O.C.G.A. § 16-13-30

Copy Citation

Current through the 2021 Regular and Special Sessions of the General Assembly.

16-13-30. Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties.

(a) Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his or her control any controlled substance.

(b) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance.

(c) Except as otherwise provided, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule I or a narcotic drug in Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) If the aggregate weight, including any mixture, is less than one gram of a solid substance, less than one milliliter of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than one gram, by imprisonment for not less than one nor more than three years;

(2) If the aggregate weight, including any mixture, is at least one gram but less than four grams of a solid substance, at least one milliliter but

(2) If the aggregate weight, including any mixture, is at least one gram but less than four grams of a solid substance, at least one milliliter but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least one gram but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3)

(A) Except as provided in subparagraph (B) of this paragraph, if the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(B) This paragraph shall not apply to morphine, heroin, opium, or any substance identified in subparagraph (RR) or (SS) of paragraph (1) or paragraph (13), (14), or (15) of Code Section 16-13-25, or subparagraph (A), (C.5), (F), (U.1), (V), or (V.2) of paragraph (2) of Code Section 16-13-26 or any salt, isomer, or salt of an isomer; rather, the provisions of Code Section 16-13-31 shall control these substances.

(d) Except as otherwise provided, any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule I or Schedule II shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, he or she shall be imprisoned for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense; provided, however, that the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(e) Any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule II, other than a narcotic drug, shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(1) If the aggregate weight, including any mixture, is less than two grams of a solid substance, less than two milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of less than two grams, by imprisonment for not less than one nor more than three years;

(2) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance, at least two milliliters but less than four milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(3) If the aggregate weight, including any mixture, is at least four grams but less than 28 grams of a solid substance, at least four milliliters but less than 28 milliliters of a liquid substance, or if the substance is placed onto a secondary medium with a combined weight of at least four grams but less than 28 grams, by imprisonment for not less than one nor more than 15 years.

(f) Upon a third or subsequent conviction for a violation of subsection (a) of this Code section with respect to a controlled substance in Schedule I or II or subsection (i) of this Code section, such person shall be punished by imprisonment for a term not to exceed twice the length of the sentence applicable to the particular crime.

(g) Except as provided in subsection (l) of this Code section, any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than three years. Upon conviction of a third or subsequent offense, he or she shall be imprisoned for not less than one year nor more than five years.

(h) Any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule III, IV, or V shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(i)

(1) Except as authorized by this article, it is unlawful for any person to possess or have under his or her control a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than two years.

(2) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(j)

(1) It shall be unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute marijuana.

(2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code Section 16-13-2, any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(k) It shall be unlawful for any person to hire, solicit, engage, or use an individual under the age of 17 years, in any manner, for the purpose of manufacturing, distributing, or dispensing, on behalf of the solicitor, any controlled substance, counterfeit substance, or marijuana unless the manufacturing, distribution, or dispensing is otherwise allowed by law. Any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years or by a fine not to exceed $20,000.00, or both.

(l)

(1) Any person who violates subsection (a) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished as follows:

(A) If the aggregate weight, including any mixture, is less than two grams of a solid substance of flunitrazepam, less than two milliliters of liquid flunitrazepam, or if flunitrazepam is placed onto a secondary medium with a combined weight of less than two grams, by imprisonment for not

less than one nor more than three years;

(B) If the aggregate weight, including any mixture, is at least two grams but less than four grams of a solid substance of flunitrazepam, at least two milliliters but less than four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a secondary medium with a combined weight of at least two grams but less than four grams, by imprisonment for not less than one nor more than eight years; and

(C) If the aggregate weight, including any mixture, is at least four grams of a solid substance of flunitrazepam, at least four milliliters of liquid flunitrazepam, or if the flunitrazepam is placed onto a secondary medium with a combined weight of at least four grams, by imprisonment for not less than one nor more than 15 years.

(2) Any person who violates subsection (b) of this Code section with respect to flunitrazepam, a Schedule IV controlled substance, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 30 years. Upon conviction of a second or subsequent offense, such person shall be punished by imprisonment for not less than ten years nor more than 40 years or life imprisonment. The provisions of subsection (a) of Code Section 17-10-7 shall not apply to a sentence imposed for a second such offense, but that subsection and the remaining provisions of Code Section 17-10-7 shall apply for any subsequent offense.

(m) As used in this Code section, the term "solid substance" means a substance that is not in a liquid or gas form. Such term shall include tablets, pills, capsules, caplets, powder, crystal, or any variant of such items.

History

Code 1933, § 79A-811, enacted by Ga. L. 1974, p. 221, § 1; Ga. L. 1975, p. 1112, § 1; Ga. L. 1979, p. 1258, § 1; Ga. L. 1980, p. 432, § 1; Ga. L. 1985, p. 149, § 16; Ga. L. 1990, p. 992, § 1; Ga. L. 1992, p. 2041, § 1; Ga. L. 1996, p. 1023, §§ 1.1, 2; Ga. L. 1997, p. 1311, § 4; Ga. L. 2012, p. 899, §§ 3-7A, 3-7B, 3-7C/HB 1176; Ga. L. 2013, p. 141, § 16/HB 79; Ga. L. 2014, p. 780, §§ 2-1, 3-1/SB 364; Ga. L. 2017, p. 417, § 6-1/SB 104.

Annotations

Notes

The 2017 amendment, effective May 8, 2017, substituted the present provisions of subparagraph (c)(3)(B) for the former provisions, which read: "This paragraph shall not apply to morphine, heroin, or opium or any salt, isomer, or salt of an isomer; rather, the provisions of Code Section 16-13-31 shall control these substances.".

Editor's notes.

Ga. L. 2012, p. 899, § 9-1(b)(2)/HB 1176, not codified by the General Assembly, provides: "Section 3-7C of this Act shall become effective on July 1, 2014, at which time, Section 3-7B of this Act shall be superceded and repealed in its entirety, and Section 3-7C of this Act shall apply to offenses which occur on or after July 1, 2014. Any offense occurring before July 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

JUDICIAL DECISIONS

General Consideration

Editor's notes.

Many of the following annotations were taken from cases decided prior to the 1996 amendment of this Code section.

Constitutionality of paragraph (j)(1). —

O.C.G.A. § 16-13-30(j)(1) is not vague and uncertain, and does not violate due process. Walker v. State, 261 Ga. 739, 410 S.E.2d 422, 1991 Ga. LEXIS 1040 (1991).

Constitutionality of paragraph (j)(2). —

Difference between punishments for purchase of marijuana under O.C.G.A. § 16-13-30(j)(2) and possession of the marijuana amount under O.C.G.A. § 16-13-2(b) does not constitute a denial of equal protection because imposition of a felony sentence under the former applies equally to all those accused of purchasing any amount of the controlled substance and, thus, there is no unconstitutional disparate treatment of similarly situated persons. State v. Jackson, 271 Ga. 5, 515 S.E.2d 386, 1999 Ga. LEXIS 322 (1999).

Right of privacy does not embrace right to possess dangerous drugs. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

General Assembly vested with discretion to determine what harmful substances shall be illegal. —

It is a matter of discretion vested in General Assembly, in light of scientific knowledge available to it, to determine what harmful substances shall be declared to be illegal. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

Construction with other Code sections. —

When one count of the accusation filed by the district attorney recited that it was charged under O.C.G.A. § 16-13-30, which is a felony which may not be brought by accusation pursuant to O.C.G.A. § 17-7-70 without the assent of the accused, not on record in the case, nor was it one of those felonies listed in O.C.G.A. § 17-7-70.1 which, under circumstances not present in the case, may be pursued by accusation, the count was considered by the court to be brought under O.C.G.A. § 16-13-2(b), misdemeanor possession of less than an ounce of marijuana. Chadwick v. State, 236 Ga. App. 199, 511 S.E.2d 286, 1999 Ga. App. LEXIS 119 (1999).

Although a court may not sentence second time offenders under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(a), the court may sentence second time offenders under both O.C.G.A. § 16-13-30(d) and any remaining provisions of O.C.G.A. § 17-10-7. Brown v. State, 252 Ga. App. 714, 556 S.E.2d 881, 2001 Ga. App. LEXIS 1359 (2001), cert. denied, No. S02C0476, 2002 Ga. LEXIS 307 (Ga. Mar. 29, 2002).

Construed with O.C.G.A. §§ 16-13-26(1)(D) and 16-13-31. —

When the total weight of the substances seized from defendant was only 24.4 grams of cocaine, the defendant argued that the only Georgia statute that proscribes possession of cocaine is O.C.G.A. § 16-13-31, which prohibits the possession of 28 grams or more of cocaine. However, although O.C.G.A. § 16-13-31 deals with being in knowing, actual possession of 28 grams or more of cocaine or any mixture containing cocaine, O.C.G.A. § 16-13-26(1)(D) (prior to 1988 amendment inserting "cocaine," at beginning of paragraph) lists "Coca leaves, any salt, compound, derivative, stereoisomers of cocaine, or preparation of coca leaves, and any salt, compound, derivative, stereoisomers of cocaine, or preparation thereof which is chemically equivalent or identical with any of these substances . . . ," which includes cocaine. Under O.C.G.A. § 16-13-30, the unlawful possession of any controlled substance, regardless of amount, constitutes an offense. Dixon v. State, 180 Ga. App. 222, 348 S.E.2d 742, 1986 Ga. App. LEXIS 2685 (1986) (decided prior to 1988 amendment of § 16-13-26).

Construction with O.C.G.A. § 17-10-7. —

Because the felony convictions not challenged by the defendant would have sufficed to render the defendant a recidivist and because both of the defendant's attacks on prior convictions for drug possession with intent to distribute lacked merit, the trial court did not err when the court considered those prior convictions and sentenced the defendant to serve 30 years without parole under O.C.G.A. §§ 16-13-30(b) and 17-10-7(c). Merritt v. State, 329 Ga. App. 871, 766 S.E.2d 217, 2014 Ga. App. LEXIS 789 (2014).

Construction of statute with federal laws.—

Statute lists simple possession of marijuana and possession with intent to distribute in disjunctive, which indicates that they are elements in the alternative, and, thus, O.C.G.A. § 16-13-30(j) is divisible such that a modified-categorical approach to determine whether the statute qualified as a crime of violence applied; the defendant's two prior Georgia convictions were for possession with intent to distribute marijuana, which qualified as a predicate offense for both the Armed Career Criminal Act and Sentencing Guidelines. United States v. Bates, 960 F.3d 1278, 2020 U.S. App. LEXIS 17249 (11th Cir. 2020).

Notice requirement of O.C.G.A § 17-10-2(a) applies to mandatory life sentences imposed under O.C.G.A. § 16-13-30(d). Moss v. State, 206 Ga. App. 310, 425 S.E.2d 386, 1992 Ga. App. LEXIS 1619 (1992).

In a prosecution for selling a controlled substance, imposition of a life sentence was improper where the state notified defendant of its intent to use previous drug convictions as similar transactions evidence but did not inform defendant of its intent to use the prior convictions in seeking the mandatory life sentence. Miller v. State, 219 Ga. App. 284, 464 S.E.2d 860, 1995 Ga. App. LEXIS 1015 (1995).

Construction with federal provisions. —

Unpublished decision: When the defendant appealed 160-month sentence for violating 21 U.S.C.S. § 841(a)(1) and (b)(1)(C), the defendant's 2003 Georgia felony conviction for possession with intent to distribute marijuana, in violation of O.C.G.A. § 16-13-30(j)(1), qualified as a controlled substance offense for purposes of applying the career offender enhancement under U.S. Sentencing Guidelines Manual § 4B1.1(a). United States v. Stevens, 654 Fed. Appx. 984, 2016 U.S. App. LEXIS 12415 (11th Cir. 2016).

Identification of defendant by confidential informant and detective. —

Trial court did not abuse the court's discretion, nor commit plain error, allowing the confidential informant (CI) and the detective to identify the defendant in videos and photographs because in addition to interacting with the defendant over the course of several drug transactions, the CI and the detective testified to have known the defendant for a long time, thus, there was some basis for concluding they were in a better position to correctly identify the defendant than the jurors. Goforth v. State, 360 Ga. App. 832, 861 S.E.2d 800, 2021 Ga. App. LEXIS 400 (2021).

Quantity purchased is not element of crime. —

Sufficient evidence existed to support a defendant's conviction of purchasing marijuana under O.C.G.A. § 16-13-30(j)(1) as the quantity purchased was not an element of the crime and the purchase could be established by proof of a promise to pay such as the defendant had made; however, the defendant's conviction was reversed for failure to give a lesser included offense instruction. Johnson v. State, 296 Ga. App. 697, 675 S.E.2d 588, 2009 Ga. App. LEXIS 317 (2009), cert. denied, No. S09C1191, 2009 Ga. LEXIS 420 (Ga. June 29, 2009).

Substance not listed as controlled substance. —

As to the possession of a controlled substance, namely Alpha-PVP (alpha-pyrrolidinopentiophenone), the state failed to present sufficient evidence to support the defendant's conviction for possession of a controlled substance because Alpha-PVP was not listed in any of the controlled substance schedules, nor was there testimony or other evidence that it was chemically related to any listed controlled substance. Roundtree v. State, 358 Ga. App. 140, 854 S.E.2d 340, 2021 Ga. App. LEXIS 21 (2021).

Jurisdiction in any county where crime could have been committed. —

Under O.C.G.A. § 16-13-30(j)(1), it was unlawful for any person to possess marijuana and since the marijuana was found in defendant's pocket when the defendant was arrested, and defendant was observed traveling in Newton County before defendant's arrest in Rockdale County, the evidence was sufficient to conclude beyond a reasonable doubt that defendant was guilty of possession of less than one ounce of marijuana since O.C.G.A. § 17-2-2(e) provided that if a crime was committed upon any vehicle traveling within the state and it cannot readily be determined in which county the crime was committed, the crime shall be considered as having been committed in any county in

readily be determined in which county the crime was committed, the crime shall be considered as having been committed in any county in which the crime could have been committed through which the vehicle has traveled. Johnson v. State, 299 Ga. App. 706, 683 S.E.2d 659, 2009 Ga. App. LEXIS 951 (2009).

Indictment sufficient. —

Although the indictment did not explicitly allege that the XLR11 was not specifically utilized as part of the manufacturing process, the indictment was sufficient because the indictment put the defendant on notice of the factual allegations the defendant had to defend in court, of the specific dates involved, and of the defendant's actions that constituted the alleged offenses. Budhani v. State, 345 Ga. App. 34, 812 S.E.2d 105, 2018 Ga. App. LEXIS 165 (2018), overruled in part, Willis v. State, 304 Ga. 686, 820 S.E.2d 640, 2018 Ga. LEXIS 685 (2018), aff'd, 306 Ga. 315, 830 S.E.2d 195, 2019 Ga. LEXIS 448 (2019).

Defendant's indictment for possessing and selling XLR11 withstood a general demurrer because the indictment alleged the essential elements of the offenses under O.C.G.A. § 16-13-30(b); under O.C.G.A. § 16-13-50(a), the state was not required to allege the affirmative defenses in O.C.G.A. § 16-13-25(12) such as that the XLR11 was intended for human consumption. Budhani v. State, 306 Ga. 315, 830 S.E.2d 195, 2019 Ga. LEXIS 448 (2019).

Poorly-worded charge. —

Trial court did not err in allowing the manufacturing methamphetamine offense to proceed to the jury under O.C.G.A. § 16-13-30(b); despite the poor wording of the caption of the count at issue, which stated "trafficking in methamphetamine," because the body of the count clearly charged the defendant with manufacturing methamphetamine, and the defendant failed to show how the defendant was misled by the presentment, nor did it expose the defendant to double jeopardy in violation of U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. XVIII. Gentry v. State, 281 Ga. App. 315, 635 S.E.2d 782, 2006 Ga. App. LEXIS 943 (2006), cert. denied, No. S07C0117, 2007 Ga. LEXIS 78 (Ga. Jan. 22, 2007).

Refusal to sever charges. —

Trial court did not abuse its discretion in failing to sever a charge against the defendant for possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a) and a charge against the defendant for kidnapping with bodily injury in violation of O.C.G.A. § 16-5-40; when the defendant was arrested for possession, the kidnapping was ongoing, as the victim remained locked in the camper where the defendant had bound the victim, and it was not an abuse of discretion for a trial judge to deny a motion for severance where the crimes alleged were part of a continuous transaction and from the nature of the entire transaction, it would have almost been impossible to present to a jury evidence of one of the crimes without also permitting evidence of the other. Johnson v. State, 281 Ga. App. 7, 635 S.E.2d 278, 2006 Ga. App. LEXIS 983 (2006).

No abuse of discretion in refusing to sever charges. —

Trial court did not abuse the court's discretion by refusing to sever a defendant's drug charges from the defendant's trial on a charge of influencing a witness because evidence of either crime would have been admissible at the trial of the other and the charged offenses were neither so numerous nor so complex that the jury was unable to parse the evidence and correctly apply the law with regard to each charge. Perry v. State, 317 Ga. App. 885, 733 S.E.2d 57, 2012 Ga. App. LEXIS 833 (2012).

Illegal possession and sale of a controlled substance are separate and distinct crimes as a matter of law. Harmon v. State, 235 Ga. 329, 219 S.E.2d 441, 1975 Ga. LEXIS 869 (1975).

Illegal possession and illegal sale of a proscribed drug are separate crimes as a matter of law. However, if the evidence required to convict an accused of the illegal sale is the only evidence showing illegal possession, then illegal possession is included in the crime of illegal sale as a matter of fact. Sullivan v. State, 178 Ga. App. 769, 344 S.E.2d 737, 1986 Ga. App. LEXIS 1758 (1986).

State failed to prove drug regulated by law. —

Defendant was improperly convicted of violating the Georgia's Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by distributing a Schedule IV drug, Zolpidem, which was commonly known as Ambien, O.C.G.A. §§ 16-13-28(a)(33) and 16-13-30(b), because the state failed to prove that the drug Ambien was regulated by law, and the trade name of a statutorily designated controlled substance was not the proper subject of judicial notice; while the state presented evidence that the defendant admitted to distributing Ambien and produced testimony that "Ambien" was a Schedule IV controlled substance, the state was required to identify "Ambien" as a trade name for Zolpidem through admissible evidence. DeLong v. State, 310 Ga. App. 518, 714 S.E.2d 98, 2011 Ga. App. LEXIS 605 (2011).

Sale of noncontrolled substance not lesser-included offense. —

Offense of unlawfully selling a noncontrolled substance while representing the substance to be a controlled substance (O.C.G.A. § **16-13-30.1**) is not included in the offense of conspiracy to sell or distribute cocaine (O.C.G.A. § 16-13-30). Smith v. State, 202 Ga. App. 664, 415 S.E.2d 481, 1992 Ga. App. LEXIS 149 (1992).

No evidence of lesser included offense of possession of cocaine. —

With regard to a defendant's conviction for trafficking in cocaine, the trial court did not err by failing to charge the jury on the lesser included offense of possession of cocaine with intent to distribute as there was no dispute that the cocaine exceeded the amount necessary to sustain a trafficking conviction, therefore, there was no evidence of the lesser included offense. However, even if the trial court's failure to give the requested instruction was error, it is highly probable that the error did not contribute to the verdict in light of the overwhelming evidence that the defendant committed the greater offense. Celestin v. State, 296 Ga. App. 727, 675 S.E.2d 480, 2009 Ga. App. LEXIS 164 (2009), cert. denied, No. S09C1200, 2009 Ga. LEXIS 340 (Ga. June 1, 2009).

Sell and possession of cocaine did not merge. —

Offenses of selling cocaine and possessing cocaine in violation of O.C.G.A. § 16-13-30(a) and (b) did not merge because two discrete portions of cocaine were used to prove the two discrete offenses; the offense of selling cocaine was proven by evidence of a crack cocaine sale to a confidential informant, and the offense of possessing cocaine was proven by the evidence that the defendant possessed the additional crack cocaine later found in the car the defendant occupied. Robertson v. State, 306 Ga. App. 721, 703 S.E.2d 343, 2010 Ga. App. LEXIS 1038 (2010).

Possession included in trafficking offense. —

Offenses of possession of cocaine and possession of cocaine with intent to distribute were lesser included offenses, as a matter of fact, of the trafficking offense since proof of the two possession offenses was established by "the same or less than all the facts" required to establish the distribution offense; thus, it was error to convict defendant of all three offenses. Hancock v. State, 210 Ga. App. 528, 437 S.E.2d 610, 1993 Ga. App. LEXIS 1239 (1993).

Even if the first count of an indictment did indeed charge both possession of marijuana with intent to distribute and simple possession, those offenses could be joined in one count because they were offenses of the same nature that differed only in degree and that related to only one transaction; thus, the count was not subject to demurrer as duplicitous. Davis v. State, 285 Ga. App. 460, 646 S.E.2d 342, 2007 Ga. App. LEXIS 547 (2007).

Distinguishing trafficking from possession. —

Amount of controlled substance is chosen as the basis for distinguishing the crime of trafficking from the somewhat less serious crimes

described in O.C.G.A. § 16-13-30. Twenty-eight grams was chosen as the dividing line. Bassett v. Lemacks, 258 Ga. 367, 370 S.E.2d 146, 1988 Ga. LEXIS 339 (1988).

Conviction for possessing cocaine was not inconsistent with acquittal of trafficking in cocaine, when the cocaine upon which the possession offense was based had been seized at a different time and place from the cocaine upon which the trafficking offense was based. Rogers v. State, 182 Ga. App. 599, 356 S.E.2d 546, 1987 Ga. App. LEXIS 2637 (1987).

Evidence did not demand acquittal of methamphetamine charges. —

Defendant was not entitled to an acquittal on either a charge of conspiracy to manufacture methamphetamine or possession of methamphetamine, as the evidence showed that methamphetamine was being manufactured inside the residence in which defendant was found, and conviction of possession of methamphetamine did not rest solely upon evidence that the methamphetamine was found on the premises also occupied by others, nor did such conviction rest solely upon defendant's spatial proximity to the contraband. McWhorter v. State, 275 Ga. App. 624, 621 S.E.2d 571, 2005 Ga. App. LEXIS 1056 (2005).

Evidence sufficient for selling products positive for indazole amide. —

State's evidence, including testimony and reports produced by the forensic chemist who tested the confiscated products as well as the exhibits showing which products were received and the results of the testing, was sufficient to prove that the products the defendants were charged with selling tested positive for indazole amide. Awtrey v. State, 346 Ga. App. 892, 815 S.E.2d 655, 2018 Ga. App. LEXIS 433 (2018).

Mere possession will not serve as basis for conviction for possessing contraband for purposes of sale. Wright v. State, 154 Ga. App. 400, 268 S.E.2d 378, 1980 Ga. App. LEXIS 2194, cert. denied, 449 U.S. 900, 101 S. Ct. 270, 66 L. Ed. 2d 130, 1980 U.S. LEXIS 3494 (1980).

When illegal possession is included in illegal sale as matter of fact. —

If evidence required to convict of illegal sale of controlled substance is the only evidence showing possession, illegal possession is included in crime of illegal sale as a matter of fact. Harmon v. State, 235 Ga. 329, 219 S.E.2d 441, 1975 Ga. LEXIS 869 (1975).

When possession and possession with intent to distribute may both be punished. —

If a person intends to distribute only a designated part of narcotics which are possessed, both offense of possession and possession with intent to distribute may be punished. Howard v. State, 144 Ga. App. 208, 240 S.E.2d 908, 1977 Ga. App. LEXIS 2638 (1977).

Merger. —

Offense of manufacturing methamphetamine under O.C.G.A. § 16-13-30(b) was a lesser included offense of trafficking/manufacturing under O.C.G.A. § 16-31-31(f)(1); thus, the trial court was authorized to sentence a defendant for the greater offense after merging the lesser offense into it. Richards v. State, 290 Ga. App. 360, 659 S.E.2d 651, 2008 Ga. App. LEXIS 239 (2008).

Selling merged into trafficking offense. —

Convictions on counts for selling methamphetamine were lesser included offenses of convictions for trafficking in methamphetamine and, therefore, merged into the trafficking convictions. Nunery v. State, 229 Ga. App. 246, 493 S.E.2d 610, 1997 Ga. App. LEXIS 1369 (1997).

No merger with misdemeanor DUI charge. —

No merger with misdemeanor DUI charge.

Defendant could be convicted on both felony possession of methamphetamine and driving under the influence of methamphetamine, a misdemeanor. Helmeci v. State, 230 Ga. App. 866, 498 S.E.2d 326, 1998 Ga. App. LEXIS 304 (1998).

Possession and distribution of methamphetamine charges did not merge. —

Possession of methamphetamine and distribution of methamphetamine charges did not merge under O.C.G.A. § 16-1-7 when defendant smoked methamphetamine in the company of a second person who later returned with a fresh supply of the drug with which defendant injected the second person; methamphetamine that defendant possessed while smoking constituted a separate amount of methamphetamine not accounted for in the distribution charge. Crutchfield v. State, 291 Ga. App. 24, 660 S.E.2d 878, 2008 Ga. App. LEXIS 427 (2008).

Manufacturing methamphetamine. —

Evidence was sufficient for a jury to find defendant guilty of manufacturing methamphetamine, as defendant leased a house in which a widespread methamphetamine manufacturing operation took place, which created a strong chemical smell immediately apparent upon entering the house, and defendant tested positive for methamphetamine, circumstantially linking defendant to the manufacturing process and undermining defendant's claim that defendant was unaware of the activity. Kirby v. State, 275 Ga. App. 216, 620 S.E.2d 459, 2005 Ga. App. LEXIS 933 (2005).

Defendant's conviction of manufacturing methamphetamine under O.C.G.A. § 16-13-30(b) was supported by sufficient evidence as the presence of chemicals and supplies as well as methamphetamine in the various containers of liquid were all indicative of a methamphetamine manufacturing operation, and testimony indicated the presence of a level of contamination in the defendant's apartment that showed that the laboratory had probably been in operation for several weeks; furthermore, the scope of the operation was such that it could not have been hidden from the defendant by defendant's co-tenant. Gentry v. State, 281 Ga. App. 315, 635 S.E.2d 782, 2006 Ga. App. LEXIS 943 (2006), cert. denied, No. S07C0117, 2007 Ga. LEXIS 78 (Ga. Jan. 22, 2007).

Because the evidence surrounding the stop of the defendant and the evidence seized thereon, including money, various guns, and almost 43 grams of methamphetamine, was sufficient to support a conviction for possession of methamphetamine with intent to distribute, the conviction was upheld on appeal; moreover, based on trial counsel's testimony and evidence that both counsel and the defendant extensively discussed the pros and cons of having a jury hear the case, sufficient extrinsic evidence showed that the defendant knowingly, voluntarily, and intelligently waived any right to a trial by jury. Whitaker v. State, 286 Ga. App. 143, 648 S.E.2d 396, 2007 Ga. App. LEXIS 558 (2007).

Evidence that the defendant owned the house where the ingredients and equipment were found, the defendant talked to the codefendant about whether the codefendant should abscond and bought the codefendant a truck, and the defendant made a list of pharmacy directions for the codefendant so that the codefendant could avoid legal restrictions on the purchase of ingredients was sufficient to support a conviction for attempt to manufacture methamphetamine. Taylor v. State, 320 Ga. App. 596, 740 S.E.2d 327, 2013 Ga. App. LEXIS 244 (2013).

Evidence was sufficient to convict the defendant of manufacturing methamphetamine and trafficking methamphetamine because, given the large array of products involved in the production of methamphetamine, their proximity to each other in the residence, and the fact that methamphetamine was found throughout the residence, the jury heard sufficient evidence to allow the jury to conclude that it would have been virtually impossible for the defendant to have been unaware that methamphetamine was being produced there; and the state presented evidence that police had observed the defendant sell methamphetamine to a confidential informant from the same residence where the methamphetamine was being produced. Cummings v. State, 345 Ga. App. 702, 814 S.E.2d 806, 2018 Ga. App. LEXIS 270 (2018), cert. denied, No. S18C1280, 2018 Ga. LEXIS 728 (Ga. Nov. 15, 2018).

Rule of lenity did not apply to imitation controlled substances. —

Trial court did not err by refusing to apply the rule of lenity with regard to a defendant's conviction for selling a counterfeit substance

Trial court did not err by refusing to apply the rule of lenity with regard to a defendant's conviction for selling a counterfeit substance because the evidence revealed that the substance would not fall under either definition of "imitation controlled substance" set forth in O.C.G.A. § 16-13-21(12.1)(A) as the parties stipulated only that the substance recovered was not a controlled substance and there was no evidence presented that the substance was specifically designed or manufactured to resemble the physical appearance of a controlled

substance. As a result, the rule of lenity did not apply, and the trial court properly sentenced the defendant for a felony. Chandler v. State, 294 Ga. App. 27, 668 S.E.2d 510, 2008 Ga. App. LEXIS 1099 (2008).

Prior similar act admissible. —

Prior guilty plea to charge of selling cocaine was substantially relevant to corroborate identification of defendant as seller, and as a prior similar act, it was similar and relevant. Evans v. State, 209 Ga. App. 606, 434 S.E.2d 148, 1993 Ga. App. LEXIS 957 (1993), cert. denied, No. S93C1990, 1993 Ga. LEXIS 1152 (Ga. Dec. 3, 1993).

Evidence showing independent crimes involving similar dollar amounts of drugs sold in sidewalk sales to passing vehicles was sufficient proof of similarity between other crimes and the one for which defendant was indicted. Aldridge v. State, 222 Ga. App. 437, 475 S.E.2d 195, 1996 Ga. App. LEXIS 869 (1996).

Admission of similar transaction evidence in a case charging the defendant with possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), and obstructing or hindering law enforcement officers, O.C.G.A. § 16-10-24, was proper because, in both the similar transaction and the incident leading to the charges being tried, the defendant was arrested in possession of cocaine and "sale-sized" baggies after seeking to avoid police; the trial court also gave an instruction that the similar transaction evidence was limited to the purpose of showing the defendant's bent of mind in committing the charged offenses. Cotton v. State, 297 Ga. App. 664, 678 S.E.2d 128, 2009 Ga. App. LEXIS 515 (2009).

Defendant was properly convicted of trafficking in methamphetamine, O.C.G.A. § 16-13-31, violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., and contributing to the delinquency of a minor, O.C.G.A. § 16-12-1, because the trial court properly admitted the state's similar transaction evidence when the evidence was introduced for the appropriate purpose of showing the defendant's knowledge and intent regarding the methamphetamine found in the defendant's room, and the trial court instructed the jury to consider the evidence for that limited purpose; both incidents occurred on the same street and both involved methamphetamine, and in both incidents police found the drugs in the defendant's bedroom along with scales. Swan v. State, 300 Ga. App. 667, 686 S.E.2d 310, 2009 Ga. App. LEXIS 1245 (2009).

During defendant's trial for possession of methamphetamine and possession of marijuana, the trial court did not abuse the court's discretion in admitting evidence of the defendant's prior conviction on an obstruction charge because the trial court admitted the evidence for the purpose of showing the defendant's course of conduct only after conducting a hearing pursuant to Ga. Unif. Super. Ct. R. 31.3(B), which the court was required to do, and the state satisfied the criteria delineated in Rule 31.3 for the admission of similar-transaction evidence; even assuming that the similar-transaction evidence should have been excluded, any error in the evidence's admission was harmless because there was videotaped evidence that the defendant was driving an obviously stolen vehicle, that the defendant fled from officers who attempted to conduct a traffic stop, that the defendant continued to lead the officers on a chase even after the defendant's tires had been flattened, that the defendant ultimately exited the vehicle and ran on foot, and that methamphetamine and marijuana not belonging to the owner were found inside the vehicle in which the defendant was the sole occupant. Mangum v. State, 308 Ga. App. 84, 706 S.E.2d 612, 2011 Ga. App. LEXIS 124 (2011).

Trial court did not abuse the court's discretion in admitting similar transaction evidence because both the prior incident and the incident for which the defendant was convicted involved the possession of cocaine since the prior possession was for the purpose of distribution, inasmuch as the evidence showed that the defendant did, in fact, distribute cocaine on that occasion, and the possession for which the defendant was convicted was for an unknown purpose and not clearly for personal use; one incident involved possession and sale of less than one gram of cocaine, the other involved possession of less than two grams of cocaine, and both incidents occurred in the county within a span of two weeks. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399, 2011 Ga. App. LEXIS 453 (2011), cert. denied, No. S11C1610, 2011 Ga. LEXIS 851 (Ga. Oct. 17, 2011).

Trial court did not abuse the court's discretion by allowing the admission of evidence regarding the defendant's prior drug possession arrest

Trial court did not abuse the court's discretion by allowing the admission of evidence regarding the defendant's prior drug possession arrest because the evidence of prior drug activity was highly probative of intent to sell a controlled substance for which the defendant was on trial and the prior act of drug possession happened while the defendant was driving a car in the same area where the sale of the methamphetamine during the first buy occurred. Moton v. State, 351 Ga. App. 789, 833 S.E.2d 171, 2019 Ga. App. LEXIS 488 (2019).

Erroneous admission of prior conviction harmless. —

Trial court's admission of the defendant's prior convictions for possession of cocaine was erroneous because the state did not present any testimony at trial establishing the prior convictions, but rather, the state's evidence was limited to the introduction of copies of the defendant's guilty pleas and convictions for the prior drug possession offenses; however, in light of the overwhelming competent evidence establishing the defendant's guilt of the sale of cocaine, it was unlikely that the erroneous admission of the prior possession offenses contributed to the verdict. Perry v. State, 314 Ga. App. 575, 724 S.E.2d 874, 2012 Ga. App. LEXIS 237 (2012).

Trial court did not abuse the court's discretion in admitting evidence of the defendant's prior attempts to manufacture methamphetamine because the state needed the evidence of the defendant's prior drug conviction to show the defendant's bent of mind and course of conduct with respect to the methamphetamine offense at issue, criminal attempt to manufacture methamphetamine in violation of O.C.G.A. §§ 16-4-1 and 16-13-30(b); the defendant disclaimed any involvement with or knowledge of a methamphetamine laboratory. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Based on the defendant's position that the defendant was not involved with a methamphetamine laboratory, as well as the similarity of the defendant's prior drug crime with criminal attempt to manufacture methamphetamine, the trial court did not abuse the court's discretion in admitting the evidence of the defendant's prior attempts to manufacture methamphetamine for the purpose of showing the defendant's bent of mind and course of conduct; the trial court was authorized to find that the probative value of the similar transaction evidence outweighed its prejudicial effect, and the trial court provided jury instructions that limited consideration of the similar transaction evidence to the appropriate purposes and provided guidance so as to diminish its prejudicial impact. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Admissibility of expert testimony. —

Knowledge of the amount of crack cocaine one would generally possess for personal use or the amount which might evidence distribution was not necessarily within the scope of the ordinary layman's knowledge and experience. Therefore, the testimony of a veteran police officer on the subject would be properly admissible under former O.C.G.A. § 24-9-67 (see now O.C.G.A. § 24-7-707). Davis v. State, 200 Ga. App. 44, 406 S.E.2d 555, 1991 Ga. App. LEXIS 762 (1991).

Defendant's argument that the evidence was insufficient to support defendant's conviction for possession by ingestion of methamphetamine because the testimony of defendant's expert witness, a forensic toxicologist with a private clinical reference laboratory, called into question the validity of the state crime lab report, was rejected because the determination of the credibility of defendant's expert and the effect of the expert's testimony on the validity of the state crime lab report were for the jury. Poston v. State, 274 Ga. App. 117, 617 S.E.2d 150, 2005 Ga. App. LEXIS 679 (2005).

Officer properly qualified as expert witness in drug possession and distribution. —

In a prosecution for possession of cocaine with intent to distribute (O.C.G.A. § 16-13-30(b)), the trial court did not abuse the court's discretion in qualifying the officer as an expert witness in drug possession and distribution as the arresting officer testified to making 35 to 40 drug-related arrests, about half of which were for possession with intent to distribute. Hight v. State, 293 Ga. App. 254, 666 S.E.2d 678, 2008 Ga. App. LEXIS 839 (2008).

In the defendant's trial for possession of methamphetamine with intent to distribute, the state properly laid the foundation for an investigator's opinion that the amount of meth, the paraphernalia, and the cash on the defendant's person were consistent with distribution: the investigator testified that the investigator had worked on the drug task force for seven years, had taken numerous courses, and came into contact with drug activity daily. Benton v. State, 356 Ga. App. 441, 847 S.E.2d 625, 2020 Ga. App. LEXIS 460 (2020), cert. denied, No. S21C0110, 2021 Ga. LEXIS 253 (Ga. App. Ct. 2021).

(2020), cert. denied, No. S21C0110, 2021 Ga. LEXIS 253 (Ga. Apr. 5, 2021).

Testimony of confidential informant admissible. —

When the confidential informant testified and was subject to cross-examination, the informant's statement that the informant found out that the defendant was selling cocaine out of the defendant's residence was admissible to explain the circumstances leading to the defendant's arrest. Hamilton v. State, 242 Ga. App. 77, 528 S.E.2d 843, 2000 Ga. App. LEXIS 95 (2000).

Revelation of the identity of a confidential informant. —

Defendant was not entitled to the identity of a confidential informant (CI) who purchased cocaine from the defendant in two controlled buys because, to the extent that the defendant wished to call the CI to impeach the CI or the investigating officer's testimony, the disclosure of the CI's identity was not required in that the investigating officer engaged in visual surveillance throughout the controlled buy operations and clearly observed the defendant when the defendant sold drugs to the CI and an audiotape recording of one controlled buy diminished the need for the CI to amplify or refute any conflicting testimony. Chandler v. State, 317 Ga. App. 406, 731 S.E.2d 88, 2012 Ga. App. LEXIS 715 (2012).

Affidavit supporting search warrant not stale. —

In a trial for possession of marijuana with intent to distribute, the trial court did not err in denying a motion to suppress a search warrant on the basis that a nine-month lapse from the crimes' occurrences rendered stale the information contained in the affidavit in support of the warrant since the information in the affidavit was not so remote that it made it unlikely that the items sought would not have been in the defendant's home at the time the warrant was issued. Amica v. State, 307 Ga. App. 276, 704 S.E.2d 831, 2010 Ga. App. LEXIS 1083 (2010), cert. denied, No. S11C0594, 2011 Ga. LEXIS 363 (Ga. Apr. 26, 2011).

Suppression of evidence. —

Motion to suppress illegally obtained evidence was properly granted. State v. Crank, 212 Ga. App. 246, 441 S.E.2d 531, 1994 Ga. App. LEXIS 205 (1994).

Because the defendant did not grant consent to an officer to search the defendant's purse, and no other exception to the warrant requirement allowing a search of the purse applied, the trial court properly granted suppression of the drugs seized from within the purse. State v. Fulghum, 288 Ga. App. 746, 655 S.E.2d 321, 2007 Ga. App. LEXIS 1284 (2007).

Consequence of a defendant's failure to contemporaneously object to the admission of evidence. —

Despite the defendant's contrary claim on appeal, because trial counsel failed to contemporaneously object to the introduction of the defendant's own statement offering to sell narcotics to a confidential informant, the defendant waived any error regarding admission of the statement on appeal; moreover, because trial counsel failed to request a mistrial or curative instruction regarding that evidence, the trial court's failure to give such an instruction, sua sponte, was not erroneous. Williams v. State, 288 Ga. App. 741, 655 S.E.2d 674, 2007 Ga. App. LEXIS 1282 (2007).

