



CaseLaw

Update

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CaseLaw This Week

Week Ending August 20, 2004

- **Evidence**
- **Implied Consent**

Evidence – Relevance

Duncan v. State, A04A1045 (08/08/04), 04 FCDR 2674, 2004 Ga. App. LEXIS 1052

Defendant was convicted of child molestation, enticing a child for indecent purposes, attempted aggravated child molestation, and attempted aggravated sodomy. On appeal, defendant contended that the trial court erred by admitting a note evidencing his attempted suicide on the date originally set for the trial. **The Court, affirming *Aldridge v. State*, 229 Ga. App. 545 (1997), found evidence of attempted suicide, where the person is charged with or suspected of a crime at that time or thereafter, is relevant as an indicator of consciousness of guilt and admissible for whatever weight the jury assigns.**

Implied Consent – Cooper v. State

Kahl v. State, A04A1206 (08/03/04), 04 FCDR 2681, 2004 Ga. App. LEXIS 1041

Defendant's convictions for DUI and following too close were affirmed. Seconds before his formal arrest, defendant was read implied consent. On appeal, defendant argued that the implied consent notice is proper only if it is read after arrest claiming *Cooper v. State*, 277 Ga. 282 (2003), overruled prior cases holding that an implied consent notice given at the time of arrest is timely, even if it precedes formal arrest. **The Court disagreed stating that *Cooper* does not control where, as here, the "serious injuries or fatalities" language of O.C.G.A. § 40-5-55 is not at issue and nothing in *Cooper* suggests that a notice given at the time of arrest, but before formal arrest, is invalid.**