

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING JANUARY 6, 2017

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THIS WEEK:

- **State's Right to Appeal; Boykin Rights**
- **Mutually Exclusive Crimes; Collateral Estoppel**

State's Right to Appeal; Boykin Rights

Raheem v. State, A16A1362, A16A1363 (11/16/16)

In these companion appeals, the trial court granted Raheem's motions for out-of-time appeals of his 1981 conviction for motor vehicle theft and his 1982 burglary conviction. The en banc Court initially noted that although the State contended that the trial court erred in granting appellant's motion for an out-of-time appeal, the merits of the order on appellant's motion for an out-of-time appeal were not before it. And, there is no basis for the State to appeal the order granting the out-of-time appeal or to file a cross-appeal in this criminal case under O.C.G.A. § 5-7-1. In so holding, the Court disapproved of *Fineza v. State*, 255 Ga.App. 835 (2002) and *Towns v. State*, 228 Ga.App. 267 (1997) to the extent that they could be relied upon to stand for the proposition that the State can timely appeal from an order granting an out-of-time appeal.

Appellant argued in both appeals that the guilty pleas in his 1981 and 1982 convictions were not knowingly and voluntarily entered because he was not informed of the constitutional rights required under *Boykin* before he entered his plea. Appellant argued that the State did not meet its burden of establishing by the record that he was advised of the three *Boykin* rights he was waiving by pleading guilty. The Court stated that the

entry of a guilty plea involves the waiver of three federal constitutional rights: the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. It is the duty of a trial court to establish that the defendant understands the constitutional rights being waived, and the record must reveal the defendant's waiver of those constitutional rights. Any defendant who pleads guilty will be able to secure a reversal of his conviction if the record does not show that he was specifically advised of each of the three *Boykin* rights and he properly presents the issue to a reviewing court. Nevertheless, nothing in *Boykin* requires the State during a guilty plea proceeding to use any precisely-defined language or "magic words."

The State conceded that the record did not demonstrate that appellant was advised of and waived all three *Boykin* rights, but argued that any such deficiency was harmless because appellant never claimed that he would have chosen to go to trial instead of taking a plea, had he been fully advised of his *Boykin* rights. But, the Court stated, our courts have interpreted this advice and waiver of the three *Boykin* rights as a strict constitutional requirement, with reversal the automatic consequence if any deviation is found to have occurred. Here, it was undisputed that the record did not disclose that appellant was advised of his right against self-incrimination or the right to confront witnesses. Accordingly, the Court concluded, because appellant was not fully advised of the rights he was waiving by pleading guilty in the 1981 and 1982 cases, the record did not substantiate that his pleas were knowingly and voluntarily. Thus, his guilty pleas were invalid, his 1981 and 1982 convictions were reversed.

Mutually Exclusive Crimes; Collateral Estoppel

Bonner v. State, A16A1097 (11/17/16)

Appellant was indicted in Fulton County on charges of armed robbery and hijacking of a motor vehicle. While the indictment was pending, he pled guilty in Clayton County to theft by receiving a vehicle. He then filed a plea in bar and motion to dismiss in the Fulton County action asserting that the charges in both the Clayton and Fulton County actions arose from the theft of the same car and that he could not be prosecuted for both taking the car and receiving it as stolen property. He argued that because the charge of theft by receiving under O.C.G.A. § 16-8-7 applies only to individuals who were not involved in the actual theft of the stolen property, his conviction under that statute represents a judicial finding that he was not the principal thief, barring any subsequent prosecution for crimes requiring a contradictory finding that he did, in fact, steal the car.

The trial court appeared to agree with appellant's analysis regarding the mutually exclusive nature of his conviction for theft by receiving when compared to the armed robbery and car hijacking charges alleged in the Fulton County indictment. Nevertheless, the court denied appellant's plea in bar and motion on the ground that appellant had not yet been convicted of two mutually exclusive crimes.

The Court noted that appellant's argument in support of his motion and plea in bar was grounded in collateral estoppel, a doctrine incorporated into the Fifth Amendment's prohibition against double jeopardy. 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. Collateral estoppel may affect a later criminal prosecution in two ways: (1) it may operate to bar the introduction of certain facts necessarily established in a prior proceeding; or (2) it may completely bar a subsequent prosecution where one of the facts necessarily determined in the former proceeding is an essential element of the conviction sought. Thus, where a defendant's prior conviction necessarily includes a factual finding that would prevent his conviction on other charges, further prosecution of those charges is barred,

and thus, the trial court erred to the extent that it found that a subsequent prosecution may proceed as long as the defendant is not convicted on the barred charge.

The Court stated that the question was whether appellant's plea to theft by receiving by retaining the stolen vehicle barred his subsequent prosecution for armed robbery and hijacking the vehicle. The Court noted that there is no doubt that one cannot be convicted of both robbery of a vehicle and theft by receiving that vehicle. The offense of theft by receiving is intended to catch the person who buys or receives stolen goods, as distinct from the principal thief. The same reasoning applies to the crime of hijacking a motor vehicle. Thus, a finding that the goods had been stolen by some person other than the accused is an essential element of a conviction for theft by receiving under O.C.G.A. § 16-8-7.

The Court noted that in the Clayton County indictment, appellant was charged with retaining the vehicle, rather than receiving or disposing of the vehicle. In looking at the history of the law regarding theft by receiving, the Court found that the addition of "retaining" the property in the 1968 revision of Code did not change the character of a theft by receiving charge, which includes as an essential element of the crime that the goods had been stolen by some person other than the accused. Accordingly, in instances where the accused was convicted of theft by receiving and/or retaining, our courts have held that he could not also be convicted of armed robbery or robbery as the crimes are mutually exclusive. Therefore, even though appellant was charged with "retaining" and not "receiving" stolen property, the Court found that appellant's conviction under O.C.G.A. § 16-8-7 contains an implicit and necessary finding that he was not the individual who stole the car. Conversely, the charges of armed robbery under O.C.G.A. § 16-8-419 and hijacking a motor vehicle under O.C.G.A. § 16-5-44.1, as indicted in this case, each requires proof that appellant actually took the car. Accordingly, the Court concluded, because these charges are mutually exclusive of appellant's prior conviction for theft by retaining the vehicle, the trial court erred in denying his plea in bar and the motion to dismiss the Fulton County indictment alleging those crimes.