Suppression motion erroneously granted based on venue following traffic stop. —

Grant of the defendant's motion to suppress on the basis of venue was reversed because the state did not need to establish venue at the pretrial hearing on the defendant's motion to suppress as it was not relevant to the issues raised in the motion, which challenged the reasonable basis for the traffic stop or whether the resulting search of the defendant and the defendant's vehicle were supported by probable cause. State v. Wallace, 338 Ga. App. 611, 791 S.E.2d 187, 2016 Ga. App. LEXIS 510 (2016).

Inconsistency in indictment caused no prejudice. —

Defendant's conviction for possession of a controlled substance was proper despite the indictment charging the defendant with possession of a controlled substance with intent to distribute because the allegations in the indictment tracked the language of possession of a controlled substance and fully apprised the defendant of the offense charged, the defendant failed to show that the defense was prejudiced in any way by the inconsistency between the denomination of the offense and the allegations in the indictment, and the defendant requested a jury charge on the offense of possession of a controlled substance as a lesser included offense of possession of a controlled substance with intent to distribute. Bryant v. State, 320 Ga. App. 838, 740 S.E.2d 772, 2013 Ga. App. LEXIS 286 (2013).

Jury instruction on substance of O.C.G.A. §§ 16-13-30 and 16-13-31. —

When the defendant was charged with trafficking in cocaine and possession of marijuana and on the day of the trial filed a request that the "jury be charged with the substance of § 16-13-30 and § 16-13-31," by seeking an instruction on two entire Code sections the request necessarily included much matter not adjusted to the issues of the case, and for this reason it was not error to fail to give such instructions. Partridge v. State, 187 Ga. App. 325, 370 S.E.2d 173, 1988 Ga. App. LEXIS 687 (1988).

Jury instruction on actual and constructive possession. —

In the absence of a request, a court's failure to give an instruction defining actual and constructive possession does not constitute reversible error. Black v. State, 167 Ga. App. 204, 305 S.E.2d 837, 1983 Ga. App. LEXIS 3313 (1983).

When a jury issue exists as to whether the defendant was exercising actual or constructive possession of cocaine, the lesser offense of possession of cocaine was reasonably raised by the evidence, and the trial court committed prejudicial error in failing to instruct pursuant to the defendant's written request. Alvarado v. State, 194 Ga. App. 781, 391 S.E.2d 668, 1990 Ga. App. LEXIS 316, aff'd, 260 Ga. 563, 397 S.E.2d 550, 1990 Ga. LEXIS 420 (1990).

Because there was evidence that the defendant, at different times, had both actual and constructive possession of marijuana, the trial court's jury charge on both types of possession was proper and did not impermissibly expand the indictment, which did not specify the manner of possession. Davis v. State, 285 Ga. App. 460, 646 S.E.2d 342, 2007 Ga. App. LEXIS 547 (2007).

Jury instruction on equal access not required. —

When a defendant was charged with possession of cocaine with intent to distribute, it was not error to fail to give a charge on equal access. The state was not relying upon the defendant's ownership or control of the home to prove that cocaine in the kitchen belonged to the defendant, but upon direct evidence that the defendant tossed the cocaine into the kitchen after being apprehended by an officer; furthermore, a charge on constructive possession was not tantamount to a charge on the presumption of ownership. Thomas v. State, 291 Ga. App. 795, 662 S.E.2d 849, 2008 Ga. App. LEXIS 646 (2008).

In a prosecution for possession of cocaine with intent to distribute (O.C.G.A. § 16-13-30(b)), the defendant was not entitled to an instruction on equal access, which applied only when the sole evidence of possession of contraband found in a vehicle was the defendant's ownership or possession of the vehicle. There was additional evidence showing that the drugs belonged to the defendant: (1) a large sum of cash on the defendant's person; (2) the defendant's prior conviction for possession of cocaine with intent to distribute; and (3) testimony that the defendant conducted another drug transaction on the day of the arrest. Hight v. State, 293 Ga. App. 254, 666 S.E.2d 678, 2008 Ga. App. LEXIS 839 (2008).

Because equal access was not a defendant's sole defense to a charge of possession with intent to distribute cocaine, the trial court was not required sua sponte to give a charge on equal access after the court gave the jury an instruction on presumption of possession based on ownership of the premises. Bailey v. State, 294 Ga. App. 437, 669 S.E.2d 453, 2008 Ga. App. LEXIS 1212 (2008), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Jury instruction on lesser included offense. —

Trial court did not err in instructing the jury to consider the lesser offense of possession of methamphetamine only if the jury did not believe beyond a reasonable doubt that the defendant was guilty of possession of methamphetamine with intent to distribute because the trial court did not insist upon unanimity with regard to the jury's decision on the greater offense. Dockery v. State, 308 Ga. App. 502, 707 S.E.2d 889, 2011 Ga. App. LEXIS 224 (2011), cert. denied, No. S11C1080, 2011 Ga. LEXIS 577 (Ga. July 11, 2011).

Curative instruction properly given. —

Sale of marijuana convictions, in violation of O.C.G.A. § 16-13-30(j), were upheld, as an officer's in-court identification of defendant was obtained via investigative techniques and was thus not unduly suggestive, and the trial court gave curative instructions to the jury after the officer testified to pulling defendant's photograph from an arrest record. Hansberry v. State, 260 Ga. App. 480, 580 S.E.2d 274, 2003 Ga. App. LEXIS 401 (2003).

Because the state presented sufficient evidence showing defendant's involvement in the sale of cocaine and the sale of cocaine within 1,000 feet of a public housing project as a party to the crimes, and because the judge's instruction and explanation after reading the wrong indictment to the jury at trial cured any error, the defendant's convictions were upheld on appeal, and a mistrial based on the latter was properly denied; moreover, the defendant was properly denied a new trial. Walker v. State, 290 Ga. App. 749, 660 S.E.2d 844, 2008 Ga. App. LEXIS 407 (2008), cert. dismissed, No. S08C1701, 2008 Ga. LEXIS 776 (Ga. Sept. 22, 2008).

Jury instruction on further deliberations. —

On appeal from a conviction for possession of cocaine, because the verdict of "guilty with reasonable doubt" was unclear and had no single element that was necessarily dispositive of the jury's finding with regard to ultimate criminal responsibility, the trial court did not err by refusing to accept the verdict and in sending the jury out for further deliberations with proper instructions. Robinson v. State, 282 Ga. App. 214, 638 S.E.2d 370, 2006 Ga. App. LEXIS 1348 (2006), cert. denied, No. S07C0406, 2007 Ga. LEXIS 152 (Ga. Feb. 5, 2007).

Jury instruction insufficient. —

Jury charge failed to define properly the offenses of trafficking in methamphetamine and possession of methamphetamine with intent to distribute because all the jury was told was that it was a violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., to traffic or possess with intent to distribute methamphetamine; the instructions given completely failed to inform the jury about the manner in which the offense of trafficking in methamphetamine or the offense of possessing methamphetamine with intent to distribute may have been committed. As such, the jury did not receive sufficient instructions to guide the jury in determining the defendant's guilt or innocence on these charges. Torres v. State, 298 Ga. App. 158, 679 S.E.2d 757, 2009 Ga. App. LEXIS 638 (2009).

Reversal of a conviction for conspiracy to violate the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., through a violation of O.C.G.A. § 16-13-30(j)(1), was required because the trial court failed to provide any limiting instruction informing jurors that the purchaser and the buyer in a drug transaction could not conspire together. Darville v. State, 289 Ga. 698, 715 S.E.2d 110, 2011 Ga. LEXIS 671 (2011).

Recharge on "sale" proper in jury instruction. —

Trial court did not err in recharging the jury after the jury requested a specific definition of "sale" under O.C.G.A. § 16-13-30 because the court acted within the court's discretion by simply referring the jury back to the correct charge, rather than giving a lengthy explanation of the absence of a word-for-word definition in O.C.G.A. § 16-13-30, and given that the charge was correct as given initially, the recharge did not deprive the defendant of any legitimate defense to the defendant's actions; the jury appeared to be confused about whether the jury had a proper definition of a sale, and when the trial court referred the jury to the correct law that had already been given, it sufficiently informed the jury that the jury had the definition that the jury needed. Ware v. State, 308 Ga. App. 24, 707 S.E.2d 111, 2011 Ga. App. LEXIS 29 (2011), cert. denied, No. S11C0941, 2011 Ga. LEXIS 441 (Ga. May 31, 2011).

"Ontrack system" test results for marijuana inadmissible. —

State's failure to present any evidence as to the characteristics, theory, operation, reliability, or scientific acceptability of "ontrack system" test performed on the defendant's urine specimen at local jail to detect the presence of tetrahydrocannabinol rendered the results of the test inadmissible. Hubbard v. State, 207 Ga. App. 703, 429 S.E.2d 123, 1993 Ga. App. LEXIS 322 (1993).

Forfeiture statute. —

Forfeiture statute, O.C.G.A. § 16-13-49, did not apply to a transaction involving an imitation controlled substance. White v. State, 264 Ga. 547, 448 S.E.2d 354, 1994 Ga. LEXIS 765 (1994).

Plea bargaining. —

Although the prosecutor incorrectly stated the minimum and maximum sentences in negotiating a plea bargain, defendant rejected the plea bargain and defendant's decision was a fully informed one. Accordingly, denial of a new trial was proper because there was no showing that defendant was harmed by the misstatement. Hester v. State, 261 Ga. App. 614, 583 S.E.2d 274, 2003 Ga. App. LEXIS 722 (2003).

Guilty pleas. —

Because the defendant confirmed that the defendant was not under the influence of drugs, that the defendant was satisfied with counsel's representation, and that the defendant wished to plead guilty to selling cocaine, the trial court did not err in accepting the guilty plea. McCloud v. State, 272 Ga. App. 609, 612 S.E.2d 907, 2005 Ga. App. LEXIS 333 (2005).

Trial court did not abuse the court's discretion by finding that a defendant's guilty plea was voluntarily, knowingly, and intelligently made as to a conviction for possession of cocaine because the trial court had no obligation to inform the defendant of the possible collateral consequence of the revocation for a prior offense and, because the defendant was represented by counsel, the trial court properly presumed that the defendant's counsel had informed the defendant of such a collateral consequence. Lamb v. State, 278 Ga. App. 97, 628 S.E.2d 165, 2006 Ga. App. LEXIS 238 (2006).

Claimed errors on appeal deemed abandoned. —

While the defendant argued that the state's evidence was insufficient to support convictions on two counts of selling cocaine in violation of O.C.G.A. § 16-13-30(b), and cited the proper standard of review, due to the lack of argument, citation of authority, or citations to the record to support this position that claim was abandoned under Ga. Ct. App. R. 25(c)(2). Clark v. State, 285 Ga. App. 182, 645 S.E.2d 671, 2007 Ga. App. LEXIS 475 (2007).

Ineffective assistance. —

In a prosecution for selling marijuana and possessing marijuana with the intent to distribute, given that the state conceded that the state failed to file notice regarding the state's intent to introduce a prior conviction as evidence in aggravation of punishment, the evidence was not introduced; as a result, defense counsel could not be found ineffective for failing to object to the introduction of the prior conviction. Allen v. State, 280 Ga. App. 663, 634 S.E.2d 831, 2006 Ga. App. LEXIS 921 (2006).

Trial court did not err in denying the defendant's motion for a new trial on the ground that the defendant's trial counsel rendered ineffective assistance by failing to obtain an electronic enhancement of a videotape depicting a drug sale, which allegedly would have shown that defendant was not the perpetrator of the offense, because the defendant failed to show that the defendant was prejudiced as a result of trial counsel's failure to obtain an electronic enhancement of the videotape prior to trial since the enhanced images failed to create a reasonable probability that the defendant was not the perpetrator depicted in the images; an undercover officer unequivocally identified the

reasonable probability that the defendant was not the perpetrator depicted in the images; an undercover officer unequivocally identified the defendant as the perpetrator based upon the officer's personal observations and independent memory of the defendant at the time of the drug sale, and although the defendant attempted to prove that another individual was the perpetrator depicted in the videotape's images,

the defendant failed to proffer sufficient evidence in support of the defendant's claim. Faulkner v. State, 304 Ga. App. 791, 697 S.E.2d 914, 2010 Ga. App. LEXIS 613 (2010).

Counsel's deficiency did not warrant a new trial. —

While the defendant's trial counsel was ineffective in failing to object to that portion of the state's closing argument in which the prosecutor referenced a slain officer's funeral a week prior, as that fact had no relevance to the charges the defendant was facing, based on the overwhelming evidence of guilt, including the defendant's admission, the defendant's convictions for trafficking in cocaine and possession of cocaine with intent to distribute were upheld on appeal; thus, a new trial was properly denied. Cantrell v. State, 290 Ga. App. 651, 660 S.E.2d 468, 2008 Ga. App. LEXIS 394 (2008).

New trial motion properly denied. —

Upon convictions of possessing cocaine with intent to distribute and obstructing a law enforcement officer, the trial court properly denied the defendant's motion for a new trial as: (1) a challenged juror affirmed the guilty verdict; (2) details about a government witness's plea deal would not have changed the trial outcome; and (3) lab results confirming the purity of the contraband seized was sufficient to show that the substance defendant possessed was cocaine. Tate v. State, 278 Ga. App. 324, 628 S.E.2d 730, 2006 Ga. App. LEXIS 318 (2006).

Upon convictions on two counts of selling cocaine, the trial court properly denied the defendant a new trial as the state's commentary during opening and closing argument on the connection between illegal drugs and crime in the community was proper, no abuse of discretion resulted from the admission of the defendant's booking mug shot, and the state's identification witnesses could testify about their level of certainty in identifying the defendant. Clark v. State, 285 Ga. App. 182, 645 S.E.2d 671, 2007 Ga. App. LEXIS 475 (2007).

Sentencing

Constitutionality of subsection (d). —

O.C.G.A. § 16-13-30(d), which mandates a sentence of life imprisonment upon a second conviction for selling cocaine, is not unconstitutional; it does not violate the Eighth and the Fourteenth Amendments to the Constitution of the United States. Grant v. State, 258 Ga. 299, 368 S.E.2d 737, 1988 Ga. LEXIS 248 (1988); Rucks v. State, 201 Ga. App. 142, 410 S.E.2d 206, 1991 Ga. App. LEXIS 1267 (1991); Carr v. State, 201 Ga. App. 479, 411 S.E.2d 913, 1991 Ga. App. LEXIS 1426 (1991); Crutchfield v. State, 218 Ga. App. 360, 461 S.E.2d 555, 1995 Ga. App. LEXIS 713 (1995), cert. denied, No. S95C1983, 1995 Ga. LEXIS 1242 (Ga. Nov. 17, 1995).

Mandatory life imprisonment sentence found in O.C.G.A. § 16-13-30(d) does not unconstitutionally deprive a defendant of due process of law. Tillman v. State, 260 Ga. 801, 400 S.E.2d 632, 1991 Ga. LEXIS 74 (1991).

Mandatory life sentence of O.C.G.A. § 16-13-30(d) does not constitute cruel and unusual punishment under Ga. Const. 1983, Art. I, Sec. I, Para. XVII. Stephens v. State, 261 Ga. 467, 405 S.E.2d 483, 1991 Ga. LEXIS 332 (1991); Cody v. State, 222 Ga. App. 468, 474 S.E.2d 669, 1996 Ga. App. LEXIS 875 (1996).

O.C.G.A. § 16-13-30(d) does not violate the equal protection or due process guarantees of the Georgia and federal constitutions. Isom v. State, 261 Ga. 596, 408 S.E.2d 701, 1991 Ga. LEXIS 425 (1991).

O.C.G.A. § 16-13-30(d) does not violate state or federal constitutional guarantees against cruel and unusual punishment. Isom v. State, 261 Ga. 596, 408 S.E.2d 701, 1991 Ga. LEXIS 425 (1991); Martin v. State, 205 Ga. App. 200, 422 S.E.2d 6, 1992 Ga. App. LEXIS 1106 (1992), cert. dismissed, No. S92C1472, 1992 Ga. LEXIS 802 (Ga. Oct. 2, 1992); Crutchfield v. State, 218 Ga. App. 360, 461 S.E.2d 555, 1995 Ga. App. LEXIS 713 (1995), cert. denied, No. S95C1983, 1995 Ga. LEXIS 1242 (Ga. Nov. 17, 1995).

Sentencing scheme in O.C.G.A. § 16-13-30(d) cannot be found unconstitutional for not having a rational basis since the legislature may have perceived repeated violations of O.C.G.A. § 16-13-30(b) with narcotic drugs (for which a life sentence is mandated) as a greater

threat to the public health, safety, and welfare than repeated violations with nonnarcotic drugs. Hailey v. State, 263 Ga. 210, 429 S.E.2d 917, 1993 Ga. LEXIS 478 (1993), cert. denied, 510 U.S. 1048, 114 S. Ct. 700, 126 L. Ed. 2d 667, 1994 U.S. LEXIS 169 (1994).

No violations based on a high percentage of African-Americans convicted. —

O.C.G.A. § 16-13-30 does not violate due process or equal protection based on statistical evidence as to the high percentage of African-Americans serving life sentences for drug offenses, nor because it creates an irrational sentencing scheme. Stephens v. State, 265 Ga. 356, 456 S.E.2d 560, 1995 Ga. LEXIS 161, cert. denied, 516 U.S. 849, 116 S. Ct. 144, 133 L. Ed. 2d 90, 1995 U.S. LEXIS 5894 (1995).

Constitutionality of subsections (b) and (d). —

No evidence supported contention that provision mandating life sentence for the second conviction of unlawful possession of a controlled substance with intent to distribute has been unconstitutionally enforced selectively against young, impoverished blacks. Hall v. State, 262 Ga. 596, 422 S.E.2d 533, 1992 Ga. LEXIS 915 (1992), cert. denied, 507 U.S. 1055, 113 S. Ct. 1956, 123 L. Ed. 2d 660, 1993 U.S. LEXIS 3088 (1993); Hailey v. State, 263 Ga. 210, 429 S.E.2d 917, 1993 Ga. LEXIS 478 (1993), cert. denied, 510 U.S. 1048, 114 S. Ct. 700, 126 L. Ed. 2d 667, 1994 U.S. LEXIS 169 (1994).

Subsection (d) not retroactive. —

O.C.G.A. § 16-13-30(d), granting trial courts greater discretion in sentencing, is not retroactive to offenses committed prior to the effective date of that section. Mikell v. State, 231 Ga. App. 85, 498 S.E.2d 531, 1998 Ga. App. LEXIS 268 (1998), vacated, 237 Ga. App. 26, 514 S.E.2d 680, 1999 Ga. App. LEXIS 370 (1999), rev'd, 270 Ga. 467, 510 S.E.2d 523, 1999 Ga. LEXIS 17 (1999).

Discriminatory enforcement of section. —

When the defendant produced, from several sources, various statistics, articles, and charts showing that blacks are more likely to be imprisoned for drug offenses than are whites, but did not offer any evidence specific to the defendant's own case that would support an inference that racial considerations played a part in the prosecution's decision to charge the defendant, the defendant's statistics failed to prove an essential element necessary in a selective prosecution case, i.e., that the prosecution engaged in a deliberate selective process of enforcement based on race. Cain v. State, 262 Ga. 598, 422 S.E.2d 535, 1992 Ga. LEXIS 953 (1992).

Defendant's claim that the mandatory life imprisonment provision was applied in a racially discriminatory manner was not properly supported since no evidence was offered that (1) blacks in general or (2) defendant in particular had been selectively prosecuted. Anderson v. State, 218 Ga. App. 872, 463 S.E.2d 502, 1995 Ga. App. LEXIS 908 (1995).

Construed with O.C.G.A. § 17-10-7. —

Both O.C.G.A. §§ 16-13-30(d) and 17-10-7 give direction as to the imposition of punishment under specified aggravated circumstances; however, O.C.G.A. § 16-13-30(d) increases the maximum from 15 years to life for the subsequent offense, whereas O.C.G.A. § 17-10-7 does not increase the maximum but adds weight in favor of its imposition. Wainwright v. State, 208 Ga. App. 777, 432 S.E.2d 555, 1993 Ga. App. LEXIS 577 (1993).

O.C.G.A. § 16-13-30(d) is interpreted as providing that, although the court may not sentence second time offenders under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(a), it may sentence second time offenders under both § 16-13-30(d) and any remaining provisions of § 17-10-7. Blackwell v. State, 237 Ga. App. 896, 516 S.E.2d 787, 1999 Ga. App. LEXIS 556 (1999), cert. denied, No. S99C1235, 1999 Ga. LEXIS 758 (Ga. Sept. 17, 1999).

LEXIS 758 (Ga. Sept. 17, 1999).

Because O.C.G.A. § 17-10-7 is the only recidivist provision that governs the situation where a defendant, who has a prior felony conviction for armed robbery, is subsequently convicted of a felony for selling cocaine, the trial court correctly applied that section in sentencing

defendant. Harden v. State, 239 Ga. App. 700, 521 S.E.2d 829, 1999 Ga. App. LEXIS 1114 (1999).

In a prosecution for sale of cocaine, the court was not required to impose a life sentence upon the defendant who had five previous drug convictions. The court retained the discretion either to impose any sentence within the statutory mandatory minimum and maximum sentence range or else to impose a life sentence. Scott v. State, 248 Ga. App. 542, 545 S.E.2d 709, 2001 Ga. App. LEXIS 324 (2001).

Since the defendant was found guilty of possessing cocaine with the intent to distribute, the defendant's third conviction for the possession of a controlled substance with the intent to distribute and the defendant's ninth felony conviction, the sentencing judge had the discretion to sentence the defendant under O.C.G.A. § 16-13-30(d) to "any sentence within the statutory mandatory minimum and maximum sentence range or else to impose a life sentence" and was not required to sentence the defendant to life imprisonment under O.C.G.A. § 17-10-7(a). Mann v. State, 273 Ga. 366, 541 S.E.2d 645, 2001 Ga. LEXIS 65 (2001).

After the defendant entered a guilty plea to possession of cocaine with intent to distribute, and the state introduced copies of a prior out-of-state drug conviction and a prior federal drug conviction, the trial court erred in sentencing defendant to 30 years under O.C.G.A. §§ 16-13-30(d) and 17-10-7(a). Papadoupalos v. State, 249 Ga. App. 300, 548 S.E.2d 59, 2001 Ga. App. LEXIS 493 (2001).

Because the defendant's conviction on count one of the indictment was the second conviction for violating O.C.G.A. § 16-13-30(b), selling a controlled substance, the trial court was not prohibited from sentencing the defendant under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(c). Johnson v. State, 259 Ga. App. 452, 576 S.E.2d 911, 2003 Ga. App. LEXIS 147 (2003).

Trial court's decision to probate a portion of the sentence imposed on the defendant for the defendant's second conviction for possession of cocaine with intent to distribute, requiring the defendant to serve only seven years, was in direct contravention to O.C.G.A. § 16-13-30(d), which stated specifically that a second time offender was to have been imprisoned for not less than 10 years; by the plain reading of § 16-13-30(d), a defendant must have served at least 10 years in prison, and O.C.G.A. § 17-10-7(c), which applied to a second offense under § 16-13-30(b), required that the time be served without parole. State v. Jones, 265 Ga. App. 493, 594 S.E.2d 706, 2004 Ga. App. LEXIS 163 (2004), cert. denied, No. S04C1066, 2004 Ga. LEXIS 591 (Ga. June 28, 2004), overruled in part, Langley v. State, No. S21G0783, 2022 Ga. LEXIS 14 (Ga. Feb. 1, 2022).

Trial court did not err in stacking two recidivist sentencing provisions by first sentencing defendant to life in prison under former O.C.G.A. § 16-13-30(d), which at the time of defendant's crime and sentencing required a life sentence for repeat offenders of § 16-13-30(b), and by then sentencing defendant to life without parole under O.C.G.A. § 17-10-7(c), which required that upon conviction of a fourth felony, defendant was not eligible for parole. Butler v. State, 277 Ga. App. 57, 625 S.E.2d 458, 2005 Ga. App. LEXIS 1364 (2005), aff'd, 281 Ga. 310, 637 S.E.2d 688, 2006 Ga. LEXIS 979 (2006).

Court of Appeals properly affirmed the imposition of a life sentence without parole against the defendant, as a recidivist, under both O.C.G.A. §§ 16-13-30(d) and 17-10-7(c), as the defendant was convicted and sentenced before the effective date of the 1996 amendment to O.C.G.A. § 16-13-30(d), thus making a life sentence the only sentence that the trial court could impose; further, because the instant felony conviction was the defendant's fourth, O.C.G.A. § 17-10-7(c) applied to the sentence by operation of subsection (e) of that statute, as enacted in 1994, so as to require the defendant to serve the sentence imposed by the trial court without the possibility of parole. Butler v. State, 281 Ga. 310, 637 S.E.2d 688, 2006 Ga. LEXIS 979 (2006).

Upon the conviction for the sale of cocaine, the trial court properly sentenced the defendant under O.C.G.A. § 17-10-7(c) and not O.C.G.A. § 17-10-1(a)(1), to the minimum sentence of ten years imprisonment under O.C.G.A. § 16-13-30(d), without the possibility of parole, as the defendant had three prior felony convictions. Fortson v. State, 283 Ga. App. 120, 640 S.E.2d 693, 2006 Ga. App. LEXIS 1571 (2006), overruled in part, Langley v. State, No. S21G0783, 2022 Ga. LEXIS 14 (Ga. Feb. 1, 2022).

Because sufficient proof of the necessary prior convictions, even without inclusion of the defendant's first offender plea, existed to authorize punishment under both O.C.G.A. §§ 16-13-30 and 17-10-7, the recidivist sentence imposed by the trial court was upheld. Johnson v. State, 284 Ga. App. 724, 644 S.E.2d 544, 2007 Ga. App. LEXIS 392 (2007), cert. denied, No. S07C1179, 2007 Ga. LEXIS 538

Johnson v. State, 284 Ga. App. 724, 644 S.E.2d 344, 2007 Ga. App. LEXIS 592 (2007), cert. denied, No. S07C1179, 2007 Ga. LEXIS 556 (Ga. July 13, 2007).

Trial court properly denied the defendant's plea withdrawal motion as the court fully informed the defendant that the sentence the court intended on imposing would be without parole, despite failing to advise the defendant of the sentence prior to the acceptance of the plea; moreover, as methamphetamine was a Schedule II non-narcotic drug, the more general provisions of O.C.G.A. §§ 16-13-30(e) and 17-10-7, and not O.C.G.A. § 16-13-30(c), applied. Thomas v. State, 287 Ga. App. 500, 651 S.E.2d 801, 2007 Ga. App. LEXIS 1003 (2007).

Defendant's sentence of 30 years without parole for trafficking in cocaine was a sentence allowed under O.C.G.A. § 16-13-30(d), and hence, not illegal or void. Defendant could not have been sentenced under O.C.G.A. § 17-10-7(a), or defendant's sentence would have been 40 years. Because the sentence was not void, it was not subject to modification under O.C.G.A. § 17-10-1(f). State v. Blue, 304 Ga. App. 471, 696 S.E.2d 692, 2010 Ga. App. LEXIS 561 (2010).

Defendant sentenced to life in prison without parole, under O.C.G.A. §§ 16-13-30(d) and 17-10-7(c), based on the defendant's prior convictions stemming from guilty pleas, was not entitled to habeas relief on the basis of the defendant's trial counsel's failure to review the transcripts of the defendant's prior plea colloquies because: (1) no per se rule required counsel to review the transcripts; and (2) counsel otherwise adequately investigated the validity of the prior convictions. Barker v. Barrow, 290 Ga. 711, 723 S.E.2d 905, 2012 Ga. LEXIS 294, cert. denied, 568 U.S. 987, 133 S. Ct. 540, 184 L. Ed. 2d 354, 2012 U.S. LEXIS 8455 (2012).

Pursuant to O.C.G.A. § 17-10-7(b.1), a defendant who has been convicted previously of violating either subsection (a), or (j), or paragraph (i)(1) of O.C.G.A. § 16-13-30 may not be sentenced as a recidivist for a second or any subsequent conviction for violating any of those provisions even if the defendant had never been convicted previously of violating the exact subsection for which the defendant is being sentenced. Mathis v. State, 336 Ga. App. 257, 784 S.E.2d 98, 2016 Ga. App. LEXIS 157 (2016).

Construed with O.C.G.A. § 16-13-31. —

Most reasonable interpretation of the legislative intent in enacting O.C.G.A. § 16-13-31(f)(1) was to supplant the general punishment provision of O.C.G.A. § 16-13-30(b) with a specific and potentially more harsh punishment provision for manufacturing methamphetamine. Richards v. State, 290 Ga. App. 360, 659 S.E.2d 651, 2008 Ga. App. LEXIS 239 (2008).

Legislative intent behind O.C.G.A. § 16-13-30(d) and the purpose for the statute's enactment is to deter repeat offenders of certain drug crimes enumerated in subsection (b) and to segregate persons who have two convictions of such offenses from the rest of society for an extended period of time. Mays v. State, 200 Ga. App. 457, 408 S.E.2d 714, 1991 Ga. App. LEXIS 1058 (1991), rev'd in part, 262 Ga. 90, 414 S.E.2d 481, 1992 Ga. LEXIS 244 (1992), vacated, 204 Ga. App. 80, 418 S.E.2d 167, 1992 Ga. App. LEXIS 688 (1992).

The 1996 amendment of O.C.G.A. § 16-13-30(d) giving the trial court greater discretion in imposing a lesser sentence than life was not retroactive. Maddox v. State, 227 Ga. App. 602, 490 S.E.2d 174, 1997 Ga. App. LEXIS 987 (1997).

Trial court erred in imposing mandatory life sentences for crimes committed in 1997, that is, after the legislative enactment making a life sentence discretionary. Moton v. State, 242 Ga. App. 397, 530 S.E.2d 31, 2000 Ga. App. LEXIS 203 (2000).

Special probation. —

Plain language of O.C.G.A. § 42-8-35.2(a) requires that a term of special probation be served "in addition to any term of imprisonment" rendered under O.C.G.A. § 16-13-30(d); thus, the two statutes do not conflict. Accordingly, a defendant was properly sentenced to a ten-year incarceration followed by special probation, and the defendant's claim that O.C.G.A. § 42-8-32.5 was implicitly repealed by the 1996 amendment to O.C.G.A. § 16-13-30 was without merit. Mike v. State, 290 Ga. App. 214, 659 S.E.2d 664, 2008 Ga. App. LEXIS 283 (2008), cert. denied, No. S08C1196, 2008 Ga. LEXIS 612 (Ga. June 16, 2008), overruled in part, Langley v. State, No. S21G0783, 2022 Ga. LEXIS 14 (Ga. Feb. 1, 2022).

Defendant's sentence for possession of methamphetamine with intent to distribute of 30 years, with the first 20 years to be served in confinement and the remainder to be served on probation, along with a special term of probation of three years in addition to the 30-year term, was valid under O.C.G.A. §§ 16-13-30(d) and 42-8-35.2. Benton v. State, 356 Ga. App. 441, 847 S.E.2d 625, 2020 Ga. App. LEXIS

term, was valid under O.C.G.A. §§ 16-13-30(d) and 42-8-35.2. Benton v. State, 356 Ga. App. 441, 847 S.E.2d 625, 2020 Ga. App. LEXIS 460 (2020), cert. denied, No. S21C0110, 2021 Ga. LEXIS 253 (Ga. Apr. 5, 2021).

Authority to resentence defendant. —

Because the trial court was correct that the court had imposed a sentence not allowed, the sentence was void and the trial court retained jurisdiction to resentence the defendant. Loveless v. State, 344 Ga. App. 716, 812 S.E.2d 42, 2018 Ga. App. LEXIS 130 (2018).

Subsection (b) must be violated for life sentence to be mandatory. —

Trial court erred in imposing life sentences upon counts two, three, and four of the indictment when a defendant must have been convicted of violating O.C.G.A. § 16-13-30(b) in order for the imposition of a life sentence to be mandatory. Brown v. State, 204 Ga. App. 794, 420 S.E.2d 823, 1992 Ga. App. LEXIS 988 (1992).

Motion to modify sentence inappropriate remedy. —

Defendant's claim that the trial court did not give defendant credit for time defendant spent in pretrial confinement when the court sentenced defendant after defendant pled guilty to charges of possession of cocaine with intent to distribute and possession of marijuana with intent to distribute was cognizable only in a mandamus or injunction action against the Commissioner of the Georgia Department of Corrections, or in a petition for habeas corpus, not in a motion to modify defendant's sentence, and the trial court properly dismissed defendant's motion to modify defendant's sentence. Maldonado v. State, 260 Ga. App. 580, 580 S.E.2d 330, 2003 Ga. App. LEXIS 428 (2003).

With regard to the defendant's conviction for attempted possession of oxycodone with the intent to distribute and the sentence imposed of 30 years confinement as a recidivist, to serve 20 years in confinement and the remainder probated, the defendant was entitled to resentencing as the state conceded that the state failed to show that the defendant's prior convictions were adjudged upon the advice of counsel or following a waiver thereof. Woodall v. State, 291 Ga. App. 484, 662 S.E.2d 549, 2008 Ga. App. LEXIS 535 (2008).

Motion to correct void sentence. —

Sentencing court should have dismissed the defendant's motion to vacate a void sentence for lack of jurisdiction because the defendant's motion presented no cognizable claim that a sentence was void as constituting punishment the law did not allow. The defendant only challenged the existence or validity of the factual or adjudicative predicate for the recidivist sentence. Kimbrough v. State, 325 Ga. App. 519, 754 S.E.2d 109, 2014 Ga. App. LEXIS 8 (2014).

Because a more specific law applies to trafficking methamphetamine, the general provisions for manufacturing controlled substances do not apply; there being no uncertainty as to which statute applies, the rule of lenity is not implicated. State v. Nankervis, 295 Ga. 406, 761 S.E.2d 1, 2014 Ga. LEXIS 538 (2014).

Life sentence for conviction of a second offense. —

Life sentence for conviction of a second offense was permissible when defendant had not been convicted of the first offense at the time defendant committed the second offense. Hailey v. State, 263 Ga. 210, 429 S.E.2d 917, 1993 Ga. LEXIS 478 (1993), cert. denied, 510 U.S. 1048, 114 S. Ct. 700, 126 L. Ed. 2d 667, 1994 U.S. LEXIS 169 (1994); Key v. State, 226 Ga. App. 240, 485 S.E.2d 804, 1997 Ga. App. LEXIS 487 (1997).

After the defendant was convicted of trafficking in cocaine and conspiracy of trafficking in cocaine in 2011 and sentenced to two concurrent terms of life in prison, the defendant's life sentence was proper because the defendant's 2010 trafficking conviction pursuant to O.C.G.A. § 16-13-31 qualified as an actual conviction under O.C.G.A. § 16-13-30(b) to trigger the recidivist provisions of § 16-13-30(d) and enhance the defendant's sentence for the 2011 trafficking conviction; and the legislature did not intend that violators of the more serious offense of trafficking be exempt from the severe punishment of § 16-13-30(d). Duron v. State, 340 Ga. App. 74, 796 S.E.2d 310, 2017 Ga. App.

LEXIS 11 (2017), cert. denied, No. S17C0983, 2017 Ga. LEXIS 599 (Ga. June 30, 2017).

Life sentence based on conviction under prior statute. —

O.C.G.A. § 16-13-30(d) authorizes a life sentence only for a second violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., which was enacted in 1974. Thus, it does not include earlier convictions for crimes which would have been violations of the Act had they been committed after the effective date of the Act. Smith v. State, 193 Ga. App. 365, 387 S.E.2d 648, 1989 Ga. App. LEXIS 1427 (1989).

Prior conviction under federal law. —

Life sentence may only be imposed for a second violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., and was not authorized since the prior offense used against the defendant was a federal drug conviction. Query v. State, 217 Ga. App. 61, 456 S.E.2d 704, 1995 Ga. App. LEXIS 340 (1995), cert. denied, No. S95C1168, 1995 Ga. LEXIS 791 (Ga. June 1, 1995).

After federal convictions, state prosecutions barred on same conduct. —

Threshold requirement of concurrent jurisdiction in O.C.G.A. § 16-1-8(c) was met in the defendant's state prosecution because the Georgia crimes of manufacturing, delivering, or selling a controlled substance and attempt, O.C.G.A. §§ 16-13-30(a) and 16-13-33, were counterparts to the defendant's federal convictions under 21 U.S.C.S. §§ 841(b)(1)(C) and 846. Calloway v. State, 303 Ga. 48, 810 S.E.2d 105, 2018 Ga. LEXIS 66 (2018).

Defendant, sentenced to life under O.C.G.A. § 16-13-30(d) was not similarly situated to codefendant granted first offender probation for equal protection purposes because the codefendant was a first offender and defendant was convicted of seven other drug charges in addition to the sale of 200 grams or more of cocaine and had prior convictions for robbery and possession of cocaine with intent to distribute. Bell v. State, 252 Ga. App. 74, 555 S.E.2d 747, 2001 Ga. App. LEXIS 1204 (2001).

Career offender implications. —

Unpublished decision: Defendant's conviction for possessing a counterfeit substance with intent to sell under O.C.G.A. § 16-13-30(i) was an offense under a state law that prohibited the possession of a counterfeit substance, and was punishable by imprisonment for a term exceeding one year; as such, the elements of the offense matched the plain language of U.S. Sentencing Guidelines Manual §§ 4B1.1 and 4B1.2, and the offense was sufficient to count towards defendant's career offender status. Moreover, this interpretation was not modified by the statutory definitions contained in 21 U.S.C.S. § 802(7), and nothing in 28 U.S.C.S. § 994 prevented the sentencing commission from using the commission's authority in this manner. United States v. Smith, 156 Fed. Appx. 154, 2005 U.S. App. LEXIS 25382 (11th Cir. 2005), cert. denied, 547 U.S. 1048, 126 S. Ct. 1639, 164 L. Ed. 2d 349, 2006 U.S. LEXIS 2641 (2006).

Unpublished decision: Defendant was properly sentenced as an armed career criminal because the defendant's 1998 Georgia felony conviction for obstructing or hindering a law enforcement officer was a violent felony, and the defendant's 1998 Georgia felony conviction for possessing marijuana with the intent to distribute fell squarely within the Armed Career Criminal Act's definition of a serious drug offense. United States v. Dixon, 598 Fed. Appx. 704, 2015 U.S. App. LEXIS 1698 (11th Cir. 2015).

Prior out-of-state convictions. —

Defense counsel was not ineffective for failing to object to the trial court's use of prior felonies defendant committed in California to sentence the defendant as a recidivist under O.C.G.A. § 17-10-7(c) as the elements of Cal. Health & Safety Code §§ 11054(f), 11350(a) (possession of cocaine) were sufficiently similar to those of O.C.G.A. §§ 16-13-26(1)(D) and 16-13-30(c); and the elements of Cal. Penal. Code § 211 (robbery) were sufficiently similar to those of O.C.G.A. § 16-8-40. Williams v. State, 296 Ga. App. 270, 674 S.E.2d 115, 2009 Ga. App. LEXIS 189 (2009).

