



CaseLaw

Update

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CaseLaw This Week

Week Ending November 12, 2004

- **Character Evidence**
- **Search and Seizure**
- **DUI**

Character Evidence

Thomas v. State, A04A1365 (10/26/04), 04 FCDR 3529

Defendant was convicted of aggravated assault on a police officer. On appeal, the defendant contends that the trial court erred in admitting certain writings found in his possession at the time of his arrest because they improperly placed his character in issue. The writings were song lyrics that the defendant had composed. The lyrics alluded to violent encounters with police officers and there was no evidence that he intended them to be anything else. The defendant argued that even if this evidence was relevant, its prejudice to him outweighed its probative value to the State. **The Court held that the lyrics were not inadmissible because they incidentally placed his character in evidence. Whether the evidence's prejudice outweighed its probative values was a matter left to the discretion of the trial court. The Court of Appeals found no abuse of discretion by the trial court in admitting the evidence.**

Jones v. State, A04A1022 (10/29/04), 04 FCDR 3535

Defendant was convicted of one count of armed robbery, two counts of theft

by taking and two counts of possession of a firearm during the commission of a crime. The defendant contends that the trial court erred in allowing as impeachment evidence a portion of his pre-trial statement to police admitting participation in another crime. The defendant testified at trial that the reason he committed the robbery was that he thought another individual implicated in the crime would "hurt him or kill him if he did not commit the robberies." **Upholding the verdict, the Court held evidence of a prior bad act that defendant and his co-defendant burglarized co-defendant's employer was admissible to impeach defendant's testimony that the crimes were out of character and he only committed them because he feared that his co-defendant would kill him.**

Search and Seizure

Strickland v. State, A04A0526 (10/27/04), 04 FCDR 3544

Defendant was convicted of cocaine trafficking, misdemeanor marijuana possession, obstructing an officer and operating a vehicle without a valid license tag. Defendant argued that the trial court erred in denying his motion to suppress because the drugs at issue were found pursuant to a stop of his vehicle at a roadblock that did not serve a legitimate primary purpose. The purpose of the roadblock was to question residents about a recent murder in the area. The Court, in its decision, followed the recent U.S. Supreme Court ruling in *Illinois v. Lidster* in

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finding that law enforcement had a “legitimate primary purpose” for the roadblock. In *Lidster*, the Court held that “citizens will often react positively when police simply ask for their help as responsible citizens to give whatever information they may have to aid in law enforcement.” **This might be more wishful thinking than fact-based when, as in this case, “simply asking for help” entails stopping a motorist at midnight to make such a request. This viewpoint gives short shrift to those citizens responsible who may not react positively to having their cars stopped for information that nothing indicates they possess; indeed, when the focus shift to what responsible citizens should be willing to endure as opposed to what law enforcement is constitutionally authorized to impose, some might suspect the Fourth Amendment has taken a hit. But, *Illinois v. Lidster* has been decided, and thereunder, it appears that the general investigative roadblock in this case served a “legitimate primary purpose.”**

State v. Godbolt, A04A1257 (10/27/04), 04 FCDR 3545

Defendant was charged with armed robbery and aggravated assault. Officer Stansberry saw three men running rapidly and in a haphazard manner across lawns and jumping over fences at 6:40 a.m. One of those men, the defendant, was running towards Officer Stansberry, and for his own safety, Stansberry drew his gun, stopped him, and ordered him to the ground. The defendant then provided further information to Stansberry justifying Stansberry’s belief that the defendant may have been involved in criminal activity, when the defendant stated that a fight had occurred at the Kwik Pick. **Officer Stansberry did not “capture” the defendant and then look for a crime that the defendant might have committed. Stansberry had a reasonable, objective, and particularized basis for stopping and briefly detaining the defendant. Then, given the defendant’s statement, Stansberry had a basis for conducting further investigation into the details of the incident at the Kwik Pick. The detention of the defendant was not illegal, and the trial court erred in suppressing evidence obtained during the defendant’s detention.**

Rigdon v. State, A04A2026 (10/28/04), 04 FCDR 3533

Defendant’s conviction of DUI-less safe was reversed. Defendant argued that his due process rights were violated after the probate court instructed him that he did not need to present evidence and legal arguments in defense of that charge. The probate court told the prosecution to “stick to” per se DUI and defense counsel tailored his trial strategy accordingly. **The probate court erred in ruling that charging instrument limited charges to per se DUI, but once ruling was made, probate court was foreclosed of the option of convicting defendant of less safe DUI.**