Using Special Demurrers to Successfully Dismiss Indictments

In Georgia, the special demurrer is an indispensable tool that criminal defense attorneys should utilize to dismiss an indictment when it fails to sufficiently particularize the date that an alleged crime was committed.

Due process requires that all indictments allege the specific date (or dates) of the alleged offense in order to provide the defendant with sufficient notice of the charges so that he or she can adequately prepare a defense. Under Georgia law, this is also required by statute (O.C.G.A. § 17-7-54).

This requirement presents challenges for prosecutors of alleged sex crimes when the accusers are children. Children often have difficulty recalling dates or pinpointing specific time periods especially in the earlier stages of development.

A child may say that something happened *"five years ago"* or *"when I was in 2nd grade."* Other times, children simply say that they can't remember at all when something may have occurred.

When the State can show that it is unable to allege a specific date on which the offense occurred, Georgia law allows for the indictment to allege that the crime occurred between two particular dates. In these circumstances, however, the indictment must at least provide the most narrow date range possible. If the evidence shows that the State could have provided a more narrow range of dates then the indictment can be dismissed with a successful special demurrer.

The special demurrer must be filed within 10 days of arraignment and allege that the indictment fails to sufficiently particularize the date(s) that the offense was committed. The defendant will then be entitled to an evidentiary hearing requiring the State to prove that it cannot more specifically narrow the range of dates set out in the indictment. If the State is unable to make this showing, the indictment may be dismissed (or "quashed") by the trial court.

If an indictment is dismissed as a result of a special demurrer, the State does have the ability to re-indict the case. Very often, however, the dismissal will give the defense another opportunity to convince the State of the weaknesses in its

case in an effort to prevent a second indictment (click here for an example). Thus, in some cases the successful demurrer can lead to the ultimate dismissal of the charges.

In the event that the case is indicted a second time, it is always possible that the subsequent indictment may be subject to a demurrer or other legal challenge. Under Georgia law (O.C.G.A. § 17-7-53.1), if two indictments are dismissed as a result of a demurrer, or any other legal motion, the State will then be barred from any further prosecution of the defendant.

So, if a defense attorney uses the special demurrer to quash the first indictment and then finds a defect in the second one, the defendant cannot ever be charged again. Therefore, the use of the special demurrer is a critical part of the defense of any sex offense allegation involving a child.