Nonfinal conviction of first offense as predicate for life sentence on second charge. —

O.C.G.A. § 17-10-2(a), relating to presentence hearings, did not operate to bar the trial court from relying on one of the cocaine charges to which defendant pled guilty in a guilty plea hearing in order to impose an enhanced mandatory life sentence pursuant to O.C.G.A. § 16-13-30(d) for the second sale of cocaine charge to which defendant pled guilty at the same hearing. Plea bargain negotiations can serve the same purpose as the giving of notice under O.C.G.A. § 17-10-2(a), and, when plea bargain negotiations are conducted, the defendant can be given "clear notice" of what the state intends to rely upon in aggravation of sentencing at the guilty plea hearing. Martin v. State, 207 Ga. App. 861, 429 S.E.2d 332, 1993 Ga. App. LEXIS 370 (1993).

In order for the imposition of life sentences to be mandatory pursuant to O.C.G.A. § 16-13-30(d), a defendant's prior conviction need not have preceded the defendant's subsequent violations of O.C.G.A. § 16-13-30(b), but the defendant's prior conviction must necessarily have preceded the defendant's subsequent trial for violating O.C.G.A. § 16-13-30(b). State v. Sears, 202 Ga. App. 352, 414 S.E.2d 494, 1991 Ga. App. LEXIS 1774 (1991).

Prior conviction trigger for mandatory life sentence. —

Defendant's conviction for the more serious offense of trafficking in cocaine under O.C.G.A. § 16-13-31 was sufficient in conjunction with the defendant's previous conviction for possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30(b) to trigger the mandatory life sentence provisions of § 16-13-30(d) and the state gave proper notice that the prior conviction would be used in aggravation at sentencing pursuant to § 16-13-30(d). Brundage v. State, 231 Ga. App. 478, 499 S.E.2d 408, 1998 Ga. App. LEXIS 470 (1998).

Life sentence appropriate. —

When there is evidence of record that the defendant was properly notified of the state's intent to use defendant's prior drug convictions in aggravation of punishment at the sentencing hearing, and such evidence was not sufficiently rebutted by defendant, the trial court did not err in sentencing defendant to life in prison as a recidivist. Washington v. State, 216 Ga. App. 352, 454 S.E.2d 214, 1995 Ga. App. LEXIS 113 (1995).

Defendant's conviction for the more serious offense of trafficking in cocaine under O.C.G.A. § 16-13-31 was sufficient in conjunction with prior convictions for sale of cocaine to trigger the mandatory life sentence provision of O.C.G.A. § 16-13-30(d). Covington v. State, 231 Ga. App. 851, 501 S.E.2d 37, 1998 Ga. App. LEXIS 538 (1998).

Life sentence cannot be imposed for a first offense even though, at the time a conviction is entered on that offense, the defendant had committed and been convicted of an intervening offense. Mays v. State, 262 Ga. 90, 414 S.E.2d 481, 1992 Ga. LEXIS 244 (1992).

Recidivist punishment under subsection (d) not precluded by § 17-10-7(c). —

Imposition of mandatory life sentences as recidivist punishment for convictions under each count of an indictment charging six separate offenses of selling cocaine was not precluded by provisions of the statute placing limitations on the use of prior convictions as the basis for imposing enhanced recidivist punishment. McCoy v. State, 210 Ga. App. 672, 437 S.E.2d 366, 1993 Ga. App. LEXIS 1308 (1993).

Neither of two concurrent convictions can serve as the predicate for the imposition of a life sentence (under O.C.G.A. § 16-13-30(d)) as to the other. State v. Sears, 202 Ga. App. 352, 414 S.E.2d 494, 1991 Ga. App. LEXIS 1774 (1991).

Rehabilitation and life sentence. —

There appears to be no constitutional requirement that a defendant receive "the benefit of rehabilitation" before a life sentence for

repeated conduct may be imposed under O.C.G.A. § 16-13-30(d). Beasley v. State, 202 Ga. App. 349, 414 S.E.2d 663, 1991 Ga. App. LEXIS 1773 (1991).

Neither convictions could serve basis for life imprisonment. —

Concurrent six-year sentences imposed upon defendant were not void, and the state's appeal was dismissed, since neither of defendant's instant convictions could serve as the predicate for the imposition of a life sentence as to the others. State v. Sampson, 203 Ga. App. 396, 417 S.E.2d 34, 1992 Ga. App. LEXIS 432 (1992), cert. denied, No. S92C0825, 1992 Ga. LEXIS 571 (Ga. July 8, 1992).

Use of second offense to revoke first-offender probation. —

Trial court did not err in treating the defendant's commission of the second offense both as the basis for the revocation of defendant's first-offender probation which, in turn, resulted in defendant's conviction of the original offense, and as the "second or subsequent offense" for which O.C.G.A. § 16-13-30 mandates a life sentence. Dean v. State, 200 Ga. App. 752, 409 S.E.2d 667, 1991 Ga. App. LEXIS 1140 (1991), cert. denied, No. S91C1484, 1991 Ga. LEXIS 583 (Ga. Sept. 6, 1991).

Notice required for life term. —

If a life sentence is to be imposed under O.C.G.A. § 16-13-30(d), the state must notify defendant of any conviction the state intends to use in aggravation of punishment pursuant to that section. Armstrong v. State, 264 Ga. 237, 442 S.E.2d 759, 1994 Ga. LEXIS 421 (1994).

Notice to the defendant that two prior convictions would be used against the defendant was timely where notice was given on the day of trial, but before the trial started. Howard v. State, 234 Ga. App. 260, 506 S.E.2d 648, 1998 Ga. App. LEXIS 1200 (1998).

Written notice that the state intends to present evidence of prior convictions coupled with oral notice that the state intends to seek a life sentence satisfies the notice requirement. Washington v. State, 238 Ga. App. 561, 519 S.E.2d 234, 1999 Ga. App. LEXIS 858 (1999).

Advance notice not required. —

O.C.G.A. § 16-13-30 contains no requirement of advance notice of prior felony convictions as a condition to sentencing or to receiving evidence of prior drug conviction. Armstrong v. State, 209 Ga. App. 796, 434 S.E.2d 560, 1993 Ga. App. LEXIS 998 (1993), aff'd, 264 Ga. 237, 442 S.E.2d 759, 1994 Ga. LEXIS 421 (1994).

Advising on sentencing. —

In a prosecution for possession of methamphetamine, the defendant claimed defense counsel was ineffective for failing to advise the defendant of the possibility of receiving a prison sentence without the possibility of parole. This claim failed as the trial court was entitled to believe trial counsel's testimony that counsel advised the defendant of this possible sentence before the defendant elected to go to trial. Matthews v. State, 294 Ga. App. 836, 670 S.E.2d 520, 2008 Ga. App. LEXIS 1329 (2008).

Enforcement of plea agreement. —

With regard to the defendant's drug possession charges and a plea agreement that waived recidivist punishment, the court held that the trial court erred by denying the defendant's motion to enforce the plea agreement made with the prior district attorney because an agreement as to terms was clearly made and the fact that the state changed the state's mind and no longer wanted to honor the plea agreement was not acceptable policy. Syms v. State, 331 Ga. App. 225, 770 S.E.2d 305, 2015 Ga. App. LEXIS 138 (2015).

Indictment sufficient. —

Indictment sufficient.

Trial court's decision overruling the defendant's special demurrer to an indictment charging the defendant with trafficking in methamphetamine and misdemeanor possession of marijuana in violation of O.C.G.A. §§ 16-13-30(b) and 16-13-31(e) was authorized

because the allegations of the indictment were sufficient to be easily understood by the jury, to allow the defendant to prepare the defendant's defense, and to protect the defendant from double jeopardy; the indictment sufficiently set forth the date of the offenses and tracked the material language of the statutes proscribing the charged offenses, and the language set forth in the counts against the codefendants separately designated the drugs upon which those charges were based and made clear that the defendant's drug charges were not based upon the drugs allegedly possessed by those individual codefendants. Fyfe v. State, 305 Ga. App. 322, 699 S.E.2d 546, 2010 Ga. App. LEXIS 628 (2010), cert. denied, No. S10C1942, 2011 Ga. LEXIS 229 (Ga. Feb. 28, 2011), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Waiver of error in indictment. —

Trial court did not err in permitting the state to try the defendant on both the sale of cocaine and trafficking in cocaine charge, after the prosecutor informed the defendant that the defendant would only be tried for the sale offense, and after the trial court excluded evidence of the trafficking crime as a similar transaction; by failing to object, the defendant waived any alleged error. Brockington v. State, 265 Ga. App. 13, 592 S.E.2d 858, 2003 Ga. App. LEXIS 1613 (2003).

No fatal variance in indictment. —

It was not a fatal variance to prosecute the defendants for possession of amphetamine when the indictment alleged possession of methamphetamine. The defendants were well aware of the misnomer and were not surprised at trial since their defense was that the substance belonged to a codefendant, and the defendants were not subject to further prosecution for possession of amphetamine. Howard v. State, 291 Ga. App. 289, 661 S.E.2d 644, 2008 Ga. App. LEXIS 467 (2008).

Indictment not final when pre-trial notice given. —

When the defendant's conviction on the first count of the instant four count indictment for violations of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., was not final at the time the state gave the state's pre-trial notice of the state's intent to seek a mandatory life sentence, the conviction on the first count could not be the basis for the imposition of a life sentence on either of the remaining counts of the indictment. Nunnally v. State, 203 Ga. App. 639, 417 S.E.2d 170, 1992 Ga. App. LEXIS 550 (1992), cert. denied, No. S92C0916, 1992 Ga. LEXIS 593 (Ga. June 25, 1992).

Jury instructions on lesser included offense. —

Instructions on the elements of the offense of possession of cocaine with intent to distribute and on the lesser included offense of simple possession given in the language of the Suggested Pattern Jury Charge were sufficient. Burse v. State, 232 Ga. App. 729, 503 S.E.2d 638, 1998 Ga. App. LEXIS 815 (1998).

Defendant was properly convicted of trafficking in methamphetamine in violation of O.C.G.A. § 16-13-31(e) because the trial court did not commit reversible error by refusing to charge the jury on the lesser included offense of simple possession of methamphetamine, O.C.G.A. § 16-13-30, when there was no written request to give a charge on simple possession; even if the trial court erred in not giving the charge, reversal was not required in light of the overwhelming evidence that defendant possessed 432.31 grams of methamphetamine, which clearly constituted trafficking, and, therefore, it was highly unlikely that the failure to give an instruction on simple possession contributed to the verdict. Gonzalez v. State, 299 Ga. App. 777, 683 S.E.2d 878, 2009 Ga. App. LEXIS 970 (2009).

Trial court's failure to charge the jury on manufacturing methamphetamine, O.C.G.A. § 16-13-30(a), as a lesser included offense of trafficking methamphetamine, O.C.G.A. § 16-13-31(f), did not contribute to the verdict and was harmless; although the trial court was

required to charge the jury on § 16-13-30(b) as a lesser included offense to § 16-13-31(f) since there was evidence that the defendant manufactured methamphetamine as prohibited by § 16-13-30(b), there was no relevant distinction between the two statutes with regard to methamphetamine as applied to the case. Because the evidence established that the defendant manufactured methamphetamine, and the defendant's admission that the defendant was "cooking" showed that the defendant knowingly manufactured methamphetamine, the jury could have found the defendant guilty of both offenses or not guilty of both. Poole v. State, 302 Ga. App. 464, 691 S.E.2d 317, 2010 Ga. App. LEXIS 161 (2010), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013).

Trial counsel was not deficient for failing to object to the trial court's instruction on the lesser included offense of possession of MDMA (Ecstasy) because the instruction explained the elements of possession of MDMA with intent to distribute and delineated that charge from simple possession of MDMA; the charge substantially covered the principles in the defendant's request to charge and adequately instructed the jury as to the jury's consideration of the charged offense and the lesser offense, and since there was overwhelming evidence of the defendant's guilt, in that the defendant possessed a distribution amount of MDMA, the defendant could not show a reasonable probability that the outcome of the defendant's trial would have been different. Taylor v. State, 306 Ga. App. 175, 702 S.E.2d 28, 2010 Ga. App. LEXIS 895 (2010), cert. denied, No. S11C0258, 2011 Ga. LEXIS 231 (Ga. Feb. 28, 2011).

Evidence sufficient for conviction of manufacturing marijuana. —

See Holland v. State, 205 Ga. App. 695, 423 S.E.2d 694, 1992 Ga. App. LEXIS 1300 (1992).

When verdict sustained. —

If the totality of the evidence is sufficient to connect defendant to possession of drugs, even though there is evidence to authorize a contrary finding, the jury's verdict will be sustained. Singleton v. State, 194 Ga. App. 5, 389 S.E.2d 496, 1989 Ga. App. LEXIS 1705 (1989).

Possession with intent to distribute is not punishable by both fine and imprisonment. —

General Assembly has not seen fit to permit imposition of both fine and imprisonment as punishment for a felony, except in specified cases, and possession of phencyclidine with intent to distribute is not one of these. Taylor v. State, 149 Ga. App. 362, 254 S.E.2d 432, 1979 Ga. App. LEXIS 1849 (1979).

Unauthorized fines are void part of sentence. —

When defendants violated O.C.G.A. § 16-13-30(b) by possessing with intent to distribute diazepam, a Schedule IV controlled substance, the trial court was without authority to impose a $5,000 fine on one defendant and $10,000 fines on each of the other defendants since O.C.G.A. § 16-13-30(h) does not authorize imposition of any fines; since a trial judge may only fix a sentence within the limits prescribed by law, the fines imposed are void and must be stricken from the respective sentences. Castillo v. State, 166 Ga. App. 817, 305 S.E.2d 629, 1983 Ga. App. LEXIS 3279 (1983).

Defendant's sentence for cocaine possession requiring the defendant to begin making monthly payments on fines, fees, and court costs during the defendant's incarceration was a punishment that the law did not allow, and therefore was void. Pursuant to O.C.G.A. § 17-10-8, the defendant could only be ordered to make such payments as a condition of probation. Crane v. State, 302 Ga. App. 422, 691 S.E.2d 559, 2010 Ga. App. LEXIS 148 (2010).

Juvenile court erred in imposing a fine for possession of cocaine because a fine was not an authorized penalty under O.C.G.A. § 16-13-30. In re A. T., 302 Ga. App. 713, 691 S.E.2d 642, 2010 Ga. App. LEXIS 218 (2010).

Monetary fines not authorized on conviction. —

Upon conviction of a defendant of possession of cocaine with intent to distribute, the trial court was without authority to impose a fine

Upon conviction of a defendant of possession of cocaine with intent to distribute, the trial court was without authority to impose a fine, penalty fee, and D.A.T.E. fee; the penalty for the offense does not include monetary fines. Rawls v. State, 210 Ga. App. 408, 436 S.E.2d 527, 1993 Ga. App. LEXIS 1202 (1993).

Fine of $50,000 was not authorized upon a conviction of a violation of O.C.G.A. § 16-13-30. Donelson v. State, 220 Ga. App. 688, 469 S.E.2d 861, 1996 Ga. App. LEXIS 313 (1996).

Phrase "subsequent offense" in O.C.G.A. § 16-13-30(g) means possession of any controlled substance rather than "a controlled substance in Schedule III, IV, or V." Ray v. State, 181 Ga. App. 42, 351 S.E.2d 490, 1986 Ga. App. LEXIS 2801 (1986).

Repeat offenders. —

It was not error to sentence defendant as a repeat offender rather than under O.C.G.A. § 16-13-30, where first offense involved possession and control of a controlled substance, and second offense involved possession with intent to distribute. Sewell v. State, 162 Ga. App. 483, 291 S.E.2d 783, 1982 Ga. App. LEXIS 2192 (1982).

Enhanced punishment based upon prior conviction. —

If the state has not specifically informed the defendant, prior to trial, that it intends to seek enhanced punishment based upon a conviction for a prior offense, the trial court would not be able to impose an enhanced sentence, even if the offense for which the defendant is being tried is a "second or subsequent offense." Mays v. State, 262 Ga. 90, 414 S.E.2d 481, 1992 Ga. LEXIS 244 (1992); Jordan v. State, 217 Ga. App. 420, 457 S.E.2d 692, 1995 Ga. App. LEXIS 467 (1995).

Previous convictions not final at the time a sentence was imposed because they were on appeal could not be relied upon as grounds for imposing enhanced punishment. Dunn v. State, 208 Ga. App. 197, 430 S.E.2d 50, 1993 Ga. App. LEXIS 466 (1993); Covington v. State, 226 Ga. App. 484, 486 S.E.2d 706, 1997 Ga. App. LEXIS 657 (1997).

Unpublished decision: Categorical approach was properly applied in determining that a defendant's prior conviction under O.C.G.A. § 16-13-30 was a "controlled substance offense" for purposes of the career offender guideline, U.S. Sentencing Guidelines Manual § 4B1.1; although the defendant received less than the statutory minimum sentence under O.C.G.A. § 16-13-30, the state court record showed that the defendant was convicted of selling cocaine, not possessing cocaine. United States v. Partee, 376 Fed. Appx. 614, 2010 U.S. App. LEXIS 10687 (7th Cir.), cert. denied, 562 U.S. 991, 131 S. Ct. 439, 178 L. Ed. 2d 340, 2010 U.S. LEXIS 8271 (2010).

Date of commission of offense determines applicability of enhanced punishment. —

It is not the date of conviction which determines the applicability of enhanced punishment but the date of the commission of the offense; where conviction was for offense which occurred prior to offense which resulted in prior conviction, trial court erred in imposing enhanced punishment under subsection (d). Doe v. State, 205 Ga. App. 322, 422 S.E.2d 558, 1992 Ga. App. LEXIS 1218 (1992).

Second conviction for sale of cocaine results in sentence of imprisonment for life, even when the prior offense is not set out in the indictment, when the state complies with the requirement of O.C.G.A. § 17-10-2(a), which provides that only such evidence in aggravation as the state has made known to the defendant prior to defendant's trial shall be admissible. State v. Hendrixson, 251 Ga. 853, 310 S.E.2d 526, 1984 Ga. LEXIS 555 (1984).

Sentenced for a second offense of cocaine possession. —

Defendant's previous conviction for cocaine possession with the intent to distribute constituted a previous conviction for cocaine possession that triggered the mandatory 30-year sentencing for a second simple possession offense under O.C.G.A. § 16-13-30(c). Smiley v. State, 241 Ga. App. 712, 527 S.E.2d 585, 2000 Ga. App. LEXIS 4 (2000).

Life sentence for trafficking in cocaine. —

Life sentence was properly imposed on the defendant after the defendant was convicted of trafficking in cocaine under O.C.G.A. § 16-13-31. Howard v. State, 234 Ga. App. 260, 506 S.E.2d 648, 1998 Ga. App. LEXIS 1200 (1998).

Life sentence based on conviction in another state. —

Imposition of the life sentence was erroneous when defendant's prior conviction was under South Carolina law and thus did not invoke the provisions of O.C.G.A. § 16-13-30(d). Peterson v. State, 212 Ga. App. 147, 441 S.E.2d 481, 1994 Ga. App. LEXIS 191 (1994).

Probation as punishment. —

Punishments provided in O.C.G.A. § 16-13-30 do not preclude probation as a punishment. Lester v. State, 190 Ga. App. 59, 378 S.E.2d 364, 1989 Ga. App. LEXIS 115 (1989).

Sentence for attempted possession appropriate. —

Trial court did not err in sentencing defendant, who had been convicted of attempted possession of crack cocaine, for purchasing a piece of a nut from an undercover police officer thinking it was crack cocaine, within the sentencing range for attempted possession of a Schedule II controlled substance, despite the fact that the indictment did not specifically allege that crack cocaine was a Schedule II controlled substance. The indictment and proof clearly showed that defendant had in fact attempted to purchase a Schedule II controlled substance. Lovain v. State, 253 Ga. App. 271, 558 S.E.2d 812, 2002 Ga. App. LEXIS 29 (2002).

Fine as condition of probation. —

When a defendant was convicted of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30 and sentenced to the mandatory minimum of 10 years' imprisonment, plus 30 years on probation, the trial court did not err in imposing a $5,000 fine as a condition of probation. O.C.G.A. § 17-10-8 permitted a trial court to impose a fine as a condition of probation. Marshall v. State, 291 Ga. App. 284, 661 S.E.2d 662, 2008 Ga. App. LEXIS 473 (2008).

Sentence outside statutory range. —

Since the ten-year felony sentence, entered by the trial court and imposed upon the defendant's convictions for possession of a controlled substance, possession of marijuana, and improper turn, was outside the statutory range in O.C.G.A. § 16-13-30(g), the sentence was void. Accordingly, the trial court had jurisdiction to resentence the defendant at any time. Simmons v. State, 315 Ga. App. 82, 726 S.E.2d 573, 2012 Ga. App. LEXIS 320 (2012).

Because the 25-year sentence imposed by the trial court exceeded the statutory maximum under O.C.G.A. § 16-13-30(c), the sentence was void. Royals v. State, 327 Ga. App. 337, 761 S.E.2d 357, 2014 Ga. App. LEXIS 334 (2014).

Sentence within authorized range. —

Defendant's sentence to five years of confinement to be probated after 12 months, payment of fines, a monthly probation fee, and submission to special conditions of probation was well within the range authorized for possession of cocaine and was not cruel and unusual punishment. Toth v. State, 213 Ga. App. 247, 444 S.E.2d 159, 1994 Ga. App. LEXIS 530 (1994).

When a defendant was sentenced to five years imprisonment for possession of cocaine, the sentence was within the statutory limits of two to 15 years, and was not so overly severe or excessive as to shock the conscience. Palmore v. State, 236 Ga. App. 285, 511 S.E.2d 624, 1999 Ga. App. LEXIS 128 (1999).

Defendant's sentence of 30 years with five years to serve and 25 years on probation for selling cocaine was within the limits set by O.C.G.A. § 16-13-30(d) and would not be disturbed. Harden v. State, 239 Ga. App. 700, 521 S.E.2d 829, 1999 Ga. App. LEXIS 1114 (1999).

Since defendant, as a fourth-time felon, faced a maximum punishment of 30 years in prison with no possibility of parole, and the trial court sentenced defendant to 25 years in prison with no possibility of parole, defendant's sentence was within the statutory guidelines; accordingly, the sentence was not void. Taylor v. State, 261 Ga. App. 248, 582 S.E.2d 209, 2003 Ga. App. LEXIS 601 (2003), cert. dismissed, No. S03C1377, 2003 Ga. LEXIS 801 (Ga. Sept. 22, 2003).

Appellate court declined to review the defendant's 30-year sentence because the sentence was within the statutory guidelines; the defendant had been found guilty of possessing cocaine with the intent to distribute, the state introduced three prior felony convictions in aggravation of sentencing pursuant to O.C.G.A. § 17-10-2(a), and given the defendant's prior drug convictions and the mandate of O.C.G.A. § 17-10-7(c), the defendant faced a maximum punishment of life in prison under O.C.G.A. § 16-13-30(d). Jackson v. State, 284 Ga. App. 619, 644 S.E.2d 491, 2007 Ga. App. LEXIS 376 (2007), cert. denied, No. S07C1169, 2007 Ga. LEXIS 521 (Ga. June 25, 2007), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Defendant misconstrued the language in O.C.G.A. § 16-13-30(d) when the defendant contended that a prior conviction for the sale of marijuana was improperly used to enhance defendant's sentence for a first conviction for possession with intent to sell amphetamine; the defendant's sentence of 30 years with 20 to serve was within the range set out for a conviction for possession with intent to sell amphetamine. McElreath v. State, 284 Ga. App. 349, 643 S.E.2d 863, 2007 Ga. App. LEXIS 320 (2007).

Because the defendant's conviction was the second for possession of cocaine, the defendant was subject to a sentence of between 5 and 30 years under O.C.G.A. § 16-13-30(c), and the trial judge's sentence of 25 years, with eight years to serve, was within the legal range of punishment. Shook v. State, 300 Ga. App. 59, 684 S.E.2d 129, 2009 Ga. App. LEXIS 1083 (2009).

Trial court did not err in vacating the defendant's sentence of 40 years confinement and resentencing the defendant as a recidivist to 20 years confinement because there was nothing in the record showing that the trial court failed to exercise the court's discretion when the court imposed the sentence; the 20-year sentence the trial court imposed on resentencing was within the court's discretion, as the sentence fell within the statutory limits for the offense for which the defendant was convicted, possession of cocaine with intent to distribute. Bush v. State, 305 Ga. App. 617, 699 S.E.2d 899, 2010 Ga. App. LEXIS 763 (2010).

No modification of the defendant's sentence or hearing was mandated because the trial court considered the positive evidence presented by the defendant, weighed that evidence with the evidence of the defendant's prior criminal history, and the seriousness of the charge before pronouncing the sentence; the sentence was authorized by O.C.G.A.§ 16-13-30, and the record did not support the defendant's ineffective assistance of counsel claim. Benford v. State, 316 Ga. App. 95, 729 S.E.2d 414, 2012 Ga. App. LEXIS 492 (2012).

Even though the General Assembly reduced the punishment for possession of methamphetamine after the subject offense occurred, the trial court did not err in imposing a sentence within the range that existed at the time of the offense, and the sentence did not amount to cruel and unusual punishment. Thompson v. State, 332 Ga. App. 204, 770 S.E.2d 364, 2015 Ga. App. LEXIS 254 (2015), cert. denied, No. S15C1245, 2015 Ga. LEXIS 562 (Ga. Sept. 8, 2015).

Life sentence neither discriminatory nor disproportionate. —

Mandatory life sentence for second violation of O.C.G.A. § 16-13-30 did not violate defendant's equal protection or due process rights, nor was it disproportionate. Jackson v. State, 223 Ga. App. 471, 477 S.E.2d 893, 1996 Ga. App. LEXIS 1200 (1996).

Trial court lacked discretion to suspend, probate or defer sentence. —

When the defendant was twice convicted of selling cocaine, the trial court correctly held that the court lacked discretion to suspend, probate, or defer a portion of the defendant's life sentence. Mosley v. State, 203 Ga. App. 275, 416 S.E.2d 736, 1992 Ga. App. LEXIS 499 (1992).

Defendant held sentenced beyond statutory maximum. —

See Smith v. State, 186 Ga. App. 303, 367 S.E.2d 573, 1988 Ga. App. LEXIS 376 (1988).

Maximum sentence appropriate. —

Because conspiracy to manufacture methamphetamine was a crime penalized by a special law, the general provisions of the penal code did not apply; thus, under both O.C.G.A. §§ 16-13-30 and 16-13-33, which were mutually exclusive, defendant was properly sentenced to 30 years, which was the maximum sentence allowed. McWhorter v. State, 275 Ga. App. 624, 621 S.E.2d 571, 2005 Ga. App. LEXIS 1056 (2005).

Merger of sentences by operation of law. —

Convictions for possession of methamphetamine and criminal attempt to manufacture methamphetamine merged as a matter of fact since the state used the same conduct to establish commission of both crimes, namely the same methamphetamine oil found in a toilet; therefore, though it was permissible to prosecute defendant for each crime, defendant could not be convicted for both offenses and the possession conviction and sentence were vacated by operation of law on appeal. Womble v. State, 290 Ga. App. 768, 660 S.E.2d 848, 2008 Ga. App. LEXIS 412 (2008).

Merger of convictions. —

Defendant's conviction for manufacturing marijuana in violation of O.C.G.A. § 16-13-30(j)(1) should have been merged into the defendant's conviction for trafficking in marijuana in violation of O.C.G.A. § 16-13-31(c) because the same evidence was used to prove both crimes, and the manufacturing count did not require proof of any fact which the trafficking count did not require. Preval v. State, 302 Ga. App. 785, 692 S.E.2d 51, 2010 Ga. App. LEXIS 226 (2010).

Denial of merger. —

Because the defendant's convictions for attempt to sell oxycodone and possession with intent to distribute each required proof of a fact which the other did not, the trial court did not err in not merging the offenses and in sentencing the defendant on both. Crankshaw v. State, 336 Ga. App. 700, 786 S.E.2d 245, 2016 Ga. App. LEXIS 130 (2016).

Trial court did not err in failing to merge the defendant's convictions for possession of drug-related objects and possession of methamphetamine, each of which required proof that the other did not. Lee v. State, 347 Ga. App. 508, 820 S.E.2d 147, 2018 Ga. App. LEXIS 559 (2018).

Waiver of notice required for life term. —

Error by the trial court in imposing a life sentence when the defendant was not given formal notice prior to trial of the state's intent to demand recidivist punishment was waived by the defendant's failure to object at the time the state introduced the defendant's prior drug conviction into evidence during the presentencing phase of the trial. Tillman v. State, 217 Ga. App. 269, 457 S.E.2d 228, 1995 Ga. App. LEXIS 387 (1995), cert. denied, No. S95C1204, 1995 Ga. LEXIS 909 (Ga. July 14, 1995).

Term of 30-years imprisonment for sale of cocaine was not an abuse of discretion because, even though O.C.G.A. § 17-10-7(a) was not applicable, such term was within the statutory limits. Covington v. State, 231 Ga. App. 851, 501 S.E.2d 37, 1998 Ga. App. LEXIS 538 (1998).

Banishment. —

It was proper for the trial court to banish the defendant from all areas of Georgia north of Interstate 20 after the defendant pled guilty to possession of cocaine. The sentence allowed the defendant to receive rehabilitative services while at the same time removing the defendant from an area where the defendant committed the defendant's prior crimes and presumably had access to illegal drugs. Shook v. State, 300 Ga. App. 59, 684 S.E.2d 129, 2009 Ga. App. LEXIS 1083 (2009).

Rule of lenity inapplicable. —

Trial court did not err in failing to apply the rule of lenity because both of the defendant's offenses, trafficking in methamphetamine and misdemeanor possession of marijuana, O.C.G.A. §§ 16-13-30(e) and 16-13-31(b), were classified as felonies, and thus, the rule of lenity did not apply. Fyfe v. State, 305 Ga. App. 322, 699 S.E.2d 546, 2010 Ga. App. LEXIS 628 (2010), cert. denied, No. S10C1942, 2011 Ga. LEXIS 229 (Ga. Feb. 28, 2011), overruled in part, McNair v. State, 293 Ga. 282, 745 S.E.2d 646, 2013 Ga. LEXIS 594 (2013), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Because there was no uncertainty that O.C.G.A. § 16-13-30(c)(1) applied to the defendant's sentencing, the rule of lenity was not applicable. Cooper v. State, 352 Ga. App. 783, 835 S.E.2d 724, 2019 Ga. App. LEXIS 628 (2019).

Remand for resentencing required. —

Because it was unclear which schedule, which Code section, and which sentencing range would apply to the substances the defendant pled guilty to selling, the defendant's sentences had to be vacated and the case remanded to the trial court for a hearing to determine on which schedule the controlled substances at issue belonged, and to impose a lawful and appropriate sentence. Williams v. State, 320 Ga. App. 243, 739 S.E.2d 727, 2013 Ga. App. LEXIS 159 (2013).

Search and Seizure

Anonymous tip serving as basis for investigatory stop. —

An investigative stop of the defendant's automobile which resulted in seizure of narcotics and the defendant's arrest did not violate the Fourth Amendment when the anonymous tip which formed the basis for the stop had been sufficiently corroborated by the arresting officer's recognition of the defendant as having been involved in an earlier drug investigation so as to furnish reasonable suspicion that the defendant was engaged in criminal activity. State v. Ball, 207 Ga. App. 729, 429 S.E.2d 258, 1993 Ga. App. LEXIS 320 (1993), cert. denied, No. S93C0921, 1993 Ga. LEXIS 566 (Ga. Apr. 15, 1993).

Search of probationer's residence. —

Trial court properly denied the defendant's motion to suppress because the court did not err in determining that the law-enforcement officers who searched the defendant's home had reasonable suspicion to suspect criminal activity or violations of probation based on the probation officer's concerns that the defendant was using drugs and attempting to avoid detection; thus, the search was conducted for probationary purposes, rather than for law-enforcement purposes. Whitfield v. State, 337 Ga. App. 167, 786 S.E.2d 547, 2016 Ga. App. LEXIS 286 (2016).

First-tier encounter. —

Trial court did not err in denying the defendant's motion for new trial after the defendant was convicted of possession of cocaine because the court properly denied a motion to suppress the defendant's statement to a police officer that the defendant had a crack pipe in a pocket; the initial interaction between the officer and the defendant was a first-tier consensual encounter, and thus, the defendant was free to disregard the officer's questions and walk away. Minor v. State, 314 Ga. App. 253, 723 S.E.2d 702, 2012 Ga. App. LEXIS 170 (2012).

Trial court properly denied the defendant's motion to suppress with regard to the defendant's drug conviction because the case involved a first-tier encounter wherein the officer asked for consent to search, which was given by the defendant and, therefore, the search was not a seizure and did not require articulable suspicion. Carter v. State, 310 Ga. App. 624, 737 S.E.2d 724, 2013 Ga. App. LEXIS 30 (2013).

seizure and did not require articulable suspicion. Carter v. State, 319 Ga. App. 624, 737 S.E.2d 724, 2013 Ga. App. LEXIS 30 (2013).

Motion to suppress filed by a defendant charged with possession of marijuana and possession of a drug-related object, O.C.G.A. §§ 16-13-30(j)(1) and 16-13-32.2(a), should have been denied because a deputy's question to the defendant, whether there was anything in the

vehicle the deputy needed to know about, did not elevate a first-tier police-citizen encounter to a detention. State v. Martin, 337 Ga. App. 390, 787 S.E.2d 314, 2016 Ga. App. LEXIS 330 (2016).

Scope of consent. —

Given that a police officer was granted consent to search the defendant's hotel room to search for the victim's stolen truck keys, upon the officer's receipt of an inconclusive response that a set of keys found could belong to the victim, a continued search, which yielded methamphetamine, was reasonable, and did not exceed the original scope of consent granted; thus, the trial court did not err in denying the defendant's motion to suppress the drug evidence that officers found as a result of a continued search. Shuler v. State, 282 Ga. App. 706, 639 S.E.2d 623, 2006 Ga. App. LEXIS 1514 (2006).

State failed to prove that an officer's opening of a pill container found in the defendant's pocket was justified based on consent, when the defendant only consented to the removal of the pill box from the defendant's pocket, and the box was not immediately identifiable as contraband. Defendant's convictions on controlled substances charges were reversed. McCormack v. State, 325 Ga. App. 183, 751 S.E.2d 904, 2013 Ga. App. LEXIS 985 (2013).

Invalid consent. —

Any implied consent by the defendant emptying the defendant's own pockets while one officer had the officer's stungun pointed at the defendant rendered the "consent" invalid. State v. Williams, 281 Ga. App. 187, 635 S.E.2d 807, 2006 Ga. App. LEXIS 1022 (2006).

Oxycodone found in the glove box of a car was inadmissible because the oxycodone was discovered pursuant to a consent search that was the product of an unauthorized traffic stop. The officer had no reasonable suspicion to justify stopping the defendants other than that the defendants' car was "out of place" at an empty truck stop parking lot. Groves v. State, 306 Ga. App. 779, 703 S.E.2d 371, 2010 Ga. App. LEXIS 1052 (2010).

In the state's appeal, the trial court did not err in granting the defendant's motion to suppress because the court did not err in finding that the officers' detention of the defendant was unreasonable as the defendant's consent to the search of the defendant's purse was the product of an illegal detention, thus, it was not valid. State v. Allen, 330 Ga. App. 752, 769 S.E.2d 165, 2015 Ga. App. LEXIS 56 (2015).

Valid consent. —

Trial court did not err by denying the defendant's motion to suppress because the evidence established that the defendant's consent was voluntary in that the defendant signed the consent forms, gave the officer the key to the home, and the record showed that during the defendant's detention, no interrogation or questioning occurred, and the duration of the detention was not overly long; further, the defendant did not appear intoxicated, spoke fluent English, was not being punished or threatened, and the consent came after the defendant spontaneously sought out the officer to talk. Durham v. State, 320 Ga. App. 81, 739 S.E.2d 389, 2013 Ga. App. LEXIS 125 (2013).

Valid consent from handcuffed defendant. —

Defendant's conviction for possession of cocaine with the intent to distribute was upheld on appeal as the defendant failed to establish that the motion to suppress would have been granted had counsel not waived the issue because, even in handcuffs, the defendant voluntarily consented to the search of the vehicle and the defendant failed to show that the consent was invalid. Blitch v. State, 323 Ga. App. 677, 747 S.E.2d 863, 2013 Ga. App. LEXIS 709 (2013).

Pat-down search exceeded permissible scope. —

Because the state introduced no evidence that the defendant consented to an officer's opening of a matchbox retrieved from the defendant's pants, the officer was not concerned that a weapon was hidden in the box, and the box was not readily identifiable as contraband, the search of the defendant's person exceeded the permissible scope of a pat-down for weapons, requiring suppression of the cocaine found inside the matchbox. Mason v. State, 285 Ga. App. 596, 647 S.E.2d 308, 2007 Ga. App. LEXIS 594 (2007).

Pat-down search proper. —

Trial court did not err in denying the defendant's motion to suppress drug evidence found on the defendant's person because the defendant's detention and pat-down was justified; a narcotics investigator was justified in believing that the investigator's safety was at risk based on the circumstances, including that officers were searching a house to execute an arrest warrant for a resident thereof, suspicion of drug activity at the house had been reported by neighbors, and the defendant, who was sitting up in bed, failed to comply with the investigator's repeated commands that the defendant display the defendant's hands, which were obscured under the covers. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697, 2012 Ga. App. LEXIS 174 (2012).

Plain feel doctrine. —

Trial court did not err in denying the defendant's motion to suppress drug evidence found on the defendant's person because the seizure of the items in the defendant's pockets was lawful; under the plain feel doctrine, a narcotics investigator was entitled to seize the item, and the evidence was properly admitted; it was unnecessary for the investigator to conclusively identify what type of drug the defendant was carrying in order for the plain feel doctrine to make the seizure of the contraband lawful. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697, 2012 Ga. App. LEXIS 174 (2012).

Safety frisk justified. —

Trial court properly denied the defendant's motion to suppress the contraband found on the defendant's person as a result of a traffic stop that came to fruition after an officer observed the defendant making a U-turn in front of a recently robbed bank because the defendant admitted to having a knife in the defendant's pocket but refused to remove the defendant's hand therefrom. As a result, the police were justified in frisking the defendant for safety reasons and the contraband was, therefore, legally obtained from the defendant. Johnson v. State, 289 Ga. App. 27, 656 S.E.2d 161, 2007 Ga. App. LEXIS 1315 (2007).

Vehicle stop for seatbelt violation. —

When the officer testified that the officer had a clear and unobstructed view of the driver of the vehicle not wearing a seat belt, this view was sufficient to establish probable cause for the stop, and once the vehicle was lawfully stopped, the officer was allowed to ask for the driver's consent to search the car. State v. Millsap, 243 Ga. App. 519, 528 S.E.2d 865, 2000 Ga. App. LEXIS 103 (2000).

