



# CaseLaw

## Update

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#### CaseLaw This Week

Week Ending December 10, 2004

- **Statement**
- **Hearsay**
- **Character Evidence**

#### Statement

*Williams v State*, A04A1730 (11/16/04), 04 FCDR 3844

Defendant was convicted of eight counts of burglary. Defendant argued that the trial court erred in admitting into evidence three custodial statements that he made to police. Prior to trial, defendant moved to suppress the statements, arguing that they were not freely and voluntarily made and that they resulted from a “hope of benefit” or “fear of injury.” He further argued that he was neither informed of nor understood his rights under *Miranda v. Arizona*. According to the investigating officer, the defendant signed a *Miranda* waiver and admitted his involvement in the various burglaries. On appeal, the defendant changed his argument and argued that the trial court should have excluded his statements to police because “he was arrested without a warrant and without a showing of probable cause.” Defendant no longer claimed that the statements were involuntary or that he did not receive proper *Miranda* warnings. **In order to raise on appeal an impropriety regarding the admissibility of evidence, the specific ground of objection must be made at the time the evidence is offered, and the failure to do so amounts to a waiver of that specific ground. In this case, the**

**defendant did not timely assert a Fourth Amendment objection to the admissibility of his statements to police. Accordingly, he has waived this issue for purposes of appeal.**

#### Hearsay

*Porter v. State*, S04A1360 (11/22/04), 04 FCDR 3784

Defendant was convicted of felony murder and two firearms offenses. Relying on the necessity exception to the hearsay rule, the trial court admitted testimony concerning a statement made in the course of police questioning of a witness who refused at trial to take the oath and testify. The defendant argued that the admission of the uncooperative witness’s hearsay statement was reversible error. **The statement of the witness who refused to take the oath and testify was testimonial hearsay under *Crawford*, and since the defendant had no opportunity to cross-examine, the trial court erred in allowing the police detective to read the witness’ statement to the jury under the necessity exception to the hearsay rule.**

#### Character Evidence

*Porter v. State*, S04A1360 (11/22/04) , 04 FCDR 3784

Defendant was convicted of felony murder and two firearms offenses. Defendant argued that his character was impermissibly placed in issue. The trial court allowed a police

detective to testify that after getting the defendant's name as a suspect, "I went to a computerized format to see if we had a photograph of that, of a person matching that name." **Since testimony that a photograph of a defendant was in police records prior to the defendant's arrest for the crime for which he is being tried does not place the defendant character in issue (*Fulton v. State*, 278 Ga. 58)(2004), the vague testimony here, which did not specify that the detective searched police file or assert that the defendant's photo was found in the search, does not do so. The trial court did not err in denying the defendant's motion for mistrial.**