CASE LAW SUMMARIES

JANUARY 2019

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  - **GOOD CHARACTER EVIDENCE OF THE VICTIM**
    - *Mondragon v. State*, --- Ga. --- , S18A1040, GA Supreme Court (January 22, 2019)
      - Judgment: (Affirmed – Harmless Error)
      - Defendant shot and killed the victim, presumably at a bar/restaurant. Defendant's defense at trial was going to be self-defense, but he had not put up any defense, because the State was still in their case-in-chief. During direct examination of the victims friends, State inquired to two of them, "had they ever seen him get in a fight" and the friends stated, no; because he was friendly and peaceful man. Defendant objected to the good character evidence of the decedent, but the Court overruled.
      - Holding: "Character evidence is generally inadmissible to prove 'action in conformity therewith or a particular occasion,' but evidence of the peaceful character of an alleged victim may be offered by the State 'in a homicide case to rebut evidence that the alleged victim was the first aggressor.'" However, it is error for the trial court to admit 'evidence of a victim's good character in anticipation of the defendant introducing contrary evidence at trial; the evidence of good character is admissible only after the defendant presents his evidence.' Revere v. State, 302 Ga. 44, 48 (2017). **But the Court found harmless error** because the defendant never presented any evidence on appeal how the defense changed or how the defendant was harmed in allowing the out of sequence character evidence. In fact, the defendant acknowledged his sole defense was self-defense and his defense would had been the same had the character evidence not came in until after his defense arose.

- **HOME INVASION**
  - **REQUIRES POSSESSING A DEADLY WEAPON OR OBJECT PRIOR TO ENTERING THE RESIDENCE**
    - *Mahone v. State*, --- Ga. App. --- , A18A1584, Court of Appeals (January 30, 2019)
      - Judgment: (Reversed)
      - Defendant was charged with home invasion and several other offenses. The facts allege, Defendant entered his girlfriend's apartment, while in the apartment, he picked up a clothes iron and beat his ex-girlfriend severely. At the close of evidence, Defendant requested a directed verdict on the home invasion arguing that since the indictment alleged he entered the home with an iron, and the undisputed facts at trial were that he located the iron once in the

apartment, that the Count should be dismissed. State argued, that since the beating occurred in a bedroom and after defendant broke down the bedroom door, that the home invasion applies to the entering of the bedroom and not the residence. Trial court agreed with the State and sentenced him to life on that count. COA now reverses.

- Holding: "The plain and unambiguous language of OCGA § 16-7-5(b) makes clear that to commit the crime of home invasion in the first degree, a perpetrator must: (1) make an unauthorized entry into a legally occupied dwelling house; (2) do so with the intent to commit a forcible felony therein; and (3) do so while in possession of a deadly weapon or other instrument capable of causing serious bodily injury." Since the uncontroverted evidence showed defendant did not possess the iron he used in his assault until after he entered the apartment. Thus, the State failed to prove an essential element of the crime of home invasion in the first degree. Additionally, the COA explained that the only difference between burglary in the first degree and home invasion is the fact that you must possess a deadly weapon prior to entering the residence.

INDEPENDENT CRIMES AND ACTS

403 BALANCING TEST – JUDGE'S DISCRETION

- *State v. Isham*, --- Ga. App. --- , A18A1621, Court of Appeals (January 10, 2019)
  - Judgment: (Affirmed)
  - Defendant was charged with various sex offenses including rape, from an incident where the defendant allegedly picked up a lady from Walmart. After that incident, defendant allegedly exposed himself at the same Walmart to another lady. The State attempted to introduce this additional independent act at the trial for rape under OCGA §24-4-404(b). The trial court denied the State's request based upon the second prong and OCGA §24-4-403. State appealed this decision, explaining the Court abused its discretion, because 403 is an extraordinary measure that should be used sparingly. Court of Appeals disagrees.
  - Holding: As a refresher, the Georgia Supreme Court has adopted the Eleventh Circuit's three-part test: "(1) the evidence is relevant to an issue in the case other than the defendant's character, (2) the probative value is not substantially outweighed by undue prejudice, and (3) there is sufficient proof for a jury to find by a preponderance of the evidence that the defendant committed the prior act. When weighing the probative value of other acts evidence against it prejudicial effect, Georgia courts apply the balancing test set fourth in OCGA §24-4-403." There is nothing in the record that indicates that the trial court

misinterpreted or misapplied the three-part test and in fact acknowledged that 403 was an extraordinary measure in the trial court's Order. Thus, the trial court did not abuse it's discretion.