With regard to a defendant's convictions for possession of methamphetamine with intent to distribute, possession of a firearm during the commission of a drug offense, and carrying a concealed weapon, the trial court properly denied the defendant's motion to suppress the items seized from the defendant's vehicle and the defendant's person after a traffic stop as the defendant's failure to wear a seatbelt and to have insurance on the vehicle justified the traffic stop. Thereafter, after being released from the traffic stop and being asked to come back, the defendant consented to the search of the vehicle and of the defendant's person, which led to the seizure of the contraband. Hughes v. State, 293 Ga. App. 404, 667 S.E.2d 163, 2008 Ga. App. LEXIS 949 (2008).

Defendant's conviction on one count of felony possession of marijuana was upheld on appeal and the trial court did not err in denying the defendant's motion to suppress based on the defendant's assertion that the initial traffic stop was illegal because the initial stop, as well as the brief detention, was authorized as a result of the officer observing the defendant not wearing a seat belt. Davis v. State, 318 Ga. App.

166, 733 S.E.2d 453, 2012 Ga. App. LEXIS 872 (2012).

Vehicle stop due to broken taillight. —

Trial court properly denied a defendant's motion to suppress the evidence of drug contraband found in the defendant's vehicle after the vehicle was stopped due to a broken taillight as the officers had the right to detain the defendant while awaiting word as to possible outstanding warrants; a certified drug recognition expert questioned the defendant and observed the defendant having bloodshot eyes, droopy eyelids, and displaying relaxed inhibitions; and the defendant sufficiently and voluntarily consented to the search of the vehicle as was shown on a videotape of the traffic stop, despite the defendant being handcuffed at the time. Maloy v. State, 293 Ga. App. 648, 667 S.E.2d 688, 2008 Ga. App. LEXIS 1033 (2008).

Investigatory detention to search for weapon. —

After the subject of an investigative stop at an airport admitted the presence of a weapon, and the officers then removed that subject to the airport precinct for further investigation, the detention was reasonable under the circumstances, and evidence uncovered of illegal possession of a controlled substance during a subsequent search conducted with the subject's voluntary consent was improperly suppressed. State v. Crisanti, 220 Ga. App. 705, 470 S.E.2d 314, 1996 Ga. App. LEXIS 345 (1996).

Probable cause for arrest. —

Police search of a defendant's bag and person, which produced handguns, cocaine, cash, and other drugs was lawful because the search was made pursuant to the police officers' lawful warrantless arrest of the defendant when the defendant arrived at a motel room exactly answering a detailed description provided by a confidential informant, who stated that the defendant would be carrying a shoulder bag containing drugs and a loaded handgun. Green v. State, 302 Ga. App. 388, 691 S.E.2d 283, 2010 Ga. App. LEXIS 135 (2010).

Trial court did not err in denying the defendant's motion to suppress evidence a police officer recovered from a rental car because the officer had reasonable grounds for detaining the defendant since the officer found the defendant and a friend in the parking lot of a closed business late at night, knew that several burglaries and thefts had occurred in the area recently, and observed that the defendant and the friend appeared to be nervous when the officer spoke with them; in the course of securing a firearm the officer saw a firearm in the center console of the rental car, the officer saw in plain view a digital scale with white residue, affording the officer probable cause to effect a custodial arrest of the defendant. Culpepper v. State, 312 Ga. App. 115, 717 S.E.2d 698, 2011 Ga. App. LEXIS 905 (2011).

Defendant's motion for independent expert to examine seized substances rejected. —

Trial court did not err in refusing to grant a continuance to allow an independent expert chemist of defendant's choice sufficient time to analyze the seized controlled substances and testify at trial since the defendant did not move to have this expert appointed until after the trial had commenced, the earliest possible time the expert could testify would be the end of the week, and the court expected the trial to be over by that time, but expressed the court's willingness to appoint someone else who would not unduly delay the trial. Dixon v. State, 180 Ga. App. 222, 348 S.E.2d 742, 1986 Ga. App. LEXIS 2685 (1986).

Shared curtilage affects admissibility. —

It is confusing to combine the concepts of "common area" and "curtilage" in deciding whether a particular area adjoining an apartment building is entitled to protection; therefore, the test should be the reasonableness of the resident's expectation of privacy and the officer's reasons for being in the yard. Espinoza v. State, 265 Ga. 171, 454 S.E.2d 765, 1995 Ga. LEXIS 156 (1995).

Evidence was not within the curtilage shared by two units in a duplex where it was not found in the hallway leading to both units or in the front yard between two driveways leading to the dwelling. Because the evidence was located in the yard outside the driveway leading to defendant's unit, an area where defendant had a reasonable expectation of privacy, i.e., a part of the curtilage of defendant's unit, for which police did not have a search warrant, the evidence should have been suppressed. Espinoza v. State, 265 Ga. 171, 454 S.E.2d 765,

1995 Ga. LEXIS 156 (1995).

Wooded area not part of curtilage. —

In woods 50 yards from the defendant's home, police found items used to manufacture methamphetamine under a tarp. The wooded area where the contraband was found was not so closely tied to the defendant's home as to warrant protection as curtilage under the Fourth Amendment. Minor v. State, 298 Ga. App. 391, 680 S.E.2d 459, 2009 Ga. App. LEXIS 687 (2009), cert. denied, No. S09C1744, 2009 Ga. LEXIS 771 (Ga. Nov. 9, 2009).

Use of a trained drug detection dog. —

Record supported the trial court's judgment that a vehicle checkpoint that was established to check drivers' licenses, registrations, and proof of insurance was established for a legitimate purpose, that a police officer did not violate defendant's rights when the officer walked a drug detection dog around defendant's car while another officer was checking the validity of defendant's driver's license, and that police had probable cause to search defendant's car after the dog alerted on it, and the trial court properly denied a motion to suppress evidence which defendant filed after defendant was charged with trafficking in cocaine and possession of cocaine with intent to distribute, and convicted defendant of both offenses. McCray v. State, 268 Ga. App. 84, 601 S.E.2d 452, 2004 Ga. App. LEXIS 851 (2004).

Search for heroin or cocaine prior to arrest. —

Totality of circumstances provided sufficient probable cause to arrest and search defendant at airport for possession of heroin or cocaine, and fact that search preceded arrest rather than vice versa was not particularly important where formal arrest followed quickly on heels of search. Berry v. State, 163 Ga. App. 705, 294 S.E.2d 562, 1982 Ga. App. LEXIS 3242 (1982).

Entrapment. —

Defendant's testimony, corroborated by a paid informant, established a prima facie case of entrapment. There was no evidence introduced that, prior to the defendant's entrapment, defendant had a predisposition to deliver, sell, distribute, or knowingly possess cocaine as forbidden by O.C.G.A. § 16-13-30(b). Since the state failed to introduce evidence to rebut the affirmative defense of entrapment, the defendant was entitled to a directed verdict of acquittal. Hill v. State, 261 Ga. 377, 405 S.E.2d 258, 1991 Ga. LEXIS 322 (1991).

Entrapment defense was properly rebuted. —

Trial court properly denied the defendant's motion for a new trial because even assuming that the defendant established a prima facie case of entrapment, the jury was authorized to find the state's evidence rebutted that defense beyond a reasonable doubt as the jury heard an audio recording of the defendant boasting that the defendant had sold a gram of heroin for $65 and that no one could get clean off of the defendant's product; thus, there was some evidence to disprove entrapment. Johnson v. State, 355 Ga. App. 683, 845 S.E.2d 419, 2020 Ga. App. LEXIS 370 (2020).

Ineffective assistance of counsel claim dismissed despite defendant's claim of working with police. —

After the defendant was convicted of selling cocaine, the trial court did not err in denying the defendant's claim of ineffective assistance of counsel since the defendant failed to show that counsel did not adequately prepare for trial or that counsel's performance was deficient and that such deficiency prejudiced the defendant's defense that the defendant was working with the police and had made the sale as part of an attempt to catch another drug dealer. Sullivan v. State, 259 Ga. App. 708, 578 S.E.2d 277, 2003 Ga. App. LEXIS 242 (2003).

Nervousness in the presence of police officers does not provide reasonable articulable suspicion. —

When officers testified the officers observed a black male exit a breeze way known for drug sales and walk in a hurried fashion toward the

which officers testified the officers observed a black male exit a breeze way known for drug sales and walk in a hurried fashion toward the male's car, becoming nervous when seeing the officers, this activity does not amount to the reasonable articulable suspicion required for a Terry stop. Peters v. State, 242 Ga. App. 816, 531 S.E.2d 386, 2000 Ga. App. LEXIS 352 (2000).

Nervousness inadequate for prolonging detention. —

As an officer did not detain a defendant for an unreasonable length of time after a traffic stop, the fact that the defendant's nervousness alone did not provide the officer with reasonable suspicion to prolong the detention was immaterial as the defendant consented to a search of the defendant's vehicle. As there was no Fourth Amendment violation, methamphetamine and drug paraphernalia found during the search did not have to be suppressed. McKnight v. State, 296 Ga. App. 38, 673 S.E.2d 573, 2009 Ga. App. LEXIS 122 (2009).

Traffic stop concluded. —

After issuing a courtesy warning ticket for a seatbelt violation to defendant, the traffic stop was concluded and defendant's continued detention was excessive because the officer's testimony did not establish reasonable suspicion of criminal activity. State v. Cunningham, 246 Ga. App. 663, 541 S.E.2d 453, 2000 Ga. App. LEXIS 1323 (2000).

Traffic stop not unreasonably prolonged. —

After an officer stopped a defendant for speeding at 3:32 A.M., the officer was given two different names for the defendant's intoxicated teenaged passenger; neither name was in the system. As the officer testified that in 90 percent of the cases, this meant that there was an outstanding warrant, suspension, probation, or parole, the officer had reasonable grounds to prolong the traffic stop; therefore, the methamphetamine the officer found in a consent search of a box hidden under the defendant's leg did not have to be suppressed. Matthews v. State, 294 Ga. App. 836, 670 S.E.2d 520, 2008 Ga. App. LEXIS 1329 (2008).

As an officer's questioning of the defendant, after a traffic stop, about the defendant's length of time in Georgia was done to determine whether the defendant was in compliance with O.C.G.A. §§ 40-2-8(a) and 40-5-20(a), and did not unreasonably prolong the stop, the defendant's rights under U.S. Const., amend. IV were not violated. Therefore, methamphetamine seized from the defendant's purse during the stop did not have to be suppressed. Sommese v. State, 299 Ga. App. 664, 683 S.E.2d 642, 2009 Ga. App. LEXIS 925 (2009).

State trooper's request to search a defendant's vehicle after telling the defendant that the defendant was free to go did not unreasonably prolong the detention and did not violate the defendant's Fourth Amendment rights. Therefore, the four pounds of marijuana found during the search was not subject to suppression. Davis v. State, 303 Ga. App. 785, 694 S.E.2d 696, 2010 Ga. App. LEXIS 336 (2010), cert. denied, No. S10C1405, 2010 Ga. LEXIS 716 (Ga. Sept. 20, 2010).

Search of vehicle incident to arrest for driving under suspension. —

Though central dispatch advised an officer that the defendant had not been served with notice of suspension of the defendant's license, the officer had probable cause to arrest the defendant for driving under suspension (O.C.G.A. § 40-5-121) as the officer had no way of knowing whether the defendant had obtained actual or constructive notice of the suspension by other means. Thus, drugs found in a search of the defendant's car incident to the arrest were admissible; the trial court's ultimate conclusion that the defendant did not have notice of the suspension did not "retroactively vitiate" the probable cause supporting the arrest. Johnson v. State, 297 Ga. App. 254, 676 S.E.2d 884, 2009 Ga. App. LEXIS 449 (2009).

Initial approach of vehicle justified. —

Officers' initial approach of defendant's vehicle and request for consent to search were warranted, even without an articulable suspicion of criminal activity at the time of their approach; moreover, even if a reasonable articulable suspicion of criminal activity had been required to briefly detain defendant, the officers had such suspicion upon seeing: (1) individuals approach defendant's car in an area known for drug

activity; (2) the individuals turn and walk away upon seeing the police; and (3) defendant's passenger swallowing what appeared to be a crack rock as the police approached. Sego v. State, 279 Ga. App. 484, 631 S.E.2d 505, 2006 Ga. App. LEXIS 615 (2006).

Consent search during sobriety roadblock. —

With regard to a defendant being charged with possessing drugs, the trial court properly denied the defendant's motion to suppress the drugs found in the defendant's vehicle during a sobriety roadblock as the roadblock was legal and the defendant voluntarily consented to the search. Britt v. State, 294 Ga. App. 142, 668 S.E.2d 461, 2008 Ga. App. LEXIS 1088 (2008).

Passenger's behavior provided reasonable suspicion and consent search authorized. —

In a prosecution for possession of methamphetamine and hydrocodone, a passenger, when questioned by police, was fidgety and nervous, stuttered, would not make eye contact, and fell after exiting the car. The passenger's behavior gave police reasonable suspicion to believe that the passenger had taken drugs, which justified the police in detaining the passenger and the defendant (who was the driver) while the police conducted a consent search of the car, which belonged to the passenger's boss. Robinson v. State, 295 Ga. App. 136, 670 S.E.2d 837, 2008 Ga. App. LEXIS 1336 (2008), cert. denied, No. S09C0622, 2009 Ga. LEXIS 211 (Ga. Apr. 20, 2009).

Defendant never withdrew consent to search. —

With regard to a defendant's conviction for possession of methamphetamine, the trial court properly denied the defendant's motion to suppress the drugs found on the defendant's person as the police obtained the defendant's consent to search the defendant's person and the defendant's failure to produce all of the items from the defendant's pockets did not amount to a withdrawal of the consent to search. Allison v. State, 293 Ga. App. 447, 667 S.E.2d 225, 2008 Ga. App. LEXIS 968 (2008).

Voluntary consent to search hotel room. —

Trial court did not err in denying a motion to suppress evidence a police officer seized in a hotel room because the trial court was authorized to find that the state satisfied the state's burden of showing that the defendant's consent to enter the hotel room was voluntary and not the product of coercion, express or implied; the officer's testimony and the defendant's statement supported a finding that the officer requested and received the defendant's consent to enter the hotel room under circumstances that did not suggest either coercion or threat, and the trial court was authorized to infer that the defendant's consent to search was freely given in the calculated hope that the officer would not find the hidden contraband. Liles v. State, 311 Ga. App. 355, 716 S.E.2d 228, 2011 Ga. App. LEXIS 721 (2011).

Group search. —

Trial court erred in granting the defendant's motion to suppress evidence of contraband, namely, defendant's possession of marijuana, as police officer's discovery of the marijuana was not pursuant to an impermissible pat-down search that two other officers conducted on a group of students, including the defendant, but was pursuant to the defendant's invitation for the officer to search the defendant after the officer asked the defendant why the defendant's license had been suspended; however, a remand was necessary to determine whether the defendant's consent to search was voluntarily given. State v. Baker, 261 Ga. App. 258, 582 S.E.2d 133, 2003 Ga. App. LEXIS 562 (2003).

Consent of probationer to search. —

When officers went to a defendant's residence to conduct a probation search based on a tip that the defendant was involved with drugs as the defendant willingly led the officers to a concealed gun, and voluntarily furnished a urine sample that tested positive for methamphetamine, the defendant gave valid consent to the search, which eliminated the need for either probable cause or a search warrant under U.S. Const., amend. IV. Brooks v. State, 285 Ga. 424, 677 S.E.2d 68, 2009 Ga. LEXIS 155 (2009).

Failure to file timely motion. —

In a prosecution for possession of cocaine with intent to distribute, because the defendant failed to voice an objection at trial regarding an inaccuracy in a search warrant affidavit as to the precise location of the alleged cocaine sale which served as the basis of the charge, but instead raised the objection for the first time in a motion for a new trial, the objection was late; thus, the appellate court's review of the motion was waived. Jackson v. State, 281 Ga. App. 368, 636 S.E.2d 34, 2006 Ga. App. LEXIS 988 (2006).

Suppression motion improperly granted. —

Because the evidence gathered while the defendant's residence was under surveillance, including the contents of the defendant's garbage as well as an officer's specific testimony regarding marijuana residue found on a piece of plastic wrap, supported a finding of probable cause necessary to justify the issuance of a search warrant for the defendant's residence, suppression of the evidence seized as a result of the execution of the search warrant was improper. State v. Davis, 288 Ga. App. 164, 653 S.E.2d 311, 2007 Ga. App. LEXIS 1049 (2007).

Evidence seized from search based on valid arrest warrant. —

Trial court did not err in denying the defendant's motion to suppress evidence found on the defendant's person because officers' search of a resident's house, where the officers found the defendant with a methamphetamine pipe, was legal since the police reasonably believed that the resident was in the house at the time of their entry based upon information from a neighbor and the fact that the vehicle registered to the resident was parked in front of the house; because the police had a valid arrest warrant for the resident and limited their search to those areas where the resident could be located, the fact that the officers could have been motivated to enter the house to search for drugs was immaterial and did not render the entry and subsequent seizure of evidence from the defendant illegal. Jones v. State, 314 Ga. App. 247, 723 S.E.2d 697, 2012 Ga. App. LEXIS 174 (2012).

Trial court did not err in denying the defendant's motion to suppress evidence seized from a residence because an investigator's knowledge was not so remote that it made it unlikely that methamphetamine manufacturing activities would be found at the premises at the time the warrant was issued; the investigator's knowledge coincided with an officer's detection of a strong odor of ether at the premises, and the search warrant was both issued and executed on the same day that the odor was detected. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Sufficient probable cause for issuance of search warrant. —

Trial court did not err in denying the defendant's motion to suppress evidence seized from a residence because the totality of the circumstances presented probable cause supporting the magistrate's issuance of a search warrant of the premises; in addition to the strong odor of ether, a DEA-trained officer knew that the odor was indicative of a methamphetamine laboratory operation, there was a prior report that a methamphetamine laboratory was being operated on the premises, and a co-defendant had previously admitted to selling methamphetamine. Newton v. State, 313 Ga. App. 889, 723 S.E.2d 95, 2012 Ga. App. LEXIS 104 (2012).

Presence in high drug area insufficient for stop. —

Officer did not have specific articulable facts sufficient to give rise to a reasonable suspicion of criminal activity and therefore the court should have granted the defendant's motion to suppress the cocaine and marijuana evidence. Specifically, while the officer believed that the defendant was involved in a criminal activity because the defendant briefly visited a motel located in a high drug area, and the defendant's brief visit was consistent with drug activity, a person's mere presence in a high crime area does not give rise to reasonable suspicion of criminal activity, even if police observe conduct which the police believe consistent with a general pattern of such activity. Adkinson v. State, 322 Ga. App. 1, 743 S.E.2d 563, 2013 Ga. App. LEXIS 433 (2013).

Odor constitutes sufficient probable cause for issuance of search warrant.

Odor constitutes sufficient probable cause for issuance of search warrant. —

Trial court erred in granting the defendant's motion to suppress by ruling that the odor of marijuana alone could not establish the requisite probable cause for the issuance of a search warrant for a residence as the appellate court overruled the holding in State v. Pando, 284 Ga. App. 70 (2007), that the presence of odors could never be the sole basis for the issuance of a search warrant; and determined that, if the affidavit for the search warrant contained sufficient information for a magistrate to determine that the officer who detected the odor of marijuana emanating from a specified location was qualified to recognize the odor, the presence of such an odor could be the sole basis for the issuance of a search warrant. State v. Kazmierczak, 331 Ga. App. 817, 771 S.E.2d 473, 2015 Ga. App. LEXIS 250 (2015).

If the affidavit for the search warrant contains sufficient information for a magistrate to determine that the officer who detected the odor of marijuana emanating from a specified location is qualified to recognize the odor, the presence of such an odor may be the sole basis for the issuance of a search warrant; to the extent that the holdings in Patman v. State, 244 Ga. App. 833 (2000), Shivers v. State, 258 Ga. App. 253 (2002), State v. Fossett, 253 Ga. App. 791 (2002), State v. Charles, 264 Ga. App. 874 (2003), Boldin v. State, 282 Ga. App. 492 (2006), and Martinez-Vargas v. State, 317 Ga. App. 232 (2012), can be interpreted as support for the premise that the odor of raw marijuana emanating from a particular location cannot be the sole basis for the issuance of a search warrant for that location, such interpretations are disapproved. State v. Kazmierczak, 331 Ga. App. 817, 771 S.E.2d 473, 2015 Ga. App. LEXIS 250 (2015).

Controlled buys demonstrated reliability of informant justifying search. —

With regard to drug-related convictions, the trial court properly denied the defendant's motion to suppress because the search warrant was supported by probable cause in that the confidential informant took a position against penal interest by reporting to officers that the informant bought drugs from the defendant, the officer stated that the information supplied by the confidential informant was confirmed by conducting three controlled drug purchases from the defendant, and the controlled buys strongly corroborated the reliability of the informant and demonstrated a fair probability that contraband would be found in the defendant's house. Reid v. State, 321 Ga. App. 653, 742 S.E.2d 166, 2013 Ga. App. LEXIS 367 (2013).

Possession

Unlawful possession of any controlled substance, regardless of amount, constitutes an offense. Scott v. State, 170 Ga. App. 409, 317 S.E.2d 282, 1984 Ga. App. LEXIS 2888, aff'd, 253 Ga. 147, 317 S.E.2d 830, 1984 Ga. LEXIS 855 (1984).

Possession as lesser included offense of conspiracy to purchase marijuana. —

Trial court did not plainly err by failing to instruct the jury on possession of marijuana as a lesser-included offense of conspiracy to purchase marijuana because the offense of possession of marijuana was not a lesser-included offense of conspiracy to purchase marijuana as the facts necessary to prove each offense were different. Hunter v. State, 355 Ga. App. 520, 844 S.E.2d 858, 2020 Ga. App. LEXIS 346 (2020).

Possession not included in crime of manufacturing. —

Possession of marijuana is not a necessary element of the crime of knowingly manufacturing marijuana by cultivating or planting, and so misdemeanor possession is not a lesser offense included in the crime of manufacturing as a matter of law. Galbreath v. State, 213 Ga. App. 80, 443 S.E.2d 664, 1994 Ga. App. LEXIS 459 (1994); Hunt v. State, 222 Ga. App. 66, 473 S.E.2d 157, 1996 Ga. App. LEXIS 537 (1996), cert. denied, No. S96C1728, 1996 Ga. LEXIS 1005 (Ga. Oct. 11, 1996).

Possession included in offense of possession with intent to distribute. —

Offense of possession of marijuana was a lesser included offense of the offense of possession of marijuana with intent to distribute, where the possession charge could be established by proof of a less culpable mental state (general criminal intent) than was required to establish

the commission of possession with intent to distribute (specific criminal intent to distribute). Talley v. State, 200 Ga. App. 442, 408 S.E.2d 463, 1991 Ga. App. LEXIS 1059 (1991).

Possession of marijuana is a lesser included offense of the offense of possession of marijuana with intent to distribute as a matter of law. Hardeman v. State, 216 Ga. App. 165, 453 S.E.2d 775, 1995 Ga. App. LEXIS 55 (1995).

Evidence sufficient to prove possession and intent to distribute. —

Evidence that small baggies of cocaine were found in a large plastic bag on the ground, where the defendant had been observed dropping what appeared to the officer to be a baseball-size clear looking bag, permitted a rational trier of fact to infer that the defendant had been in possession of the cocaine. Ample evidence showed the defendant's intent to distribute the cocaine. Barber v. State, 317 Ga. App. 600, 732 S.E.2d 125, 2012 Ga. App. LEXIS 772 (2012).

Sufficient evidence supported the defendant's conviction for possession of cocaine with the intent to distribute because the jury could infer from a narcotics officer's expert opinion testimony that the defendant possessed the cocaine with the intent to distribute the cocaine, given the way the defendant concealed the drugs, the way the drugs were packaged for street sale, the amount of drugs on the defendant's person, and the fact that the defendant lacked a device for using the drugs. Moreover, the jury could infer that the defendant was selling drugs given that a citizen alerted the police to suspicious activity at the address where the defendant was found and because the defendant was lingering around a house that was not the defendant's home, late at night, in a high drug-sales area, without a credible explanation. Thomas v. State, 321 Ga. App. 214, 741 S.E.2d 298, 2013 Ga. App. LEXIS 340 (2013), cert. denied, No. S13C1182, 2013 Ga. LEXIS 777 (Ga. Sept. 23, 2013), overruled in part, Langley v. State, No. S21G0783, 2022 Ga. LEXIS 14 (Ga. Feb. 1, 2022).

Appellate court refused to disturb the jury's verdict convicting the defendant of possession of drugs with the intent to distribute because after hearing the evidence and having the opportunity to judge the credibility of the witnesses, the jury properly concluded that the only reasonable hypothesis was that the defendant possessed the drugs found hidden in the kitchen, despite the defendant's argument that others had equal access. King v. State, 325 Ga. App. 777, 755 S.E.2d 22, 2014 Ga. App. LEXIS 74 (2014).

Evidence was sufficient to convict the defendant of possession of marijuana with intent to distribute because the marijuana found in the stolen car was packaged in nine individual baggies, with eight of the baggies contained in a larger plastic bag on the driver's side floorboard and the ninth baggie on the passenger seat; the sheriff's investigator testified that, based on the sheriff's training and experience, the marijuana was packaged in a manner commonly used for distribution; the victim, who had the victim's car stolen, testified at trial that the marijuana did not belong to the victim; and any rational trier of fact could infer that the defendant possessed marijuana, a controlled substance, with intent to distribute. McNorrill v. State, 338 Ga. App. 466, 789 S.E.2d 823, 2016 Ga. App. LEXIS 472 (2016).

Evidence was sufficient to convict the defendant of possession of methamphetamine, possession of methamphetamine with intent to distribute, and two counts of possession of drug-related objects as the state presented ample evidence of the defendant's constructive possession of the methamphetamine and drug paraphernalia found inside a fabric bag because the contraband was found in the defendant's residence, which authorized a jury to presume that the defendant possessed it; a witness testified that the defendant and another individual sold methamphetamine; and a law-enforcement officer testified that the items contained in the bag, such as separate baggies and a digital scale, showed an intent to distribute drugs. Duncan v. State, 346 Ga. App. 777, 815 S.E.2d 294, 2018 Ga. App. LEXIS 387 (2018), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Conspiracy to possess marijuana with intent to distribute is not a lesser included offense of possession. Rowe v. State, 181 Ga. App. 492, 352 S.E.2d 813, 1987 Ga. App. LEXIS 2543 (1987).

Prima facie case of unlawful possession of controlled substance. —

If state proves that the defendant possessed controlled substance in a container without a label indicating a valid prescription, the state has established a prima facie case and shifts to the defendant the burden of going forward with evidence showing that the defendant's possession was under a valid prescription or that the defendant was otherwise exempted from the Georgia Controlled Substances Act,

O.C.G.A. § 16-13-20 et seq. Nix v. State, 135 Ga. App. 672, 219 S.E.2d 6, 1975 Ga. App. LEXIS 1778 (1975).

Head of household presumption of possession of contraband found therein is no longer a viable presumption in Georgia. Ramsay v. State, 175 Ga. App. 97, 332 S.E.2d 390, 1985 Ga. App. LEXIS 2776 (1985).

Evidence sufficient for conviction of selling heroin at townhome. —

Defendant's convictions for trafficking in heroin and possession with intent to distribute cocaine were supported by evidence that the drugs were found in plain view in the townhome, the defendant was seen selling heroin to an informant in the front yard, and the defendant had $3,189 in cash and three cell phones, one of which was used to communicate with a person being investigated for selling drugs, in the defendant's possession when arrested. Hargrove v. State, 361 Ga. App. 106, 863 S.E.2d 364, 2021 Ga. App. LEXIS 439 (2021).

Evidence of apartment "ownership" held sufficient. —

Defendant's convictions for trafficking in cocaine and possession of heroin with intent to distribute was sustained even though the evidence connecting the defendant to the apartment was circumstantial. Williams v. State, 262 Ga. App. 67, 584 S.E.2d 625, 2003 Ga. App. LEXIS 713 (2003).

Cash as proof of intent to distribute. —

It was not error to admit into evidence $390 in cash found on defendant at the time of defendant's arrest for possessing heroin with intent to distribute, where defendant was unemployed, and there was testimony that the packets of heroin defendant dropped by defendant's feet were the size packets that sold for 10 to 20 dollars and the money found in defendant's possession was in denominations of mostly 10 and 20 dollar bills. Such evidence would tend to show that defendant had been selling heroin and that defendant intended to distribute the packages of heroin in defendant's possession. Thus, the money had probative value in determining the issue of intent. Houston v. State, 180 Ga. App. 267, 349 S.E.2d 228, 1986 Ga. App. LEXIS 2708 (1986).

While a defendant was presumed to be in possession of cocaine found in a car that the defendant owned, the defendant argued the presumption was rebutted by evidence that others in the car had equal access to the drugs. As the defendant also possessed $494 in cash, the jury was not compelled to find the presumption of possession rebutted; therefore, the evidence, including testimony that the number of bags of cocaine found was inconsistent with personal consumption, was sufficient to convict the defendant of possession of cocaine with intent to distribute in violation of O.C.G.A. § 16-13-30(b). Hamilton v. State, 293 Ga. App. 297, 666 S.E.2d 630, 2008 Ga. App. LEXIS 926 (2008).

Allegation that the defendant "unlawfully," possessed cocaine was sufficient to encompass both the intent to commit the proscribed act and the knowledge necessary to form that intent. Dye v. State, 177 Ga. App. 813, 341 S.E.2d 469, 1986 Ga. App. LEXIS 1554 (1986).

Prescription drugs prescribed for another. —

Nothing in the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., authorizes possession of controlled substances that allegedly were prescribed for someone other than the defendant but were not in the prescription container when found in the possession of the defendant. Black v. State, 194 Ga. App. 660, 391 S.E.2d 432, 1990 Ga. App. LEXIS 286 (1990), cert. denied, No. S90C0803, 1990 Ga. LEXIS 769 (Ga. Apr. 5, 1990).

Evidence sufficient to prove oxycodone pills were controlled substance. —

Testimony from experts in drug identification that, based on the fact that the logo on pills found in the defendant's possession matched that of pharmaceutically prepared oxycodone tablets, the pills were oxycodone, was sufficient to allow a reasonable jury to conclude that the defendant possessed that controlled substance. Kessinger v. State, 298 Ga. App. 479, 680 S.E.2d 546, 2009 Ga. App. LEXIS 713 (2009).

Multiple offenses for simultaneous possession. —

Defendant may be prosecuted, convicted, and separately sentenced for the simultaneous possession of each of the controlled substances listed in O.C.G.A. § 16-13-26. Tabb v. State, 250 Ga. 317, 297 S.E.2d 227, 1982 Ga. LEXIS 1235 (1982).

Sole or joint possession. —

Law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons shared actual or constructive possession of a thing, possession is joint. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Although a probationer's boyfriend claimed ownership to methamphetamine found in a tin in the probationer's dresser drawer, the trial court, as the finder of fact, was entitled to believe that testimony while disbelieving a professed exclusive ownership of the methamphetamine; moreover, the fact that the tin was found in the probationer's dresser drawer provided more than a mere spatial connection between the probationer and this particular contraband. Giang v. State, 285 Ga. App. 491, 646 S.E.2d 710, 2007 Ga. App. LEXIS 555 (2007).

Evidence sufficient to prove constructive, joint possession. —

When police officers in execution of a no-knock search warrant on the home where the teenage defendant lived with defendant's mother found a sock with cocaine in the sock floating in a toilet of a bathroom that defendant had exited, defendant's cousin acknowledged seeing defendant with the sock earlier and suspecting drugs were in the sock, and the officers also found marijuana and crack cocaine in a cigar box that defendant admitted owning during an earlier detention hearing, the evidence was sufficient to prove the defendant was in constructive, joint possession of the drugs. In the Interest of R.S., 253 Ga. App. 409, 559 S.E.2d 143, 2002 Ga. App. LEXIS 86 (2002).

By showing circumstantially that the defendant and two codefendants had equal access to the cocaine and marijuana in the defendant's truck, the evidence established that all three were parties to the crime and, thus, guilty of joint constructive possession of the drugs under O.C.G.A. §§ 16-13-2(b) and 16-13-30(b). Davis v. State, 270 Ga. App. 777, 607 S.E.2d 924, 2004 Ga. App. LEXIS 1601 (2004).

Defendant's conviction for possession of marijuana was affirmed as an accomplice testified that the accomplice and the defendant smoked a substance and that it was marijuana; having smoked the substance repeatedly and with it only inches away from the defendant in the glove compartment, the defendant had the power and intention to exercise dominion or control over the marijuana and to have constructively and jointly possessed it with the accomplice. Michael v. State, 281 Ga. App. 289, 635 S.E.2d 790, 2006 Ga. App. LEXIS 989 (2006), cert. denied, No. S07C0097, 2006 Ga. LEXIS 950 (Ga. Nov. 6, 2006), overruled in part, Gibbs v. State, 340 Ga. App. 723, 798 S.E.2d 308, 2017 Ga. App. LEXIS 126 (2017).

Despite the defendant's contrary claim, the state presented sufficient evidence that the defendant and the codefendants had joint constructive possession of the contraband seized, and that the jury could reject the defendant's equal access defense, given that: (1) some of that contraband was found in a bedroom in which the defendant slept and underneath the defendant's mattress; and (2) a large amount of cash was found in the defendant's purse. Castillo v. State, 288 Ga. App. 828, 655 S.E.2d 695, 2007 Ga. App. LEXIS 1308 (2007).

There was sufficient evidence to support the defendants' convictions for trafficking in cocaine and possession of less than one ounce of marijuana because the evidence established that the contraband was found in a shoe under the driver's seat of the van the defendants were traveling in, and sufficient circumstantial evidence proved that the defendant driver had the power and intention to exercise dominion or control over the cocaine and marijuana based on that defendant's driving of the van at the time of the traffic stop. There was sufficient circumstantial evidence to establish that the defendant occupant had the power and intention to exercise dominion or control over the cocaine and marijuana found in the van based on that defendant's conflicting story given to the police with regard to what the defendants were doing and the fact that a smoking pipe that tested positive for cocaine was found on that defendant's person. Woodard v. State, 289 Ga. App. 643, 658 S.E.2d 129, 2008 Ga. App. LEXIS 101 (2008), cert. denied, No. S08C1061, 2008 Ga. LEXIS 475 (Ga. June 2, 2008),

overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Because the codefendant testified and identified the defendant as the owner of the cocaine at issue, and because the defendant was standing next to the cocaine in plain view, evidence presented at trial was sufficient to support defendant's joint and constructive

possession of the cocaine; moreover, defendant's act of pointing to evidence that the codefendant had equal access to the cocaine was of no consequence as the equal access doctrine did not apply to those charged with being in joint constructive possession of contraband. Slade v. State, 289 Ga. App. 877, 658 S.E.2d 439, 2008 Ga. App. LEXIS 222 (2008).

There was sufficient evidence to support defendant's conviction for possession of methamphetamine as the state produced evidence connecting the defendant to methamphetamine oil found in a toilet by more than spatial proximity since the evidence showed that the production of methamphetamine oil was a final stage in the process of manufacturing methamphetamine in a form suitable for sale and personal use, and officers recognized the strong odor of the methamphetamine manufacturing process permeating the house where defendant was located along with methamphetamine oil. Womble v. State, 290 Ga. App. 768, 660 S.E.2d 848, 2008 Ga. App. LEXIS 412 (2008).

When the defendants, a married couple who were in a car with a third person, were charged with trafficking in cocaine, possession of cocaine with intent to distribute, possession of amphetamine, and possession of a firearm during certain crimes, there was sufficient evidence that the defendants had joint constructive possession of a duffel bag in which drugs and a weapon were found. The evidence showed that one spouse exercised control over the car that transported the contraband and that the other spouse tried to retrieve a paper sack inside the duffel bag at the sheriff's office with suspicious and inconsistent explanations. Howard v. State, 291 Ga. App. 289, 661 S.E.2d 644, 2008 Ga. App. LEXIS 467 (2008).

Even if others had access to cocaine found in a kitchen, a jury could infer that a defendant had joint constructive possession of the cocaine since the evidence showed that the defendant had been seen earlier in the day with 15 bags of cocaine that the defendant said the defendant planned to sell that day, that when the police came to execute a warrant on an alleged drug dealer's house the defendant ran into the house where the defendant was found in the kitchen with seven bags of cocaine and a heated pot of grease containing three additional "hits," and that the defendant was the only one in the kitchen. Riley v. State, 292 Ga. App. 202, 663 S.E.2d 835, 2008 Ga. App. LEXIS 745 (2008).

Defendant's convictions for trafficking in methamphetamine and possession of cocaine were upheld on appeal as the jury was authorized to find that the defendant constructively possessed the contraband since the defendant lived at the apartment searched by consent and despite the fact that others living in the apartment had equal access to the drugs. Additionally, the defendant was found lying on a mattress atop a bag containing more than an ounce of methamphetamine. Maldonado v. State, 293 Ga. App. 356, 667 S.E.2d 156, 2008 Ga. App. LEXIS 940 (2008).

Two intruders entered a house through a window, threatened the occupants with handguns, and stole over an ounce of marijuana from the house. As defendant was found trapped behind the steering wheel of the get-away vehicle after the vehicle crashed while fleeing a patrol car (the intruders having fled), the evidence was sufficient to establish that the defendant and the intruders were in joint, constructive possession of the marijuana. Olds v. State, 293 Ga. App. 884, 668 S.E.2d 485, 2008 Ga. App. LEXIS 1089 (2008).

Evidence was sufficient to support two defendants' convictions for constructive possession of methamphetamine, in violation of O.C.G.A. § 16-13-30(a), since, according to an accomplice, the codefendants and the accomplice smoked methamphetamine inside a vehicle prior to a police stop. The accomplice's testimony was corroborated by observations of the investigating officers. Davenport v. State, 308 Ga. App. 140, 706 S.E.2d 757, 2011 Ga. App. LEXIS 142 (2011), cert. denied, No. S11C1024, 2011 Ga. LEXIS 614 (Ga. Sept. 6, 2011), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to sustain the defendant's convictions for trafficking in cocaine, a violation of O.C.G.A. § 16-13-31(a)(1), and possession of ecstasy, a violation of O.C.G.A. § 16-13- 30(a), although the defendant was neither in actual possession of the contraband nor in control of the vehicle where the contraband was found because there was slight evidence of access, power, and intention to exercise control or dominion over the contraband and, therefore, excluding every other reasonable hypothesis save that of the defendant's guilt, as required under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), the question of constructive, joint possession was within the jury's discretion. The ecstasy pills were found in a prescription pill bottle belonging to the defendant, and the pill bottle was found in a bag

with the cocaine. Ferrell v. State, 312 Ga. App. 122, 717 S.E.2d 705, 2011 Ga. App. LEXIS 900 (2011), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to establish constructive possession of crack cocaine because the defendant admitted during questioning that the cocaine in a passenger's shoe was the defendant's payment for driving, which constituted at least slight evidence indicating that the defendant had access, power, and intention to exercise dominion over the crack. Stokes v. State, 317 Ga. App. 435, 731 S.E.2d 118, 2012 Ga. App. LEXIS 725 (2012), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence that the defendant and another shared the bedroom where the cocaine was found, that the defendant admitted the defendant was aware the roommate sold drugs, and that the defendant used drugs supported the defendant's conviction for possession of cocaine. Stacey v. State, 292 Ga. 838, 741 S.E.2d 881, 2013 Ga. LEXIS 373 (2013).

