



CaseLaw

Update

Prosecuting Attorneys' Council of Georgia

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CaseLaw This Week

weeks ending 12/26/03; 1/2/04

Equal Access Rule

Evidence - Character

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Evidence - Rape Shield Statute

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Equal Access Rule

Felder v. State, A03A2580 (12/5/03), 04 FCDR 34, 2003 Ga. App. Lexis 1517

Defendant's conviction for cocaine possession was affirmed. Defendant argued on appeal that the equal access rule should apply since the victim had been inside defendant's car and could have put the cocaine in the vehicle.

The equal access rule, which entitles the defendant to acquittal where evidence is presented that others had equal access to a vehicle or that the vehicle had recently been used by others, applies only where the

sole evidence of possession of the contraband found in the vehicle is based upon the defendant's ownership or possession of the vehicle. In this case, defendant's possession of the vehicle was not the sole evidence of his possession of the cocaine found in it.

Evidence - Character

Drummer v. State, A03A2040, A03A2041 (12/11/03), 04 FCDR 27, 2003 Ga. App. Lexis 1543

Co-defendant's questioning of a witness about threats allegedly made against the witness if she testified did not constitute bad-character evidence against the defendant because only one question, which the witness did not answer, mentioned or implied that the defendant was the source of the threats.

White v. State, A03A2206 (12/10/03), 04 FCDR 45, 2003 Ga. App. Lexis 1521

Defendant's shoplifting conviction was reversed. The indictment, which listed defendant's three prior shoplifting convictions, was read to the jury without redaction of the prior charges. The prior convictions were not admitted as similar transactions. Although a felony shoplifting charge requires proof of recidivism, recidivism

is an issue for sentencing and it was **error for the jury to be made aware of the prior convictions during the guilt/innocence phase of the trial.** The error was harmful because the evidence of guilt was not overwhelming.

Evidence - Res Gestae

Sweney v. State, A03A2467 (12/5/03), 04 FCDR 31, 2003 Ga. App. Lexis 1514

Defendant's burglary conviction was affirmed. A neighbor called 911, reported men stealing carpets from a cleaners' storage building, and informed police that defendant had entered the building. The caller did not testify at trial, but the trial court admitted the tape of the call. The Court held that **the tape was admitted properly under the res gestae exception to the hearsay rule because the caller's statements were made while the incident was in progress and without premeditation or afterthought.** It also was admissible as an excited utterance.

Evidence - Rape Shield Statute

Abdulkadir v. State, A03A2111 (12/5/03), 04 FCDR 34, 2003 Ga. App. Lexis 1513

Defendant's convictions for the child molestation and aggravated child molestation of his 13-year-old stepdaughter were affirmed. **There was no error in ruling under the rape shield statute, OCGA § 24-2-3(a), that defendant could show that the victim was angry with him as a motive for the victim to fabricate the molestation charges. However, defendant could not show that the victim's anger resulted from defendant's role in**

Evidence - Statement

Jewett v. State, A03A1753 (12/5/03), 04 FCDR 44, 2003 Ga. App. Lexis 1511

There was no error in admitting the oral statement that defendant made to a GBI agent after his arrest. The statute governing confessions, OCGA § 24-3-34, does not provide that a statement that falls short of being a confession is inadmissible. **An incriminating statement is admissible under OCGA § 24-3-34 as the admission of a party-opponent; and any indication in defendant's statement that he committed another offense did not render it inadmissible as improper character evidence.**

Jurisdiction

Mann v. State, A03A2441 (12/11/03), 04 FCDR 35, 2003 Ga. App. Lexis 1546

Defendant was indicted in 1996 and in 2000 for crimes involving the same victim. On April 10, 1996, defendant pled guilty to the 1996 indictment for kidnapping with bodily injury and was sentenced to 10 years probation. This sentence, however, was illegal under OCGA § 17-10-6.1(b), which requires that someone convicted of kidnapping be sentenced to a mandatory minimum of ten years imprisonment. On January 10, 2001, the trial court accepted a withdrawal of his 1996 guilty plea. In April 2001, defendant went to trial for both the 1996 and 2000 indictments.

The Court of Appeals held that the trial court erred in accepting the withdrawal of the guilty plea and allowing a trial to proceed on the 1996 indictment. Defendant can withdraw his plea only before sentencing or before the

expiration of the term of court in which the plea was entered. **Because the sentence was void, the trial court did have jurisdiction to resentence defendant at any time.** However, the trial court could not accept a withdrawal of the 1996 plea in 2001. Therefore a trial could not proceed on charges for which defendant was previously convicted in 1996. However, this did not invalidate defendant's conviction under the 2000 indictment.

Jury Selection

Logan v. State, A03A2287 (12/11/03), 04 FCDR 25, 2003 Ga. App. Lexis 1549

The trial court did not abuse its discretion by denying the defendant's motion to strike the entire jury panel based on one juror's comments that he was a neighbor and that he knew the defendant had been a problem. The juror's comments did not link defendant to other crimes and was not inherently prejudicial.

Search and Seizure

Filix v. State, A03A2500 (12/5/03), 04 FCDR 28, 2003 Ga. App. Lexis 1515

Defendant's conviction for a Cobb County armed robbery was affirmed. The trial court did not err in denying defendant's motion to suppress blue jeans that were seized from him. **Although defendant was being held at the DeKalb County jail at the time on an unrelated arrest that was subsequently determined to be illegal, the jeans were seized pursuant to a valid Cobb County search warrant based on evidence from the armed robbery that was unrelated to the illegal detention in DeKalb.**

Sentencing - First Offender Act

Middleton v. State, A03A1892 (12/11/03, 04 FCDR 42, 2003 Ga. App. Lexis 1539

The trial court **did not err by not according first-offender treatment to the defendant.** The defendant's record showed a **prior out-of-state conviction** that resulted in a 1-year probationary sentence, which the trial court believed was a felony. The **defendant failed to present evidence that the conviction was a misdemeanor**, despite his having ample opportunity to do so.

Speedy Trial

State v. Edminson, No. A03A2339 (12/11/03), 04 FCDR 43, 2003 Ga. App. Lexis 1548

The grant of defendant's speedy trial motion for discharge and acquittal was affirmed. **In support of defendant's motion for reconsideration of denial of defendant's speedy trial motion, defendant submitted an affidavit verifying that jurors were impaneled and qualified to try his case during the time the State was required to initiate his trial.** This affidavit satisfied defendant's burden of showing that jurors were impaneled and qualified to try his case.

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***The Prosecuting Attorneys' Council encourages you to add commentary or creative prosecution suggestions for any of this Caselaw. The responses will be published in a PAC publication, please e-mail David Fowler at dfowler@pac.state.ga.us, or Glen Hollingshed at hollngs@pac.state.ga.us with feedback.**