

Prosecuting Attorneys' Council of Georgia

# CaseLaw UPDATE

WEEK ENDING SEPTEMBER 30, 2011

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## THIS WEEK:

- **Kidnapping; *Garza***
- **Impeachment Evidence**

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### ***Kidnapping; Garza***

*Goolsby v. State, A11A1524 (9/13/11)*

Appellant was convicted on thirteen felony counts in connection with the invasions of the homes and the rapes of S. P. and H. M. M. He challenged the sufficiency of the evidence as to the kidnapping convictions as to each victim, arguing insufficient evidence under *Garza*. The evidence showed that S. P., after hearing suspicious noises at around 4 a.m., got up from her couch where she was watching television and took a few steps toward her kitchen. Appellant stepped out of the kitchen, grabbed both of her arms near the wrists, and forcefully walked her backwards a couple of steps to the couch. He pushed her down on the couch, raped her, and subsequently fled. Three months later, in the same mobile home community where S. P. lived, H. M. M. awoke to a loud noise. She got up to investigate and walked into her dining room where she saw Goolsby in the utility room inside her house. After seeing Goolsby, H. M. M. turned and ran for the front door, but Goolsby caught her from behind and pulled her away from the door. H. M. M. struggled to free herself. Goolsby attempted to tie H. M. M.'s hands together with a string as he was pulling her away from the door toward her bedroom. When H. M. M. clung to another door, Goolsby pulled out a knife, held it to her back, and beat her until she let go. Goolsby eventually tied H. M.

M.'s hands in front of her and forced her into her bedroom. Once in the bedroom, he put her on the bed where he raped her.

The Court found that because appellant's case was on direct review or not yet final when the Georgia Supreme Court decided *Garza*, it was in the pipeline when *Garza* was handed down, and thus, the Court was required to apply the *Garza* test to determine whether the movement of the victim sufficiently establishes the element of asportation. Applying the four-factor *Garza* test to appellant's attack on S. P., the Court found the evidence insufficient to establish asportation. The duration of the movement was minimal. When appellant grabbed S. P. in front of her kitchen, he forced her back "just a few steps" to her couch. Even though the movement occurred before the actual rape, it was movement incidental and in furtherance of the rape. The movement of the victim was not a necessary element of the crime of rape, but it allowed appellant to exercise control over S. P. during his conduct of the rape and was, therefore, an inherent part of the rape. Finally, the movement itself presented no significant danger to the victim independent of the danger posed by the rape itself because nothing changed in regard to S. P.'s isolation or potential rescue as a result of the movement to the couch. So, the movement in question was not in the "nature of the evil the kidnapping statute was originally intended to address." As the movement did not establish the element of asportation under the *Garza* test, appellant's conviction for kidnapping with bodily injury as it pertains to S. P. was reversed.

However, after assessing the evidence of the attack on H. M. M. under the *Garza*, the Court concluded that the evidence was sufficient to establish the asportation element of the crime of kidnapping with bodily injury.

Although the record did not establish the duration of the movement, the Court stated that in cases where the *Garza* standard applies, not all four factors must be met to establish the element of asportation. Considering the second and third factors, the movement of H. M. M. from the front door to the bedroom did not occur during the commission of the rape or the aggravated assault, and it was not an inherent part of either the rape or the aggravated assault. The movement happened before and was separate from the rape. Moreover, appellant did not continue to assault H. M. M. after he pulled her to the back bedroom; he assaulted her to subdue her, and then forced her into the bedroom and onto the bed. Finally, the movement created a significant danger to H. M. M. independent of the danger posed by the rape or the aggravated assault. The movement of H. M. M. enhanced his control over her and isolated her from protection or potential rescue. Before appellant managed to pull H. M. M. into her bedroom, H. M. M. was at the front door where she could have made her escape or alerted her neighbors to provide help. Accordingly, the evidence was sufficient to sustain appellant's conviction of kidnapping with bodily injury of H. M. M.

## **Impeachment Evidence**

*Dozier v. State, A11A1085 (9/19/11)*

Appellant was convicted of rape, aggravated sodomy, aggravated child molestation, child molestation, and incest. Appellant testified and for impeachment purposes, the State entered into evidence a certified copy of his aggravated assault conviction from 1993. Appellant contended that the trial court failed to apply the proper statutory standard in determining whether his aggravated assault conviction was admissible to impeach his testimony. Before appellant testified, the trial court considered outside the jury's presence whether the State could use evidence of his prior aggravated assault conviction to impeach his testimony. The record showed that appellant was confined until 1998, and because his release occurred more than ten years before the trial, under OCGA § 24-9-84.1 (b) the trial court was required to consider whether the probative value of the evidence, as supported by specific facts and circumstances, substantially outweighed its prejudicial effect.

The trial court granted the State's request to

admit the prior conviction for impeachment purposes. The court reasoned that, because the crimes for which appellant was being tried were "crimes of credibility," with an alleged victim saying something happened and appellant saying nothing happened, evidence of the prior conviction was probative enough on the issue of appellant's veracity and credibility to outweigh the potential prejudicial effect of admitting evidence of the conviction. Additionally, the trial court noted, evidence appellant committed a violent act was relevant to the victim's testimony that she did not disclose the crimes immediately for fear appellant would hurt her. The court then commented, "The jury is going to decide who to believe and I think it's important for them to have if he wishes to testify, he has the right to testify, but I have never understood the artificial boundaries between other witnesses and parties in the case. I don't understand that. It just doesn't make any sense to me. That's one of the requests to charge which you have made, which is he gets examined like everybody else, he gets sworn like everyone else. As far as I'm concerned, defendants ought to be subject to impeachment just like everybody else. So that's the reason why I'm [allowing the State to impeach appellant with the prior conviction.]"

Appellant argued that because the statute establishes a stricter standard to admit a conviction less than ten years old against a defendant rather than a witness, it must also require that trial court apply a stricter standard to admit an older conviction against a defendant. He further argued that the trial court's statement quoted above showed that the court "expressly failed to distinguish between the higher threshold required of a testifying defendant as compared to another witness, so there is no way that it could correctly weigh the necessary factors if the threshold for an over-age conviction is higher still."

The Court disagreed. It found that the trial court's observations questioning the reasons for having different impeachment standards for defendants and other witnesses did not negate its analysis or establish that the trial court failed to grasp the difference. The statute itself contains no distinction between defendants and witnesses when more than ten years has passed since the applicable conviction or release. Secondly, the trial court properly considered the specific facts and circumstances of appellant's prior aggravated assault conviction,

as required by OCGA § 24-9-84.1 (b), before concluding that the probative value of evidence of the conviction substantially outweighed its prejudicial effect. The trial court specifically addressed the relevant factors, including "the kind of felony involved, the date of the conviction, and the importance of the witness's credibility." Therefore, the trial court did not abuse its discretion in allowing the State to introduce the prior conviction.