Since the defendant leased the apartment where the drugs were found, there was sufficient evidence for the jury to conclude that the defendant and the codefendant were in joint constructive possession of the cocaine and marijuana found there. Ahmed v. State, 322 Ga. App. 154, 744 S.E.2d 345, 2013 Ga. App. LEXIS 470 (2013).

Evidence sufficient to prove constructive, joint possession but not sufficient to prove intent to distribute. —

With regard to a defendant's convictions for possession of marijuana with the intent to distribute, trafficking in 4-Methylenedioxymethamphetamine, commonly known as ecstasy, trafficking in cocaine, and possession of a firearm during the commission of a crime, there was sufficient evidence to support the defendant's conviction for possession of the contraband, which was found in a backpack, based on the strong odor of marijuana coming from the vehicle in which the defendant was a passenger, the defendant's suspicious and nervous behavior, the defendant's joint living arrangement with two other defendants, the defendant's possession of ammunition for another one of the defendant's weapons, and the fact that the defendant was, at times, within arm's reach of the backpack, which showed an intent and power to exercise joint control over the backpack and the drugs found therein; likewise, there was sufficient evidence to support the trafficking charges based on the amounts of the contraband found; and, there was sufficient evidence to support the firearm possession charge since the defendant was found in possession of a magazine that fit the gun located within arm's reach. However, considering that there were four people in the vehicle, the court found that the state's evidence was insufficient to exclude the reasonable hypothesis that the marijuana was intended for personal use, therefore, the conviction for the intent to distribute marijuana was reduced to possession. Vines v. State, 296 Ga. App. 543, 675 S.E.2d 260, 2009 Ga. App. LEXIS 246 (2009).

Actual or constructive possession. —

Person who knowingly has direct physical control over a thing at a given time is in actual possession of the thing. A person who, though not in actual possession, knowingly has both the power and intention at a given time to exercise dominion or control over a thing is then in constructive possession of the thing. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Possession of marijuana may be actual or constructive, and the evidence is sufficient to support a conviction for possession where it would authorize a jury to find that defendant, at the very least, was in constructive possession of marijuana, since defendant exercised dominion and control over it. Hadden v. State, 181 Ga. App. 628, 353 S.E.2d 532, 1987 Ga. App. LEXIS 2572 (1987).

Possession sufficient to sustain a conviction pursuant to O.C.G.A. § 16-13-30(b) may be either actual or constructive. Walton v. State, 194 Ga. App. 490, 390 S.E.2d 896, 1990 Ga. App. LEXIS 174 (1990).

Neither actual nor constructive possession of cocaine is an element of the offense of selling of cocaine. Evans v. State, 235 Ga. App. 577, 510 S.E.2d 313, 1998 Ga. App. LEXIS 1575 (1998).

Defendant's motion for a directed verdict of acquittal on a charge of possession of cocaine with intent to distribute was properly denied; the evidence establishing defendant's constructive possession of cocaine included defendant's presence in the room where it was found, defendant's actual possession of a key to the apartment where it was found and $346.00 in cash, testimony by another individual at the

scene that the individual and defendant were partners in the drug trade, and defendant's giving a false name when police arrived. Jackson v. State, 276 Ga. App. 694, 624 S.E.2d 270, 2005 Ga. App. LEXIS 1362 (2005).

As the officer heard a bag that contained dime bags of marijuana fall from where the defendant, who was in custody, was walking and where a later search of the defendant revealed empty baggies, the circumstantial evidence tended to prove the offense of possession with intent to distribute marijuana under O.C.G.A. § 16-13-30 and the state was not required to tender the illegal drugs at trial. In the Interest of P.M.H., 277 Ga. App. 643, 627 S.E.2d 211, 2006 Ga. App. LEXIS 179 (2006).

Although the defendant claimed that at least 10 others were within throwing distance of the pouch containing cocaine, sufficient evidence supported the defendant's conviction of possession of cocaine and possession of less than one ounce of marijuana under O.C.G.A. § 16-13-30; the pouch was found between the defendant's legs, and the labels found in the pouch tied the defendant to the marijuana cigarettes found in the defendant's car given that they were the same type of labels. Pierre v. State, 281 Ga. App. 69, 635 S.E.2d 363, 2006 Ga. App. LEXIS 1003 (2006).

Sufficient evidence established the defendant's possession of the cocaine under O.C.G.A. § 16-13-30; a deputy found the cocaine in the area where the other deputy saw it fly from the defendant's window during a chase of the defendant's vehicle, and this was sufficient for the jury to conclude that the cocaine belonged to defendant. Florence v. State, 282 Ga. App. 31, 637 S.E.2d 779, 2006 Ga. App. LEXIS 1306 (2006).

Defendant's possession of cocaine conviction was upheld on appeal as supported by the sufficiency of the evidence given: (1) an officer's act of observing a hand emerge from the passenger window and toss out a bag of cocaine; (2) that, based on the officer's testimony, it would have been physically impossible for the driver of the vehicle to toss out the bag while driving the car; and (3) the evidence showed that the defendant was the passenger and no other person was in the car; moreover, as witness credibility was the jury's province, the court found that a rational trier of fact could have found the defendant guilty of possession of cocaine beyond a reasonable doubt. Johnson v. State, 283 Ga. App. 425, 641 S.E.2d 655, 2007 Ga. App. LEXIS 81 (2007).

Sufficient evidence of constructive possession of crack cocaine was presented to convict a defendant under O.C.G.A. § 16-13-30(b) based on the facts that plastic baggies containing a large amount of crack cocaine were found in an apartment bathroom shortly after the defendant fled there and closed the door; and numerous similarities existed between other items found under the tub and items found in the defendant's pockets. Marshall v. State, 295 Ga. App. 354, 671 S.E.2d 860, 2008 Ga. App. LEXIS 1374 (2008), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Jury was authorized to infer that a defendant had been in possession of the bag of cocaine found on the ground next to the garbage dumpster based on an officer's testimony that the officer saw the defendant walk over to the dumpster and bend down next to the dumpster, and that no other items were found in the area where the defendant had bent down. White v. State, 313 Ga. App. 605, 722 S.E.2d 198, 2012 Ga. App. LEXIS 34 (2012).

Sufficient evidence supported the defendant's conviction for possession of cocaine based on the evidence showing that the defendant ran from the back yard of a girlfriend's leased residence and had approximately 26 grams of cocaine on or near the defendant's person when apprehended on the front porch of the adjoining property by the police; thus, the evidence authorized the jury to infer that the defendant had either constructive or actual possession of the cocaine. Smith v. State, 323 Ga. App. 668, 747 S.E.2d 859, 2013 Ga. App. LEXIS 712 (2013).

Defendant's conviction for drug possession was upheld on appeal because there was sufficient evidence to support the defendant's conviction based on the defendant admitting to owning the safe where approximately 80 grams of marijuana were located. Franklin v. State, 325 Ga. App. 728, 754 S.E.2d 774, 2014 Ga. App. LEXIS 60 (2014).

Evidence of the quantum of marijuana seized in conjunction with the presence of the weapon and ammunition found in the bedroom the defendant ran to on being confronted by police, as well as the cell phones containing the defendant's photograph, the scholarship application in the defendant's name, the video security system, the police scanner, and the defendant's mother's pill bottle therein, linked the defendant to the marijuana and weapon. Copeland v. State, 327 Ga. App. 520, 759 S.E.2d 593, 2014 Ga. App. LEXIS 373 (2014).

Spatial proximity was not the only evidence of the defendant's possession of crack cocaine as the pill bottle containing the cocaine was not on the ground when the defendant got out of the car, the defendant attempted to hide the bottle with the defendant's feet during the search, and in a similar transaction the defendant had carried a pill bottle containing crack cocaine. Tanksley v. State, 327 Ga. App. 273, 758 S.E.2d 611, 2014 Ga. App. LEXIS 316 (2014).

Neither actual nor constructive possession shown. —

When the only evidence relating to defendant was that the defendant and codefendants left a codefendant's apartment together in a codefendant's car, that a codefendant was carrying a bag containing drugs when the codefendant left the codefendant's apartment that was found on the floor in front of the seat where a codefendant was riding, and there was no evidence that defendant even knew the bag was in the car, the evidence did not show actual possession by defendant; and a finding that defendant was in constructive possession of the contraband must be based upon some connection between the defendant and the contraband other than spatial proximity. The evidence was insufficient to support defendant's conviction of possession of the contraband. Shirley v. State, 166 Ga. App. 456, 304 S.E.2d 468, 1983 Ga. App. LEXIS 2210, cert. vacated, 251 Ga. 505, 309 S.E.2d 142, 1983 Ga. LEXIS 983 (1983).

Because there was no evidence connecting defendant with the cocaine found in a hotel room other than defendant's presence at a hotel and the fact that the room was registered in defendant's name, any presumption of possession was rebutted as a matter of law. Stringer v. State, 275 Ga. App. 519, 621 S.E.2d 761, 2005 Ga. App. LEXIS 1020 (2005).

At most, the evidence showed that cocaine in a bottle found in a yard near the defendant's home was in the possession of the defendant's son, who was seen throwing something into the yard as the officers approached to execute a search warrant; the trial court should have granted a directed verdict on the charge of possessing drugs with intent to distribute for the drugs in the bottle. Smith v. State, 278 Ga. App. 315, 628 S.E.2d 722, 2006 Ga. App. LEXIS 321 (2006), cert. denied, No. S06C1314, 2006 Ga. LEXIS 687 (Ga. Sept. 12, 2006).

Evidence was insufficient to prove that a defendant constructively possessed drugs as, even assuming that the defendant had been in a bedroom in which drugs were found, there was not sufficient evidence that the defendant exercised control over the drugs, or knew the drugs were present, since: (1) no contraband was found on or near the defendant's person; (2) the drugs were found inside a ball of electrical tape in a corner of the bedroom; (3) the home belonged to another person; and an officer believed that the other person resided in the bedroom, and (4) there was no evidence that the defendant resided on the premises, or that the defendant was seen in the bedroom in which the drugs were found. Johnson v. State, 282 Ga. App. 52, 637 S.E.2d 775, 2006 Ga. App. LEXIS 1302 (2006).

Evidence was insufficient to show constructive possession of methamphetamine found in a car in which defendant was a passenger because there was no evidence, besides spatial proximity, connecting the defendant with the contraband since there was no evidence showing that the defendant knew that a baggy found in the car contained contraband or the defendant hid the baggy in the car. Millsaps v. State, 300 Ga. App. 383, 685 S.E.2d 371, 2009 Ga. App. LEXIS 1177 (2009), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Trial court erred in finding that the defendant violated the defendant's probation by committing the new felony of possessing a controlled substance, piperazine or TFMPP, in violation of O.C.G.A. § 16-13-30 because the circumstantial evidence was insufficient to show the defendant's constructive possession of the TFMPP pills; the only evidence linking the defendant to the drugs was spatial proximity, but it was at least equally likely that the pills belonged to the driver of the truck where the pills were found. Scott v. State, 305 Ga. App. 596, 699 S.E.2d 894, 2010 Ga. App. LEXIS 761 (2010).

Possession of cocaine found in passenger's pockets. —

Evidence was sufficient to convict a defendant of being a party to the crime of possession of cocaine in violation of O.C.G.A. §§ 16-2-20(b) and 16-13-30(a), although the cocaine was found in the defendant's nephew's pockets, because the nephew was blind and could not have driven himself to locate the drugs or completed the purchase by himself. Wade v. State, 305 Ga. App. 819, 701 S.E.2d 214, 2010 Ga. App. LEXIS 819 (2010).

In vicinity of contraband. —

Merely having been in the vicinity of contraband does not, without more, establish possession. Ridgeway v. State, 187 Ga. App. 381, 370 S.E.2d 216, 1988 Ga. App. LEXIS 695 (1988).

Defendant's conviction for possession of cocaine, O.C.G.A. § 16-13-30(a), was reversed because the trial court determined under Ga. Unif. Super. Ct. R. 31.3(B) whether the state possessed a proper purpose for admission of similar transaction evidence, or whether the two offenses were sufficiently connected or similar; the error was not harmless because the state could not establish that the defendant had actual possession of the cocaine found in the girlfriend's vehicle. McCrory v. State, 341 Ga. App. 174, 798 S.E.2d 385, 2017 Ga. App. LEXIS 166 (2017).

Evidence of possession of "portable" contraband near defendant's home. —

Even if the equal access doctrine applied to marijuana plants growing in buckets near defendant's home, there was substantial other evidence of defendant's possession of the "portable" contraband, such as that defendant was linked to ownership of the containers in which some of the plants were growing, that some of the plant-filled buckets were on the boundaries of defendant's yard within feet of defendant's dog pen and defendant's garden, all visible from defendant's yard, and that defendant was a gardener and had a readily available water source. Blitch v. State, 188 Ga. App. 487, 373 S.E.2d 227, 1988 Ga. App. LEXIS 1084 (1988).

Access to premises. —

When the defendant made no affirmative showing that anyone other than the defendant and the defendant's spouse had actual access to the bedroom or the bedroom closet during several days or weeks prior to the discovery of the pills, the jury was authorized to find defendant guilty of the offense of unlawful possession of diazepam. Prescott v. State, 164 Ga. App. 671, 297 S.E.2d 362, 1982 Ga. App. LEXIS 3340 (1982).

Evidence authorized a finding that the defendant and a codefendant were in joint constructive possession of the drugs in the bedroom that they were apparently sharing and in which the contraband was found. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Despite the defendant's denial of any knowledge of the existence of drugs and other contraband in a motel room in which the defendant was the sole occupant, evidence of the contraband found in close proximity to other evidence which the defendant admitted owning, when coupled with the fact that only one key to the room existed, which the defendant admitted to having, and that no one had brought anything into the room since the person the defendant alleged was the owner of the evidence had left, was sufficient to support the defendant's convictions under O.C.G.A. §§ 16-11-106, 16-13-2, and 16-13-30, and 16-13-31. Hall v. State, 283 Ga. App. 266, 641 S.E.2d 264, 2007 Ga. App. LEXIS 31 (2007).

Evidence was sufficient to prove that two defendants knowingly possessed cocaine and marijuana found in a house to which the defendants both had keys and where their belongings were located, as required by O.C.G.A. §§ 16-13-30(j)(1) and 16-13-31(a), although the defendants did not own or rent the house. Lott v. State, 303 Ga. App. 775, 694 S.E.2d 698, 2010 Ga. App. LEXIS 342 (2010), cert. denied, No. S10C1335, 2010 Ga. LEXIS 757 (Ga. Sept. 20, 2010), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Equal access of others to premises. —

Evidence that cocaine was found hidden on the outside of the defendant's mobile home, which was parked in an area to which a large number of persons, not only visitors to the unit occupied by the defendant but anyone having business in the mobile home park, had potential access, without evidence directly connecting the defendant to the cocaine, was entirely circumstantial, and insufficient to sustain the defendant's conviction for possession of cocaine. Prescott v. State, 164 Ga. App. 671, 297 S.E.2d 362, 1982 Ga. App. LEXIS 3340

the defendant's conviction for possession of cocaine. Prescott v. State, 164 Ga. App. 671, 297 S.E.2d 362, 1982 Ga. App. LEXIS 3540 (1982).

Defendant's conviction for unlawful possession of cocaine was reversed, where there was no evidence that defendant occupied the bedroom where the cocaine was found, and other persons living in the residence had equal access to the bedroom. Nations v. State, 177 Ga. App. 801, 341 S.E.2d 482, 1986 Ga. App. LEXIS 1533 (1986); Johnson v. State, 245 Ga. App. 583, 538 S.E.2d 481, 2000 Ga. App. LEXIS 1015 (2000).

When the state presented evidence that the defendant was a lessee and occupant of an apartment where cocaine was found there was a rebuttable presumption that the defendant had possession and evidence that others had access was not sufficient to rebut the presumption against the defendant. Wilson v. State, 231 Ga. App. 525, 499 S.E.2d 911, 1998 Ga. App. LEXIS 502 (1998).

Evidence was sufficient to convict defendant of possession of cocaine where a pipe used to smoke crack cocaine the night before was found in defendant's bedroom, even though defendant shared the house with other people, because additional evidence connected defendant to the pipe besides the fact that defendant used the room where it was found, as there was testimony that defendant actually possessed the crack and smoked it, and there was no evidence that anyone else had equal access to defendant's bedroom. Whitlock v. State, 265 Ga. App. 111, 593 S.E.2d 17, 2003 Ga. App. LEXIS 1538 (2003).

Sufficient evidence overcame defendant's equal access defense as defendant's ownership or possession of a vehicle containing the seized methamphetamine was not the sole evidence establishing defendant's guilt of possession of methamphetamine; the state also relied on defendant's roommate's testimony that defendant purchased the seized methamphetamine and kept the methamphetamine in the vehicle. Stovall v. State, 275 Ga. App. 244, 620 S.E.2d 462, 2005 Ga. App. LEXIS 939 (2005), cert. denied, No. S06C0200, 2006 Ga. LEXIS 100 (Ga. Jan. 30, 2006).

Insufficient evidence supported the defendant's conviction of possession of marijuana under O.C.G.A. § 16-13-30; the defendant lived with a female, and there was no evidence presented in the case that connected the defendant to the small baggies of marijuana found hidden in a bag under the end table of the living room in the apartment. Gentry v. State, 281 Ga. App. 315, 635 S.E.2d 782, 2006 Ga. App. LEXIS 943 (2006), cert. denied, No. S07C0117, 2007 Ga. LEXIS 78 (Ga. Jan. 22, 2007).

There was sufficient evidence to support a defendant's conviction on various drug possession charges based on the evidence of various drugs being found in the bedroom the defendant resided in of a two-bedroom apartment shared with another, despite others having equal access to the apartment. Smith v. State, 297 Ga. App. 526, 677 S.E.2d 717, 2009 Ga. App. LEXIS 464 (2009).

Insufficient evidence supported defendant's conviction of possession of marijuana with intent to distribute. —

There was insufficient evidence to support the defendant's conviction for possession of marijuana with the intent to distribute because the state merely proved that the defendant possessed marijuana and failed to produce any evidence that the defendant possessed scales or other drug-dealing paraphernalia or that large amounts of cash on the defendant's person or in the defendant's apartment were found. Beard v. State, 318 Ga. App. 128, 733 S.E.2d 426, 2012 Ga. App. LEXIS 865 (2012).

Effect of equal access of others to premises. —

Merely finding contraband on premises occupied by defendant is not sufficient to support conviction if it affirmatively appears from evidence that persons other than defendant had equal opportunity to commit the crime. McCann v. State, 137 Ga. App. 445, 224 S.E.2d 99, 1976 Ga. App. LEXIS 2480 (1976); Person v. State, 155 Ga. App. 106, 270 S.E.2d 319, 1980 Ga. App. LEXIS 2477 (1980); Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Equal access rule generally applies to contraband in open, notorious, and easily accessible areas. Wright v. State, 154 Ga. App. 400, 268 S.E.2d 378, 1980 Ga. App. LEXIS 2194, cert. denied, 449 U.S. 900, 101 S. Ct. 270, 66 L. Ed. 2d 130, 1980 U.S. LEXIS 3494 (1980).

"Equal access" instruction not warranted. —

Defendant was not entitled to an "equal access" instruction relating to drugs found in the defendant's vehicle since, as there was no instruction on presumption of possession, that presumption was not placed before the jury, and since the defendant's ownership of the vehicle was not the sole evidence of possession of cocaine with intent to distribute. State v. Johnson, 280 Ga. 511, 630 S.E.2d 377, 2006 Ga. LEXIS 338 (2006).

Because the state was not relying upon the defendant's ownership or control of the residence in order to link the ownership and possession of the methamphetamine found to the defendant, a charge on equal access was not authorized by the evidence. Thrasher v. State, 289 Ga. App. 399, 657 S.E.2d 316, 2008 Ga. App. LEXIS 97 (2008).

In a defendant's trial for possession of cocaine, the state did not rely on a presumption that the defendant possessed the cocaine, but presented direct evidence that the defendant exited a car with the drugs in a bag and disposed of the bag in the woods following an accident. Therefore, the defendant was not entitled to an equal access charge relative to the woods. Hill v. State, 302 Ga. App. 291, 690 S.E.2d 677, 2010 Ga. App. LEXIS 123 (2010).

Conviction not precluded when defendant connected with contraband. —

Totality of the evidence was sufficient to connect the defendant to the possession of cocaine seized in a residence shared by the defendant and the defendant's girl friend even though the evidence would have authorized a finding that others had equal access to the drugs. Lane v. State, 177 Ga. App. 553, 340 S.E.2d 228, 1986 Ga. App. LEXIS 2431 (1986).

Evidence from the defendant's live-in girlfriend that a lunch bag and shoe box containing marijuana and scales belonged to the defendant was sufficient to prove that the defendant had sole constructive possession of the marijuana in violation of O.C.G.A. § 16-13-30(j), although both the defendant and the girlfriend had equal access to the marijuana. Jefferson v. State, 309 Ga. App. 861, 711 S.E.2d 412, 2011 Ga. App. LEXIS 473 (2011), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

When joint constructive possession alleged. —

Equal access rule, conceptually and historically, has no application when all persons allegedly having equal access to the contraband are alleged to have been in joint constructive possession of that contraband. It is simply a defense available to the accused to whom a presumption of possession flows. Castillo v. State, 166 Ga. App. 817, 305 S.E.2d 629, 1983 Ga. App. LEXIS 3279 (1983).

When state's evidence is of actual, physical possession. —

"Equal access" rule is inapplicable when the state's evidence is not that the defendant constructively possessed contraband, but that the defendant actually and physically possessed the contraband. Marshall v. State, 153 Ga. App. 198, 264 S.E.2d 718, 1980 Ga. App. LEXIS 1747 (1980).

Equal access rule inapplicable to marijuana plants growing outside. —

While equal access rule may be applicable with reference to loose, portable quantities of contraband found inside house, it is not properly applicable to marijuana plants growing outside, which require a period of months to grow, mature, and be harvested. Goode v. State, 130 Ga. App. 791, 204 S.E.2d 526, 1974 Ga. App. LEXIS 1265 (1974).

Equal access rule does not apply to cases involving marijuana plants growing on the land outside the owner's or lessee's residence, and not in portable containers, on the basis that such contraband is stationary. Ward v. State, 178 Ga. App. 129, 342 S.E.2d 373, 1986 Ga. App. LEXIS 1610 (1986).

Equal access rule inapplicable where physical possession shown. —

When a search warrant was executed, the defendant was found with a bucket of water into which the defendant was placing packets of foil, and a sampling of the packets showed the presence of cocaine, the rule that the mere presence of contraband on the premises occupied by

and a sampling of the packets showed the presence of cocaine, the rule that the mere presence of contraband on the premises occupied by an accused is insufficient to sustain a conviction when there is also evidence of access by others was not applicable, even though there was no proof that others had not put cocaine in the bucket. Bradley v. State, 180 Ga. App. 386, 349 S.E.2d 263, 1986 Ga. App. LEXIS 2729 (1986).

Chain of custody. —

State failed to prove an adequate chain of custody because there was no evidence at trial that the plastic bag and the alleged cocaine were distinct items with readily observable distinguishing characteristics; fungible items require proof of chain of custody. Phillips v. Williams, 276 Ga. 691, 583 S.E.2d 4, 2003 Ga. LEXIS 551 (2003).

In a trial for possession of cocaine, it was not error to admit a substance into evidence when the only break in the chain of custody occurred after a scientist tested the substance and found the substance to be cocaine; even if there was error, it was harmless given the overwhelming evidence of guilt, including trial testimony and scientist's report, even without the substance being introduced into evidence. Cowins v. State, 290 Ga. App. 814, 660 S.E.2d 865, 2008 Ga. App. LEXIS 419 (2008).

Equal access defense was not sufficient. —

Evidence that the defendant placed an object, which was later found to be crack cocaine, on the hood of a car, that two other men did not move, and then the defendant tried to flee after seeing the police, was sufficient for a jury to find that the defendant was not merely in close proximity to the drugs, but that the other men in the area did not have an equal opportunity to place the cocaine on the hood of the truck. Daniels v. State, 261 Ga. App. 5, 582 S.E.2d 4, 2003 Ga. App. LEXIS 528 (2003).

Evidence was sufficient to support defendant's conviction for possession of more than 28 grams of a mixture containing methamphetamine, as a search of defendant's vehicle after a lawful stop revealed the drug as well as paraphernalia, and the presumption of equal access between defendant and the passenger was overcome by defendant's voluntary statement that the drugs belonged to the defendant. Collins v. State, 273 Ga. App. 598, 615 S.E.2d 646, 2005 Ga. App. LEXIS 584 (2005).

There was sufficient evidence to support defendant's conviction for possession of marijuana with intent to distribute, because defendant drove a car into a parking lot, an individual who was empty-handed got into the vehicle and they drove to a remote area of the lot, and thereafter, the individual exited the vehicle, as the presumption of the equal access rule was rebutted by police officers' observation that the individual was empty handed and that the marijuana which was found in defendant's vehicle was in a briefcase behind the passenger's seat; there was also sufficient other evidence that supported a finding that defendant possessed the marijuana. Causey v. State, 274 Ga. App. 506, 618 S.E.2d 127, 2005 Ga. App. LEXIS 777 (2005).

Even though the defendant did not own the home where methamphetamine and other contraband were found, and even though the defendant was not arrested with drugs or drug-related objects on the defendant's person, there was sufficient evidence to link the defendant to the contraband, including a codefendant's testimony that the defendant brought the drugs into the home and the defendant's statement to the police about the drug's location. Tucker v. State, 276 Ga. App. 117, 622 S.E.2d 466, 2005 Ga. App. LEXIS 1186 (2005).

Evidence supported the defendant's conviction for possession of methamphetamine because: (1) the defendant acknowledged that an unoccupied tractor-trailer was defendant's; (2) the police entered the cab and saw in plain sight a crack cocaine or methamphetamine pipe; (3) testing of the pipe was positive for methamphetamine; (4) the defendant admitted that the defendant smoked methamphetamine in the pipe and had a "drug problem"; and (5) the equal access rule did not apply as the defendant made inculpatory admissions authorizing a finding that the defendant possessed the methamphetamine. Rochefort v. State, 279 Ga. 738, 620 S.E.2d 803, 2005 Ga. LEXIS 665 (2005).

Although the defendant contended that the trial court erred by denying the defendant's motion for a directed verdict of acquittal because presence in the vicinity of contraband did not establish possession, defendant and the codefendant were indicted and tried together for possession of methamphetamine, the jury was entitled to conclude that defendant was in possession of the methamphetamine-coated pipe, which was found in the car the defendant drove, next to the driver's seat; moreover, the jury heard the officer's testimony that the defendant stated at arrest that the defendant was aware the item was used to smoke methamphetamine, and the trial court charged the

jury on the doctrine of equal access. Thus, the jury was able to contemplate and reject the equal access defense, and sufficient evidence was presented for the jury to find that the defendant possessed the methamphetamine. Dover v. State, 307 Ga. App. 126, 704 S.E.2d 235, 2010 Ga. App. LEXIS 1099 (2010).

Equal access rule in automobile context. —

Equal access rule, as the rule applies in the automobile context, is merely that evidence showing that a person or persons other than the owner or driver of the automobile had equal access to contraband found in the automobile may or will, depending upon the strength of the evidence, overcome the presumption that the contraband was in the exclusive possession of the owner or driver. Castillo v. State, 166 Ga. App. 817, 305 S.E.2d 629, 1983 Ga. App. LEXIS 3279 (1983).

Evidence was insufficient to support a conviction for possession of cocaine because the sole evidence of possession was the defendant's ownership and driving of the vehicle in which the cocaine was found under the passenger seat, and the passenger had equal access to that cocaine. Turner v. State, 276 Ga. App. 381, 623 S.E.2d 216, 2005 Ga. App. LEXIS 1256 (2005), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013), overruled in part as stated in Griffin v. State, 331 Ga. App. 550, 769 S.E.2d 514, 2015 Ga. App. LEXIS 41 (2015).

Presumption as to drugs found in automobile. —

Absent contrary circumstances, drugs found in an automobile are presumed to belong to the driver and owner. Moore v. State, 155 Ga. App. 149, 270 S.E.2d 339, 1980 Ga. App. LEXIS 2500 (1980).

Sufficient evidence supported defendant's conviction for possession of cocaine found in the car the defendant was driving despite the fact that others had access to the car the day before and the only evidence linking defendant to the cocaine was the defendant's possession of the car; the trier of fact heard defendant's claim, and apparently decided that defendant did not rebut the inference that the driver of an automobile is presumed to have possession and control of contraband found in the automobile. Davis v. State, 272 Ga. App. 33, 611 S.E.2d 710, 2005 Ga. App. LEXIS 209 (2005).

Since the defendant admitted knowing that methamphetamine was in a vehicle in which the defendant was a passenger, and drug paraphernalia found in the defendant's home showed a sufficient connection to and knowledge of the drugs found in the vehicle, the evidence was sufficient to prove that the defendant was in constructive possession of the drugs in violation of O.C.G.A. § 16-13-30(a). Clewis v. State, 293 Ga. App. 412, 667 S.E.2d 158, 2008 Ga. App. LEXIS 952 (2008).

Defendant, as the driver of a vehicle stopped at a roadblock, was presumed to have possession and control of drugs found in the vehicle. Although the defendant presented some evidence of others' access to the vehicle, the question of whether the presumption was rebutted was for the jury, which decided against the defendant. Blankenship v. State, 301 Ga. App. 602, 688 S.E.2d 395, 2009 Ga. App. LEXIS 1421 (2009).

Evidence was sufficient to support the defendant's convictions for possession of methamphetamine and possession of marijuana because in the absence of any evidence to the contrary, the jury was authorized to consider the rebuttable presumption that the defendant, as the sole driver of a stolen vehicle, had possession of and control over the contraband contained within that vehicle, and the record was devoid of any evidence that someone other than the defendant had access to the interior of the vehicle; while affirmative evidence showing that a person or persons other than the owner or driver of the automobile had equal access to contraband found in the automobile may or will, depending upon the strength of the evidence, overcome the presumption that the contraband was in the exclusive possession of the owner or driver, this legal principle does not mean that the state must establish a negative fact, but rather, the burden on the state remains the same: to prove every element of the crimes charged beyond a reasonable doubt. Mangum v. State, 308 Ga. App. 84, 706 S.E.2d 612, 2011 Ga. App. LEXIS 124 (2011).

Presumption of ownership may be overcome by evidence of equal access. —

Evidence of equal access to drugs is sufficient to overcome presumption that contraband belongs to defendant driver and owner of

Evidence of equal access to drugs is sufficient to overcome presumption that contraband belongs to defendant driver and owner of automobile and was in defendant's possession; whether or not this evidence was sufficient to rebut inference arising from finding of drugs in automobile is a question for jury to decide. Moore v. State, 155 Ga. App. 149, 270 S.E.2d 339, 1980 Ga. App. LEXIS 2500 (1980).

Evidence was sufficient to convict defendant of possession of marijuana and cocaine based upon the drugs that were found on the floorboard of the truck that defendant used, which defendant's father owned, as defendant did not claim that the drugs belonged to defendant's passenger in the truck and no one else had equal access on that day to the truck. Marion v. State, 268 Ga. App. 699, 603 S.E.2d 321, 2004 Ga. App. LEXIS 989 (2004).

Presence of cocaine metabolites in body fluid is direct evidence only of the fact that cocaine was introduced into the body producing the fluid, and is not direct evidence that the person possessed the cocaine. Rather, the presence of cocaine metabolites in body fluid is only circumstantial or indirect evidence of possession. Green v. State, 260 Ga. 625, 398 S.E.2d 360, 1990 Ga. LEXIS 469 (1990), cert. denied, 500 U.S. 935, 111 S. Ct. 2059, 114 L. Ed. 2d 464, 1991 U.S. LEXIS 2884 (1991), overruled in part as stated in West v. State, 288 Ga. App. 566, 654 S.E.2d 463, 2007 Ga. App. LEXIS 1252 (2007).

Quantification of substance in urine sample not required. —

Amounts of controlled substances in urine sample did not have to be quantified to prove charges of driving under the combined influence of marijuana and cocaine and drug possession. Kerr v. State, 205 Ga. App. 624, 423 S.E.2d 276, 1992 Ga. App. LEXIS 1324 (1992), cert. denied, No. S93C0106, 1993 Ga. LEXIS 32 (Ga. Jan. 7, 1993).

Proven through stillborn fetus. —

When the indictment charged defendant with possession of cocaine in violation of O.C.G.A. § 16-13-30, it was proper to admit evidence supporting the state's case that a blood specimen of her stillborn fetus tested positive for metabolite of cocaine. Jackson v. State, 208 Ga. App. 391, 430 S.E.2d 781, 1993 Ga. App. LEXIS 501, cert. dismissed, 263 Ga. 403, 436 S.E.2d 632, 1993 Ga. LEXIS 810 (1993).

Circumstantial evidence charge not necessary when direct evidence is sufficient. —

A charge to the jury that a conviction based on circumstantial evidence alone is not warranted unless the proven facts exclude every hypothesis other than the guilt of the accused is not required, even if requested, unless the state's evidence is entirely circumstantial; when a police officer testified that the officer saw the defendant in actual possession of cocaine, and there was other direct evidence of the defendant's possession of marijuana, including the defendant's admission that the defendant owned the garment in which some marijuana was found, there was no error in the trial court's refusal to give the charge. Wells v. State, 180 Ga. App. 133, 348 S.E.2d 681, 1986 Ga. App. LEXIS 2689 (1986).

Charge on circumstantial evidence not required. —

When, in a trial for possessing heroin with intent to distribute, there was direct evidence that defendant was in possession of heroin, it is not error to refuse to charge on circumstantial evidence. Houston v. State, 180 Ga. App. 267, 349 S.E.2d 228, 1986 Ga. App. LEXIS 2708 (1986).

Requested charge on mere presence properly denied. —

In a trial for possession of cocaine with intent to distribute, the court did not erroneously deny the defendant's request to charge on mere presence, where a police officer testified that the officer watched the defendant receive money from a third party in exchange for a packet of what appeared to be cocaine, and when the officer arrested the defendant moments later, the officer observed a number of packages of what proved to be cocaine in the front seat of the car in which the defendant was seated. Garner v. State, 199 Ga. App. 468, 405 S.E.2d 299, 1991 Ga. App. LEXIS 537 (1991).

Instruction proper. —

Charge regarding constructive possession which closely tracked the language of the Suggested Pattern Jury Instructions for Criminal Cases and which gave a rebuttable inference of possession was not erroneous. Pittman v. State, 208 Ga. App. 211, 430 S.E.2d 141, 1993 Ga. App. LEXIS 469 (1993), cert. denied, No. S93C1079, 1993 Ga. LEXIS 763 (Ga. July 15, 1993).

In a prosecution for possession of cocaine with the intent to distribute, the court did not err in giving an instruction on the lesser-included charge of possession of cocaine; no injury resulted because the jury found defendant guilty of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30(b) and that verdict was supported by sufficient competent evidence. Brown v. State, 243 Ga. App. 632, 534 S.E.2d 98, 2000 Ga. App. LEXIS 506 (2000).

Because it was unlawful under the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., to possess any amount of a controlled substance such as codeine, absent exceptions such as lawful possession, which was charged to the jury, the instruction as given was not misleading as the fact that the violation was an "alleged" violation was implicit given the trial court's instructions to the jury as to the state's burden of proof and the presumption of innocence. Furthermore, since the indictment's reference to codeine as a Schedule V drug was surplusage, the state was required to show that the defendant was in possession of codeine, not that the codeine fell within Schedule V; thus, the failure to instruct the jury regarding a Schedule V substance was not erroneous as it was not a defense to the offense of possession of codeine and to suggest so was misleading. Evans v. State, 330 Ga. App. 241, 766 S.E.2d 821, 2014 Ga. App. LEXIS 823 (2014), cert. dismissed, No. S15C0653, 2015 Ga. LEXIS 207 (Ga. Mar. 30, 2015).

Lesser included offense. —

When the indictment charged the defendant with trafficking in cocaine by possessing more than 28 ounces, the trial court erred in refusing to give the defendant's requested charge on the lesser included offense of simple possession of cocaine. Howard v. State, 220 Ga. App. 579, 469 S.E.2d 746, 1996 Ga. App. LEXIS 209 (1996), cert. denied, No. S96C1082, 1996 Ga. LEXIS 868 (Ga. May 23, 1996); Lumpkin v. State, 245 Ga. App. 627, 538 S.E.2d 514, 2000 Ga. App. LEXIS 1026 (2000).

Because the defendant was indicted for possession of more than 28 grams of methamphetamine, a violation of O.C.G.A. § 16-13-31, the defendant had sufficient notice that the lesser-included offense of possession with intent to distribute, a violation of O.C.G.A. § 16-13-30(b), might be submitted to the jury if the evidence warranted it; consequently, by charging the lesser offense in accordance with O.C.G.A. § 16-1-6, the trial court did not permit the jury to convict the defendant in a manner not alleged in the indictment in violation of the defendant's due process rights. Rupnik v. State, 273 Ga. App. 34, 614 S.E.2d 153, 2005 Ga. App. LEXIS 392 (2005).

State proved possession of marijuana. —

See Millwood v. State, 166 Ga. App. 292, 304 S.E.2d 103, 1983 Ga. App. LEXIS 3225 (1983).

Trial court properly denied defendant's motion for a directed verdict of acquittal, and properly entered a judgment of conviction against defendant for misdemeanor possession of marijuana, as the evidence sufficiently showed that defendant possessed marijuana which police found in a search of the home. Heller v. State, 275 Ga. App. 637, 621 S.E.2d 591, 2005 Ga. App. LEXIS 1064 (2005).

In a drug possession case, the defendant was not convicted based on circumstantial evidence that, in violation of former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), failed to exclude every other hypothesis save that of the defendant's guilt; the passenger's testimony that the defendant handed the passenger drugs and told the passenger to discard the drugs provided direct evidence that the defendant possessed more than an ounce of marijuana in violation of O.C.G.A. § 16-13-30. Curtis v. State, 282 Ga. App. 322, 638 S.E.2d 773, 2006 Ga. App. LEXIS 1301 (2006), cert. denied, No. S07C0427, 2007 Ga. LEXIS 203 (Ga. Feb. 26, 2007).

Passenger's testimony, stating that the defendant passed marijuana to the passenger and told the passenger to discard the marijuana, was sufficiently corroborated under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) to support a finding of guilt of possession of more

than an ounce of marijuana under O.C.G.A. § 16-13-30; the marijuana found near the defendant was packaged the same way as the marijuana found outside the car, and it could, therefore, be inferred that the marijuana found outside the car had previously been in the back seat beside the defendant. Curtis v. State, 282 Ga. App. 322, 638 S.E.2d 773, 2006 Ga. App. LEXIS 1301 (2006), cert. denied, No. S07C0427, 2007 Ga. LEXIS 203 (Ga. Feb. 26, 2007).

Evidence supported the defendant's convictions of felony murder during the commission of aggravated assault, aggravated assault, possession of marijuana, and possession of a firearm during the commission of a crime since: (1) after smoking marijuana, the defendant attacked the victim, pulled a gun from the defendant's pocket, and shot the victim four times; (2) the victim told the police that the defendant did it; (3) the victim died; (4) a knife was found near the victim, the defendant had a stab wound and the defendant claimed self-defense; and (5) witnesses one and two saw the defendant pull the gun but did not see the victim with a knife. Hill v. State, 291 Ga. 160, 728 S.E.2d 225, 2012 Ga. LEXIS 500 (2012).