- **JUVENILE TRANSFER TO SUPERIOR COURT**
  - **FACTORS TO CONSIDER**
    - *In the Interest of K.S. (a child)*, --- Ga. App. --- , Court of Appeals (January 23, 2019)
      - Judgment: (Affirmed – decided by the Whole Court of Appeals)
      - Defendant is a juvenile, who was at least 15 years old. He was charged with entering over 30 vehicles, theft of a vehicle, and gang participation. He had pending armed robbery charges in another jurisdiction. The State petitioned the juvenile court to transfer the case to Superior Court. The juvenile court ultimately agreed with the State and transferred the case to Superior Court. The defendant appeals the transfer alleging there was no probable cause that he committed the various offenses.
      - Holding: "Before transferring jurisdiction from juvenile to superior court, the juvenile court must determine that: (1) there is probable cause to believe that a child committed the alleged offense; (2) such child is not committable to an institution for the developmentally disabled or mentally ill; and (3) the petition alleges that such child (A) was at least 15 years of age at the time of the commission of the offense and committed an act which would be a felony if committed by an adult." The COA eventually addressed each of these factors including the 11 factors outlined in OCGA 15-11-562 and found the juvenile court did not abuse its discretion in transferring the case to superior court
      - Important Note: This case was decided by the entire court and is a lengthy opinion addressing each of the factors. This would be a great case to differentiate, if you have case where the State is requesting transfer.

- **POSSESSION**
  - **CONSTRUCTIVE POSSESSION**
    - *Wooten v. State*, --- Ga. App. --- , A18A1521, Court of Appeals (January 17, 2019)
      - Judgment: (Affirmed)
      - Defendant was convicted of numerous drug related charges and for theft by receiving stolen property (a firearm). The evidence at trial is that he was the sole person in the house when it was raided. His ex-

wife also resided in the home and used the master bedroom and master bathroom where the drugs were located. However, there was smoking pipes and rolling papers found in the living room where the defendant was located along with lighters in his bedroom. Defendant claimed he neither had actual or constructive possession of the drugs found in the ex-wife's portion of the house. COA disagrees.

- Holding: "To prove constructive possession the State is required to show that a person, though not in actual possession, 'knowingly has both the power and intention at a given time to exercise dominion or control over' the drugs…Generally, a finding of constructive possession 'cannot rest solely upon the person's spatial proximity to the object…Nevertheless, if the State presents evidence that a defendant owned or controlled premises where contraband was found, it gives rise to a rebuttable presumption that the defendant possessed the contraband…So long as there is 'slight evidence of access, power, and intention to exercise control or dominion over an instrumentality, the question of fact regarding constructive possession remains within the domain of the trier of fact." Given the officers found, pipes, rolling papers and lighters where the Defendant had control of those items, there is slight evidence of his intention to exercise control of the drugs. Court found him in constructive possession.

PRO SE FILINGS WHILE REPRESENTED BY COUNSEL

MOTION TO WITHDRAW A GUILTY PLEA

- Cason v. State, --- Ga. App. --- , A18A1994, Court of Appeals (January 18, 2019)
  - Judgment: (Vacated and Remanded)
  - Defendant entered a non-negotiated plea to drugs and was eventually sentenced to 3 years to serve in custody. Defendant was represented by an attorney at the plea hearing. During the same term of court, Defendant filed pro se motions to withdraw his guilty plea. Defendant was still represented by counsel at the time of filing his motion, because the Trial Court never removed his plea attorney as attorney of record. COA determined, since he is still represented by counsel, his pro se motions should be vacated including the appeal from the trial court's denial to allow him to withdraw his guilty plea.
  - Holding: "A criminal defendant in Georgia does not have the right to represent himself and also be represented by an attorney, and pro se filings by represented parties are therefore unauthorized and without effect." Therefore all his pro se motions filed should be vacated.

