



CaseLaw

Update

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CaseLaw This Week

Week Ending August 27, 2004

- **Evidence**

Evidence – Identification

Thomas v. State, A04A1556 (08/12/04),
2004 Ga. App. LEXIS 1091

Defendant's convictions for armed robbery, aggravated assault, and a firearms offense were affirmed. **The robbery occurred in a well-lit area, the victim stood close to the robber during the robbery, which lasted 4-5 minutes, and the victim was very sure at the showup that defendant was the robber. The Court held that, under the totality of the circumstances, the one-on-one showup shortly after the crimes did not create a substantial likelihood of misidentification.** The court noted that, even though a one-on-one showup is inherently suggestive, an identification produced from a showup is not necessarily inadmissible.

Evidence/Discovery – Photographs

Taylor v. State, A03A0465 (08/11/04), 2004
Ga. App. LEXIS 1088

Defendant's conviction for theft by taking was affirmed. **The trial court did not err in admitting certain undated photographs of the defendant which were obtained by the prosecutor less than ten days before trial, as the photographs were newly discovered evidence.** The Court noted that the prosecutor notified the defense immediately upon learning of the existence of the photographs. The photographs depicted defendant with a distinctive mustache, and were used to rebut defendant's claim of misidentification and to support witness testimony that defendant shaved his mustache the day of the robbery. Defendant's wife authenticated the photographs. **The Court stated that it had not found any case law which requires photographs to bear a time-stamp to be admissible.**