

RECENT DEVELOPMENTS IN CRIMINAL LAW

Venue and Embezzlement

Jessie Hayes, an employee of Lake Charles Diesel in Calcasieu Parish, was dispatched to a Lafourche Parish location to do a job. Hayes purportedly received a \$15,000.00 cashier's check, but called his employer to report that the check had been stolen from his truck, and never again reported to work. The customer reported that Mr. Hayes had been given \$15,000.00 in cash in return for a receipt.

The defendant was subsequently charged by bill of information with theft of currency valued over \$500.00, in violation of La. R.S. 14:67(A) on the basis of the missing \$15,000.00. In response to defendant's motion to quash based on improper venue, based on the criminal activities taking place in Lafourche rather than Calcasieu Parish, the State amended the bill of information to allege the theft of various diesel parts and uniforms belonging to Lake Charles Diesel. At argument on the motion to quash, the State maintained that it had not dropped the charge with respect to the \$15,000.00, but claimed that the taking of parts and uniforms was actually part of a larger scheme to convert various property belonging to the employer, culminating in the theft of the cash. The Trial Court denied the motion to quash and held that venue for the case was proper in Calcasieu Parish.

The Third Circuit reversed and ordered the motion to quash be granted, finding that the State failed to show that the defendant had formed the intent to permanently deprive the employer of ownership of the non-cash items at the time of the taking. With respect to the cash, the Court of Appeal found that the State had not proved that defendant had formed the necessary intent while in Calcasieu Parish.

In a per curiam opinion, the Louisiana Supreme Court reversed the Court of Appeal, reinstated the order of the trial court, and remanded for further proceedings. The Supreme Court agreed with the Court of Appeal's finding that the evidence did not show any formation of intent to deprive the employer of the property while in Calcasieu, but instead analyzed the crime as being "in the nature of an embezzlement offense." Reviewing the theft of the uniforms and parts, the Supreme Court noted that under *State v. Wells* 197 So.420, (1940), the venue was proper in the place where the property to be returned. With respect to the missing cash, the Supreme Court reviewed a variety of case law and statutory materials from other jurisdictions, noting that many jurisdictions have a rule stating that the venue for embezzlement is proper in the location where the property is to be returned. Further discussing the issue, the Supreme Court engaged in a near "center of gravity" discussion, finding that "the force of the defendant's alleged criminal acts is felt nowhere else than in Calcasieu parish."

Justice Weimer dissented, finding the jurisdiction improper under La. C.Cr.P. 611, as no evidence had been produced to show that any act or element of the offense had occurred in Calcasieu Parish. Justice Weimer also made note of the State's inconsistency in billing the case, with the amendment of the bill of information and its difficulty in maintaining a unified theory of the case. Justice Weimer pointed out that the "embezzlement theory of venue" was neither

advanced nor considered below, and that the defendant had not had an opportunity to argue against it. *State v. Hayes*, 2001-3193, (La. 1/28/03) 837 So.2d 1195

Second Degree Battery

Defendant James Danny Jackson was charged by bill of information with second degree batter of Randy Tomlinson, the owner of a self-serve carwash in Opelousas. Mr. Tomlinson had run the defendant off from his carwash on a number of occasions for doing a bucket wash on vehicles and harassing customers, but on January 21, 2002, Jackson apparently decided he would not leave without a fight. Although the accounts differ, the Trial Court found Mr. Tomlinson's version more credible, and found that Jackson had struck Tomlinson three times on the jaw with his fist following a confrontation in which Jackson was told to leave the carwash.

Tomlinson suffered a dislocated jaw, which required surgery. Mr. Tomlinson's jaw was braced for two weeks, suffered ongoing pain, could not bite down or chew for about three weeks, and had problems eating for another four to six weeks following the incident. The Trial Court found Jackson guilty of second degree battery and sentenced him to four years, to run concurrent with a sentence he was serving for an unrelated charge.

Jackson appealed the conviction, challenging the sufficiency of the evidence both as to intent and as to serious bodily injury. The Third Circuit Court of Appeal affirmed the conviction, finding that the specific intent required for La. R.S. 14:34.1 could be inferred from the circumstances of the incident. The Court of Appeal specifically noted that Tomlinson claimed he was struck while bent down to gather Jackson's bucket of cleaning supplies, that he had no warning prior to being struck, and had no opportunity to defend himself. These factors combined with Jackson's three blows provided the specific intent to inflict serious bodily injury, despite the spontaneity of the incident.

Considering the question of serious bodily injury, the Court of Appeal reviewed the statutory definition and applicable case law, and found that Tomlinson did suffer "extreme physical pain and protracted impairment of a bodily function within the meaning of the statute." *State v. Jackson*, 2002-1250 (La. App. 3 Cir. 2/5/03) 838 So.2d 841

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