- Important Note: The COA cited to the Georgia Supreme Court of what the defense attorney's continuing legal representation requires after a guilty plea has been entered: "at a minimum, legal representation continues – unless interrupted by entry of an order allowing counsel to withdraw or compliance with the requirements for substitution of counsel, see USCR 4.3(1)-(3) – through the end of the term at which a trial court enters a judgement of conviction and sentence on a guilty plea, during which time the court retains authority to change its prior orders and judgments on motion or sua sponte for the purpose of promoting justice…A formal withdrawal of counsel cannot be accomplished until after the trial court issues an order permitting the withdrawal. Until such an Order properly is made and entered, no formal withdrawal can occur and counsel remains counsel of record." White v. State, 302 Ga. 315, 319 (2017)

➢ PROSECUTOR'S COMMENTS

PROSECUTOR'S IMPROPER STATEMENT CONCERNING "TRUTH"

✪ *Richardson v. State*, --- Ga. --- , S18A1328, GA Supreme Court (January 22, 2019)

- Judgment: (Affirmed – Harmless Error)
- Defendant was convicted of murder. At trial, the prosecutor stated in closing argument: "My job that I took an oath to do is to seek the truth. That's what the State is doing in this case." The defense failed to object to this statement and the Defendant raised ineffective grounds on appeal.
- Holding: The court appeared to acknowledge that the Prosecutor's statements were improper, but explained the defendant failed to demonstrate any prejudice in the remarks. The Court stated, "[t]he statement, while troubling, was made in response to the argument from defense counsel that, with respect to his intense cross-examination of witnesses, he 'had a job to do' and that he was there 'to stand up for [the defendant] and help him.' Viewed in the context of dueling attorneys exchanging arguments concerning their role in the judicial process, 'the improper remarks of the prosecuting attorney did not undermine the fundamental fairness of the trial."

PROSECUTOR'S IMPROPER COMMENT CONCERNING DEFENSE COUNSEL'S CONDUCT

✪ *Jordan v. State*, --- Ga. --- , S18A1434, Ga. Supreme Court (January 22, 2019)

- Judgment: (Affirmed – harmless error)
- Defendant was convicted of murder and other crimes. During cross-examination of one of the witnesses, the defense counsel accused the

witness of lying to the Court. The prosecutor objected to the attorney's question. Defense counsel requested the judge to limit the speaking objection of the prosecutor, and the prosecutor responded: "well, she's…She's deceiving – the jury right now." Defense counsel moved for a mistrial, but the Court gave a curative instruction.

- Holding: The Court first admonished the prosecutor: "It is true that 'find distasteful any argument that unnecessarily impugns the integrity of opposing counsel, even if obliquely…and we do not condone a lawyer accusing another lawyer of deceit in the presence of the jury." However, the Court then went on to state that a motion for mistrial lies with the trial court and the appropriate curative instruction that was given was proper.

➢ RECIDIVIST SENTENCING

NO NEED TO ALLEGE IN INDICTMENT UNLESS GOING FROM MISDEMEANOR TO A FELONY

✪ *Martin v. State*, --- Ga. App. --- , A18A1627, Court of Appeals (January 09, 2019)

- Judgment: (Affirmed)
- Defendant was charged and convicted of robbery in the second degree. At sentencing, defendant argued he could only be sentenced to 5 years, per the statute. The Trial Court however sentenced him to 8 years because he had a prior conviction for burglary. Defendant argued unsuccessfully, that the prior conviction could not be considered because it was not alleged in the Indictment and considered by the Grand Jury.
- Holding: "Since 1974 when Georgia adopted judge sentencing, OCGA §17-10-2, it is not required that the prior convictions be included in the indictment but only that the accused receive notice of the State's intention to seek recidivist punishment and of the identity of the prior convictions….Our decision in Wainwright v. State, 208 Ga. App. 100 (1991) does discuss the need to include prior convictions in an indictment when they change the nature of the offense from a misdemeanor to a felony." But this was enhanced sentencing from a felony to a felony.

