



CaseLaw

Update

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CaseLaw This Week

Week Ending July 9, 2004

- **Jury Selection**
- **Speedy Trial – Rape**

Jury Selection

Robinson v. State, S04A0265 (06/28/04), 04 FCDR 2146, 2004 Ga. LEXIS 524.

The defendant was charged with malice murder, felony murder, burglary, aggravated battery and several other offenses for shooting and killing his sister-in-law and beating and shooting his wife. In a pretrial motion, the State requested the trial court to find O.C.G.A. § 15-12-165, the statute granting the defendant twice as many peremptory juror challenges as the State, unconstitutional. The State argued that since the crimes were against women the defense would strike women from the jury while the State would strike men because the defendant was male. Once the State had struck all of the jurors it could, the defense would still be able to strike additional women jurors thus providing the defendant with an advantage. The trial court found O.C.G.A. § 15-12-165 to be unconstitutional because it allowed disparate treatment of similarly situated potential jurors by gender. On interim review, the Supreme Court reversed the trial court's ruling. **The Court reasoned**

that under *Batson* the State has an appropriate remedy to address the defense's illegal striking of jurors based on gender. The Court also stressed the point that it would be unconstitutional for either the defense or prosecution to strike jurors because of the juror's gender.

Speedy Trial – Rape

Merrow v. State, A04A0393 (06/21/04), 04 FCDR 2201, 2004 Ga. App. LEXIS 837.

The defendant, charged with rape, appeals the denial of his motion for discharge and acquittal based on the ground that he was denied a speedy trial. The court had to determine if O.C.G.A. § 17-7-171, which allows the State more time to try a defendant for capital offenses where the defendant invokes his right to a speedy trial, applied to rape cases. The main issue addressed was whether rape is a capital offense for the purposes of the speedy trial statutes since the death penalty can no longer be imposed for rapes where death to the victim did not occur. **The court held that for the purposes of the speedy trial statutes (O.C.G.A. §§ 17-7-170 and 17-7-171) rape should be considered a capital offense.**