Sufficient evidence supported the defendant's conviction for possession of marijuana because the evidence showed that the defendant had marijuana in the defendant's possession when arrested. Smith v. State, 323 Ga. App. 668, 747 S.E.2d 859, 2013 Ga. App. LEXIS 712 (2013).

Possession of methamphetamine proven. —

Evidence was sufficient for a jury to find defendant guilty of possession of methamphetamine, as defendant leased a house in which a widespread methamphetamine manufacturing operation took place, which created a strong chemical smell immediately apparent upon entering the house, and defendant tested positive for methamphetamine in the defendant's system, circumstantially linking defendant to the manufacturing process and undermining the claim that defendant was unaware of the activity. Kirby v. State, 275 Ga. App. 216, 620 S.E.2d 459, 2005 Ga. App. LEXIS 933 (2005).

Because the defendant, who was a passenger in a vehicle stopped by police, and the vehicle's driver had different responses when the arresting officers asked them where they were going, and a bag containing about three pounds of methamphetamine was found between the passenger's and driver's seats, and the defendant fled the scene, and the packaging of the methamphetamine was very similar to the packaging of the cocaine, marijuana, and cash found at the defendant's residence two months earlier, the evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of trafficking in methamphetamine and of possession of methamphetamine with intent to distribute. Salinas-Valdez v. State, 276 Ga. App. 732, 624 S.E.2d 278, 2005 Ga. App. LEXIS 1367 (2005).

Because a jury could find that the defendant was aware of the methamphetamine that fell from the defendant's pants and that the defendant had actual or constructive possession of the methamphetamine, the evidence was sufficient to find the defendant guilty of possession of methamphetamine under O.C.G.A. § 16-13-30(b). Hayes v. State, 276 Ga. App. 268, 623 S.E.2d 144, 2005 Ga. App. LEXIS 1225 (2005).

There was sufficient evidence to convict the defendant of possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a), as methamphetamine was found in pants from which the defendant retrieved a key and in which the defendant's wallet was found, and methamphetamine was found in the defendant's wallet. Johnson v. State, 281 Ga. App. 7, 635 S.E.2d 278, 2006 Ga. App. LEXIS 983 (2006).

Because the trial court properly found that testimony tending to show that the defendant's daughter possessed the methamphetamine the defendant was charged with possessing was hearsay, and testimony from the defendant's grandson was irrelevant, the defendant's conviction for possession was affirmed on appeal. Corbin v. State, 287 Ga. App. 194, 651 S.E.2d 101, 2007 Ga. App. LEXIS 871 (2007).

Sufficient evidence was established to support a defendant's conviction for possession of methamphetamine with intent to distribute since the evidence seized from the defendant's vehicle included the division of the drugs in small plastic baggies, which was evidence of intent to distribute, as well as possessing methamphetamine weighing 24.75 grams, which was inconsistent with personal use. Davis v. State, 287 Ga. App. 478, 651 S.E.2d 750, 2007 Ga. App. LEXIS 928 (2007), cert. denied, No. S08C0176, 2008 Ga. LEXIS 179 (Ga. Feb. 11, 2008).

There was evidence that the defendant affirmatively stated to police officers that the methamphetamine was defendant's and not another individual's drug. The defendant testified at trial that the defendant had previously been convicted of possession of methamphetamine and that the defendant had used methamphetamine in the house; thus, there was sufficient evidence for the jury to conclude the defendant

was in possession of the methamphetamine. Shoemaker v. State, 292 Ga. App. 97, 663 S.E.2d 423, 2008 Ga. App. LEXIS 709 (2008).

Officer found methamphetamine in a portion of a truck where the defendant kept personal belongings and the defendant was the sole occupant of the vehicle. The defendant's testimony denying possession of the drugs and stating that others had equal access to the truck did not establish under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) that the circumstantial evidence was insufficient to convict the defendant of possession of methamphetamine. Bryson v. State, 293 Ga. App. 392, 667 S.E.2d 170, 2008 Ga. App. LEXIS 946 (2008).

There was sufficient evidence to support a defendant's conviction for possession of methamphetamine based on the contraband being found under the passenger seat in which the defendant was sitting and an officer observing the defendant reach under the seat. Further, a syringe was found in the defendant's pocket; thus, there was more evidence than just spatial proximity to support the conviction. McBee v. State, 296 Ga. App. 42, 673 S.E.2d 569, 2009 Ga. App. LEXIS 120 (2009).

Evidence was sufficient to support a conviction of possession of methamphetamine, O.C.G.A. § 16-13-30(a), because the state presented sufficient evidence that the defendant lived at the property, and the jury could, therefore, presume that the defendant had greater access and control to the closet in the house where methamphetamine was found than that of a mere occupant; when the defendant was arrested, the defendant admitted to police that the defendant previously sold methamphetamine, and the officers discovered a large amount of currency on the defendant's person. Scales and syringes were also found at the property, and the individuals who the defendant claimed lived in the home and possessed the methamphetamine were not discovered at the property. Turner v. State, 298 Ga. App. 107, 679 S.E.2d 127, 2009 Ga. App. LEXIS 618 (2009).

Evidence supported a conviction of possession of methamphetamine when an officer testified that the officer twice observed the defendant smoke methamphetamine, identified the pipe the defendant used, and explained, from the officer's narcotics training, how the pipe was used to smoke the methamphetamine; there was also methamphetamine recovered from the desk where the defendant was sitting. While the defendant complained that the pipe was not tested for the presence of methamphetamine, in drug possession cases the state was not required to present expert testimony scientifically identifying the substance or to introduce the drugs into evidence; moreover, the officer's testimony as to a conclusion of fact that could be within the officer's knowledge had been admitted without objection and thus could not be attacked as incompetent. Burg v. State, 298 Ga. App. 214, 679 S.E.2d 780, 2009 Ga. App. LEXIS 627 (2009).

Evidence was sufficient to sustain the defendant's conviction for possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a) because the jury was justified in concluding that a wallet containing methamphetamine belonged to the defendant based on a deputy's testimony that the wallet was found on the defendant's person during a pat-down search incident to the defendant's arrest for driving with a suspended license. McGhee v. State, 303 Ga. App. 297, 692 S.E.2d 864, 2010 Ga. App. LEXIS 346 (2010).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal after a jury found the defendant guilty of possession of methamphetamine because the totality of the evidence, although circumstantial, was sufficient to authorize a rational jury to find the defendant guilty beyond a reasonable doubt and to reject as speculative and unreasonable the hypothesis that someone else discarded the drugs in a patrol car; the defendant possessed a homemade smoking pipe containing methamphetamine residue, there was similar transaction evidence, and the patrol officer testified that the officer had exclusive control of the officer's patrol car, the officer stayed with the officer's car whenever the car was serviced by third parties, the officer searched the backseat immediately after the defendant exited from the car, and the officer discovered the drugs directly up under the seat where the defendant had been sitting. Taylor v. State, 305 Ga. App. 748, 700 S.E.2d 841, 2010 Ga. App. LEXIS 807 (2010).

Evidence that the defendant had possession of the canister containing methamphetamine earlier on the day the defendant was arrested, the canister belonged to the defendant, and the defendant and a passenger had smoked methamphetamine from the canister a couple of hours before the officer found the canister was sufficient to support the defendant's conviction for methamphetamine possession under O.C.G.A. § 16-13-30(a). Mallard v. State, 321 Ga. App. 650, 742 S.E.2d 164, 2013 Ga. App. LEXIS 366 (2013), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to convict the defendant of possession of methamphetamine and misdemeanor possession of marijuana as the evidence sufficed to support the jury's finding that the defendant possessed the drugs found under a mattress because the drugs were located under the mattress directly underneath where the defendant sat; and the defendant possessed digital scales that appeared to have drug residue on the scales. Smith v. State, 331 Ga. App. 296, 771 S.E.2d 8, 2015 Ga. App. LEXIS 162 (2015), overruled, Hill v. State, 360

Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence that two bags of drugs were found in the apartment over a garage belonging to the defendant's mother where the defendant was present, and another individual only testified to bringing one bag, allowed the jury to find that the defendant had the power and intention

to exercise dominion and control over the methamphetamine found in the apartment as required for a conviction for possession of less than one gram of methamphetamine. Mantooth v. State, 335 Ga. App. 734, 783 S.E.2d 133, 2016 Ga. App. LEXIS 124 (2016), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Lipstick evidence insufficient to establish constructive possession of methamphetamine. —

Evidence was insufficient to convict the defendant of possession of methamphetamine as the defendant did not have constructive possession of the drugs found inside of a flower pot in a residence that was neither owned nor occupied by the defendant because there was no evidence that the residue on a pipe was actually lipstick; even if it was lipstick, there was no evidence that the defendant owned any lipstick, let alone the particular lipstick found on the pipe; the mere presence of a pipe with lipstick on it in the vicinity of a female did not constitute direct evidence of possession by that female; and there was no DNA or fingerprint evidence linking the defendant to the drug-laced pipe. Poteet v. State, 358 Ga. App. 82, 853 S.E.2d 671, 2021 Ga. App. LEXIS 4 (2021).

Evidence sufficient to support conviction of sale and trafficking in methamphetamine. —

Evidence that a defendant sold an undercover officer methamphetamine on two occasions, with one sale of more than 28 grams, and that the defendant participated in a later, larger drug deal, supported the defendant's convictions for trafficking in methamphetamine, O.C.G.A. § 16-13-31(e), and sale of methamphetamine under O.C.G.A. §§ 16-13-26(3)(B) and 16-13-30(b). Culajay v. State, 309 Ga. App. 631, 710 S.E.2d 846, 2011 Ga. App. LEXIS 420 (2011).

Evidence that defendant was actively attempting to dispose of methaqualone by flushing the methaqualone down the toilet authorized defendant's conviction. Anderson v. State, 166 Ga. App. 459, 304 S.E.2d 550, 1983 Ga. App. LEXIS 3242 (1983).

Evidence sufficient for conviction. —

See Smith v. State, 168 Ga. App. 92, 308 S.E.2d 226, 1983 Ga. App. LEXIS 3376 (1983); Bryant v. State, 174 Ga. App. 468, 330 S.E.2d 406, 1985 Ga. App. LEXIS 2717 (1985); Lewis v. State, 174 Ga. App. 613, 330 S.E.2d 810, 1985 Ga. App. LEXIS 2734 (1985); Clarington v. State, 178 Ga. App. 663, 344 S.E.2d 485, 1986 Ga. App. LEXIS 2554 (1986); Boles v. State, 178 Ga. App. 508, 343 S.E.2d 729, 1986 Ga. App. LEXIS 2542 (1986); Brown v. State, 178 Ga. App. 691, 344 S.E.2d 509, 1986 Ga. App. LEXIS 2563 (1986); Houston v. State, 180 Ga. App. 267, 349 S.E.2d 228, 1986 Ga. App. LEXIS 2708 (1986); Bradley v. State, 180 Ga. App. 386, 349 S.E.2d 263, 1986 Ga. App. LEXIS 2729 (1986); Black v. State, 181 Ga. App. 540, 353 S.E.2d 4, 1987 Ga. App. LEXIS 1477 (1987); Freeman v. State, 182 Ga. App. 654, 356 S.E.2d 718, 1987 Ga. App. LEXIS 2654 (1987); Pittman v. State, 183 Ga. App. 12, 357 S.E.2d 855, 1987 Ga. App. LEXIS 2678 (1987); Bentley v. State, 183 Ga. App. 112, 358 S.E.2d 274, 1987 Ga. App. LEXIS 2682 (1987); Howard v. State, 185 Ga. App. 215, 363 S.E.2d 621, 1987 Ga. App. LEXIS 2861 (1987); Lewis v. State, 186 Ga. App. 349, 367 S.E.2d 123, 1988 Ga. App. LEXIS 317 (1988); Wright v. State, 189 Ga. App. 441, 375 S.E.2d 895, 1988 Ga. App. LEXIS 1438 (1988); Doe v. State, 189 Ga. App. 793, 377 S.E.2d 546, 1989 Ga. App. LEXIS 30 (1989); Reeves v. State, 194 Ga. App. 539, 391 S.E.2d 35, 1990 Ga. App. LEXIS 191 (1990); Smith v. State, 197 Ga. App. 609, 398 S.E.2d 858, 1990 Ga. App. LEXIS 1379 (1990); Nelson v. State, 197 Ga. App. 898, 399 S.E.2d 748, 1990 Ga. App. LEXIS 1505 (1990); Shiropshire v. State, 201 Ga. App. 421, 411 S.E.2d 339, 1991 Ga. App. LEXIS 1383 (1991); Ross v. State, 206 Ga. App. 1, 424 S.E.2d 308, 1992 Ga. App. LEXIS 1552 (1992); Turner v. State, 213 Ga. App. 77, 443 S.E.2d 703, 1994 Ga. App. LEXIS 456 (1994); Moreland v. State, 213 Ga. App. 638, 445 S.E.2d 388, 1994 Ga. App. LEXIS 682 (1994); Teasley v. State, 214 Ga. App. 646, 448 S.E.2d 904, 1994 Ga. App. LEXIS 996 (1994); Thomas v. State, 222 Ga. App. 337, 474 S.E.2d 631, 1996 Ga. App. LEXIS 818 (1996); Lang v. State, 226 Ga. App. 729, 487 S.E.2d 485, 1997 Ga. App. LEXIS 749 (1997); Tate v. State, 230 Ga. App. 186, 495 S.E.2d 658, 1998 Ga. App. LEXIS 83 (1998); King v. State, 230 Ga. App. 301, 496 S.E.2d 312, 1998 Ga. App. LEXIS 115 (1998), cert. denied, No. S98C0754, 1998 Ga. LEXIS 548 (Ga. May 14, 1998); Johnson v. State, 230 Ga. App. 507, 496 S.E.2d 785 (1998); Grant v. State, 239 Ga. App. 608, 521 S.E.2d 654, 1999 Ga. App. LEXIS 1081 (1999); Heath v. State, 240 Ga. App. 492, 522 S.E.2d 761, 1999 Ga. App. LEXIS 1273 (1999); Brackins v. State, 249 Ga. App. 788, 549 S.E.2d 775, 2001 Ga. App. LEXIS 630 (2001); Wood v. State, 264 Ga. App. 787, 592 S.E.2d 455,

2003 Ga. App. LEXIS 1568 (2003); In the Interest of A.A., 265 Ga. App. 369, 593 S.E.2d 891, 2004 Ga. App. LEXIS 120 (2004), cert. dismissed, No. S04C1099, 2004 Ga. LEXIS 494 (Ga. June 7, 2004).

Evidence sufficient to sustain conviction for possession of cocaine with intent to distribute. Kinney v. State, 199 Ga. App. 354, 405 S.E.2d 98, 1991 Ga. App. LEXIS 473 (1991).

Evidence showing that cocaine found in the defendant's possession was divided between more than 30 small glassine or clear plastic packages indicated a manner of packaging commonly associated with the sale or distribution of such contraband and would authorize any rational trier of fact to infer that the defendant possessed cocaine with the intent to distribute. Williams v. State, 199 Ga. App. 544, 405 S.E.2d 539, 1991 Ga. App. LEXIS 547 (1991).

Defendant's presence in the vicinity of cocaine, defendant's participation in an attempt to elude possession, the finding of cocaine at the defendant's feet and the presence of cocaine in the defendant's bodily system as evinced by drug tests were sufficient to authorize a rational trier of fact to infer that the defendant possessed cocaine with intent to distribute. Jones v. State, 207 Ga. App. 46, 427 S.E.2d 40, 1993 Ga. App. LEXIS 57 (1993).

Defendant's conviction of possession of cocaine in violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-30 et seq., was supported by sufficient evidence; the defendant admitted that a passenger in the defendant's vehicle had purchased crack cocaine, and a pipe found in the vehicle tested positive for cocaine residue. Bevis v. State, 259 Ga. App. 269, 576 S.E.2d 652, 2003 Ga. App. LEXIS 75 (2003).

Conviction of a second defendant for possession of marijuana with intent to distribute in violation of O.C.G.A. § 16-13-30 was affirmed after: (1) evidence that the second defendant expected to receive $1,000 to receive a package for a person authorized the jury to conclude beyond a reasonable doubt that defendant was aware the package contained contraband; (2) a mistrial was not warranted since curative instructions were given by the court regarding the irrelevancy of remands by the first defendant's attorney; and (3) the package was admissible since it was easily identifiable, securely packed, and there was no evidence of tampering. Sandoval v. State, 260 Ga. App. 61, 579 S.E.2d 75, 2003 Ga. App. LEXIS 309 (2003).

Evidence of the defendant's possession of cocaine was sufficient when the evidence consisted of a police officer's testimony that the officer saw the defendant discard a glass tube while fleeing the officer and a forensic chemist's testimony that the tube contained trace amounts of cocaine. Jones v. State, 260 Ga. App. 487, 580 S.E.2d 278, 2003 Ga. App. LEXIS 411 (2003).

Evidence was sufficient to support defendant's conviction for possession of cocaine with intent to distribute, as a police officer saw defendant commit traffic offenses, pursued defendant's car for those offenses, saw defendant throw a white substance out of the driver's side window, the substance was later identified as an amount of cocaine consistent with the distribution and personal use of cocaine, and defendant had a large amount of cash on defendant at the time defendant's car was finally stopped; the evidence was sufficient under the Jackson standard to support each element of defendant's conviction although a remand was required to make a finding regarding an ineffective assistance of counsel claim. Talbot v. State, 261 Ga. App. 12, 581 S.E.2d 669, 2003 Ga. App. LEXIS 512 (2003).

On appeal from the trial court's judgment convicting the defendant of possession of marijuana, the appellate court refused to affirm the defendant's conviction on the basis of seeds, stems, and residue that were found in the defendant's bedroom because those items were not tested scientifically and a forensic toxicologist who testified could not state beyond a reasonable doubt that the items were marijuana, but the appellate court held that the toxicologist's testimony that the toxicologist found marijuana metabolites in a urine sample the defendant gave to police was sufficient to sustain the defendant's conviction. Cargile v. State, 261 Ga. App. 319, 582 S.E.2d 473, 2003 Ga. App. LEXIS 531 (2003), cert. denied, No. S03C1360, 2003 Ga. LEXIS 808 (Ga. Sept. 22, 2003).

Evidence was sufficient to support the defendant's conviction for possession of cocaine when the state introduced blood test results showing a metabolite of cocaine in the defendant's blood after the defendant refused to spit out the substance the defendant was chewing. Millsap v. State, 261 Ga. App. 427, 582 S.E.2d 568, 2003 Ga. App. LEXIS 650 (2003).

Evidence held sufficient for possessing cocaine, possessing cocaine within 1,000 feet of a housing project, and attempted bribery, where police officers observed the defendant engaging in what appeared to be a drug transaction, the officers thereafter found cocaine on the

police officers observed the defendant engaging in what appeared to be a drug transaction, the officers thereafter found cocaine on the sidewalk where the defendant had been standing and cocaine in the defendant's pockets, and the defendant told a police officer who was counting the defendant's money to take it and the defendant's watch, and that the defendant would pay the officer more in a week if the officer would let the defendant go. Hester v. State, 261 Ga. App. 614, 583 S.E.2d 274, 2003 Ga. App. LEXIS 722 (2003).

Even assuming the lab results regarding methamphetamine were non-probative hearsay, the detailed testimony by the officers provided the requisite evidence to convict defendant of manufacturing and trafficking in methamphetamine. Bilow v. State, 262 Ga. App. 850, 586 S.E.2d 675, 2003 Ga. App. LEXIS 785 (2003), cert. denied, No. S04C0048, 2004 Ga. LEXIS 42 (Ga. Jan. 12, 2004).

Testimony of the officers alone held sufficient to support convictions of selling cocaine as the credibility and weight to be given to the witnesses was within the province of the jury. Sutton v. State, 261 Ga. App. 860, 583 S.E.2d 897, 2003 Ga. App. LEXIS 790 (2003).

Evidence that, inter alia, an officer observed the defendant drop a piece of paper which later tested positive for cocaine was sufficient to support a conviction for possession of cocaine. Griffin v. State, 266 Ga. App. 50, 596 S.E.2d 405, 2004 Ga. App. LEXIS 296 (2004).

Evidence supported the defendant's conviction for possession of methamphetamine as an accomplice's statement that the defendant was involved in a drug transaction was supported by the defendant's admission that the defendant was at the accomplice's house to buy drugs, the defendant's possession of a digital scale of the type used in drug transactions, and cash in an amount an expert testified was typical of that charged for an eightball of methamphetamine. Lewis v. State, 268 Ga. App. 547, 602 S.E.2d 278, 2004 Ga. App. LEXIS 962 (2004).

There was sufficient evidence to show that the defendant possessed cocaine since the defendant resided in the bedroom where the cocaine was discovered, a friend testified that the friend heard the defendant admit the cocaine was found in the defendant's room, the defendant's mother pointed out the room as defendant's, and after the cocaine was discovered, the defendant went into hiding, and the argument of equal access by the defendant's mother and brother to the cocaine was unavailing when other evidence linked the defendant to the cocaine. Truitt v. State, 266 Ga. App. 56, 596 S.E.2d 219, 2004 Ga. App. LEXIS 299 (2004).

Defendant's acts, including telephoning a known drug dealer about purchasing cocaine and driving to an agreed location to make the transaction sufficiently constituted a substantial step to convict defendant of attempting to possess cocaine. Massey v. State, 267 Ga. App. 482, 600 S.E.2d 437, 2004 Ga. App. LEXIS 690 (2004).

When marijuana allegedly possessed by the defendant was tested by the state crime lab but then was lost and was not presented at trial, the evidence presented, including the defendant's admissions and the arresting officers' identification of the marijuana, was sufficient to sustain the defendant's possession conviction. Jones v. State, 268 Ga. App. 246, 601 S.E.2d 763, 2004 Ga. App. LEXIS 897 (2004).

Evidence that an undercover police officer tried to purchase drugs from a third person, that the third person said the person would have to get the drugs from "his source," and that the officer was present when defendant gave a package to a third person shortly before the third person delivered cocaine to the officer was sufficient to sustain defendant's convictions for trafficking in cocaine and possessing cocaine with intent to distribute. Serrate v. State, 268 Ga. App. 276, 601 S.E.2d 766, 2004 Ga. App. LEXIS 888 (2004).

Evidence was sufficient to support the defendant's conviction of possession of cocaine in violation of O.C.G.A. § 16-13-30(a) as cocaine was a controlled substance under O.C.G.A. § 16-13-26(1)(D) and the defendant had an additional 2.2 grams of cocaine in the defendant's pocket when the defendant was arrested for trafficking in cocaine found in a cooler. Salgado v. State, 268 Ga. App. 18, 601 S.E.2d 417, 2004 Ga. App. LEXIS 827 (2004).

Evidence was sufficient to sustain convictions of possession of controlled substances, O.C.G.A. § 16-13-30(a), and possession of controlled substances with intent to distribute, O.C.G.A. § 16-13-30(b), when two witnesses testified that the substance in a bag carried by the defendant appeared to be crack cocaine, and a field test indicated that the substance was crack cocaine. Riddle v. State, 267 Ga. App. 630, 600 S.E.2d 709, 2004 Ga. App. LEXIS 738 (2004).

When the defendant's possession of a vehicle was not the sole evidence of defendant's possession of drugs and a confidential informant's testimony was not material to the defense, the defendant was not entitled to know the informant's identity and the trial court properly denied the defendant's motion for a new trial on the charges of possession of cocaine. Respress v. State, 267 Ga. App. 654, 600 S.E.2d 727, 2004 Ga. App. LEXIS 743 (2004).

Evidence was sufficient to support the defendant's conviction for possession of cocaine as cocaine was found in the defendant's pocket during a search of the defendant's clothes while being arrested on other charges. Finney v. State, 270 Ga. App. 422, 606 S.E.2d 637, 2004 Ga. App. LEXIS 1467 (2004).

Defendant's cocaine possession conviction was affirmed as defendant's statement that defendant and two other men went to the victim's house to buy cocaine, that the victim came out of the victim's house with the cocaine and gave it to defendant, and that defendant split the cocaine with defendant's accomplices, was corroborated by proof that cash was found on the victim's bed next to several bags of a substance that later tested positive for crack cocaine. Williams v. State, 270 Ga. App. 424, 606 S.E.2d 871, 2004 Ga. App. LEXIS 1456 (2004).

Evidence was sufficient to support the defendant's conviction for possession of cocaine as the evidence showed that the defendant kept cocaine in the office and that the defendant alone controlled access to the defendant's office as a sign on the office door made it plain that the office was the defendant's office and that the office was off limits to everyone except the defendant. Simmons v. State, 271 Ga. App. 330, 609 S.E.2d 678, 2005 Ga. App. LEXIS 49 (2005).

Evidence was sufficient to support the defendant's conviction for possession of cocaine as police searched a hotel room where the defendant was with a girlfriend and cocaine residue and paraphernalia was found. Wilson v. State, 271 Ga. App. 359, 609 S.E.2d 703, 2005 Ga. App. LEXIS 41 (2005).

Evidence supported the defendant's possession of marijuana conviction because: defendant fled from the police, kicked two officers, and had marijuana, BC packets, and a cell phone, and the defendant's DNA matched the DNA on the beer can. Lewis v. State, 271 Ga. App. 744, 611 S.E.2d 80, 2005 Ga. App. LEXIS 157 (2005).

Evidence supported the defendant's conviction for possession of methamphetamine because a police officer testified the methamphetamine was taken from the defendant's wallet. Morrison v. State, 272 Ga. App. 34, 611 S.E.2d 720, 2005 Ga. App. LEXIS 219 (2005), aff'd, 280 Ga. 222, 626 S.E.2d 500, 2006 Ga. LEXIS 119 (2006), overruled in part, State v. Slaughter, 289 Ga. 344, 711 S.E.2d 651, 2011 Ga. LEXIS 470 (2011).

Conviction for possession by ingestion of methamphetamine was supported by a positive preliminary urine test for amphetamines conducted by the defendant's supervising probation officer and a gas chromatography/mass spectrometry test performed on the sample by the state forensic toxicologist, which confirmed the presence of methamphetamine. Poston v. State, 274 Ga. App. 117, 617 S.E.2d 150, 2005 Ga. App. LEXIS 679 (2005).

Sufficient evidence supported the defendant's conviction of possession of cocaine under O.C.G.A. § 16-13-30(a) as: (1) the informant testified that the defendant procured crack cocaine for the informant for $300.00; (2) detectives witnessed the defendant enter and exit the bar where, according to the informant, defendant obtained the cocaine; and (3) the substance tested positive for cocaine, a controlled substance under O.C.G.A. § 16-13-26(1)(D); the credibility of the informant, which, according to the defendant, was allegedly impaired by the informant's prior criminal conduct, was an issue for the jury. Ross v. State, 275 Ga. App. 137, 619 S.E.2d 809, 2005 Ga. App. LEXIS 905 (2005).

Circumstantial evidence under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) was sufficient to support the defendant's conviction for possession of cocaine, in violation of O.C.G.A. § 16-13-30, as the defendant was approached by two undercover officers and upon seeing that one of the officers had a badge, the defendant turned around and made a throwing motion with a clenched fist in the direction of a trash barrel; the defendant was in an area known for drug sales, and three pieces of crack cocaine were found in the vicinity of the trash barrel. Woods v. State, 275 Ga. App. 471, 620 S.E.2d 660, 2005 Ga. App. LEXIS 997 (2005).

Conviction for possessing cocaine with intent to distribute was sufficiently supported by evidence showing that 1.5 grams of cocaine were found in the defendant's pocket and that an electronic scale, small plastic baggies, and over $2,600.00 in cash were found in the defendant's residence. Copeland v. State, 273 Ga. App. 850, 616 S.E.2d 189, 2005 Ga. App. LEXIS 638 (2005).

Although a videotape of the transaction provided helpful confirmation of an undercover officer's identification of the defendant as the seller of cocaine, the testimony of the officer, by itself, was sufficient to support the jury's determination of guilt. Williams v. State, 277 Ga. App. 633, 627 S.E.2d 196, 2006 Ga. App. LEXIS 166 (2006).

635, 627 S.E.2d 196, 2006 Ga. App. LEXIS 166 (2006).

Evidence was sufficient to support conviction of simple possession of cocaine where, during the defendant's flight on foot from an officer, the officer saw defendant take an object from a pocket and flick it away and where the police found a small box containing drugs in the area of the chase, which the officer identified as the object the defendant discarded. Wilburn v. State, 278 Ga. App. 76, 628 S.E.2d 174, 2006 Ga. App. LEXIS 252 (2006).

Sufficient evidence, including a tape recording of the drug transaction, testimony from three government agents, and the jury's rejection of the defendant's defenses of misidentification and mere presence at the scene of a crime supported the defendant's sale of cocaine conviction; the defendant failed to preserve an alleged error in the jury charge regarding the factors the jury may consider in assessing reliability of identification testimony. Bonner v. State, 278 Ga. App. 855, 630 S.E.2d 127, 2006 Ga. App. LEXIS 418 (2006).

Defendant's convictions of possession of cocaine, O.C.G.A. § 16-13-30(a), and giving a false name and date of birth, O.C.G.A. § 16-10-25, were supported by sufficient evidence that, during a level-one encounter with an officer, the defendant gave the officer a false name and birth date, that, during a subsequent search of the defendant's person validly consented to by the defendant, the officer found documents that revealed the defendant's true identity and five pieces of a substance that the officer suspected was crack cocaine, that the officer's field test of the substance indicated positive for cocaine, that the substance was later tested at a state crime lab which confirmed that it was cocaine, and that there was a sufficient chain of custody for that substance. Postell v. State, 279 Ga. App. 275, 630 S.E.2d 867, 2006 Ga. App. LEXIS 518 (2006).

There was sufficient evidence to sustain the jury's verdict finding the defendant guilty beyond a reasonable doubt of possession of cocaine in violation of O.C.G.A. § 16-13-30(a), as the arresting officer testified that the defendant was in possession of a substance that tested positive for cocaine. Copeland v. State, 281 Ga. App. 11, 635 S.E.2d 283, 2006 Ga. App. LEXIS 984 (2006).

Appellate court upheld the defendant's convictions for possession of cocaine, sale of cocaine, and possession of cocaine with intent to distribute, based on sufficient evidence consisting of testimony from two special agents identifying the defendant, a videotape of a cocaine sale, and positive test results confirming the substance the defendant sold and possessed was cocaine. Henley v. State, 281 Ga. App. 242, 635 S.E.2d 856, 2006 Ga. App. LEXIS 1065 (2006).

Upon the defendant's challenge to the evidence supporting a cocaine possession charge and portions of the state's closing argument, because sufficient evidence corroborated the accomplice testimony supporting said charge, including that cocaine was found in the vicinity of the vehicle the defendant drove, and the defendant's flight from police showed a consciousness of guilt, conviction on said charge was upheld; moreover, the defendant waived objection to any argument of future dangerousness, and even if an objection had been made, the prosecutor's argument was proper, as such urged conviction based on current evidence that the defendant was a drug dealer and could not be seen as urging conviction based on future dangerousness. Carr v. State, 282 Ga. App. 199, 638 S.E.2d 348, 2006 Ga. App. LEXIS 1351 (2006).

Sufficient evidence supported the defendant's conviction of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30 despite the passenger's claim at trial that the passenger, not the defendant, threw the cocaine out the car window; the jury was permitted to reject the passenger's trial testimony as it conflicted with the passenger's earlier statement that the defendant had thrown the cocaine, and other evidence included the officer's statement that the cocaine was thrown from the driver's side where the defendant had been seated, and a substantial amount of cash was recovered from the defendant. Smith v. State, 282 Ga. App. 255, 638 S.E.2d 388, 2006 Ga. App. LEXIS 1355 (2006).

Defendant's convictions for possession of cocaine with intent to distribute and possession of a controlled substance within 1,000 feet of a housing project, in violation of O.C.G.A. § 16-13-30(b) and O.C.G.A. § 16-13-32.5(b), were based on sufficient evidence since the state proved by circumstantial evidence pursuant to former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) that the defendant had been walking back and forth to an overturned bucket when people approached from the street in what appeared to be drug transactions, and the drugs were found under the bucket; there was evidence that the amount of drugs recovered were more than one would use for personal use, such that it indicated an intent to distribute, and there was also evidence indicating the proximity of the bucket to a nearby public housing complex. Reason v. State, 283 Ga. App. 608, 642 S.E.2d 236, 2007 Ga. App. LEXIS 136 (2007).

Defendant's convictions for malice murder, aggravated battery, burglary, and violation of the Georgia Controlled Substances Act, O.C.G.A.

Defendant's convictions for malice murder, aggravated battery, burglary, and violation of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by unlawfully possessing cocaine and marijuana were supported by sufficient evidence; the defendant walked into a neighbor's house with a butcher knife in each hand and stabbed two people, knives found in the woods behind the defendant's apartment matched the descriptions of those used in the stabbings and had deoxyribonucleic acid matching the defendant's, two knives were missing

from a knife block in the defendant's apartment, marijuana and cocaine were found in the apartment, the defendant told a friend that the defendant had "hurt some people really bad," and three eyewitnesses identified the defendant as the assailant. Swanson v. State, 282 Ga. 39, 644 S.E.2d 845, 2007 Ga. LEXIS 351 (2007).

There was sufficient evidence of possession to support a defendant's convictions of trafficking in cocaine, possession of cocaine with the intent to distribute, possession of marijuana, and possession of a firearm during the commission of a crime since: the defendant sped off when police tried to stop the defendant for running a stop sign; narcotics and a gun were found in the passenger side of the car; the passenger's story that the passenger had flagged down the defendant for a ride and that the passenger was unaware of the drugs and the gun was corroborated by the passenger's girlfriend; the defendant's sister, who owned the car, testified that there was no contraband in the car before the defendant took the car; the defendant had $1,755 in cash on the defendant's person; and the defendant had prior drug offenses. Jackson v. State, 284 Ga. App. 619, 644 S.E.2d 491, 2007 Ga. App. LEXIS 376 (2007), cert. denied, No. S07C1169, 2007 Ga. LEXIS 521 (Ga. June 25, 2007), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Given that the evidence presented against the defendant showed that, as the only passenger in a moving vehicle, the defendant, as that passenger, and not the driver, could have tossed bags of cocaine out of a window, the evidence supported the defendant's possession conviction. Johnson v. State, 283 Ga. App. 425, 641 S.E.2d 655, 2007 Ga. App. LEXIS 81 (2007).

Defendant's conviction for cocaine possession did not rest on "mere presence" evidence; an officer's unobstructed observation of the defendant in the act of throwing a crack pipe onto the ground, combined with the lab testing of the substance removed from the pipe, provided ample direct evidence from which the jury could have found that the defendant possessed cocaine. Smith v. State, 285 Ga. App. 399, 646 S.E.2d 499, 2007 Ga. App. LEXIS 533 (2007); Marshall v. State, 286 Ga. App. 86, 648 S.E.2d 674, 2007 Ga. App. LEXIS 696 (2007).

Evidence supported the defendant's convictions of two counts of malice murder, armed robbery, and possession of cocaine since: a driver carrying a gun and a bag ran out of a car that had been dragging the body of the car's owner and that had another dead victim in the passenger seat; bags of cocaine were on the lap of the victim in the passenger seat; one victim had been shot with a .44 caliber weapon; a canine unit located a .44 caliber revolver, cash, a man's clothes with cocaine in them, and a shoulder bag in the woods into which the driver had fled; the defendant came out of the woods wearing only underwear; and the defendant admitted to shooting the victims. Preston v. State, 282 Ga. 210, 647 S.E.2d 260, 2007 Ga. LEXIS 477 (2007).

In a prosecution for possession of marijuana with intent to distribute, there was sufficient evidence that the defendant possessed the marijuana found in a car in which the defendant was riding; the defendant admitted to owning the car, marijuana was found where the defendant had been sitting and under the driver's seat, and a passenger testified that the defendant had been driving earlier that evening and that the defendant admitted to the passenger that the marijuana was the defendant's. King v. State, 287 Ga. App. 375, 651 S.E.2d 496, 2007 Ga. App. LEXIS 976 (2007).

There was sufficient evidence to support a conviction for possession of methamphetamine and possession of drug related objects when the defendant admitted telling officers that the defendant owned a pipe that had methamphetamine residue on the pipe, but said that the admission had been made under pressure and that a purse in which drug-related items were found was a "community purse" used by employees of the convenience store where the defendant worked; it was for the jury to resolve conflicts in the testimony and to weigh the evidence. Doyal v. State, 287 Ga. App. 667, 653 S.E.2d 52, 2007 Ga. App. LEXIS 894 (2007).

Given that two officers testified that the officers saw the defendant, in plain view, packaging 35 grams of cocaine and 94 grams of marijuana into smaller packages, and the testimony of a single witness was generally sufficient to establish a fact, the defendant's convictions for trafficking in cocaine and possession of marijuana with the intent to distribute were upheld on appeal. King v. State, 289 Ga. App. 461, 657 S.E.2d 570, 2008 Ga. App. LEXIS 120 (2008).

There was sufficient evidence to uphold defendant's conviction for drug possession as the evidence established that the defendant attempted to sell drugs during a controlled buy situation set up by the police and a gray pouch containing numerous small red bags of

attempted to sell drugs during a controlled buy situation set up by the police and a gray pouch containing numerous small red bags of marijuana as well as one medium-sized bag of cocaine were found on the defendant's person. Further, at trial, the defendant admitted to possessing the marijuana and, although defendant insisted that the officers put the cocaine in the gray pouch, three officers participating in the arrest denied that the cocaine and the pouch had been planted. Habersham v. State, 289 Ga. App. 718, 658 S.E.2d 253, 2008 Ga. App. LEXIS 190 (2008).

Trial court properly denied a defendant's motion for a new trial, and there was sufficient evidence to support defendant's conviction for possession of cocaine with the intent to distribute and that defendant's drug possession was not for personal use, based on the finding of 25 pieces of crack cocaine, totaling 1.68 grams being found on defendant's person, and an officer testifying that the officer investigated crack cocaine sales in the area for over a year and was familiar with the price of crack cocaine, how the cocaine was packaged, how buyers and sellers interact, and how sellers often use a two-way radio, such as was found on the defendant, to conduct the transactions. Defendant's contention that the defendant was addicted to crack cocaine was further contradicted by no crack pipe being found on the defendant's person, nor was there any evidence that the defendant was under the influence of any drug at the time of the search. Griffin v. State, 291 Ga. App. 618, 662 S.E.2d 171, 2008 Ga. App. LEXIS 500 (2008), cert. denied, No. S08C1469, 2008 Ga. LEXIS 709 (Ga. Sept. 8, 2008).

There was sufficient evidence to support defendant's conviction for possession of cocaine and marijuana, both with intent to distribute, and defendant's conviction was not based only on circumstantial evidence as there was direct evidence that the defendant sold cocaine based on the defendant being observed in the bathroom of the residence doing something at the toilet in response to the police entry; a large quantity of cocaine and marijuana were found in the toilet tank; a witness linked defendant to those drugs; several digital scales were found around the house; and two witnesses testified that no one else in the house sold drugs but defendant. Howard v. State, 291 Ga. App. 386, 662 S.E.2d 203, 2008 Ga. App. LEXIS 513 (2008).