- **PRIOR CONVICTION 'MAY' REQUIRE A SENTENCE OF INCARCERATION**
  - *State v.* Yohman, --- Ga. App. --- , A18A1695, Court of Appeals (January 11, 2019)
    - Judgment: (Reversed)
    - Defendant was charged with felony fleeing and had a prior felony conviction for drugs. The prior felony conviction, defendant was sentenced to serve 15 weekends in jail. Defendant plead guilty to a non-negotiated plea and convinced the trial court that the recidivist statute OCGA§17-10-7(a) does not apply, because the Statute requires "any person who, after having been convicted of a felony offense in this state…and sentenced to confinement in a penal institution." Defendant argued that because she was only sentenced to probation and jail time, that the Statute did not apply. COA disagrees based upon jail is considered a penal institution.
    - Holding: "If the defendant has been previously convicted of a felony for which she was 'sentenced to confinement in a penal institution,' and the State has otherwise complied with the appropriate notice requirements to seek recidivist punishment, the defendant 'shall be sentenced to undergo the longest period of time prescribed for the punishment of the subsequent offense of which he or she stands convicted.' OCGA §17-10-7(a)" In this case it is 5 years in prison without parole or probation. Footnote 5 states OCGA §42-1-5(a)(3) defines penal institution as "any place of confinement for persons accused of or convicted of violating a law of this state or an ordinance of a political subdivision of this state." Thus, the weekend jail sentence conforms to the statute for recidivism to apply.
    - IMPORTANT NOTE**:** Footnote 8, "OCGA §17-10-7(a) does not contain a minimum sentence of confinement. Therefore, because the record demonstrates that [defendant] was confined for a least a portion of her prior sentence, we need not decided whether [defendant] was confined 'in a penal institution' during the probationary portion of her sentence…Likewise, we need not consider whether a sentence of probation alone would satisfy the confined in a penal institution requirement of OCGA §17-10-7(a)." Therefore the COA did not decide whether a straight probation sentence is sufficient to comply with the recidivist statute. I would start objecting to any prior conviction that does not include any confinement portion of the sentence.

- **SEARCH AND SEIZURE**
  - **ARTICULABLE SUSPICION INVOLVES THE TOTALITY OF THE CIRCUMSTANCES**
    - *Mathis v. State*, --- Ga. App. --- , A18A1630, Court of Appeals (January 17, 2019)
      - Judgment: (Affirmed)
      - Defendant and co-defendant were stopped in a vehicle after suspicious activity at Kohls department store. Co-defendant entered Kohls and attempted to purchase expensive items, but claimed he did not have his Kohl's credit card. The store manager was asked to look up the information, but when asked his social and date of birth, the guy had to look up the information on his phone. The store manage explained the system was down, because he suspected identity fraud. Manager eventually called the police. Police pulled over the vehicle after it left the store. Both codefendants filed a motion to suppress based upon the police officer lacked reasonable articulable suspicion to stop the vehicle.
      - Holding: "An officer may conduct a brief investigatory stop when specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.. In determining whether the facts authorized the stop, a court must take the totality of the circumstances into account and determine whether the detaining officer has a particularized and objective basis for suspecting the particular person stopped of criminal activity… While mere conformity with a general pattern of behavior is not sufficient to justify a stop, there was evidence here to support the trial court's finding that the officer had a particularized suspicion of wrongdoing." Mainly the suspicious activity in Kohls including having to lookup the social and date of birth in the phone.

  - **PROLONGED TRAFFIC STOP**
    - *USA v. Campbell*, 3:14-cr-00046-CAR-CHW-1, 11th Circuit (January 08, 2019)
      - Judgment: (Affirmed – harmless error based upon precedence at the time)
      - Defendant was stopped on I-20 in Georgia for crossing the fog line and having a blinker that flashed too rapidly. After running the defendant's information for warrants, the officer inquired to various criminal activity, including if Defendant had any illegal dvd's, possessed any drugs, had any weapons etc. Eventually the officer asked if he could search the vehicle and the defendant agreed. Officers found a gun and charged him with possession of a firearm by a convicted felon. Defendant moved to suppress the evidence claiming

the officer did not have reasonable articulable suspicion to stop the vehicle and the fact the officer prolonged the stop. The district court denied the motion.

