



GEORGIA COURT DEFINES AUTHORITY OF BAIL BONDSMAN

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On August 18, 2016, the Court of Appeals of Georgia decided *Harper v. State*ⁱ, which serves as instructive concerning the law related to the authority of bail bondsman to enter the residence of third parties to revoke a bond. The relevant facts of *Harper*, taken directly from the case, are as follows:

Harper was acting alone as a bail recovery agent for a professional bondsman when he entered the residence of Tina McDaniel through a locked door, without McDaniel's knowledge or permission, and arrested Stephen Collier inside the residence on behalf of the bondsman for the purpose of surrendering Collier to state custody because his criminal bond had been forfeited. At the time of Harper's intrusion, McDaniel was changing clothes in her bedroom when she heard her daughter scream, and she ran to find Harper inside her residence holding Collier to the floor while handcuffing him. McDaniel asked Harper who he was, and Harper responded that "he was Houston County." Based on this response, McDaniel mistakenly thought that Harper was a Houston County police officer. Harper never identified himself as a bail recovery agent. Collier did not reside at the McDaniel residence - he was an acquaintance of McDaniel who was at the residence that day to perform work on a vehicle located at the residence. Before taking Collier from the residence, Harper told McDaniel that he had come in through the back door, and that she "might need to get [her] door fixed." Photographs of the door showed the property damage caused by Harper when he entered the residence through the locked door. After McDaniel reported the intrusion to police, Harper was arrested and charged with two counts of criminal trespass.ⁱⁱ

Harper was tried by a jury and convicted of two counts of criminal trespass under Georgia law (OCGA § 16-7-21). The first count was under OCGA § 16-7-21(a) for damaging McDaniel's door, and the second count was under OCGA § 16-7-21(b)(2) for entry into McDaniel's residence after receiving notice such entry was forbidden. Harper appealed his convictions to the Court of Appeals of Georgia and argued that his entry was justified under OCGA § 16-3-20, and as such, that code section was a complete defense to his prosecution.

The first issue before the court was whether OCGA § 16-3-20 regarding "justification" was a complete

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defense to Harper's prosecution for criminal trespass. OCGA § 16-3-20, provides, in pertinent part, the following:

The fact that a person's conduct is justified is a defense to prosecution for any crime based on that conduct. The defense of justification can be claimed:

(4) When the person's conduct is reasonable and is performed in the course of making a lawful arrest;

(5) When the person's conduct is justified for any other reason under the laws of this state;
...ⁱⁱⁱ

The court then set out to determine if the arrest was lawful, in other words, if the bail bondsman was legally authorized to enter McDaniel's residence, to arrest Harper, who did not live at that location. The court examined case law applicable to this issue from Georgia and the United States Supreme Court. The court stated

The bondsmen have an interest in ensuring that the principals appear in court, because if they do not appear then the bond will be forfeited. As a result of their custody, bondsmen "have their principal on a string, and may pull the string whenever they please, and render him in their discharge." *Taylor*, 83 U. S. at 371. If the principal refuses to surrender, the bondsman under common law can lawfully arrest him and return him to the sheriff's custody. *Id.* at 371; *Clark v. Gordon*, 82 Ga. 613, 616, 9 S.E. 333 (1889); *Bennett v. State*, 169 Ga. App. 85, 311 S.E.2d 513 (1983). See *Gray v. Strickland*, 163 Ala. 344, 50 So. 152, 153 (Ala. 1909). **Further, the common law conferred on bondsman broad powers with which to effectuate their seizures of principals. As the Supreme Court stated in *Taylor*, bondsmen: "may exercise their rights in person or by agent. They may pursue [the principal] into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to rearrest by the sheriff of an escaping prisoner."** *Taylor*, 83 U. S. at 370 [(emphasis supplied)].^{iv} [emphasis added]

Accordingly, the court interpreted the above to mean that, while a bond agreement gives a bondsman the legal authority to arrest a person using reasonable force, that only extends to arrest in public and arrests in the person's own residence. Specifically, the court stated

Under the above authorities, the bond agreement between Collier and the bondsman carried with it Collier's implied consent that the bondsman or Harper (as the bail recovery agent) may use reasonable force necessary to arrest Collier on a forfeited bond, including the use of reasonable force to enter Collier's residence for that purpose. *Bennett*, 169 Ga. App. at 85-86; see *State v. Burhans*, 89 P3d 629, 634 (Kan. 2004); *State v. Mathis*, 509 SE2d 155, 160 (N.C. 1998); *People v. Oram*, 217 P3d 883, 889-890 (Colo. App. 2009); *Fitzpatrick v. Williams*, 46 F2d 40, 40 (5th Cir. 1931). **But nothing in the bond agreement between the bondsman and Collier can be construed to provide authority for the bondsman, or the bondsman's**

