



CaseLaw

Update

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CaseLaw This Week

Week Ending April 23, 2004

- **Statements**
- **Possession of a Firearm by a Convicted Felon – Effect of a Nolo Contendere Plea**
- **Evidence – Witness**
- **Competency**
- **Search & Seizure**

statements at issue were not made in response to a question asked by the police, they did not fall within custodial interrogation as set out in *Miranda*.

Jones v. State, A04A0286 (04/01/04), 04 FDCR 1389, 2004 Ga. App. LEXIS 459

The defendant alleged that the trial court erred in not suppressing certain custodial statements claiming that he made these statements in the hopes that the detectives would drop certain charges against his girlfriend. The court held that under OCGA § 24-3-50, **the benefit contemplated by the statute is benefit to the defendant which relates to the charge facing him. Confessions made under a promise of a benefit to another are deemed collateral and are not excludable solely on those grounds.**

Statement

Singleton v. State, A04A0784 (04/06/04), 04 FDCR 1374, 2004 Ga. App. LEXIS 468

Defendant's conviction for cocaine possession with intent to distribute was affirmed. Defendant argued that statements he made to the police should have been suppressed because he was under arrest at the time he made the statements and he had not received his *Miranda* warnings. Upon execution of a search warrant police subdued the defendant attempting to flush potential evidence. An officer held up the bag rescued from the toilet, and stated, "I got what you tried to flush," to which the defendant replied "you got me." The court held that the officers conduct in retrieving the bag and the statement he made did not constitute an interrogation. **The court held that because the**

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Blackmon v. State, A04A0456 (04/08/04), 04 FCDR 1377, 2004 Ga. App. LEXIS 482

Defendant's two convictions for possession of a firearm by a convicted felon were reversed. The defendant had pled nolo contendere to burglary in 1977 and was sentenced to three years probation. The state then used that plea as a basis for charging the defendant with two counts of possession of a firearm by a convicted felon in the instant case. **The Court of Appeals held that a plea of nolo contendere cannot be used to establish a previous felony conviction for purposes of OCGA § 16-11-131(b).**

Evidence – Witness Competency

Thomas v. State, A04A0292 (04/08/04), 04 FCDR 1391, 2004 Ga. App. LEXIS 484

Defendant's conviction for cruelty to children was affirmed. The Court of Appeals held that the trial court's allowing **the victim's 6 year old brother to sit in his mother's lap while the child testified at the competency hearing did not indicate a lack of reason.** The fact that the child felt more comfortable in his mother's lap did not negate a finding that the child was competent and did not justify reversal.

Search & Seizure

Crow v. State, A04A0355 (04/08/04), 04 FCDR 1387, 2004 Ga. App. LEXIS 485

Defendant appealed his conviction for possession of cocaine, possession of methamphetamine, possession of LSD, and possession of marijuana with intent to distribute on the grounds that evidenced seized should be suppressed because the search warrant was stale. The government received tips in May and June of 2000 but the warrant based upon those

tips was not issued until August of 2000. The court held that, **“although time is certainly an element of probable cause that must be considered by the magistrate before issuing a warrant, the precise date information is obtained is not always essential. ‘Rather, the inquiry is as to whether the factual statements within the affidavit are sufficient to create a reasonable belief that the conditions described in the affidavit might yet prevail at the time of issuance of the search warrant.’** Judgment affirmed.

**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
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with feedback.*