



CaseLaw Update

Prosecuting Attorneys' Council of Georgia

Legal Services Staff

David Fowler
Deputy Executive Director
for Legal Services

Chuck Olson
General Counsel

Joesph Burford
Trial Services Director

Fay McCormack
Traffic Safety Coordinator

Patricia Hull
Traffic Safety Prosecutor

Tom Hayes
DPD Director

Gary Bergman
Staff Attorney

Tony Lee Hing
Staff Attorney

Rick Thomas
Staff Attorney

Donna Sims
Staff Attorney

Jill Banks
Staff Attorney

Al Martinez
Staff Attorney

Troy Golden
Staff Attorney

Clara Bucci
Staff Attorney

CaseLaw This Week

Week Ending January 21, 2005

- **Right to Remain Silent**
- **Venue**

Right to Remain Silent

Billings v. State, S04A1716 (01/10/05), 05
FCDR 152

Defendant's convictions for felony murder, armed robbery, burglary and possession of a firearm during the conviction of a crime affirmed in part and vacated in part. Defendant challenged his convictions on the grounds that during a videotaped interview, a police detective made reference to a time when the defendant would take the witness stand. The tape was played for the jury. The defendant contended that this statement constituted an impermissible comment on the defendant's silence. The Supreme Court rejected this argument finding that the detective's comments were not "manifestly intended to comment on his failure to testify nor was it of such character that it would prejudice the jury on his failure to testify".

Venue

Tompkins v. State, S04G1113 (01/10/05), 05
FCDR 174

Defendant's conviction for two counts of child molestation affirmed with direction. The defendant was convicted of

two counts of child molestation following a bench trial in which both parties agreed to present their evidence by proffer. During the State's proffer no direct evidence of venue was offered. The defendant did not affirmatively challenge venue in the defense presentation. The defendant raised the issue of venue in his appeal to the Court of Appeals and that court held that the defendant had waived his objection to venue by failing to raise the issue before the trial court in his proffer. The Supreme Court reversed this holding on the grounds that **venue is an element of the crime** which the State is required to prove, absent a stipulation by the defendant. Since there was no stipulation in this case, the Supreme Court held that the State is required to prove venue and although the defendant did not challenge the issue at trial, **"the State bears the burden of proving every element, and the fact that a defendant does not affirmatively challenge an element at trial does not relieve the State of this burden, nor does it justify the conclusion that the defendant stipulates to the existence of that element."**