As the defendant admitted at trial that the defendant was in possession of a gun and cocaine when the defendant was stopped by the police and that the defendant was 16 years old at the time, there was sufficient evidence for the jury to find the defendant guilty of possession of cocaine, possession of a firearm while in the commission of a felony, and possession of a pistol by a person under the age of 18. Olive v. State, 291 Ga. App. 538, 662 S.E.2d 308, 2008 Ga. App. LEXIS 560 (2008).

Convictions of manufacture, distribution, and possession of methamphetamine with the intent to distribute under O.C.G.A. § 16-13-30(b), possession of ephedrine/pseudoephedrine under O.C.G.A. § 16-13-30.3(b)(1), and possession of a firearm during the commission of a felony under O.C.G.A. § 16-11-106(b)(4) were supported by the evidence. A panel van belonging to the defendant had been modified as a methamphetamine lab, was located on the defendant's property, and was powered by an electrical cord running from the defendant's trailer; everything necessary to support the production of methamphetamine was present in the vicinity of the vehicle; the defendant's name and that of the defendant's spouse had been scrawled on an interior panel of the vehicle; the defendant offered to provide any methamphetamine that a house guest wanted; uncured methamphetamine and enough ephedrine was present at the scene to make 30 to 33 grams of methamphetamine; and the defendant admitted to giving methamphetamine to others and to owning the sawed-off shotgun recovered from the panel van. Boone v. State, 293 Ga. App. 654, 667 S.E.2d 880, 2008 Ga. App. LEXIS 1041 (2008).

Additional evidence other than a defendant's ownership of the premises demonstrated the defendant's possession of cocaine with intent to distribute. The cocaine was found in an office containing the defendant's personal items; entry into the office had been made more difficult by installation of a steel padlocked door, which was locked when officers arrived to conduct the search; the defendant admitted to installing surveillance equipment; numerous items used to measure, prepare, and ingest cocaine were found in the office; and the defendant admitted to an officer that pill bottles of cocaine belonged to the defendant. Bailey v. State, 294 Ga. App. 437, 669 S.E.2d 453, 2008 Ga. App. LEXIS 1212 (2008), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to support convictions of felony murder and possession of cocaine. A person fitting the defendant's description, wearing black clothing and carrying a black garbage bag, ran from the store where the victim worked; within an hour of the shooting, the defendant, who lived three blocks away, gave a neighbor's child "cigars without tobacco" and lottery tickets from a black garbage bag, and said that the defendant had "hit a lick"; packages of tobacco tubes were found on the ground between the store and the defendant's apartment complex; the victim's wallet was found in a trash receptacle at the complex, and a police dog followed the scent on the wallet to the defendant's apartment; officers searching the defendant's apartment found cocaine, a handgun, black clothing, a black stocking, and a

novelty dollar bill of the sort that had been given to the victim the night before the shooting; and the bullet that killed the victim was fired from the handgun in the defendant's room. Jones v. State, 284 Ga. 672, 670 S.E.2d 790, 2008 Ga. LEXIS 1021 (2008).

There was sufficient evidence to support a defendant's conviction for possession of cocaine based on the police observing the defendant making a throwing motion with the defendant's hands after the police commanded the defendant to come and thereafter finding in the area where the defendant was standing three rocks of dry crack cocaine even though it had been raining, and no one else was in the area. Ware v. State, 297 Ga. App. 400, 677 S.E.2d 423, 2009 Ga. App. LEXIS 438 (2009).

Evidence was sufficient to support a conviction of cocaine and marijuana possession. An officer testified that the officer found a plastic bag containing the drugs in the location where the officer saw a person identified as the defendant pull out an object and then replace the object; the defendant's arguments regarding the identification testimony, which was contradicted by defense witnesses, went to the weight and credit to be given the evidence and not to the evidence's sufficiency. Smith v. State, 297 Ga. App. 658, 678 S.E.2d 496, 2009 Ga. App. LEXIS 507 (2009).

Convictions of drug possession pursuant to O.C.G.A. §§ 16-13-2, 16-13-28, and 16-13-30 were supported by sufficient evidence under circumstances in which, following a stop, an officer found a bag of marijuana in the defendant's pocket, and, after arresting the defendant, the officer also found $858 in the defendant's pockets and a bottle containing 16 pills of Alprazolam under the dashboard of the car the defendant had been driving; the pills were what remained of a 90-pill prescription issued five days before to a different person. Further, a bag of cocaine was later found in the patrol car where the defendant was held before backup officers arrived. Noellien v. State, 298 Ga. App. 47, 679 S.E.2d 75, 2009 Ga. App. LEXIS 582 (2009).

There was sufficient evidence to support a defendant's conviction for possession of methamphetamine with the intent to distribute with regard to the police finding the contraband in the defendant's vehicle, despite the defendant's contention that the state failed to show that the defendant was in possession of the drug and failed to show an intention to distribute, based on the defendant's intentional use of the vehicle. Further, there was testimony from a witness that the witness had recently ingested methamphetamine that was procured from the defendant and the codefendants and that the defendant provided the transportation that facilitated the procurement of the methamphetamine that was ingested. Armstrong v. State, 298 Ga. App. 855, 681 S.E.2d 662, 2009 Ga. App. LEXIS 805 (2009).

Evidence was sufficient to convict the defendant of possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a) because the defendant occupied and controlled a trailer where the drugs were found. Peacock v. State, 301 Ga. App. 873, 689 S.E.2d 853, 2010 Ga. App. LEXIS 12 (2010).

Evidence was sufficient to convict a defendant of constructive possession of cocaine in violation of O.C.G.A. § 16-13-30(a) given that an extended stay motel room where an undercover officer purchased cocaine was rented to the defendant, the defendant was in the room, and drugs and paraphernalia were in plain view on the table. A jury could infer that the defendant was aware of the cocaine, was in control of the cocaine, and was in sole or joint constructive possession of the cocaine. Conyers v. State, 302 Ga. App. 95, 690 S.E.2d 233, 2010 Ga. App. LEXIS 65 (2010), cert. denied, No. S10C0909, 2010 Ga. LEXIS 439 (Ga. June 1, 2010).

Evidence was sufficient to permit a rational jury to find the defendant guilty beyond a reasonable doubt of possession of cocaine in violation of O.C.G.A. § 16-13-30 because a sheriff's deputy and the arresting officer testified that cocaine was found on the defendant's person and the expert testimony of the state crime lab technician confirmed that the seized substance was cocaine. Davis v. State, 304 Ga. App. 355, 696 S.E.2d 381, 2010 Ga. App. LEXIS 527 (2010).

Any rational trier of fact could have found the defendant guilty of trafficking in cocaine, possession of methylenedioxyamphetamine, and possession of less than one ounce of marijuana beyond a reasonable doubt because based on the evidence, the jury was authorized to conclude that the defendant threw a plastic bag containing drugs out the passenger side window of the defendant's car; the state presented evidence that a deputy saw the defendant actually possessing the bag of illegal narcotics as the defendant held the bag in the car before the defendant threw the bag out the passenger's window, and another deputy assigned to the drug suppression task force testified, without objection, that the amount of cocaine in the bag was more than a user would have in a user's possession and that would be the amount that a mid-level dealer would have in a dealer's possession. McCombs v. State, 306 Ga. App. 64, 701 S.E.2d 496, 2010 Ga. App. LEXIS 798 (2010).

Since the defendant was the owner of the house where the ephedrine and pseudoephedrine were found, the defendant was presumed to have possessed all of the contents and, thus, there was sufficient evidence to support the defendant's possession conviction. Taylor v. State, 320 Ga. App. 596, 740 S.E.2d 327, 2013 Ga. App. LEXIS 244 (2013).

Evidence that the defendant's son spent most of the son's time in the downstairs of the defendant's house smoking marijuana and selling the marijuana to a regular stream of customers and that the defendant was not surprised when a safe in the son's bedroom was opened and drugs and paraphernalia were found there supported the defendant's conviction for possession of more than one ounce of marijuana. Kirchner v. State, 322 Ga. App. 275, 744 S.E.2d 802, 2013 Ga. App. LEXIS 495 (2013), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine, possession of oxycodone and less than one ounce of marijuana, and driving while the defendant's license was suspended because the defendant knew the defendant's license to drive was suspended, and because the defendant knowingly had both the power and intention to exercise dominion or control over the controlled substances found in the backpack and was in constructive possession of those substances, as the defendant was driving the car in which the backpack was located, and the defendant was linked to the backpack by the defendant's control of the car and evidence that the backpack contained a copy of a fake driver's license the defendant gave to an officer. Armstrong v. State, 325 Ga. App. 690, 754 S.E.2d 652, 2014 Ga. App. LEXIS 51 (2014).

Testimony from both of the arresting officers that the officers personally witnessed the defendant with what looked like crack cocaine rocks in the defendant's mouth and further testimony that the officers saw the defendant spit out some pieces of the suspected cocaine, which the officers retrieved and which later tested positive for cocaine, supported a conviction for possession of cocaine. Jordan v. State, 326 Ga. App. 78, 755 S.E.2d 882, 2014 Ga. App. LEXIS 123 (2014).

Evidence that the defendant's ex-girlfriend and the ex-girlfriend's aunt saw the defendant place a plastic bag containing what they believed to be marijuana onto a scale before taking it out the back door and the defendant sat alone on the back steps until police arrived and found plastic bags of marijuana and cocaine side-by-side behind a panel beside the steps where the defendant sat, showed more than spatial proximity, and was sufficient to support a conviction for possession of cocaine. Johnson v. State, 335 Ga. App. 796, 783 S.E.2d 156, 2016 Ga. App. LEXIS 86 (2016).

Because the record showed that trace amounts of both marijuana and cocaine were found in the defendant's possession, and neither statute criminalizing possession of those substances required more, the evidence was sufficient to support the defendant's convictions for possession. Francis v. State, 345 Ga. App. 586, 814 S.E.2d 571, 2018 Ga. App. LEXIS 242 (2018).

Evidence sufficient for codeine possession conviction. —

Trial court did not err in refusing to direct a verdict of acquittal because the evidence was sufficient to convict the defendant of possession of codeine as the evidence at trial supported an inference that the defendant possessed a prescription bottle that was in another person's name and that the liquid in the bottle contained codeine; and the state was not required to show that the codeine fell specifically within Schedule V as a description in an indictment to a specified controlled substance by reference to a particular Schedule in the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., was mere surplusage. Evans v. State, 330 Ga. App. 241, 766 S.E.2d 821, 2014 Ga. App. LEXIS 823 (2014), cert. dismissed, No. S15C0653, 2015 Ga. LEXIS 207 (Ga. Mar. 30, 2015).

Trial court determines credibility and resolves conflicts. —

In a bench trial, because conflicts in the evidence were for the trial court as the trier of fact, and not the court of appeals to resolve, the defendant's convictions for theft by taking a motor vehicle and possessing cocaine were not subject to reversal on appeal based on the conflicts. Marshall v. State, 286 Ga. App. 86, 648 S.E.2d 674, 2007 Ga. App. LEXIS 696 (2007).

Defendant failed to demonstrate search warrant inadequately described car where cocaine found. —

Trial court properly denied defendant's motion to suppress evidence and motion for a directed verdict of acquittal, and properly entered a

Trial court properly denied defendant's motion to suppress evidence and motion for a directed verdict of acquittal, and properly entered a judgment of conviction against defendant for possession of cocaine, as the evidence sufficiently showed that defendant possessed cocaine which police found in a search of defendant's home and vehicle parked on a street just outside a fence that defendant and the wife owned;

the motion to suppress was properly denied since defendant did not show that the search warrant inadequately described the car in which the cocaine would be found. Heller v. State, 275 Ga. App. 637, 621 S.E.2d 591, 2005 Ga. App. LEXIS 1064 (2005).

Drugs within vehicles. —

Evidence was sufficient to authorize the jury's finding that defendant was in joint constructive possession of the cocaine, marijuana, and a pistol found inside the driver's car because the drugs were in plain view inside a car that smelled of raw marijuana, defendant was nervous about the impending search and gave evasive answers to the officers, defendant was in possession of an unusually large amount of cash and was in a position to see the pistol when the driver took the driver's proof of insurance from the glove box and, given the trafficking amount of cocaine found, the jury was authorized to infer that the driver and defendant possessed a loaded handgun to protect their illegal drug trade; thus, the evidence was sufficient to support the jury's finding that defendant was guilty of trafficking in cocaine, possession of marijuana, and possession of a firearm during the commission of a crime. Lopez v. State, 259 Ga. App. 720, 578 S.E.2d 304, 2003 Ga. App. LEXIS 257 (2003), cert. denied, No. S03C0933, 2003 Ga. LEXIS 583 (Ga. June 2, 2003).

When narcotics officers observed the defendant attempt to destroy a white substance against the side of the defendant's vehicle, and by rubbing the defendant's hand against a beer can, when coupled with a positive field test of both areas for cocaine, provided sufficient direct evidence to sustain a possession of cocaine conviction. Davis v. State, 260 Ga. App. 853, 581 S.E.2d 380, 2003 Ga. App. LEXIS 493 (2003).

When the evidence was sufficient to conclude that the defendant saw, had access to, and control over a plastic bag of cocaine sitting on a vehicle's front passenger seat, the trial court did not err in denying the defendant's acquittal motion. Felder v. State, 264 Ga. App. 583, 591 S.E.2d 471, 2003 Ga. App. LEXIS 1517 (2003).

Rational trier of fact was authorized to find that both defendants burglarized the victims' residence; that, once inside, they took money, clothing, and other personal property by use of a gun; that the first defendant also committed an aggravated assault on the female victim by striking her in the head with a handgun and was, therefore, in possession of a firearm during the commission of a crime; and that both defendants, along with their cohorts, had been in possession of the cocaine which was tossed out the vehicle they were riding in and found along the roadway. Davis v. State, 264 Ga. App. 221, 590 S.E.2d 192, 2003 Ga. App. LEXIS 1441 (2003).

Defendant was properly convicted of possession of cocaine after a crack pipe with cocaine residue was found in defendant's car because although defendant claimed that the pipe belonged to a friend, defendant admitted knowing of the pipe's presence in defendant's car. Walker v. State, 265 Ga. App. 449, 594 S.E.2d 678, 2004 Ga. App. LEXIS 147 (2004).

There was sufficient evidence to support defendant's conviction for possession of cocaine with intent to distribute because defendant was lawfully stopped for a traffic violation due to having only one operational headlight, a canine alerted to the passenger side of the vehicle, and a search of defendant's person and of the truck revealed cocaine and cash in such amounts as to lead a reasonable person to conclude that defendant had been selling the drugs. Barnett v. State, 275 Ga. App. 464, 620 S.E.2d 663, 2005 Ga. App. LEXIS 994 (2005).

Evidence was sufficient to support the defendant's conviction for violation of O.C.G.A. § 16-13-30 of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., because a passenger in the defendant's truck testified that the defendant purchased crack cocaine from an individual in a high drug area, a rock of crack cocaine was found in the defendant's truck, and a police officer corroborated that testimony pursuant to former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) with the officer's own observations that the individual that the defendant was talking to had money in the individual's hand as it was lowered from the defendant's truck window. Millsap v. State, 275 Ga. App. 732, 621 S.E.2d 837, 2005 Ga. App. LEXIS 1104 (2005).

Since there was direct testimony that the defendant possessed the cocaine found in a car, corroborated by circumstantial evidence that a police officer saw the defendant take something from the defendant's pants and place it on the floor of the car, the defendant was properly found guilty of possession of cocaine. Depree v. State, 276 Ga. App. 499, 623 S.E.2d 701, 2005 Ga. App. LEXIS 1290 (2005).

Evidence that there were plastic bags of drugs in the driver's side door of a vehicle in which the defendant was sitting in the driver's seat, along with plastic bags recovered from the defendant's pocket that matched the bags containing the drugs, was sufficient to convict the defendant of possession of marijuana and cocaine with intent to distribute. Mackey v. State, 299 Ga. App. 851, 683 S.E.2d 899, 2009 Ga. App. LEXIS 1006 (2009).

Evidence that a cigarette pack containing methamphetamine and cocaine was found at the defendant's feet on the floor of a car after a traffic stop, along with evidence that the others in the car had just picked up the defendant to buy drugs from the defendant, was sufficient to allow a jury to find constructive possession in violation of O.C.G.A. § 16-13-30(a). Howard v. State, 300 Ga. App. 124, 684 S.E.2d 297, 2009 Ga. App. LEXIS 1097 (2009).

Trial court did not err in convicting the defendant of possession of cocaine with the intent to distribute, O.C.G.A. § 16-13-30(b), and possession of marijuana, O.C.G.A. § 16-13-2(b), because the circumstantial evidence established a meaningful connection between the defendant and the contraband, evidence which showed the defendant exercising power and dominion over the drugs found inside the wheel well on the front passenger's side of a car; the jury could infer that the drugs had been recently placed in the wheel well, and because the defendant had fled from the police, had been caught within arm's reach of the drugs, and had a large amount of cash in the defendant's pockets, the jury could infer that the defendant was a drug dealer and that the defendant had placed the drugs in the wheel well to avoid being prosecuted for possessing the drugs. Wright v. State, 302 Ga. App. 332, 690 S.E.2d 654, 2010 Ga. App. LEXIS 56 (2010).

Trial court erred in denying the defendant's motion for new trial after a jury found the defendant guilty of possession of more than one ounce of marijuana in violation of O.C.G.A. § 16-13-30(j) because the evidence adduced at trial was insufficient to show that the defendant was in sole constructive possession of the contraband when the defendant alone was charged with possessing the marijuana although the passenger in the defendant's car had equal access to the drugs, and the only legal evidence linking the defendant to the marijuana in the back seat was the defendant's spatial proximity to the marijuana; an officer's testimony concerning scales that were found in the car, to the extent it suggested some deception on the passenger's part, that deception did not give rise to the sole, reasonable inference that defendant was in sole constructive possession of the marijuana, and because the inference did not exclude every other reasonable hypothesis save the guilt of defendant, the evidence was insufficient to prove beyond a reasonable doubt that the defendant was in sole constructive possession of the marijuana. Rogers v. State, 302 Ga. App. 65, 690 S.E.2d 437, 2010 Ga. App. LEXIS 47 (2010), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Possession of car and possession of drugs. —

Trial court did not err in denying either a motion for directed verdict or a motion for new trial based on sufficiency grounds because the evidence supported the finding that the defendant was in possession of bags of cocaine and marijuana found in the cargo area of the car when stopped and, although the defendant did not own the car, the fact that the defendant was driving the car gave rise to a rebuttable presumption that the defendant possessed the drugs found within the car, which the defendant failed to rebut. Cromartie v. State, 348 Ga. App. 563, 824 S.E.2d 32, 2019 Ga. App. LEXIS 47 (2019).

Insufficient evidence of possession in vehicle. —

There was insufficient evidence of constructive possession to support a conviction of possessing cocaine with intent to distribute; although a brown paper bag of cocaine was found under the passenger seat where the defendant had been sitting for over three hours, there was no evidence that the defendant knew of the contents of the bag or that the defendant had hid the bag, and the defendant's spatial proximity to the cocaine over a long period of time could not sustain the defendant's conviction. Gillis v. State, 285 Ga. App. 199, 645 S.E.2d 674, 2007 Ga. App. LEXIS 474 (2007).

Evidence was insufficient for adjudication as a delinquent for acts that would have constituted cocaine possession if committed by an adult because the circumstantial evidence of defendant's spatial proximity to cocaine found in a car's console did not exclude every reasonable hypothesis other than constructive possession. In the Interest of J.S., 303 Ga. App. 788, 694 S.E.2d 375, 2010 Ga. App. LEXIS 399 (2010).

Drugs thrown from vehicles. —

While a defendant claimed that the evidence was insufficient to exclude the possibility that the cocaine belonged solely to the defendant's passenger, the testimony of the passenger that the passenger dropped the drugs out of the truck after the defendant threw them in the passenger's lap was adequately corroborated under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) by the facts that the defendant had more than $2,000 in the defendant's pocket and that the defendant was the owner and driver of the truck from which the drugs were thrown; the defendant was, thus, properly convicted of trafficking in cocaine under O.C.G.A. § 16-13-31(a)(1) and possession of cocaine as a lesser included offense of possession with intent to distribute. Wingfield v. State, 297 Ga. App. 476, 677 S.E.2d 704, 2009 Ga. App. LEXIS 454 (2009).

Evidence sufficient for conviction of possession of methaqualone with intent to distribute. —

See Johnston v. State, 178 Ga. App. 219, 342 S.E.2d 706, 1986 Ga. App. LEXIS 2516 (1986).

Evidence insufficient to establish actual or constructive possession of cocaine or methamphetamine. —

See Dawson v. State, 183 Ga. App. 94, 357 S.E.2d 891, 1987 Ga. App. LEXIS 1897 (1987); Ridgeway v. State, 187 Ga. App. 381, 370 S.E.2d 216, 1988 Ga. App. LEXIS 695 (1988); Johnson v. State, 245 Ga. App. 583, 538 S.E.2d 481, 2000 Ga. App. LEXIS 1015 (2000).

Evidence was insufficient to support the defendant's convictions of possession of methamphetamine with intent to distribute as there was no evidence connecting the defendant to the drugs other than the defendant's own equal access. The drugs and paraphernalia were not found in an area exclusively used by the defendant, and the defendant's cousin had the same access to the drugs and paraphernalia. Xiong v. State, 295 Ga. App. 697, 673 S.E.2d 86, 2009 Ga. App. LEXIS 96 (2009), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Evidence sufficient to support conviction for possession with intent to distribute. —

Given the items found in the defendant's pockets, including large amounts of drugs, cash, two cell phones, and a residue-laden razor blade, coupled with the evidence regarding the text messages between the defendant and other individuals, the evidence was sufficient to support the defendant's convictions for possession with intent to distribute the drugs. Glispie v. State, 335 Ga. App. 177, 779 S.E.2d 767, 2015 Ga. App. LEXIS 748 (2015), aff'd in part and rev'd in part, 300 Ga. 128, 793 S.E.2d 381, 2016 Ga. LEXIS 736 (2016), vacated in part, 341 Ga. App. 817, 801 S.E.2d 910, 2017 Ga. App. LEXIS 286 (2017).

Evidence of res gestae admissible as relevant. —

Because the defendant was charged with possessing cocaine, and other evidence showed that the defendant purchased cocaine from a man who was outside of a game room, evidence that the man dropped crack cocaine into a trash can immediately after the transaction as police detectives appeared, and that cash was found on the man, was relevant as part of the res gestae of the crime that the defendant was charged with committing; denial of the defendant's motion for mistrial was proper. Millsap v. State, 275 Ga. App. 732, 621 S.E.2d 837, 2005 Ga. App. LEXIS 1104 (2005).

Knowing possession of cocaine. —

There was no evidentiary basis upon which the jury could have concluded beyond a reasonable doubt that defendant was in knowing possession of cocaine. Evidence showed only that a certain amount of crack cocaine was found on the floorboard between the seat and the door on the passenger side of the car near where defendant had been sitting and that defendant denied seeing the owner of the car with any drugs that day. Reid v. State, 212 Ga. App. 787, 442 S.E.2d 852, 1994 Ga. App. LEXIS 397 (1994), overruled in part, Maddox v. State,

322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Intent to possess not found. —

State failed to establish that a defendant knowingly possessed khat with the knowledge that it contained cathinone as the state's expert witness testified that cathinone converted into cathine, another chemical that the defendant was not charged with possessing, after some period of time and that cathinone was undetectable without the use of scientific testing equipment. Additionally, the evidence showed that the khat in the case was harvested more than two days before its subsequent arrival in Georgia, the defendant testified that the defendant believed the chemical "went out" of the khat after two days, and there was no evidence that the defendant made any attempt to conceal the nature of the package in which the khat was found by, for example, evading police or showing false identification. Mohamed v. State, 314 Ga. App. 181, 723 S.E.2d 694, 2012 Ga. App. LEXIS 144 (2012), cert. denied, No. S12C1038, 2012 Ga. LEXIS 616 (Ga. June 18, 2012).

Defendant was entitled to reversal of a conviction for possession of cathinone, a Schedule I substance, because the state failed to establish that the defendant knowingly possessed cathinone; a state crime lab chemist who tested the khat concluded that cathinone was not detectable by sight, although scientific testing revealed detectable amounts. Amin v. State, 317 Ga. App. 685, 732 S.E.2d 340, 2012 Ga. App. LEXIS 795 (2012).

Delivery and Distribution

Construed with O.C.G.A. § 16-13-32.5. —

Convictions for selling cocaine (O.C.G.A. § 16-13-30) and selling cocaine within 1000 feet of a public housing project (O.C.G.A. § 16-13-32.5) did not merge because the latter statute contains a specific non-merger provision and the intent thereof is simply to increase the punishment for violating both statutes. Harper v. State, 213 Ga. App. 611, 445 S.E.2d 300, 1994 Ga. App. LEXIS 672 (1994), cert. denied, No. S94C1579, 1994 Ga. LEXIS 1028 (Ga. Sept. 29, 1994).

Admission, in trafficking trial, of evidence of prior possession conviction. —

In trial for trafficking in cocaine, there was no error in admission of evidence of defendant's prior conviction for possession, since evidence of possession of a bag or container containing residue or traces of cocaine (which is the evidence upon which the prior conviction was based) does not demand the conclusion that defendant used, rather than sold or distributed, the cocaine which had at one time been in the bag. Stephens v. State, 208 Ga. App. 291, 430 S.E.2d 29, 1993 Ga. App. LEXIS 444 (1993).

Knowledge shown. —

Although circumstantial, evidence that the products the defendants were selling were pre-packaged in small quantities, yet sold for unusually large amounts, and that clerks observed customers come in multiple times a day to purchase them, along with smoking papers, and the customers often returned in an altered state, was sufficient to support a finding the defendants knew the products contained a controlled substance. Awtrey v. State, 346 Ga. App. 892, 815 S.E.2d 655, 2018 Ga. App. LEXIS 433 (2018).

Pregnant woman not guilty for transporting drugs to fetus. —

Legislature did not intend to include transmission of controlled substances to fetuses in the conduct prohibited by O.C.G.A. § 16-13-30(b). State v. Luster, 204 Ga. App. 156, 419 S.E.2d 32, 1992 Ga. App. LEXIS 796 (1992), cert. denied, No. S92C1020, 1992 Ga. LEXIS 467 (Ga. June 4, 1992).

Delivery of marijuana and distribution of marijuana are both distinct violations of O.C.G.A. § 16-13-30(b) and they are not included but each may be committed exclusive of the other. Buford v. State, 162 Ga. App. 498, 291 S.E.2d 256, 1982 Ga. App. LEXIS 2197 (1982).

Included offenses. —

Sale and delivery under O.C.G.A. § 16-13-30(b) are not separate and distinct crimes because a sale necessarily includes a delivery of goods for a price and the sale is complete upon delivery. Robinson v. State, 164 Ga. App. 652, 297 S.E.2d 751, 1982 Ga. App. LEXIS 3338 (1982).

When the trial court charged the entirety of O.C.G.A. § 16-13-30 even though the indictment alleged only possession of marijuana "with intent to distribute," sufficient remedial instructions were given which properly confined the charge to the particular portion of the section applicable to the offense charged in the indictment, and defendant was not harmed thereby. Caithaml v. State, 163 Ga. App. 429, 294 S.E.2d 674, 1982 Ga. App. LEXIS 2518 (1982).

Expert opinions. —

Although the police officer who made an investigatory stop of defendant's vehicle was not formally tendered as an expert witness, because the state laid the foundation for that officer's opinion by eliciting the testimony about the officer's experience and training in drug enforcement, and the defendant never objected to the officer's opinion that the amount of marijuana the defendant possessed was more consistent with distribution rather than personal use, the evidence was admissible. Daniels v. State, 278 Ga. App. 263, 628 S.E.2d 684, 2006 Ga. App. LEXIS 303 (2006), cert. denied, No. S06C1248, 2006 Ga. LEXIS 430 (Ga. June 12, 2006).

Smell of marijuana on person in own driveway. —

After the defendant exited a vehicle parked in the defendant's driveway, police smelled an odor of raw marijuana on the defendant's person and, after searching the vehicle with the driver's consent, found marijuana residue. Therefore, the police had probable cause to arrest the defendant for possession of marijuana. Minor v. State, 298 Ga. App. 391, 680 S.E.2d 459, 2009 Ga. App. LEXIS 687 (2009), cert. denied, No. S09C1744, 2009 Ga. LEXIS 771 (Ga. Nov. 9, 2009).

Intent to distribute inferred from evidence. —

After police officers found ten grams of cocaine, two "chunks" of hashish, and two bags containing approximately one pound of hashish in defendants' automobiles, the quantity of the contraband found, as well as the presence of a cocaine analysis field kit, cocaine-tainted spoons, rolling papers and related drug paraphernalia, gave rise to a reasonable reference that defendants had the intent to distribute marijuana and cocaine. Holbrook v. State, 177 Ga. App. 318, 339 S.E.2d 346, 1985 Ga. App. LEXIS 2951 (1985).

Evidence that the defendant was in possession of nine rocks of crack cocaine, did not have a smoking device, and did not appear to be under the influence at the time of the defendant's arrest, and an expert's testimony that someone with that amount of cocaine had the cocaine for the purpose of distributing the cocaine, established the defendant's intent to distribute cocaine. Palmer v. State, 210 Ga. App. 717, 437 S.E.2d 490, 1993 Ga. App. LEXIS 1331 (1993).

Defendant's possession of 11 rocks of cocaine combined with the officer's expert testimony that such quantity far exceeded that possessed for personal use sufficed to sustain a conviction for possessing cocaine with intent to distribute. Myers v. State, 268 Ga. App. 607, 602 S.E.2d 327, 2004 Ga. App. LEXIS 970 (2004).

Because two experienced police officers involved in defendant's arrest testified that the packaging of the marijuana found on defendant's person was consistent with preparing it for sale as opposed to personal use, and defendant conceded that the officers' testimony concerning their training and experience in drug cases laid a proper foundation for their opinion testimony that the packaging of the marijuana was consistent with distribution, sufficient evidence supported defendant's conviction of possession with the intent to distribute marijuana. Marshall v. State, 270 Ga. App. 663, 607 S.E.2d 258, 2004 Ga. App. LEXIS 1571 (2004).

Evidence supported the defendant's conviction of possession of marijuana and possession of cocaine with intent to distribute because the

Evidence supported the defendant's conviction of possession of marijuana and possession of cocaine with intent to distribute because the defendant stipulated that cocaine and marijuana were found under a sink and behind wall paneling in the house where the defendant lived, showing the defendant's constructive possession, and the amount of the drugs, and other indicia of distribution such as currency, baggies, razor blades, and scales, showed the defendant's intent to distribute. Marshall v. State, 273 Ga. App. 17, 614 S.E.2d 169, 2005 Ga. App. LEXIS 396 (2005).

Officer's testimony that the amount of cocaine in a bag in the defendant's possession was inconsistent with personal use, and that the cocaine was packaged for distribution, was sufficient to support the defendant's conviction for possessing cocaine with the intent to distribute. Best v. State, 279 Ga. App. 309, 630 S.E.2d 900, 2006 Ga. App. LEXIS 533 (2006).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1(a) in the possession with intent to distribute cocaine in violation of O.C.G.A. § 16-13-30 case; the defendant was seen fleeing into the woods wearing an unmarked black hat, a dog smelled the defendant on the same hat that was found near the defendant and that contained cocaine, and the defendant was not wearing a hat when the defendant was found. Riggins v. State, 281 Ga. App. 266, 635 S.E.2d 867, 2006 Ga. App. LEXIS 1075 (2006).

Despite the defendant's challenge to the sufficiency of the evidence to support a conviction for possession of marijuana with intent to distribute that conviction was upheld on appeal given that: (1) the marijuana found in the defendant's vehicle was packaged in 17 small zip-lock bags, commonly known as a dime bags and used for the purchase and selling of marijuana; (2) no evidence was presented which connected any other person to their possession; and (3) the jury could infer the defendant's intent from the individual packaging and number of bags found. Gerlock v. State, 283 Ga. App. 229, 641 S.E.2d 240, 2007 Ga. App. LEXIS 18 (2007).

Because: (1) the circumstantial evidence was sufficient to support a finding that the defendant intended to distribute the cocaine seized, as the defendant was in possession of a large amount of cash and 12.12 grams of cocaine divided into 33 individual packages; and (2) the arresting officer, who had been involved in thousands of drug arrests, testified that the small bags of crack cocaine ordinarily sold for $20 each, the jury was authorized to infer and find that the defendant possessed the drugs with the intent to distribute the drugs. Harper v. State, 285 Ga. App. 261, 645 S.E.2d 741, 2007 Ga. App. LEXIS 505 (2007).

Given the evidence seized from an athletic bag taken from the back of the vehicle searched, which the defendant was driving, as well as the scales used to weigh the substance out, sufficient evidence existed to authorize a finding that the defendant intended to sell the narcotics stashed in the bag with the cocaine, which included methamphetamine. Stroud v. State, 286 Ga. App. 124, 648 S.E.2d 476, 2007 Ga. App. LEXIS 708 (2007).

Given a police officer's testimony that the drugs found at the scene came from a bag which the defendant removed from a pants pocket, the jury was authorized to find that the defendant trafficked in cocaine, possessed cocaine with intent to distribute, and possessed less than one ounce of marijuana; moreover, the amount of cocaine at issue, as well as the defendant's possession of digital scales typically used to weigh drugs for distribution, permitted the jury to discount the defendant's own testimony and find an intention to distribute the drugs. Lipsey v. State, 287 Ga. App. 835, 652 S.E.2d 870, 2007 Ga. App. LEXIS 1112 (2007).

Sufficient evidence was presented to demonstrate that defendant intended to distribute crack cocaine in violation of O.C.G.A. § 16-13-30(b) based on the amount of individual pieces of crack cocaine found in baggies discovered under a tub in a bathroom to which the defendant fled and the razor blades and plastic baggies found in the defendant's pocket. Marshall v. State, 295 Ga. App. 354, 671 S.E.2d 860, 2008 Ga. App. LEXIS 1374 (2008), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

There was sufficient evidence to support a defendant's conviction of being a party to the crimes of possession of marijuana and cocaine with intent to distribute in violation of O.C.G.A. §§ 16-2-20 and 16-13-30 because the defendant was holding large quantities of drugs for an accomplice in a running car outside a hotel with knowledge that the accomplice was at the hotel to make a sale. Haywood v. State, 301 Ga. App. 717, 689 S.E.2d 82, 2009 Ga. App. LEXIS 1431 (2009).

Evidence sufficient to show intent to distribute cocaine. —

Officer's opinion that the amount of cocaine in the defendant's possession was greater than that normally kept for personal use and was separately packaged for distribution authorized the jury to find that the defendant possessed the cocaine with intent to distribute. Horne v. State, 318 Ga. App. 484, 733 S.E.2d 487, 2012 Ga. App. LEXIS 881 (2012).

Validity of indictment. —

Although the indictment technically was partly inaccurate in that the state was required to prove that the defendant sold a Schedule II drug in violation of O.C.G.A. § 16-13-30(b), not that the defendant violated Schedule II, this inaccuracy did not invalidate the indictment because the facts stated in the indictment clearly indicated that the charged crime was an unlawful sale of methamphetamine, a Schedule II drug, to an undercover agent. Freeman v. State, 201 Ga. App. 216, 410 S.E.2d 749, 1991 Ga. App. LEXIS 1299 (1991), cert. denied, No. S92C0056, 1991 Ga. LEXIS 851 (Ga. Oct. 18, 1991).

Pregnant woman could not have reasonably known that she could have been prosecuted for delivering or distributing cocaine to her fetus if she ingested the controlled substance while pregnant; the fetus was not a "person" within the meaning of the statute. State v. Luster, 204 Ga. App. 156, 419 S.E.2d 32, 1992 Ga. App. LEXIS 796 (1992), cert. denied, No. S92C1020, 1992 Ga. LEXIS 467 (Ga. June 4, 1992).

State was not required to prove that crack cocaine was a Schedule II substance merely because the indictment alleged the defendant sold "Cocaine, a Schedule II Controlled Substance." Wright v. State, 232 Ga. App. 104, 501 S.E.2d 543, 1998 Ga. App. LEXIS 593 (1998).

Opinion evidence not allowed if it invades jury's province. —

Admission of police officer's testimony identifying the defendant in photographs of alleged drug deals established a fact that jurors could decide for themselves was inadmissible and reversible error. Mitchell v. State, 283 Ga. App. 456, 641 S.E.2d 674, 2007 Ga. App. LEXIS 86 (2007).

Instruction on entrapment. —

In a prosecution for trafficking in cocaine, the trial court did not err in refusing to instruct the jury on the affirmative defense of entrapment as: (1) sufficient evidence was presented that the defendant voluntarily committed the offense upon being given the opportunity to do so; and (2) no evidence was presented to show that the informant employed undue persuasion, incitement, or deceit to induce the defendant into selling drugs; thus, the defendant's claim of ineffective assistance of counsel for failing to present evidence to support an entrapment defense was rejected and did not warrant a new trial. Campbell v. State, 281 Ga. App. 503, 636 S.E.2d 687, 2006 Ga. App. LEXIS 1147 (2006).

Trial court did not err in failing to charge the jury on entrapment because there was no evidence that a deputy's undue persuasion, incitement, or deceit induced the defendant to sell cocaine or that the defendant was not predisposed to commit the crime. Quarterman v. State, 305 Ga. App. 686, 700 S.E.2d 674, 2010 Ga. App. LEXIS 793 (2010).

Trial court did not err in failing to define "intent to distribute" in jury charge. —

Trial court's failure to define "intent to distribute" when charging on intent to distribute marijuana under O.C.G.A. § 16-13-30(j)(1) was not error; the term "distribute" possessed only the ordinary and common dictionary meaning and did not need to be specifically defined. The defendant failed to object to the charge without the definition, and the charge as given was not plain error excusing the failure to object under O.C.G.A. § 17-8-58(b). Boring v. State, 303 Ga. App. 576, 694 S.E.2d 157, 2010 Ga. App. LEXIS 370 (2010).

Irrelevant evidence properly excluded. —

In a prosecution for possession of marijuana with intent to distribute, while the defendant was entitled to introduce relevant and admissible testimony tending to show that another person committed the crime, the trial court did not abuse the court's discretion in excluding evidence that an individual the defendant went to go visit on the night of the arrest was a known drug dealer and had been arrested on drug charges as there was no evidence tending to connect that person to the marijuana found in the defendant's vehicle; hence, the evidence failed to raise a reasonable inference of the defendant's innocence, and did not directly connect the other person with the corpus

delicti, or show that the other person recently committed a crime of the same or similar nature. Gerlock v. State, 283 Ga. App. 229, 641 S.E.2d 240, 2007 Ga. App. LEXIS 18 (2007).

Evidence sufficient for conviction of selling heroin. —

See Russell v. State, 226 Ga. App. 574, 486 S.E.2d 704, 1997 Ga. App. LEXIS 662 (1997), cert. dismissed, No. S97C1444, 1998 Ga. LEXIS 212 (Ga. Jan. 30, 1998).