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agent, to enter McDaniel's residence (where Collier did not reside) without obtaining McDaniel's consent. *Mathis*, 509 SE2d at 161; *Burhans*, 89 P3d at 634.^[1]

Therefore, the defense of justification under OCGA § 16-3-21 did not prevent Harper's prosecution because he acted "without authority." Harper argued that *Mease v. State*^v, supported his defense, however, the court noted that in *Mease*, they only held that a licensed bondsman entering a home to arrest a person was not acting with an "unlawful purpose." Thus, the court held that Harper did not have the authority to enter McDaniel's residence to arrest Collier without McDaniel's consent. As such, the conviction for OCGA § 16-7-21(a) related to damaging McDaniel's property was affirmed.

The second issue before the court was whether the State proved all of the essential elements of OCGA § 16-7-21(b)(2) which states, in pertinent part, the following:

A person commits the offense of criminal trespass when he or she knowingly and without authority . . . [e]nters upon the . . . premises of another person . . . after receiving, prior to such entry, notice from the owner, rightful occupant, or, upon proper identification, an authorized representative of the owner or rightful occupant that such entry is forbidden. .

. . .^{vi}

Harper argued that he did not receive express notice from McDaniel's prior to his entry that his entry was forbidden. The State argued that the locked door at McDaniel's residence was sufficient notice that Harper's entry was forbidden. The court of appeals stated

To be found guilty of this offense requires proof that the accused entered knowingly and without authority after having received express notice that the entry was forbidden. *Wood v. State*, 227 Ga. App. 677, 678 (490 SE2d 179) (1997); *Scott v. State*, 130 Ga. App. 75, 78 (202 SE2d 201) (1973) (essential element was "showing that [defendant's] entry into the [premises] had previously been expressly forbidden."); *Osborne v. State*, 290 Ga. App. 188, 189 (665 SE2d 1) (2008) (essential element was showing that entry had previously been "expressly forbidden."). **Express notice is required because "[i]nherent in the statute's notice provision is a requirement that notice be reasonable under the circumstances, as well as sufficiently *explicit* to apprise the trespasser what property he is forbidden to enter."** *Rayburn v. State*, 250 Ga. 657, 657 (300 SE2d 499) (1983) (emphasis supplied). As the Supreme Court stated in *Murphey v. State*, 115 Ga. 201, 202 (41 SE 685) (1902), "it ought in every case of this kind to be made to clearly appear, not only that the notice [not to enter] given to the accused was intended to apply to the particular [premises] alleged to have been unlawfully entered upon, **but also that such notice was conveyed to him by language sufficiently explicit to enable him to so understand.**" (emphasis supplied). The State failed to produce any evidence showing that Harper was given the required prior express notice not to enter McDaniel's premises. **The State's allegation and proof that Harper was given prior "constructive notice" not to enter the premises when he entered without permission through a locked door was not sufficient to establish the prior express notice required for violation of OCGA § 16-7-21 (b) (2).**^{vii} [emphasis added]

Therefore, since the State failed to prove that Harper had advance, express notice forbidding his entry,

and since the locked door alone was not sufficient to establish prior express notice, the court of appeals reversed Harper's conviction for a violation of OCGA § 16-7-21(b)(2).

Practice Pointers

- If a bail bondsman wants to enter the home of a third party to arrest a person, the bail bondsman must obtain consent from the lawful resident.
- The above rule is the same as that which applies to law enforcement officers: Officers need consent, a search warrant or exigent circumstances to enter a third party's residence to arrest a wanted person.
- In this case, the Fourth Amendment was not implicated by Harper's entry because Harper was acting as a private person, not a government agent, and no law enforcement officers were involved in the entry into McDaniel's home.

ⁱ A16A1008 (Ga. App. Decided August 18, 2016)

ⁱⁱ Id.

ⁱⁱⁱ OCGA 16-3-20

^{iv} Harper, A16A1008

^v 165 Ga. App. 746 (302 SE2d 429)(1983)

^{vi} Harper, A16A1008

^{vii} Id.