



CaseLaw

Update

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CaseLaw This Week

Week Ending December 3, 2004

- **Similar Transactions**
- **Cross-Examination**
- **Search and Seizure**
- **Character Evidence**

Similar Transactions

Morita v. State, A04A2299 (11/08/04)

Defendant was convicted of kidnapping with bodily injury, rape, aggravated sodomy, aggravated child molestation, aggravated assault, and cruelty to children in the first degree. Defendant contends that the trial court erred in admitting similar transaction evidence of a kidnapping and rape of an eleven year old victim who lived in his apartment complex. **The law in Georgia is that in order for evidence of independent offenses or acts to be admitted into evidence, the State must show that (1) it seeks to introduce evidence of the independent offense or act, not to raise an improper inference as to the accused's character, but for some appropriate purpose which has been deemed to be an exception to the general rule of inadmissibility; (2) there is sufficient evidence to establish that the accused committed the independent offense or act; (3) there is a sufficient connection or similarity between the independent offense or act and the crime charged so that proof of the former tends to prove the latter.**

Williams v. State, 261 Ga. 640 (1991). In this case, the State sought to introduce the evidence to show motive, bent of mind, modus operandi, and the lustful disposition of the defendant. 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 to be admissible as similar transaction evidence."

Blevins v. State, A04A1243 (11/09/04)

Defendant was convicted of child molestation. At trial, the state presented evidence of four similar transactions involving child molestation. In three of these instances, the defendant pled guilty and was convicted. **"In crimes involving sexual offenses, evidence of similar previous transactions is admissible to show the lustful disposition of the defendant and to corroborate the victim's testimony. The exception to the general rule that evidence of independent crimes is inadmissible has been most liberally extended in the area of sexual offenses."** *Hostetler v. State*, 261 Ga. App. 237, 238 (1) (582 S.E.2d 197)(2003) The similar transaction evidence in this case was proffered to show intent, motive, course of conduct and the defendant's lustful disposition. We find no abuse of discretion in the admission of evidence regarding the four prior incidents involving the defendant and other young males.

Similar Transactions – Res Gestae

Houston v. State, A04A2371 (11/15/04)

Defendant was convicted of aggravated assault and robbery. The defendant robbed a Kentucky Fried Chicken restaurant within 24 hours of robbing a Mrs. Winners restaurant and attempting to rob a Church's Fried Chicken. The defendant claims the trial court erred in admitting evidence of the Kentucky Fried Chicken robbery as similar transaction evidence in her trial for the other two robberies. **The Court held that evidence of the Kentucky Fried Chicken robbery is admissible as part of the res gestae because the robbery occurred within 24 hours of the Mrs. Winner's robbery and on the same day as the Church's Fried Chicken attempt robbery and was a continuation of a crime spree. Even if it were not admissible under res gestae it would still be admissible as a similar transaction. In order for a similar transaction to be introduced, the state must make three affirmative showings as mandated by *Williams v. State*, 261 Ga. 640 (1991).** The defendant erroneously focused on the differences between the separate crime and the crimes in question, rather than correctly focusing on their similarities. Although the crimes are not identical, there are numerous similarities. All of the robberies occurred in less than a 24 hour period. All were of drive-through windows at restaurants, and all the restaurants were located within a short distance of each other. In each robbery the suspect wore a green Army Jacket and drove a blue car. **A similar transaction need not be identical to be admissible.**

Cross-Examination

Blevins v. State, A04A1243 (11/09/04)

Defendant was convicted of child molestation. The defendant argues that the state exceeded the permissible use of similar transaction evidence by cross-examining him about this evidence. During direct-examination, the defendant testified about the similar transactions, and denied that he had abused the victim in two of the cases. The defendant stated that he pled guilty to those charges only because his lawyer advised him

that his jail time would be reduced. On cross-examination, the prosecutor questioned the defendant regarding whether he had committed the other crimes introduced as similar transactions. The trial judge overruled the objection and said that "if your client denies that these events occurred or attempts to down play them, then the jury is entitled to know what the truth is about these incidents because they cannot consider them for any purpose if they did not occur." **The Court of Appeals agreed with the trial court that the defendant's denial of touching the victims in the previous cases opened the door on cross-examination for the prosecutor to question him regarding the other prior crimes to which he pled guilty. The State, like any other party, has the right to conduct a thorough and sifting cross-examination and to pursue the specifics of a topic the defendant introduced.**

