



CaseLaw Update

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CaseLaw This Week

Week Ending January 28, 2005

- **Expert Witness – Qualification**
- **Implied Consent**
- **Evidence – Audiotape**
- **Evidence – Relevance**

Expert Witness – Qualification

Helton v. State, A04A2088 (01/12/05), 05 FCDR 188, 2005 Ga. App. LEXIS 21.

Defendant was convicted for possession of methamphetamine with intent to distribute. The arresting officer testified to his experience in law enforcement, his advanced drug training, and his experience regarding drug arrests. Based on his experience, the arresting officer testified that the substance recovered from the defendant had the coloration of methamphetamine and was in an amount too large for personal use. A GBI forensic scientist testified that the substance recovered from the defendant tested positive for methamphetamine. On appeal, defendant contends that the testimony of the arresting officer was insufficient because he was never qualified as an expert. **The court held that an officer does not have to be qualified as an expert to identify a substance where the proper foundation has been laid with respect to the officer's experience and training.** Judgment affirmed.

Implied Consent

Lenhardt v. State, A04A2099 (01/07/05), 05 FCDR 190, 2005 Ga. App. LEXIS 14.

The defendant was convicted of DUI and driving with an expired tag. The defendant was arrested in Coweta County by a Georgia State Patrol officer but requested to have his own independent blood test conducted at Georgia Baptist Hospital in downtown Atlanta. The officer told defendant that Georgia Baptist was too far from his patrol area and offered to take defendant to either of the hospitals in Coweta County. The defendant agreed to go to one of the Coweta County hospitals. Defendant argues that he was denied his right to an independent test from qualified personnel of his own choosing. **The court held that where a suspect's request for an independent chemical test is unreasonable, the officer is justified in refusing to accommodate the request.** Here, the request was unreasonable given the distance to the hospital of choice, the availability of closer hospitals, the limited number of patrol officers working in Coweta County, and the fact that the defendant accepted the choices given to him. Judgment affirmed.

Evidence – Audiotape

Pasuer v. State, A04A2207 (01/07/05), 05 FCDR 192, 2005 Ga. App. LEXIS 18.

Defendant was convicted for the possession and sale of cocaine. He sold the cocaine to two informants conducting a controlled buy. One of the informants wore an electronic surveillance device to record the drug purchase. The audiotape of the drug buy was introduced at trial. Defendant

argues the admission of the tape was error because portions of the tape were inaudible and evidence favorable to his defense was not recorded on the tape. The informants making the drug buy also testified at trial. The court stated that as long as the State presents a proper foundation for an audiotape the trial court has discretion to admit it, even if part of it is inaudible. **The court held that because the audiotape was not the only evidence of what occurred during the controlled buy, the trial court was not required to exclude it simply because it was partially inaudible.** Judgment affirmed.

Evidence – Relevance

Hill v. State, A04A1817 (01/10/05), 05 FCDR 198, 2005 Ga. App. LEXIS 20.

Defendant was convicted of armed robbery and battery. On appeal, defendant argues that the trial court erred by excluding defendant's proffered evidence of a reverse similar transaction that another, nearly identical robbery had occurred two weeks prior. Testimony showed that the earlier robbery was most likely committed by another individual, who could not be identified. However, **the defendant failed to establish that the person who committed the second robbery was the same person who committed the first robbery. The reverse similar transaction evidence was properly excluded.** Judgment affirmed.