



CaseLaw

Update

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CaseLaw This Week

Week Ending November 26, 2004

- Evidence
- Sentencing

Evidence – Similar Transaction

Morita v. State, A04A2299 (11/08/04), 2004
Ga. App. LEXIS 1429

Defendant's convictions for kidnapping with bodily injury, rape, aggravated sodomy, aggravated child molestation, aggravated assault and cruelty to children were affirmed. Defendant claimed that the trial court erred in admitting similar transaction evidence. Defendant argued that the instances were not sufficiently similar and the prejudicial effect outweighed any probative value. The victims in both cases were children, they were both kidnapped and taken into the woods and they were both sexually molested. The court found that, because "the admissibility of similar transaction evidence is liberally construed in the area of sexual offenses, the sexual molestation of young children or teenagers, regardless of the type of act, is sufficiently similar transaction evidence."

Sentencing – Recidivist

Wheeler v. State, A04A1782 (11/08/04), 2004
Ga. App. LEXIS 1431

The Court of Appeals vacated defendant's recidivist sentence for armed robbery and remanded for a resentencing

hearing, holding that the state failed to meet its burden of proof under O.C.G.A. § 17-10-7(a). Before defendant's trial, the state filed notice that it was seeking recidivist punishment under O.C.G.A. § 17-10-7(a), in light of defendant's previous Florida conviction for grand theft, but did not attach a copy of the conviction to the notice. The Court held that, in order to obtain a recidivist sentence under O.C.G.A. § 17-10-7(a), the state must give defendant "clear notice" before trial of its intention to seek such a sentence. Without the opportunity to inspect a certified copy of the Florida conviction, the court stated that it is unable to determine whether defendant was properly sentenced.