



CaseLaw Update

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CaseLaw This Week

Week Ending March 4, 2005

• Retroactive application of *Cooper*

Retroactive application of Cooper

Costly v. State, A05A0734 (02/17/05), 05
FCDR 532, 2005 Ga. App. LEXIS XXX.

Defendant was convicted of first degree homicide by operating a vehicle in violation of OCGA § 40-6-391(a)(6), driving under the influence of methamphetamine and amphetamine. A urine sample was obtained from the defendant for purposes of chemical testing pursuant to OCGA § 40-5-55 which, at the time, allowed for samples to be taken from a driver involved in an accident resulting in a fatality. The accident at issue occurred in 2001. In 2003 the Georgia Supreme Court held in *Cooper* that the portion of OCGA § 40-5-55 allowing for bodily substance samples to be taken from drivers based solely on the fact they were involved in an accident with injury was unconstitutional. The court held **that since defendant's conviction was on direct review it was not final and was thus in the "pipeline" so the *Cooper* decision applied to defendant's appeal.** Conviction on this count reversed.