



CaseLaw

Update

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CaseLaw This Week

Week Ending May 7, 2004

Evidence – Cross-Examination Evidence – Chemical Testing Judges – Judicial Comment

defendant, in which both parties discussed the victim's occupation as a stripper. The defendant could not ask the victim on the stand whether she was, or was not a stripper as that would not be a legitimate inquiry.

Evidence – Cross-Examination

Walker v. State, A04A0353 (04/21/04), 04 FCDR 1492, 2004 Ga. App. LEXIS 552

The Court of Appeals affirmed the defendant's conviction for false imprisonment. The defendant alleged that the trial court erred in not allowing him to cross-examine the victim about her employment as a stripper. The court held that, "**the state has a legitimate interest in protecting witnesses from harassment and intimidation. Thorough cross-examination is a principal means of ascertaining the truth, but a witness has a right to be examined only as to relevant matters and to be protected from improper questions and from harsh and insulting demeanor.**"

The court found that the defendant had ample opportunity to cross-examine the victim about the conversation that occurred between the victim and the

Evidence – Chemical Testing

Sheehan v. State, A04A0264 (04/21/04), 04 FCDR 1499, 2004 Ga. App. LEXIS 555

The defendant's conviction for DUI was affirmed. The defendant alleged that the results of his state-administered breath test should have been suppressed because he was effectively denied an independent blood test. Because the evidence demonstrated that the police officer made reasonable efforts to accommodate the defendant's request for an independent blood test, the court held

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that reversal was unwarranted.

The defendant was arrested pursuant to a traffic stop and transported to the police station where a breath test was administered. After the test was administered, the defendant requested an independent blood test and the police officer transported the defendant to the local hospital for that purpose. Upon arriving, the defendant was informed by hospital personnel that the hospital would not accept a personal check as payment for the blood test. The defendant told the police officer that he had cash at his place of business and the officer made arrangements to transport the defendant to that location. Once in the parking lot of the hospital, the defendant informed the police officer that he *did not* have cash at his place of business but he had other checks which he wanted to attempt to cash. The officer informed the defendant that there was no place to cash a check at 2:00a.m. and transported the defendant to the jail. The court held that short of paying for the test himself, which of course is not required, the officer made every effort to accommodate the defendant's request and therefore there was no ground for reversal.

proved as to the guilt of the accused" contained in OCGA § 17-8-57. The trial court simply asked the agent if she had authored a certain report and whether the report was written in the agent's words or the victim's words. The trial court then permitted defense counsel to proceed with his cross-examination, which defense counsel did.

Judges – Judicial Comment

Walker v. State, A04A0353 (04/21/04), 04 FCDR 1492, 2004 Ga. App. LEXIS 552

The defendant's conviction for false imprisonment was affirmed. Defendant contended that the trial court improperly demonstrated favor to the prosecution when it asked questions of a GBI agent during the defense's cross-examination. The Court of Appeals held that the trial court's questioning of the agent did not violate the prohibition against "expressions or intimations of opinions as to what has or has not been

**The Prosecuting Attorneys' Council encourages you to add commentary or creative prosecution suggestions for any of this Caselaw. The responses will be published in a PAC publication, please e-mail David Fowler at dfowler@pac.state.ga.us, or Joe Burford at jburford@pac.state.ga.us with feedback.*