



CaseLaw

Update

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CaseLaw This Week

Week Ending September 10, 2004

- **Competency**
- **Juror**
- **Search and Seizure**
- **Evidence**

Competency – Child Witness

Norman v. State, A04A1294 (08/23/04), 04
FDCR 2834, 2004 Ga. App. LEXIS 1120

Defendant's convictions for burglary, armed robbery, and kidnapping were affirmed. Defendant claimed that the trial court erred in finding that the child witness was competent to testify. The Court found an **adequate competency hearing outside the presence of the jury, in that the child testified that he understood the difference between the truth and a lie; that it was bad to lie and that he could get into trouble if he told a lie; that he promised to tell the truth; and that if the judge asked the child to raise his hand and promise to tell the truth, he would do that.** The Court further found that the fact that the child did not know specifically what would happen to him if he told a lie in court has no bearing upon the determination of competency.

Juror – Excusal for Cause

Bailey v. State, A04A1258 (08/26/04), 04
FDCR 2840, 2004 Ga. App. LEXIS 1137

Defendant's convictions for kidnapping with bodily injury, theft by receiving a motor vehicle, aggravated assault, and possession of a knife during the commission of a felony were affirmed. Defendant contended that the trial court erred by excusing an African-American female juror for cause even though the juror stated that she could keep the parties on equal footing. The juror told the court that she had a son who was convicted of murder in Gwinnett County and sentenced to life in prison. **The Court found that the trial court was entitled to consider all of the juror's circumstances when determining whether she should be excused. The Court found the juror's statement, that she could keep the parties on equal footing, to be immaterial.**

Search and Seizure

Riding v. State, A04A1780 (08/26/04), 04
FDCR 2848, 2004 Ga. App. LEXIS 1141

Defendant's conviction for DUI was affirmed. Defendant asserted that the officer did not have a reasonable and

articulable basis for a suspicion in order to stop defendant. A citizen came in person to a police station, reported two vehicles driving erratically on a certain street and described the vehicles. In response, an officer drove to the street, and observed two vehicles as described by the citizen. The officer stopped both cars. Defendant was driving one of the cars. The officer smelled the odor of alcohol on defendant. Defendant was arrested and a breath test showed that his blood alcohol concentration was over the legal limit. **The Court held that the report by the citizen was a reasonable and articulable basis for a suspicion by the officer that defendant may have been driving erratically and illegally.** The Court found that the officer was authorized to detain defendant briefly for the limited purpose of determining whether he in fact exhibited perceptible manifestations of intoxication. **The Court pointed out that cases involving anonymous tips are distinguishable from cases where the concerned citizen reported directly to the authorities.**

Evidence – Character

Lanier v. State, A04A1662 (08/26/04), 04 FCDR 2852, 2004 Ga. App. LEXIS 1138

Defendant's conviction for felony theft by shoplifting was affirmed. Defendant argued that the State improperly introduced evidence of defendant's character when the arresting officer testified that another witness, an off-duty deputy sheriff acting as store security, told the arresting officer that he knew defendant "from the jail and other places." The Court found no merit in defendant's claim, quoting *Roaderrick v. State*, 257 Ga. App. 73, **the Court stated that "mere mention that a defendant has been in jail falls short of placing his character in issue."** The Court found that the trial judge gave sufficient and immediate

curative instruction to the jury regarding the comment made by the arresting officer.

Evidence – Similar Transaction

Anderson v. State, A04A0974, 04 FCDR 2854, 2004 Ga. App. LEXIS 1128

Defendant's convictions for rape and kidnapping were affirmed. Defendant claimed that the trial court erred in admitting evidence of a similar transaction and in doing so impermissibly placed his character into evidence. Here, the evidence was admitted to show bent of mind and course of conduct. The Court found that the two conditions for admissibility were satisfied. First, defendant did not dispute that he was found guilty of rape in 1981, and second, the prior offense and the offense charged are similar with respect to the manner of assault. **The Court noted that the proper focus is on the similarity, and not the differences, between the separate crimes and the crime in question. Further, any time lapse between the two crimes goes to the weight and credibility of the evidence, and not its admissibility.**

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