



CaseLaw Update

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CaseLaw This Week

Week Ending February 25, 2005

- **DUI – Right to Remain Silent**
- **Witness Sequestration**

DUI – Right to Remain Silent

Long v. State, A04A2193 (12/06/04), 05
FCDR 431, 2005 Ga. App. LEXIS XXX.

Defendant was convicted of driving under the influence of alcohol to the extent she was a less safe driver. On appeal, the defendant argued that the trial court erred in refusing to exclude evidence of her refusal to submit to voluntary field sobriety tests because such evidence violates her right to remain silent. The court found that the officer had a reasonable articulable suspicion that the defendant was intoxicated which provided him with a legal basis for asking defendant to submit to field sobriety tests. The court held that there was no violation of defendant's right to remain silent because she was not in custody at the time the field sobriety test was requested. Judgment affirmed.

Witness Sequestration

Carter v. State, A04A2394 (02/10/05), 05
FCDR 445, 2005 Ga. App. LEXIS XXX.

Defendant was convicted of attempted armed robbery, aggravated battery, aggravated assault, and three counts of

possession of a firearm during the commission of a crime. Defendant invoked the rule but the trial court allowed, at the State's request, the investigating GBI officer to remain in the courtroom. The State informed the court that the agent's presence was required for an orderly presentation of the evidence. The Court was troubled by the trial court's ready acceptance of the State's conclusory assertion that the agent was needed in the courtroom. Although finding the trial court did not abuse its discretion, the Court stated "[w]e have reached a point where the prosecution acts as though it has an absolute right to have its witness present for the duration of trial. An empty assertion that the prosecution "needs" a witness during trial to assist in the orderly presentation of its case, without more, should not be the kind of assertion upon which discretion can be granted. Judgment affirmed.