

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MARCH 9, 2012

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THIS WEEK:

- **Right to Remain Silent; Judicial Comment**
- **Venue; Similar Transaction**

Right to Remain Silent; Judicial Comment

Ridley v. State, S11A1416 (3/5/2012)

Appellant argued that the trial court improperly stated an opinion on the testimony given by a dentist he called as an expert witness. The record showed that the State called an expert in forensic odontology in order to identify a set of bite marks located on the victim's breast. In order to challenge the forensic odontologist's testimony, that appellant could not have caused the bite mark, appellant called a dentist who had no expertise in forensic odontology. After extended questioning which revealed that appellant's dental expert had no experience in identifying bite marks like the ones left on the victim, appellant attempted to elicit testimony regarding the dental impressions an individual could leave by covering his teeth with his lips while biting into fruit. The trial judge, sua sponte, stopped the testimony and stated, "I think he's speculating. He doesn't know." The judge then explained to appellant's counsel, "He's an expert what he's talking about now is not something he's an expert in any more than any of us are." Appellant contended that this was an improper comment on the evidence.

The Court held that the trial court exercised its judgment and discretion by stopping the testimony and explaining his ruling to Appellant's counsel. A trial judge may not express his opinion about a proven or unproven

issue relevant to the guilt of the defendant. OCGA § 17-8-57. Under § 17-8-57, however, a trial judge may explain the reasons for an evidentiary ruling to the parties. Here, the trial court was merely explaining the basis for an evidentiary ruling.

Appellant next argued that the trial court should not have admitted into evidence custodial statements made by him while he was being investigated in 1994 regarding the rape of S. D. Appellant argued he asserted his right to remain silent prior to his admission. The Court found that the record, however, did not support this contention. As detectives prepared to take appellant to jail in 1994, he admitted raping S. D. on November 18, 1994 and stated he did not have sex with the victim. At trial, appellant admitted to having had sex with the victim, and the State impeached him based on his 1994 denial. The Court found that at no point did appellant unequivocally state that he wanted to remain silent or wanted to speak with an attorney before speaking further with police.

Venue; Similar Transaction

Thomas v. State, S11A1686 (3/5/2012)

Appellant challenged his convictions for numerous crimes, including malice murder, armed robbery, and aggravated assault, committed at two different convenience stores on the same night. He contended that the trial court erred by permitting the State to introduce evidence of the two armed robberies he committed in 1995 as similar transactions. The Court held that contrary to appellant's contention, the 12-year period between the prior offenses and the new crimes did not compel exclusion of the similar transaction

evidence, particularly because appellant spent ten years of that time incarcerated for the 1995 robberies. The evidence showed that appellant committed the two previous 1995 robberies with a handgun on the same day at locations near each other. Based on these similarities to the crimes for which the appellant was on trial, the trial court's decision to admit the evidence to show motive, common plan, or scheme was not an abuse of discretion.

Appellant claimed that the trial court erred in denying his motion for a change of venue due to pretrial publicity. To succeed on this claim, appellant had to show either that the setting of the trial was inherently prejudicial or that the jury selection process showed actual prejudice to a degree that rendered a fair trial impossible. The trial court determined that appellant failed to carry his burden to show inherent prejudice, and a review of the record showed that the court did not abuse its discretion in its ruling.

As for actual prejudice, during voir dire, 10 of the 104 members of the jury pool reported strong feelings about the case and were excused for cause. Appellant contended that an additional six jurors should have been excused after displaying a high level of knowledge and emotion about the case. The Court noted, however, that the excusal percentage would have been 15 percent, which did not establish actual prejudice and any issues of pretrial publicity were properly dealt with in the case through voir dire and the jury selection process.