

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING AUGUST 3, 2012

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THIS WEEK:

- **Similar Transactions**
- **Venue; Kidnapping**

Similar Transactions

Boynton v. State, A12A1492 (7/27/2012)

Appellant was found guilty of seven counts of armed robbery, one count of aggravated assault, one count of burglary, and one count of possession of a firearm during the commission of a crime against another. The record showed the following facts: several men were playing cards at one of their residences when one of the players opened the front door to leave the game, and then heard a man outside say "give me your money." The man, later identified as the appellant, then hit him on the head with a gun. Immediately after that the appellant, his cousin, and two other accomplices entered the house. All wore hats, gloves, and bandannas to conceal their identities. The robbers then placed the victims' wallets and other belongings, including a Razor cell phone that had a University of Georgia "G" on the cover, in a bag. The appellant was the last to leave the house. One of the players observed the men run into an open field on the other side of the house before he called the police. Not present at the robbery, but instrumental to its execution, was another gentleman who knew about the card game and mentioned it to appellant as well as helped the men execute the robbery, driving around the neighborhood and discussing with the appellant and his cousin about how the men would escape the house after the robbery. During an investigation into the robbery, officers learned that the defendant

had told a man that he had participated in the robbery. According to the witness, the defendant got from the robbery a red or orange cell phone with a University of Georgia "G" on it, wallets, and a bag full of money. Based on this information and other leads, the police arrested the appellant and his accomplices. In addition to the above evidence, the State proffered as a similar transaction, evidence that appellant, with an accomplice, on a previous occasion tried to force his way into the apartment of a woman. As the woman started to leave her apartment she heard a knock on the door. She opened the door, and a masked man pointed a gun at her chest, trying to force his way into the apartment. The victim screamed and closed the door on the gunman's arm. She heard another man tell the gunman that they needed to escape. After the men fled, the victim called the police and said that she saw the men leave in a red car with a tan convertible top. She said the gunman was wearing a black mask, a black jacket with a hood, blue shorts, gloves, and white tennis shoes, and carrying a black bag on his back. The State was able to introduce all facts about this case except the conviction.

Appellant contended the trial court erred in admitting this similar transaction evidence. First, he argued that the similarities between the attempted robbery and the robbery of the poker player's house were neither sufficiently numerous nor distinct enough to earmark them as the handiwork of the defendant, and should not have been introduced as similar transaction evidence to show modus operandi. Secondly, he contended the trial court erred in admitting the similar transaction evidence to show course of conduct, arguing that there was no logical connection between

the attempted robbery and the later robbery. The Court noted that in general, evidence of independent offenses committed by a defendant is irrelevant and inadmissible in a trial for a different crime. In some cases, however, evidence of similar crimes is admissible where its relevance to show identity, motive, plan, scheme, bent of mind and course of conduct, outweighs its prejudicial impact. The Court then delineated the similarities between both the attempted robbery and the later robbery, which are that, in both cases, the defendant was (1) entering another's residence (2) in Columbus (3) through force (4) while the residence was occupied, (5) armed with a gun and (6) concealing his face and hands, (7) with at least one other conspirator, and (8) using an automobile close to the scene of each incident as a getaway car. Furthermore, for similar transactions the law requires either a sufficient connection or similarity between two events. Further, the Court stated that regardless of whether the attempted robbery was logically connected to the latter robbery, there were eight, distinct similarities between the two. Thus, the trial court was authorized to find that the evidence of the defendant's participation in the attempted robbery tended to prove that he also committed the later robbery, and was admissible to prove his course of conduct and modus operandi.

Venue; Kidnapping

Day v. State, A12A1464 (7/27/2012)

Appellant was found guilty of kidnapping, false imprisonment, and aggravated battery. He contended several enumerations of error including that the State failed to present sufficient evidence to prove that venue was proper in Hall County. The record showed the following relevant facts. Appellant picked up a woman whom he had known for about two months ("the victim") from the Franklin County Jail. Appellant owed her \$700 to \$750 for repair work. After failing to retrieve the money from his cousin's house, appellant then drove the victim to a house in Hall County. Appellant entered the house, and the victim waited in the vehicle for about two hours before knocking on the door and asking to use the restroom. When she exited the restroom, she walked into a room full of people who invited her to use what she believed to be methamphetamine, which was lying on a table.

After being heckled for her trepidation, she relented and ingested some of the drug. When the people in the house suggested that she have sex with some of them, she and appellant left the house and drove away in his vehicle.

As appellant started driving down a road in Hall County, he began swearing at the victim, telling her that the reason he took her to the house was to have sex. Shortly after leaving the house, appellant repeatedly hit her in the face, then stopped his vehicle, dragged the victim onto the road, and continued beating and threatening to kill her. The victim tried to call 911 on her cell phone, but no one came to assist her. After dragging her back into his vehicle, appellant wielded a knife, pressing it against the victim hard enough to cut her skin. The victim was able to take the knife and throw it out the vehicle's window. The victim begged appellant to let her go, but he continued to restrain and threaten her. In fear for her life, she jumped from the vehicle, but appellant again dragged her back into the vehicle. Appellant told the victim that his vehicle was running out of gas and that if it did, he was going to kill her. She suggested that they stop somewhere to get gas, hoping that she would be able to scream or draw some attention and assistance. Appellant refused, afraid that someone might see her. While continuing to threaten and beat the victim, appellant turned onto Interstate 85 and drove into Jackson County, where his vehicle ran out of gas. Appellant then pulled the victim into the woods and laid down. When the victim felt him loosen his grip on her, she ran, jumping over the median and escaped.

Appellant argued that the evidence was insufficient to support his conviction for kidnapping because the State failed to prove beyond a reasonable doubt that the kidnapping occurred within Hall County. However, the Court found that in this case, the State presented evidence sufficient for a reasonable trier of fact to find that the kidnapping occurred in Hall County beyond a reasonable doubt. The Court pointed out that both the victim and appellant testified that the house where the victim used the restroom and ingested drugs is in Hall County. Further, a Hall County police officer testified that, upon her release from the hospital, the victim was able to lead the officer down the road on which appellant first assaulted and dragged her back into his vehicle. The officer highlighted the road for the jury on a map of Hall and other surround-

ing counties. He concluded his testimony by stating his determination that appellant had initially assaulted the victim and then dragged her back into his vehicle while they were in Hall County. Thus, the Court concluded that the State's evidence was sufficient to show that appellant seized the victim, held her against her will, and transported her in his vehicle while in Hall County and, therefore, to prove venue for the kidnapping charge.