



CaseLaw

Update

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CaseLaw This Week

Week Ending October 8, 2004

- Evidence
- Sentencing
- Joinder

Evidence – Res Gestae

Patel v. State, S04A0829 (09/27/04), 04 FCDR 3143, 2004 Ga. LEXIS 796

Defendant's conviction for felony murder was affirmed. The court found that a statement made by defendant's wife to his brother at or near the time of the shooting was properly admitted, as the statement sprang naturally and spontaneously from the strain of the circumstances which preceded the shooting. Those circumstances constituted one continuous transaction for res gestae purposes. **The court found that the mere fact that the statement reflected a subjective opinion of defendant's state of mind, as opposed to an objective, observable fact, is of no consequence as long as it is part of the res gestae.**

Evidence – Crawford

Walton v. State, S04A1326 (09/27/04), 04 FCDR 3150, 2004 Ga. LEXIS 804

Defendant's convictions for malice murder and possession of a firearm were affirmed. Defendant claimed that his right to confrontation was violated, under *Crawford*, when the court permitted introduction of a deceased witness's statement as a dying declaration. **The court noted that in its *Crawford* opinion, the Supreme Court declined to extend its holding to dying declarations by acknowledging that admission of a dying declaration was an exception to the general rule that a prior opportunity to cross-examine was a necessary condition for admissibility of testimonial statements.** The court went on to hold that defendant waived any objection to the statement's admission because no objection was made to the statement at defendant's trial.

Ross v. State, S04A1258 (09/27/04), 04 FCDR 3152, 2004 Ga. LEXIS 815

Defendant's conviction for malice murder was affirmed. Defendant contended that the trial court erred by admitting a statement made by defendant's girlfriend who had witnessed the homicide, but was deceased at the time of trial. Defendant's girlfriend told police that defendant was "hot-headed" and that he had been drinking heavily;

there was “no damn reason” for defendant to have killed the victim; and that defendant ultimately admitted to his girlfriend that he killed the victim because he was “tired of his mouth.” Police taped her statement, which was played at trial under the necessity exception to the hearsay rule, O.C.G.A. § 24-3-1(b). Defendant claimed that it was error to allow the statement under the necessity exception because the surrounding circumstances did not support a finding of reliability or trustworthiness and because admission of the evidence violated his rights of confrontation. **The court found that defendant’s assertion regarding the reliability and trustworthiness of the statement is irrelevant under *Crawford*, but that admission of the statement was error because defendant did not have an opportunity to cross-examine the witness about her statement. The court found that this error was harmless, however, because the statement was merely cumulative of other admissible evidence and there is no reasonable possibility that the statement contributed to the verdict.**

Evidence - Photographs

McClure v. State, S04A0944 (09/27/04), 04 FCDR 3154, 2004 Ga. LEXIS 812

Defendant’s convictions for felony murder and aggravated assault were affirmed. The court held that the trial court abused its discretion by admitting into evidence a photograph of the victim’s corpse after internal organs had been removed for donation, however, this error was harmless in light of the overwhelming evidence of defendant’s guilt. **The court found that a photograph depicting the victim’s corpse after autopsy incisions are made, or after the state of the body has been changed by medical authorities, is only admissible to show a material fact that became apparent solely because of the autopsy.**

Evidence – Character/Impeachment

McClure v. State, S04A0944 (09/27/04), 04 FCDR 3154, 2004 Ga. LEXIS 812

Defendant’s convictions for felony murder and aggravated assault were affirmed. The trial court did not abuse its discretion by limiting defendant’s cross-examination of a state’s witness to exclude questioning about whether the witness committed a felony several months before the victim’s murder. **The court found that a witness cannot be impeached by instances of specific misconduct unless that misconduct has resulted in conviction of a felony crime involving moral turpitude.**

Sentencing

Pate v. State, A04A1092 (09/22/04), 04 FCDR 3178, 2004 Ga. App. LEXIS 1259

Defendant’s convictions for aggravated sexual battery, sexual battery, theft by taking, impersonating an officer, obstructing an officer, and hindering an officer were affirmed. Defendant’s sentence was vacated. **The court held that the state must give a defendant affirmative notice before trial that his prior felony offenses will be used against him for recidivist purposes during sentencing, and found that here, the state failed to give notice of the armed robbery conviction until after the verdict was rendered.** Since the armed robbery conviction was the basis for the sentence of life without parole on the aggravated sexual battery convictions, the court vacated the sentence on those charges.

Joinder of Offenses

Williams v. State, A04A1989 (09/21/04), 04 FCDR 3180, 2004 Ga. App. LEXIS 1252

Defendant’s convictions for armed robbery, robbery by sudden

snatching, and aggravated assault with a handgun were affirmed. **The court found that the robberies showed a common plan, scheme, and purpose, and evidence of one was admissible in a trial of the others, so their severance was not mandatory. The number of offenses and the complexity of the evidence did not make the jury unable to distinguish the evidence and apply the law to each charge, so denying defendant’s motion to sever was not an abuse of discretion.**



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