15-year-old. He contended that his trial counsel rendered ineffective assistance by failing to instruct him that he was not required to admit to the charged crime before he could pursue the defense of entrapment and that—if he had known this—he would have chosen to take the stand. The Court disagreed.

The Court stated that even assuming trial counsel rendered ineffective assistance in advising appellant on the law of entrapment, he failed to show that his failure to testify on his own behalf was so prejudicial that it affected the result of the trial. At the hearing on the motion for new trial, trial counsel testified that his decision to discourage appellant from testifying on his own behalf was not based on any misunderstanding of the law, but rather because appellant "had already done so much damage to his own credibility . . . in his discussions with the police officers after his arrest, that [trial counsel] just felt like it was better for him not to say much of anything after that." Trial counsel "didn't see any way appellant could clear that up effectively" if he took the stand. Trial counsel discouraged appellant from taking the stand because he "didn't

want appellant to dig any deeper of a hole than he had already dug in the interviews," and believed that it would not persuade the jury.

Appellant testified if he had taken the stand in his own defense, he would have testified that if Stacey had not been "so persistent," he would not have driven to the park to meet her for sex and that he had been the victim of abuse in the past. But, the Court found, this testimony would not have overcome evidence of transcripts of the text messages between the officer impersonating Stacey and appellant where he agreed to meet Stacey for sex in the park even after he learned she was underage and had seen photos confirming that Stacey was a minor. Further, the trial court issued a jury instruction on entrapment. Thus, the Court concluded, appellant did not prove that, but for the lack of his testimony at trial, there was a reasonable probability the outcome of the trial would have been different.

Next, appellant argued that his conviction for computer pornography (OCGA § 16-12-100.2 (d)) should have merged with his conviction for criminal attempt to commit child molestation (OCGA § 16-4-1) for sentencing. The Court again disagreed.

Utilizing the "required evidence" test set forth in *Drinkard v. Walker*, 281 Ga. 211 (2006), the Court found that the attempt to commit child molestation offense required the State to prove (1) that appellant had the intent to commit child molestation and (2) that he took a substantial step towards that act by discussing sexual acts with someone that he believed to be a child and driving to the park for the purpose of having sex with said child. The computer pornography charge required the State to prove that he (1) used a cellular telephone (2) to seduce or entice a person he believed to be a child for the purpose of child molestation. Thus, each offense required proof of a fact that the other did not — the substantial step element of the attempt charge was not required to prove the computer pornography charge, while the use of a cellular telephone or internet messaging service element was not required to prove the attempted child molestation charge. Therefore, the Court concluded, because each crime required proof of at least one additional element that the other did not, they did not merge for the purposes of sentencing.

Statute of Limitations; Person-Unknown Tolling Provision

Wright v. State, A22A1339 (9/22/22)

Appellant was convicted of criminal attempt to commit murder and aggravated assault stemming from the shooting of Lindo, her husband. Very briefly stated, the evidence showed that on several occasions during their marriage, Appellant devised plans to kill Lindo, confiding in her oldest daughter and oldest son that she wanted Lindo dead because he allegedly raped her and because she wanted to collect on his \$1,000,000 life insurance policy. A couple of incidents (e. g., torching the house with Lindo asleep in it) occurred in 2010. In 2011, appellant agreed to give the daughter's then boyfriend a share of the insurance proceeds if he killed Lindo. On May 25, 2011, someone jumped out of the bushes and shot at Lindo's car as he was driving home. Lindo was shot but survived. Neither of the eldest children ever told their father about appellant's plans and actions. However, after appellant and Lindo divorced in 2014, the daughter told Lindo and his new wife of everything she knew about appellant's repeated attempts to kill him. Also, in 2015, the son composed a rap song entitled "Saving Dad's Life," which, as described by the son, included lyrics about "basically everything that happened as far as with [appellant] trying to harm [Lindo]." The son played the song for Lindo, who "finally caught on" to the meaning of the lyrics. The State indicted appellant in 2017.

Appellant contended that the trial court erred in denying her plea in bar. Specifically, she argued, there was no basis for tolling the applicable statute of limitation and the limitation period therefore ran before she was indicted. The Court stated that it was undisputed that the alleged offenses occurred in May 2011, and that the grand jury indicted appellant more than four years later in April 2017. Because the statute of limitation was four years, see OCGA § 17-3-1 (c), appellant made out

a prima facie case that the limitation period had run, and thus the issue was whether the State established that a tolling exception applied.

In pursuing charges against appellant, the State relied on the "person-unknown" tolling exception as set out in OCGA § 17-3-2 (2). Under that exception, the limitation period is tolled during the time period when "[t]he person committing the crime is unknown or the crime is unknown[.]" OCGA § 17-3-2 (2). In this context, the identity of the perpetrator becomes "known" to the State when the State becomes aware of facts that give rise to probable cause to arrest that person for the crime. Probable cause exists when the facts known to the State could lead a reasonably prudent person to conclude that there is a "probability" - more than mere suspicion, but less than absolute certainty — that the defendant committed the offense. In this context, the State is charged with knowledge of the facts actually known by the victim. Thus, to establish that the person-unknown exception applies, the State must show that the facts within its knowledge — including knowledge imputed from the victim — were not enough to lead a reasonably prudent person to identify the defendant as the perpetrator until a time that, relative to the indictment, was within the limitation period.

The Court noted that after conducting an evidentiary hearing on the matter, the trial court entered its order denying appellant's plea in bar, finding, among other things, that the State proved that it did not become aware of facts sufficient to provide it with probable cause to arrest appellant until at least November 2014, when the oldest daughter first told Lindo about appellant's involvement in the shooting. The trial court noted that while the knowledge of Lindo was imputed to the State, Lindo had no more than a mere suspicion that appellant might possibly be involved in the shooting until the aforementioned date. Consequently, the trial court concluded that the State carried its burden of proving that the four-year limitation period was tolled under OCGA § 17-3-2 (2) until November 2014, rendering appellant's April 2017 indictment timely.

The Court found that the trial court's findings were not erroneous. There was evidence that the initial police investigation into Lindo's shooting was suspended in May 2012 because the police were unsuccessful in developing any leads, given the lack of any eyewitness identification of a suspect, the lack of any physical evidence pointing to a suspect, and the lack of any surveillance recordings of the incident. There also was evidence that although Lindo had some suspicions about appellant over the years, he was not conveyed information about appellant's efforts to kill him until at least November 2014, when he first learned from the oldest daughter that appellant was involved in the shooting and had made prior attempts to kill him or have him killed. And while appellant emphasized that the son testified that he had been composing rap songs that made reference to the attempted killings since 2012 and had been playing them for Lindo, the son also testified that he would mix together topics when composing songs and that Lindo had not "caught on" until 2015 when he heard the song "Saving Dad's Life," which set out all of the ways that appellant had tried to harm Lindo.

Thus, the Court concluded, imputing Lindo's knowledge to the State, there was evidence that the State did not become aware of facts sufficient to provide it with probable cause to arrest appellant for the shooting until November 2014. Accordingly, the trial court committed no error in determining that the State carried its burden of proving that the limitation period was tolled until November 2014 under the "person-unknown" tolling exception as set forth in OCGA § 17-3-2 (2) and that appellant's prosecution thus was not time-barred.