- Holding: The 11 Circuit first explained that a rapidly blinking turn signal, means the turn signal is not in working order, which is in violation of the Georgia Statute that requires all lights be in working order. Thus the initial stop was permissible. However, the 11th Circuit explained that the officer asking questions such as: where he was going, who was going to see, where he worked, when his last traffic ticket was, how good of a deal he had on his car, whether he counterfeit merchandise in his car etc impermissibly prolonged the stop. The Court explained, "related tasks are the 'ordinary inquiries incident to a traffic stop' unrelated tasks are 'other measures aimed at detecting criminal activity more generally.'" The Court went further to explain, "to unlawfully prolong [a stop], the officer must (1) conduct an unrelated inquiry aimed at investigating other crimes (2) that adds time to the stop (3) without reasonable suspicion." In this case, the 11th Circuit stated the stop was unreasonably prolonged. However based upon precedent at the time the stop took place, "the good faith exception" applies. As such, the Court affirmed the decision.
- Important Note: Footnote 16 explains that under current precedence, the decision may be different. "The retroactive application of a new rule of substantive Fourth Amendment law raises the question whether a suppression remedy applies; it does not answer that question."

➢ **SEVERANCE**

CO-DEFENDANTS

✪ *Soloman v. State*, --- Ga. --- , S18A1195, GA Supreme Court (January 22, 2019)

- Judgment: (Affirmed)
- Defendant and co-defendant were charged and convicted of murder. Defendant requested pre-trial to have his case severed from the co-defendant because there were more evidence of guilt toward the co-defendant and the defendant feared a "spill over effect". Trial Court refused to sever the defendants and bother were found guilty.
- Holding: A trial court examines three factors to determine whether co-defendants should be severed: "(1) the likelihood of confusion of the evidence and law; (2) the possibility that evidence against one defendant may be considered against the other defendant; and (3) the presence of absence of antagonistic defense." …"The mere fact that the evidence against [the codefendant] may have been stronger does not lead to the conclusion that evidence against [the defendant] had an

impermissible 'spillover effect'." The same evidence would have been presented even if they were tried separately. "The fact that the evidence as to one of two co-defendants is stronger does not demand a finding that the denial of severance motion is an abuse of discretion, where there is evidence showing that the defendants acted in concert."

- **COUNTS OF THE INDICTMENT**
  - *Mims v. State*, --- Ga. --- , S18A1208, GA Supreme Court (January 22, 2019)
    - Judgment: (Affirmed in Part and Reversed in Part)
    - Defendant was charged in two separate incidents: the first, a stolen car from Detroit; and the second, a murder of a convenience store attendant in Dalton Georgia about a month after the car was stolen in Detroit where the car was used to flee. As to the first incident, there was very limited evidence concerning the theft (eye witness giving a general height of the person who stole the vehicle). As to the second incident, there was overwhelming evidence, which included: a store video, defendant's cell phone left at the store, blood covered clothing recovered from defendant, and the lottery tickets taken at the time also recovered from the defendant. Trial Counsel did not move pre-trial to sever the two incidents from each other and the Defendant alleged ineffectiveness for the trial counsel's failure.
    - Holding: "Two or more offenses may be joined in one charge, with each offense stated in a separate count, when the offenses, whether felonies or misdemeanors or both: (a) are of the same or similar character, even if not part of a single scheme or plan; or (b) are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan." Because the evidence of the first incident (theft) was not so intertwined with the evidence of the second incident (murder), such that it would be impossible to present evidence of one without the other, the joinder of the offenses was not authorized. Therefor, trial counsel provided deficient service for failing to move to sever the counts. However, under the second prong of Strickland; because of the overwhelming evidence concerning the murder charge, Defendant cannot show how she was harmed as to the murder charge. In relation to the theft by receiving charge, given there was minimal evidence to that count, the Supreme Court of Georgia reverses that conviction and does find trial counsel was ineffective for failing to sever the counts. State can retry the theft charge should it choose.