Search and Seizure

State v. Trammel, A04A1872 (11/09/04)

The Court of Appeals reversed the grant of the defendant's motion to suppress evidence gathered in connection with a traffic stop, holding that the arresting officer had probable cause to stop the defendant for driving a vehicle that appeared to have blue flashing lights under its hood and for stopping the vehicle a second time after observing the driver stall the vehicle several times as she attempted to pull away at the conclusion of the first stop. The officer initially pulled over the defendant's vehicle because it had blue lights under its hood in violation of O.C.G.A. § 40-8-90(a). After the female driver told the officer that she was driving a friend's vehicle, the officer advised her to tell the owner of the car to get rid of the blue lights and that she was free to go. After the officer returned to his patrol car, he became suspicious when he observed the stick-shift car that the woman claimed she had been driving stalled several times as she tried to pull away. This led the officer to believe that the woman had never driven a stick shift and perhaps was not the one who had been driving the car before the initial traffic stop. The officer went back to the defendant's vehicle to investigate and the defendant admitted that he and his friend had switched seats and that he had been the one initially driving. The officer checked the defendant's driving history and discovered

that his license had been suspended for being a habitual violator. The defendant moved to suppress all evidence seized in connection with the stop on the ground that the officer did not have a reasonable suspicion of criminal activity to warrant the stop. **"An officer must have reasonable suspicion of criminal conduct before conducting additional questioning and searching a vehicle once a normal traffic stop has ended and the officer has told the motorists they are free to go."** *Anderson v. State*, 261 Ga. App. 657, 659 (2003). Here, the record reveals that the officer had a reasonable suspicion of criminal activity warranting the second stop. It was reasonable for the officer to conclude under the totality of the circumstances that the woman was not the original driver and may have switched places with the passenger, who had possibly been driving illegally.

State v. Mauerberger, A04A2346 (11/10/04)

The Court of Appeals reversed the grant of defendant's motion to suppress marijuana evidence found in his car pursuant to a consent search during a traffic stop. A police officer stopped the defendant for failing to make a complete stop at a stop sign and for failing to use his turn signal. The officer asked the defendant for consent to search his vehicle for weapons and contraband. During the search of the car, the officer found marijuana in defendant's ashtray. The trial agreed that the initial stop was proper and that the officer had defendant's consent to search. However, the court stated that the officer lacked a particularized and objective basis to question the defendant about weapons and narcotics. **The Court of Appeals held that a police officer, having effected a valid stop of a vehicle, does not violate a driver's Fourth Amendment rights merely by inquiring about his possession of weapons or drugs or requesting his consent to search his vehicle for those weapons or drugs. It is not the nature of the question that offends the Fourth Amendment, it is whether in asking the questions the officer impermissibly detains the individual beyond that necessary to investigate the traffic violation precipitating the stop. If such a detention occurs, it must be supported by reasonable articulable suspicion of criminal activity. In this case, when the officer asked for consent and**

searched the defendant's vehicle, his driver's license check was still pending. Thus the trial court erred in finding that the traffic stop had "concluded" before the questioning began.

Character Evidence

King v. State, A04A2107 (11/09/04)

Defendant was convicted for possession of methamphetamine and amphetamine with intent to distribute. The defendant argues that the trial court erred in allowing the admission of his past criminal history for purposes of impeachment. During trial, the court allowed the admission of copies of several indictments in which the defendant had been previously charged with several felony counts and had pled guilty. The defendant took the stand and denied all of the charges against him. The State argues that the defendant put his character at issue when he claimed that he did not use illegal drugs. However, an examination of the record shows that the defendant did not say he does not use illegal drugs but the testimony dealt with whether the defendant was transporting drugs to the informant's home. **The Court held that the defendant did not inject his good character at trial and the State is barred from introducing the prior convictions against him. Since the trial court improperly admitted the prior convictions, the defendant's conviction must be reversed and he is entitled to a new trial.**