- **SEXUAL ASSAULT OF A STUDENT**
  - **DAILY SUBSTITUTE TEACHER DOES NOT APPLY**
    - *State v. Rich*, --- Ga. App. --- , A18A1986, Court of Appeals (January 24, 2019)
      - Judgment: (Affirmed)
      - Defendant was charged with sexual assault of a student, pursuant to OCGA § 16-6-5.1, alleging she had sex with a student and she was a teacher at the time. The allegations were that she had sex with the student after school and not while on the school premises. Defendant moved to quash the Indictment claiming, that since she was a daily substitute teacher, her employment ended at the end of each school day, and therefore, she was classified as a teacher when the sex occurred. The trial court agreed and the State appealed the decision. The COA agrees with the trial court and acknowledges, that at the time the sex occurred, the defendant was not classified as a teacher.
      - Holding: The defendant did not possess a teaching certificate, she was a 'classfied employee,' like cafeteria workers and maintenance staff. A daily substitute is not expected to prepare for class, prepare any homework assignments, administer any state-mandated tests, grade or evaluate students' work, answer students' questions after class, or participate in after-school programs. The trial court concluded that if OCGA §16-6-5.1(b)(1) applied to the defendant, "it did so only while she performed her duties during the school day." "The fact that [the defendant] often worked at the school does not demand the conclusion that her duties and responsibilities were those of a teacher. The crucial inquiry here is whether her job was equivalent to that of a teacher, not the number of days she was present in school." Therefore the statute does not apply and the trial court correctly quashed and dismissed the indictment.

- **THEFT BY RECEIVING STOLEN PROPERTY**
  - **KNOWLEDGE – STATE'S BURDEN**
    - *Wooten v. State*, --- Ga. App. --- , A18A1521, Court of Appeals (January 17, 2019)
      - Judgment: (Reversed)
      - Defendant was convicted of numerous drug related charges and for theft by receiving stolen property (a firearm). At trial, the owner of the gun testified that the gun was missing after her house burned down in a fire. The arresting investigating officer later testified that the gun was found after a search of defendant's truck. The State, did not offer any evidence regarding the defendant's knowledge or that he should have known the gun was stolen.

- Holding: "Proof of possession, alone, of recently stolen property is not sufficient to establish the essential element of the offense of theft by receiving stolen property that the possessor knew or should have known that the property was stolen…Knowledge that a gun was stolen cannot be inferred even when the defendant bought a gun on the street at a reduced price, or when the gun was labeled for law enforcement use…Nor can such knowledge be inferred when there is only evidence that the defendant found a gun that had been reported stolen." In this case, the State failed to prove defendant knew the gun was stolen and reverses his conviction in that matter.

➢ **TOXICOLOGY REPORT OF VICTIM**

✪ *Mondragon v. State*, --- Ga. --- , S18A1040, GA Supreme Court (January 22, 2019)

- Judgment: (Affirmed)
- Defendant shot and killed the victim, presumably in a fight at a bar/restaurant. Defendant's sole defense was self-defense and that the victim was the aggressor. Defendant attempted to introduce evidence of the victims toxicology, in hopes of showing the victim was the aggressor. However, the defense could not explain to the Trial Court or proffer any evidence about how the victim's drinking affected his behavior. The Trial Court disallowed the evidence.
- Holding: Because the defendant was unable to proffer any evidence of the effect the victim's drinking alcohol had on him, the toxicology report would not have been admissible to impeach other witness's testimony that the victim did not appear intoxicated. ("It was difficult to ascribe how such a concentration affected the victim because the medical examiner did not know the victim's experience with alcohol and could not tell whether it made [the victim] euphoric, aggressive, or sleepy." Dunn v. State, 292 Ga. 359, 361 (2013))

➢ **TRAFFIC CITATION FAILS TO ALLEGE A CRIME OCCURRED**

TRAFFIC CITATION THAT MERELY ALLEGES A VIOLATION OF A PARTICULAR STATUTE IS INSUFFICIENT TO ALLEGE A CRIME OCCURRED

✪ *Strickland v. State*, --- Ga. App. --- , A18A1829, Court of Appeals (January 25, 2019)

- Judgment: (Reversed)
- Defendant was in an accident and received a traffic citation for following too close. Defendant had a bench trial, and at the conclusion

of evidence, requested a directed verdict because the citation failed to allege a crime or place the defendant on notice of what he must defend against. The traffic citation merely stated the Defendant committed the offense of following too close in violation of OCGA §40-6-49. Court of Appeals agrees with the defendant that the citation failed to allege the all the elements of the crime and thus, a directed verdict should have been granted.

- Holding: "The Supreme Court of Georgia emphasized that withstanding a general demurrer or motion to quash 'requires more than simply alleging the accused violated a certain statute.' Thus, a legally sufficient indictment must either '(1) recite the language of the statute that sets out all the elements of the offense charged, or (2) allege the facts necessary to establish violation of a criminal statute. Jackson v. State, 301 Ga. 137, 140 (2017)." "We conclude that the citation was substantively defective because it simply alleges that [the defendant] violated a certain statute, which is insufficient to survive a motion to quash."

VENUE

JUROR CAN MAKE REASONABLE INFERENCES

- *Worthen v. State,* --- Ga. --- , S18A1212, GA Supreme Court (January 22, 2019)
  - Judgment: (Affirmed)
  - This is a very lengthy decision concerning Venue that details 150 years of precedence concerning Venue. Defendant was found guilty of murder. Defendant was in a vehicle on the road and got into an argument with the victim who was on the sidewalk. Defendant eventually shot the victim from his vehicle. At trial, several officers testified the victim's apartment, which is located at 490 Angier Avenue was in Fulton County. There was no evidence presented at trial that the street or sidewalk in front of the apartment were actually in Fulton. The Georgia Supreme Court reversed prior precedence and concluded the jurors are able to make reasonable inferences in deciding whether venue has been established.
  - Holding: The Georgia Supreme Court overrules Jones v. State, 272 Ga. 900 (2000) and Gosha v. State, 56 Ga. 26 (1876) and stated, "there is no apparent reason why the jury in this case should be precluded from making the entirely reasonable inference that the place where [the crime occurred] – the sidewalk or street just in front of a building located in Fulton County – was also in Fulton County, absent any indication that the locations in questions were among the very few in this State that straddle a county line. The Court indicated that in all other aspects of the trial, the jurors can make reasonable inferences,

and there is no reason why jurors cannot make reasonable inferences when determining venue. Because the Courts have went back and forth on this issue over the past 150 years, the court discussed in length why this is the correct decision and to ensure there is no confusion going forward. Any case that holds otherwise is now overruled, which include Jones and Gosha.

- **VENUE PROPER WHERE THE BODY DISCOVERED**
  - *Hernandez v. State*, --- Ga. --- , S18A1307, GA Supreme Court (January 22, 2019)
    - Judgment: (Affirmed)
    - Defendant was charged and convicted of murder. The eye witness stated the killing took place on I-75 between Clayton and Henry Counties. She could only remember the approximate exit number, but could not be certain. The body of the victim was eventually located in Dekalb. Defendant's sole enumeration of error was that since the witness placed the murder occurring in Clayton or Henry County, then Venue was not proper in Dekalb. The Supreme Court disagrees.
    - Holding: If a "body is discovered in this state and it cannot be readily determined in what county the cause of death was inflicted, it shall be considered that the cause of death was inflicted in the county in which the dead body was discovered." In the case at bar, because it was not readily determinable where the defendant shot and killed the victim, venue was proper in Dekalb.
    - Important Note: Venue is a jury question. The Court explained that the jury could have determined that the exact location of the killing could not be determined therefore, the jury was left to consider the county where the body was discovered was the proper venue. In this case, had the defense presented a more definitive place where the killing took place, the jury could have found venue was not proper in Dekalb and found him not guilty.

- **VOIR DIRE**
  - **JUROR'S FRIENDSHIP WITH A WITNESS**
    - *Anthony v. State*, --- Ga. App. --- , A18A2134 – Court of Appeals (January 17, 2019)
      - Judgment: (Affirmed)
      - Defendant was convicted of armed robbery and related offenses. In the middle of trial, one of the juror's recognized a State's witness (a Marta Police Officer). The juror explained he did not know the witness through a mutual friend. When asked why he did not mention this during the jury selection process, the juror explained he did not know it was the same person, because he did not know the person he knew was a police officer. The trial court asked if the juror could be fair and impartial, and he stated he could. Based upon the juror's answers, the trial court did not excuse the juror.
      - Holding: "Generally a juror's knowledge of, or non-familial relationship with, a witness, attorney, or party provides a basis for disqualification only if it is shown that it has resulted in the juror having a fixed opinion of the accused's guilt or innocence or a bias for or against the accused." In the case at bar, the juror did not demonstrate any preconception of guilty, innocence, or bias toward the defendant.

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