Evidence sufficient for conviction of selling cocaine. —

See Bagby v. State, 178 Ga. App. 282, 342 S.E.2d 731, 1986 Ga. App. LEXIS 2513 (1986); Hubert v. State, 181 Ga. App. 684, 353 S.E.2d 612, 1987 Ga. App. LEXIS 2569 (1987); Golden v. State, 184 Ga. App. 434, 361 S.E.2d 703, 1987 Ga. App. LEXIS 2282 (1987); Flournoy v. State, 186 Ga. App. 774, 368 S.E.2d 538, 1988 Ga. App. LEXIS 513 (1988); Grant v. State, 258 Ga. 299, 368 S.E.2d 737, 1988 Ga. LEXIS 248 (1988); Barrow v. City of Atlanta, 188 Ga. App. 400, 373 S.E.2d 88, 1988 Ga. App. LEXIS 1054 (1988); Cleveland v. State, 192 Ga. App. 659, 386 S.E.2d 169, 1989 Ga. App. LEXIS 1113 (1989); Dublin v. State, 194 Ga. App. 606, 391 S.E.2d 451, 1990 Ga. App. LEXIS 274 (1990); Woods v. State, 210 Ga. App. 172, 435 S.E.2d 464, 1993 Ga. App. LEXIS 1097 (1993); Johnson v. State, 214 Ga. App. 77, 447 S.E.2d 74, 1994 Ga. App. LEXIS 775 (1994), cert. denied, No. S94C1738, 1994 Ga. LEXIS 1146 (Ga. Oct. 28, 1994); Sorrells v. State, 218 Ga. App. 413, 461 S.E.2d 904, 1995 Ga. App. LEXIS 749 (1995); Jackson v. State, 223 Ga. App. 207, 477 S.E.2d 347, 1996 Ga. App. LEXIS 1101 (1996); Copps v. State, 223 Ga. App. 518, 478 S.E.2d 390, 1996 Ga. App. LEXIS 1174 (1996); Jones v. State, 229 Ga. App. 63, 493 S.E.2d 224, 1997 Ga. App. LEXIS 1328 (1997); Clay v. State, 232 Ga. App. 541, 502 S.E.2d 267, 1998 Ga. App. LEXIS 649 (1998); Beard v. State, 242 Ga. App. 742, 531 S.E.2d 168, 2000 Ga. App. LEXIS 330 (2000); Jones v. State, 243 Ga. App. 374, 533 S.E.2d 437, 2000 Ga. App. LEXIS 467 (2000).

Defendant who told an undercover officer that the defendant could procure crack cocaine, took the officer's the money, and attempted to procure the cocaine could be reasonably found to have been a party to the sale. Little v. State, 230 Ga. App. 803, 498 S.E.2d 284, 1998 Ga. App. LEXIS 290 (1998).

Construed most favorably to the verdict, the evidence that defendant sold cocaine to undercover officers was sufficient to allow a rational jury to find defendant guilty of selling a controlled substance, selling a controlled substance within 1,000 feet of a public housing project, and resisting arrest. Mikell v. State, 231 Ga. App. 85, 498 S.E.2d 531, 1998 Ga. App. LEXIS 268 (1998), vacated, 237 Ga. App. 26, 514 S.E.2d 680, 1999 Ga. App. LEXIS 370 (1999), rev'd, 270 Ga. 467, 510 S.E.2d 523, 1999 Ga. LEXIS 17 (1999).

Evidence was sufficient to support the defendant's conviction for sale of a controlled substance, cocaine, as ample evidence supported the jury's verdict that the defendant made a sale of cocaine to a confidential informant and that the substance was cocaine. Dixon v. State, 252 Ga. App. 385, 556 S.E.2d 480, 2001 Ga. App. LEXIS 1289 (2001).

Evidence was sufficient to sustain the defendant's convictions for selling cocaine because, regardless of the name the defendant used, the fact remained that the confidential informant identified the defendant as the man who sold the cocaine on two occasions and the white powdered substance that was immediately turned over to police after each buy was scientifically analyzed and determined to be cocaine. Johnson v. State, 259 Ga. App. 452, 576 S.E.2d 911, 2003 Ga. App. LEXIS 147 (2003).

Defendant's conviction of possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30, was supported by sufficient evidence as testimony by a police officer indicated that the defendant acted as a lookout during drug sales and took the money from the sales; the jury was free to discount testimony by another person involved in the sales that the defendant knew nothing about the sales. Arnold v. State, 260 Ga. App. 287, 581 S.E.2d 601, 2003 Ga. App. LEXIS 341 (2003).

Evidence held sufficient to support the defendant's conviction for selling cocaine when the evidence showed that the defendant directed an undercover agent to a place where a drug sale could be made, that one of the two passengers with the defendant took money from the undercover agent and gave the undercover agent crack cocaine in return, both passengers in the defendant's car testified that the money from the sale was given to defendant, and the money used in the sale, identifiable because the money had been photocopied, was found in

the defendant's pockets during the defendant's arrest a short time after the sale. Zinnamon v. State, 261 Ga. App. 170, 582 S.E.2d 146, 2003 Ga. App. LEXIS 567 (2003).

Comments which an informant made on tape shortly after the defendant sold drugs to the informant and left the informant's car were part of the res gestae; the trial court did not abuse the court's discretion by admitting those comments during the defendant's trial or by allowing the jury to read transcripts of the tape recording police made, and evidence showing that the defendant was the person who sold drugs to the informant was sufficient to sustain the defendant's conviction. Lyons v. State, 266 Ga. App. 89, 596 S.E.2d 226, 2004 Ga. App. LEXIS 307 (2004).

Evidence was sufficient to support the defendant's convictions on two counts of selling cocaine as the evidence showed that the first sale was made after an undercover officer approached the defendant's employee and the employee could only facilitate the transaction after conferring with the defendant and going into the defendant's office with defendant; it also showed that the second, separate sale was made by the defendant when the undercover officer dealt with the defendant directly and that the sale would go forward after the defendant was satisfied that the undercover officer had cash to facilitate the transaction. Simmons v. State, 271 Ga. App. 330, 609 S.E.2d 678, 2005 Ga. App. LEXIS 49 (2005).

Because the police officer witnessed the confidential informant and defendant engage in a hand-to-hand exchange and the informant returned to the officer with a rock of crack cocaine that the informant did not previously possess, sufficient evidence supported the selling cocaine conviction in violation of O.C.G.A. § 16-13-30, even though neither the defendant nor the informant was found with $20.00 that was provided to the informant for the purchase as this went to the weight, not the sufficiency, of the evidence. Hampton v. State, 272 Ga. App. 565, 612 S.E.2d 854, 2005 Ga. App. LEXIS 327 (2005).

There was sufficient evidence to support the defendant's conviction for two counts of selling cocaine, based on two controlled buys conducted by a confidential informant, wherein the defendant was given cash in exchange for cocaine; even assuming that a concealed audio recording device produced a tape which was inadmissible on one such occasion, the evidence was still sufficient for purposes of conviction. Brown v. State, 274 Ga. App. 302, 617 S.E.2d 227, 2005 Ga. App. LEXIS 726 (2005), cert. denied, No. S05C1902, 2005 Ga. LEXIS 734 (Ga. Oct. 24, 2005).

Conviction for sale of cocaine in violation of O.C.G.A. § 16-13-30 was supported by sufficient evidence because the defendant could not argue that the defendant acted as an informant when the defendant had no reason to believe that the buyers were law enforcement officers and knowingly gave the buyers cocaine with the intent to obtain remuneration. Enoch v. State, 277 Ga. App. 164, 626 S.E.2d 160, 2006 Ga. App. LEXIS 21 (2006).

Conviction for selling cocaine was upheld on appeal because sufficient evidence was established, via a positive field test, that defendant was in possession of cocaine that the defendant attempted to sell to an undercover officer and there was no requirement that the state should have tested the substance again at the crime lab. Collins v. State, 278 Ga. App. 103, 628 S.E.2d 148, 2006 Ga. App. LEXIS 241 (2006).

Because the testimony of a single witness was generally sufficient to establish a fact, and there was no requirement that an actual exchange of money for drugs be witnessed by more than one person or be recorded on videotape, the defendant's sale of cocaine conviction was upheld on appeal, based on a law enforcement agent's actions of handing the defendant $40 in exchange for two pieces of a substance that tested positive for cocaine. Hicks v. State, 281 Ga. App. 217, 635 S.E.2d 830, 2006 Ga. App. LEXIS 1053 (2006).

Evidence supported a defendant's conviction of selling cocaine after testimony by an undercover agent that the defendant sold the agent cocaine was corroborated by a videotape; moreover, as the defendant had been charged as a party to the crime, the state had to prove only that the defendant, as opposed to a passenger in the defendant's car and a codefendant, facilitated the sale, and the defendant did not challenge the evidence proving facilitation. Woods v. State, 287 Ga. App. 268, 651 S.E.2d 188, 2007 Ga. App. LEXIS 932 (2007).

Evidence supported the defendant's conviction of selling crack cocaine after a confidential informant testified at trial that the defendant had twice sold the informant crack cocaine, a police officer checked the informant before and after the videotaped sales, and a forensic chemist testified that the substance sold was cocaine. Ingram v. State, 286 Ga. App. 662, 650 S.E.2d 743, 2007 Ga. App. LEXIS 843 (2007), overruled, State v. Lane, 308 Ga. 10, 838 S.E.2d 808, 2020 Ga. LEXIS 98 (2020).

overruled, State v. Lane, 308 Ga. 10, 838 S.E.2d 808, 2020 Ga. LEXIS 98 (2020).

Evidence was sufficient to support a defendant's conviction for violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., by selling cocaine, in violation of O.C.G.A. § 16-13-30(b), based on an undercover officer's testimony as well as a corroborative tape

recording of the drug sale transaction with the defendant; there was no requirement that the audio recording conclusively identify the defendant's voice. McSears v. State, 292 Ga. App. 804, 665 S.E.2d 890, 2008 Ga. App. LEXIS 866 (2008).

Evidence was sufficient to convict defendant of selling cocaine rather than merely being present while the defendant's stepsibling sold the cocaine because both confidential informants testified that the informants negotiated the purchase of cocaine from defendant, not from the defendant's stepsibling, and this was reflected in a videotape of the transaction that was played for the jury. Additionally, the stepsibling testified that the defendant gave the stepsibling the cocaine to give to the informants, and that the defendant received the money. Duffie v. State, 301 Ga. App. 607, 688 S.E.2d 389, 2009 Ga. App. LEXIS 1419 (2009).

Defendant abandoned any challenge to the sufficiency of the evidence with regard to defendant's conviction for selling cocaine because the defendant offered no substantive argument to support the defendant's argument as required under Ga. Ct. App. R. 25(a)(3) and (c)(2); nevertheless, there was sufficient evidence for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of selling cocaine. Quarterman v. State, 305 Ga. App. 686, 700 S.E.2d 674, 2010 Ga. App. LEXIS 793 (2010).

Defendant's claim that the evidence was insufficient to support the defendant's convictions because the state relied on hearsay testimony of a forensic scientist who did not personally conduct the chemical tests failed because, even assuming the testimony was inadmissible, the state submitted sufficient evidence, including testimony from the police, the informant, and the defendant, establishing that the drugs recovered, with one exception, constituted cocaine. Cooper v. State, 324 Ga. App. 451, 751 S.E.2d 102, 2013 Ga. App. LEXIS 863 (2013).

Confidential informant working for law enforcement in an undercover operation purchased crack cocaine from the defendant on two separate occasions. Therefore, the evidence was clearly sufficient to allow the jury to convict the defendant of selling and possessing cocaine. McDougler v. State, 323 Ga. App. 828, 748 S.E.2d 475, 2013 Ga. App. LEXIS 756 (2013).

Aiding and abetting sale of cocaine. —

Evidence was sufficient to convict the defendant because the defendant aided and abetted the sale of cocaine to the undercover officer pursuant to O.C.G.A. § 16-2-20; the defendant approached an undercover officer, the defendant took money from the officer and went into a hotel room, and the defendant later returned and gave the officer cocaine. Ware v. State, 308 Ga. App. 24, 707 S.E.2d 111, 2011 Ga. App. LEXIS 29 (2011), cert. denied, No. S11C0941, 2011 Ga. LEXIS 441 (Ga. May 31, 2011).

Evidence sufficient for conviction of selling cocaine and marijuana. —

See Smith v. State, 178 Ga. App. 19, 341 S.E.2d 901, 1986 Ga. App. LEXIS 2492 (1986).

Evidence sufficient to sustain conviction of conspiracy to distribute methaqualone. —

See Skinner v. State, 182 Ga. App. 370, 355 S.E.2d 726, 1987 Ga. App. LEXIS 1706 (1987).

Evidence sufficient to convict for sale of and trafficking in cocaine. —

See Thomas v. State, 184 Ga. App. 318, 361 S.E.2d 280, 1987 Ga. App. LEXIS 2768 (1987).

Evidence that the defendant agreed to sell drugs to an informant was sufficient to support defendant's conviction for selling and trafficking in cocaine. Carter v. State, 261 Ga. App. 204, 583 S.E.2d 126, 2003 Ga. App. LEXIS 586 (2003).

Evidence sufficient for conviction of trafficking and possession of controlled substances. —

See Clark v. State, 184 Ga. App. 380, 361 S.E.2d 682, 1987 Ga. App. LEXIS 2777 (1987).

Because the state presented recorded conversations between the defendant and a confidential informant (CI) to set up a drug buy, and evidence that the defendant drove to the meeting place and that the CI dropped the money for the drugs in the defendant's seat, while the defendant did not participate in the actual transaction, there was sufficient evidence to show that the defendant was a party to the transaction, and sufficient evidence to authorize the conviction. Murphy v. State, 272 Ga. App. 287, 612 S.E.2d 104, 2005 Ga. App. LEXIS 269 (2005).

Evidence supported a defendant's conviction for possession with intent to distribute a controlled painkiller as the defendant was hiding 35 painkiller pills in a plastic zip-lock bag without a label indicating a valid prescription in the waistband of the defendant's pants and the defendant gave one pill to the driver of a car; though the defendant might have been authorized to possess the painkiller, the defendant was not authorized to distribute the drug. Atkinson v. State, 280 Ga. App. 635, 634 S.E.2d 828, 2006 Ga. App. LEXIS 922 (2006).

Evidence supported a defendant's conviction for the sale of a controlled painkiller as the jury rejected a third party's testimony that the defendant had given the third party four painkiller pills and believed a police officer's testimony that on the evening of the incident, the third party told the officer that the third party paid the defendant $20 for the four painkiller pills. Atkinson v. State, 280 Ga. App. 635, 634 S.E.2d 828, 2006 Ga. App. LEXIS 922 (2006).

Convictions of manufacture, distribution, and possession of methamphetamine with the intent to distribute under O.C.G.A. § 16-13-30(b), possession of ephedrine/pseudoephedrine under O.C.G.A. § 16-13-30.3(b)(1), and possession of a firearm during the commission of a felony under O.C.G.A. § 16-11-106(b)(4) were supported by the evidence. A panel van belonging to the defendant had been modified as a methamphetamine lab, was located on the defendant's property, and was powered by an electrical cord running from the defendant's trailer; everything necessary to support the production of methamphetamine was present in the vicinity of the vehicle; the defendant's name and that of the defendant's spouse had been scrawled on an interior panel of the vehicle; the defendant offered to provide any methamphetamine that a house guest wanted; uncured methamphetamine and enough ephedrine was present at the scene to make 30 to 33 grams of methamphetamine; and the defendant admitted to giving methamphetamine to others and to owning the sawed-off shotgun recovered from the panel van. Boone v. State, 293 Ga. App. 654, 667 S.E.2d 880, 2008 Ga. App. LEXIS 1041 (2008).

Because a police officer properly stopped defendant's car for a suspended registration, saw what appeared to be a weapon in defendant's fanny pack, and the suspected methamphetamine was found in plain view during a limited protective search and while the officer was engaged in a lawful arrest; accordingly, defendant's constitutional rights were not violated, and defendant was properly convicted of trafficking in methamphetamine and possession of methamphetamine with intent to distribute under O.C.G.A. §§ 16-13-30(b) and 16-13-31(e). Eaton v. State, 294 Ga. App. 124, 668 S.E.2d 770, 2008 Ga. App. LEXIS 1118 (2008).

Because probation officers were authorized to investigate an allegation that the defendant's son possessed drugs in violation of the son's probation, and because the officers were authorized to seize contraband falling in plain view, the evidence was sufficient to sustain the defendant's convictions for possession of methamphetamine with intent to distribute and trafficking in methamphetamine under O.C.G.A. §§ 16-13-30(b) and 16-13-31(e)(1). Prince v. State, 299 Ga. App. 164, 682 S.E.2d 180, 2009 Ga. App. LEXIS 851 (2009).

Evidence was sufficient to support the defendant's conviction of sale of a controlled substance because the person who sold the drugs to the informant for the defendant gave a detailed account of the sale, including the defendant's planning and execution of the crime, the person's testimony was corroborated by the testimony of the informant, and the testimony was further corroborated by the four trash pulls at the defendant's residence, which yielded pill bottles, full prescriptions, and the doctor's notes, and the search of the defendant's residence, which yielded a large number of prescription pills. Thompson v. State, 349 Ga. App. 1, 825 S.E.2d 413, 2019 Ga. App. LEXIS 97 (2019).

Evidence sufficient for conviction of possession of cocaine with intent to distribute. —

See Copeland v. State, 228 Ga. App. 734, 492 S.E.2d 723, 1997 Ga. App. LEXIS 1251 (1997); Morgan v. State, 230 Ga. App. 608, 496 S.E.2d 924, 1998 Ga. App. LEXIS 237 (1998); Stewart v. State, 232 Ga. App. 565, 502 S.E.2d 502, 1998 Ga. App. LEXIS 747 (1998);

S.E.2d 924, 1998 Ga. App. LEXIS 257 (1998); Stewart v. State, 232 Ga. App. 903, 502 S.E.2d 502, 1998 Ga. App. LEXIS 747 (1998); McNair v. State, 240 Ga. App. 324, 523 S.E.2d 392, 1999 Ga. App. LEXIS 1333 (1999).

Evidence was sufficient to support the defendant's conviction for possession of cocaine with intent to distribute after the defendant was arrested on an outstanding warrant and a search of the defendant's residence and person revealed cocaine, which according to the state's expert was packaged for distribution, a razor blade, baggies of the type used to package cocaine, and a cell phone. Taylor v. State, 267 Ga. App. 588, 600 S.E.2d 675, 2004 Ga. App. LEXIS 714 (2004).

Evidence was sufficient to support defendant's conviction for possession of cocaine with intent to distribute after: (1) an informant provided information that defendant was in a certain hotel room waiting for a ride, which was corroborated; (2) the informant also stated that defendant had cocaine that defendant wished to sell; (3) when police officers stopped a car in which defendant was riding, the defendant refused to show the officers defendant's hands, and as the officers thought that defendant was reaching for a weapon, the officers subdued defendant; and (4) a pill bottle in defendant's pocket contained crack cocaine cut into small rocks for distribution, along with cash. Mew v. State, 267 Ga. App. 454, 600 S.E.2d 397, 2004 Ga. App. LEXIS 681 (2004).

Evidence was sufficient to convict the defendant of cocaine trafficking and possession of cocaine with intent to distribute because there was more evidence than the defendant's mere presence in the apartment, which was actually rented by the defendant's sister, that linked the defendant to the cocaine: (1) the jury could infer that the defendant actually lived in the apartment because the defendant claimed ownership of a television and a video game in the apartment; (2) it was a one-bedroom apartment to which the defendant had a key; (3) the defendant was sleeping in the bedroom when the police arrived; (4) the defendant's own statements provided additional evidence demonstrating the defendant's possession of the cocaine hidden in the kitchen cabinets; and (5) the defendant had a lot of cash on the defendant's person with large numbers of denominations that was typically used to purchase drugs. Ballard v. State, 268 Ga. App. 55, 601 S.E.2d 434, 2004 Ga. App. LEXIS 840 (2004).

Evidence supported the defendant's conviction for possession of cocaine with intent to distribute because two investigators saw the defendant put a plastic bag under a beer bottle in the woods, the plastic bag was found to contain crack cocaine, and one investigator testified that the amount in question exceeded that possessed for personal use. Tise v. State, 273 Ga. App. 201, 614 S.E.2d 832, 2005 Ga. App. LEXIS 454 (2005).

Because: (1) the defendant failed to sufficiently prove an entrapment defense, and hence, the need for disclosure of an informant's identity; (2) no error resulted in refusing to strike a juror for cause; and (3) the trial court's entrapment instruction was legally correct and did not mislead the jury, the defendant's convictions for trafficking in cocaine, in violation of O.C.G.A. § 16-13-31(a), possession of cocaine with intent to distribute, contrary to O.C.G.A. § 16-13-30(b), and two counts of use of communication facilities in committing a felony drug offense, under O.C.G.A. § 16-13-32.3, were affirmed on appeal. Griffiths v. State, 283 Ga. App. 176, 641 S.E.2d 169, 2006 Ga. App. LEXIS 1516 (2006), cert. denied, No. S07C0652, 2007 Ga. LEXIS 333 (Ga. Apr. 24, 2007).

Evidence was sufficient to support two defendants' convictions for possession of cocaine with the intent to distribute after officers found a large amount of cash on the first defendant's person, including a recorded bill used in a controlled buy, as well as scales, small plastic bags, and scattered bags of drugs, including five individually wrapped pieces of cocaine. Beck v. State, 286 Ga. App. 553, 650 S.E.2d 728, 2007 Ga. App. LEXIS 827 (2007), vacated in part, 293 Ga. App. 854, 668 S.E.2d 479, 2008 Ga. App. LEXIS 1281 (2008), aff'd in part and rev'd in part, 283 Ga. 352, 658 S.E.2d 577, 2008 Ga. LEXIS 247 (2008).

Defendant's convictions for possessing 28 grams or more of cocaine, possessing cocaine with intent to distribute, and possession of a firearm during the commission of a felony were upheld on appeal as sufficient evidence was presented via the direct testimony of the defendant's live-in girlfriend, which when combined with the evidence showing their joint constructive possession of the drugs and gun tended to connect and identify the defendant with the crimes charged. Allen v. State, 286 Ga. App. 469, 649 S.E.2d 583, 2007 Ga. App. LEXIS 810 (2007).

Despite the defendant's equal access claim, because: (1) the evidence sufficiently showed the defendant's ownership and possession of the vehicle where the contraband was found; (2) the similar transaction evidence showed that the defendant previously admitted possessing an almost identical array of drugs and drug processing paraphernalia; (3) the informant was a mere tipster and not a material or necessary witness; and (4) trial counsel did not render ineffective assistance, the defendant's possession of cocaine with intent to distribute conviction was upheld on appeal; thus, the trial court properly denied the defendant's motion for a directed verdict of acquittal. Cauley v. State, 287 Ga. App. 731, 652 S.E.2d 796, 2007 Ga. App. LEXIS 1271 (2007).

Ga. App. 701, 652 S.E.2d 586, 2007 Ga. App. LEXIS 1071 (2007).

Evidence was sufficient to support the defendant's conviction of possession of cocaine with intent to distribute: (1) crack cocaine and plastic bags were found at a hotel room where the defendant was; (2) a witness testified that the witness and the witness's cousin had gone to

the hotel room and begun looking for someone to bring them cocaine; (3) the defendant brought crack cocaine there; and (4) after some was smoked, the cousin, the defendant, and another person packaged the crack into the small bags found at the scene. Gassett v. State, 289 Ga. App. 792, 658 S.E.2d 366, 2008 Ga. App. LEXIS 110 (2008).

Evidence was sufficient to support a conviction of possession of cocaine with intent to distribute when the defendant was the only person who ran when officers approached a home, an officer saw the defendant toss cocaine into the kitchen, and the defendant was the only person in the house who had a significant amount of money. Although two witnesses testified that the witnesses had tried to buy cocaine from the defendant earlier that evening and had been told by the defendant that the defendant had none, the jury was authorized to believe the officer's testimony over the witnesses. Thomas v. State, 291 Ga. App. 795, 662 S.E.2d 849, 2008 Ga. App. LEXIS 646 (2008).

There was sufficient evidence to show that the defendant distributed cocaine based on the defendant providing a confidential informant cocaine in exchange for cash. Beck v. State, 292 Ga. App. 472, 665 S.E.2d 701, 2008 Ga. App. LEXIS 714 (2008), cert. denied, No. S08C1863, 2008 Ga. LEXIS 922 (Ga. Oct. 6, 2008).

Defendant was properly convicted of possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), as the following evidence was sufficient to prove the cocaine found by police belonged to the defendant rather than a companion: (1) police found two large pieces of cocaine about four feet from where defendant placed the defendant's right hand after police ordered the defendant to lie on the ground; (2) the companion testified that the defendant bought the cocaine just before the police arrived; and (3) the defendant confessed to selling drugs. Neugent v. State, 294 Ga. App. 284, 668 S.E.2d 888, 2008 Ga. App. LEXIS 1171 (2008).

Defendant's conviction for possession of cocaine with the intent to distribute was proper as an accomplice's testimony identifying defendant as the owner of a purse containing the cocaine was corroborated. Smith v. State, 296 Ga. App. 160, 674 S.E.2d 42, 2009 Ga. App. LEXIS 150 (2009).

Trial court did not err in convicting the defendant of distribution of cocaine in violation of O.C.G.A. § 16-13-30(b) and in denying the defendant's motion for directed verdict because it was not an abuse of discretion to admit a deputy's lay opinion testimony identifying the defendant on a surveillance videotape since the testimony was probative of a fact in issue and based on the deputy's observations of the defendant at the time the surveillance photograph was taken; because the deputy's testimony was sufficient to identify the defendant as the perpetrator of the crime pursuant to former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8), the evidence was sufficient to find the defendant guilty of distribution of cocaine beyond a reasonable doubt. Strickland v. State, 302 Ga. App. 44, 690 S.E.2d 638, 2010 Ga. App. LEXIS 30 (2010).

Evidence was sufficient to support the defendant's conviction for possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), because the evidence established beyond any reasonable doubt that the defendant had the power and the intent to exercise control over the cocaine, and the state established by overwhelming circumstantial evidence that the defendant was in either constructive or actual possession of the cocaine; the defendant was found kneeling over the contraband, the jury was authorized to infer that the defendant had been "fidgeting" with a piggy bank in which 37 small bags of cocaine were hidden, and pants with the defendant's driver's license and cash were found in the same corner of the bedroom as the cocaine. Jackson v. State, 306 Ga. App. 33, 701 S.E.2d 481, 2010 Ga. App. LEXIS 737 (2010).

Evidence was sufficient to authorize the finding that the defendant was guilty of possession of cocaine with intent to distribute because evidence that cocaine was found on the ground where the defendant had been observed dropping what appeared to officers to be cocaine permitted a rational trier of fact to infer that the defendant had been in possession of the cocaine and had the intent to distribute the cocaine, which the defendant dropped when the defendant was apprehended; moreover, immediately before the defendant's apprehension, an officer had witnessed the defendant appearing to sell crack cocaine to another person. Bush v. State, 305 Ga. App. 617, 699 S.E.2d 899, 2010 Ga. App. LEXIS 763 (2010).

Evidence was sufficient to support the defendants' conviction for possession of cocaine with intent to distribute and marijuana with intent to distribute because: (1) police officers, while executing a search of the defendants' home, found crack cocaine, marijuana, a large number

distribute because: (1) police officers, while executing a search of the defendants' home, found crack cocaine, marijuana, a large number of plastic baggies, digital scales which had cocaine residue on them, a police scanner, and a handgun; (2) one of the defendants told an officer that all of the narcotics belonged to that defendant; (3) a police lieutenant, who was accepted by the trial court as an expert in the field of street level narcotics, opined, based on the large number of packaging supplies that were found, the large amounts of marijuana

and crack cocaine that were found, as well as the handgun and police scanner that were found, that the defendants possessed the crack cocaine and marijuana for the purpose of distributing the drugs; and (4) evidence of one defendant's prior arrest and conviction for possession of cocaine with intent to distribute was introduced as a similar transaction. Smith v. State, 309 Ga. App. 889, 714 S.E.2d 593, 2011 Ga. App. LEXIS 484 (2011).

Evidence that the defendant possessed enough crack-cocaine for 30 individual hits, which was consistent with distribution rather than personal use, the defendant was in possession of a scale, and the scale was coated in residue that appeared to be crack-cocaine was sufficient to support the defendant's conviction for possession with intent to distribute. Taylor v. State, 344 Ga. App. 439, 810 S.E.2d 333, 2018 Ga. App. LEXIS 48 (2018).

Evidence supported finding of intent to distribute marijuana. —

Deputy's testimony supported a jury's finding that a defendant possessed marijuana with the intent to distribute in violation of O.C.G.A. § 16-13-30(j)(1); the deputy testified that the packaging and amount of marijuana (7 grams), as well as the digital scales in the defendant's bag, indicated that the defendant was selling the marijuana. Boring v. State, 303 Ga. App. 576, 694 S.E.2d 157, 2010 Ga. App. LEXIS 370 (2010).

Evidence that a defendant participated in a plan for the delivery of a package containing 12 pounds of marijuana to a residence, along with digital scales, a marijuana grinder, and plastic baggies at the residence, and the defendant's admission that the marijuana was the defendant's, was sufficient to convict the defendant as a party to possession of marijuana with intent to distribute, trafficking in marijuana, and possession of marijuana, pursuant to O.C.G.A. § 16-2-20. Salinas v. State, 313 Ga. App. 720, 722 S.E.2d 432, 2012 Ga. App. LEXIS 58 (2012).

Jury was authorized to reject as incredible the defendant's wife's testimony that the couple went to Georgia to take a trip because they were having marital issues and the wife's claim that the defendant had no knowledge of the crimes the wife committed when the wife's step-brother asked the wife to transport some drugs to Ohio and, thus, the evidence was sufficient to support the defendant's convictions for trafficking in cocaine and possession of marijuana with intent to distribute. Calcaterra v. State, 341 Ga. App. 599, 801 S.E.2d 337, 2017 Ga. App. LEXIS 254 (2017).

Evidence insufficient for conviction of possession with intent to distribute. —

Evidence consisting of a reference to a hearsay tip from an unidentified source that defendant was selling drugs and the opinion testimony of the arresting police officer, not qualified as an expert, that 1.2 grams of cocaine would not normally be an amount held by a user was not sufficient to support a conviction of possession with intent to distribute. James v. State, 214 Ga. App. 763, 449 S.E.2d 126, 1994 Ga. App. LEXIS 1046 (1994).

After the state introduced evidence of the defendant's prior guilty pleas for possession with intent to distribute cocaine and the sale of cocaine, but this evidence was offered to impeach the defendant when the defendant took the stand, not as evidence of similar transactions whereby the jury could infer similar motive or bent of mind, the evidence was held insufficient to support a conviction of intent to distribute. Bethea v. State, 220 Ga. App. 800, 470 S.E.2d 328, 1996 Ga. App. LEXIS 351 (1996).

Evidence showing merely that defendant possessed two bags of marijuana and had a prior conviction for possession of marijuana with intent to distribute and possession of cocaine was not sufficient for conviction. Parris v. State, 226 Ga. App. 854, 487 S.E.2d 690, 1997 Ga. App. LEXIS 801 (1997).

Trial court was not authorized to find the defendant intended to distribute drugs since the state produced no evidence that defendant had scales, guns, cash, drug packaging materials, or a large quantity of marijuana, and did not introduce any evidence of prior drug sales by

the defendant, or any testimony that the defendant was observed selling or attempting to sell drugs. Clark v. State, 245 Ga. App. 267, 537 S.E.2d 742, 2000 Ga. App. LEXIS 939 (2000).

State failed to prove defendant was guilty of possession of cocaine with intent to distribute as to a substance found in defendant's car; thus, defendant's conviction was reversed since: (1) defendant did not state that the substance was cocaine in defendant's post-arrest statement; (2) the police expert did not identify the substance as cocaine, but as suspected cocaine; (3) no tests were performed on the substance; (4) the photographs admitted into evidence did not establish that the substance was cocaine; and (5) codefendant's testimony and the purported statement by the confidential informant did not identify the substance found in defendant's car. Cooper v. State, 258 Ga. App. 825, 575 S.E.2d 691, 2002 Ga. App. LEXIS 1535 (2002), cert. denied, 540 U.S. 888, 124 S. Ct. 270, 157 L. Ed. 2d 160, 2003 U.S. LEXIS 6399 (2003), cert. denied, No. S03C0553, 2003 Ga. LEXIS 343 (Ga. Mar. 28, 2003).

Evidence did not support the defendant's conviction for possession of marijuana with intent to distribute as the mere fact that a package of marijuana was addressed, but not delivered, to an apartment leased by defendant did not tie the defendant to the drugs; the evidence was circumstantial and it was equally plausible that the codefendants were independently dealing in marijuana. Patten v. State, 275 Ga. App. 574, 621 S.E.2d 550, 2005 Ga. App. LEXIS 1040 (2005).

There was insufficient evidence of intent to convict the defendant of possession of cocaine with intent to distribute under O.C.G.A. § 16-13-30, as there was no evidence that the cocaine had been divided and packaged for individual sale or as to a personal use quantity; thus, the circumstantial evidence did not permit a rational trier to exclude the reasonable hypothesis, pursuant to former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), that the defendant intended to use the cocaine. Florence v. State, 282 Ga. App. 31, 637 S.E.2d 779, 2006 Ga. App. LEXIS 1306 (2006).

While the evidence was sufficient to convict the defendant of possession of cocaine found in a pill bottle in the defendant's vehicle, it was insufficient to prove that the defendant intended to distribute the cocaine under O.C.G.A. § 16-13-30(b) because the state produced no evidence that the defendant had scales, cutting implements, weapons, a large amount of cash, a customer list, or drug packaging materials; there was no evidence of prior convictions of drug possession with intent to distribute, no testimony that the defendant was seen selling or trying to sell drugs, no expert testimony that the amount of drugs seized was inconsistent with personal use, and no evidence as to the amount of cocaine seized. Under former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6), storing drugs in a pill bottle, and possessing an unidentified number of sales-size pieces of the drug, without more, equally supported the hypothesis that the person found with the drugs was a user rather than a dealer. Hicks v. State, 293 Ga. App. 830, 668 S.E.2d 474, 2008 Ga. App. LEXIS 1226 (2008).

Codefendant's convictions for possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), and possession with intent to distribute a controlled substance within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), was unsupportable as a matter of law, and the trial court erred by denying the defendant's motion for a directed verdict of acquittal because the circumstantial evidence and the reasonable inferences derived therefrom were insufficient to connect the codefendant to the cocaine, which was found in an upstairs bedroom occupied by the codefendants; no evidence was introduced to show that the codefendant resided in the apartment where the cocaine was found, which could authorize an inference that the codefendant possessed the property therein. Jackson v. State, 306 Ga. App. 33, 701 S.E.2d 481, 2010 Ga. App. LEXIS 737 (2010).

Evidence that the defendant kicked in a door and entered an occupied apartment with others, the defendant provided the guns used, the defendant placed a gun to one victim's head, a victim's wallet and key were taken, and marijuana, digital scales, and a device used to grind marijuana were found at the defendant's house was sufficient to support the defendant's convictions for four counts of aggravated assault, three counts of false imprisonment, and one count each of armed robbery, burglary, possession of marijuana with intent to distribute, and possession of a firearm during the commission of a felony. Thompson v. State, 320 Ga. App. 150, 739 S.E.2d 434, 2013 Ga. App. LEXIS 141 (2013).

Defendant was entitled to reversal of the convictions for possession with intent to distribute and trafficking drugs because the defendant was merely present at a residence, which the defendant did not own or lease, when a search warrant was executed, there was no evidence the defendant had actual or constructive possession of the drugs, and there was no evidence the defendant was a party to these crimes. Scott v. State, 326 Ga. App. 115, 756 S.E.2d 220, 2014 Ga. App. LEXIS 133 (2014).

Since the evidence only showed that the defendant had been a visitor at the residence where the drugs were found and there was no evidence that the officers found drugs, cash, or other evidence on the defendant's person linking the defendant to the contents of the residence in question, the evidence was insufficient to support the defendant's convictions for trafficking, possession, and possession with intent to distribute the drugs. Morales v. State, 332 Ga. App. 794, 775 S.E.2d 168, 2015 Ga. App. LEXIS 400 (2015).

Supplying drugs for sex with minor supported conviction. —

Evidence was sufficient to support a conviction of distribution of cocaine under O.C.G.A. § 16-13-30 because the 15-year-old victim admitted that, on several of the occasions when having sex with defendant, the defendant had supplied the victim with crack cocaine, which they had smoked together. Watson v. State, 302 Ga. App. 619, 691 S.E.2d 378, 2010 Ga. App. LEXIS 195, cert. denied, 562 U.S. 932, 131 S. Ct. 328, 178 L. Ed. 2d 213, 2010 U.S. LEXIS 7482 (2010).

Evidence sufficient to support convictions for both sale of cocaine and possession of cocaine with intent to distribute. —

Because the state presented sufficient evidence through: (1) the testimony of an informant and the agent conducting a controlled buy from the defendant involving the informant; (2) the field tests done on the substance purchased and seized as a result of a search warrant; and (3) the results of the state's crime lab tests, the defendant's convictions for the sale of cocaine and possession with intent to distribute cocaine were upheld on appeal. Moreover, the latter conviction was further supported by testimony from the agent that the quantity and unique packaging of the cocaine found in the location searched were inconsistent with mere personal consumption. Johnson v. State, 289 Ga. App. 206, 656 S.E.2d 861, 2008 Ga. App. LEXIS 36 (2008).

Charge on "specific intent" not required. —

In a prosecution for possession of cocaine with intent to distribute, the trial court correctly rejected a requested charge necessitating that the state prove a "specific intent" to commit the crime. Price v. State, 223 Ga. App. 807, 478 S.E.2d 915, 1996 Ga. App. LEXIS 1282 (1996).

Similar transaction evidence properly admitted. —

In a prosecution for possession of cocaine with intent to distribute, the trial court properly admitted similar transaction evidence as the evidence showed that the defendant previously admitted possessing an almost identical array of drugs and drug processing paraphernalia. Cauley v. State, 287 Ga. App. 701, 652 S.E.2d 586, 2007 Ga. App. LEXIS 1071 (2007).

Defendant's three prior drug offenses involved the sale of $20 worth of crack cocaine to undercover officers or informants during drug investigations in the same neighborhood. Therefore, these similar transactions were admissible to show the defendant's bent of mind, course of conduct, and intent to sell cocaine in violation of O.C.G.A. § 16-13-30(b). Morrison v. State, 300 Ga. App. 405, 685 S.E.2d 413, 2009 Ga. App. LEXIS 1187 (2009).

Trial court did not abuse the court's discretion in admitting similar transaction evidence that the defendant had sold cocaine to a confidential informant because the trial court expressly found that the similar transaction was admissible for the purpose of showing the defendant's intent, that the defendant had committed the similar transaction, and that there was sufficient connection between the similar transaction and the charged offense, possession of cocaine with intent to distribute in violation of O.C.G.A. § 16-13-30(b). Wright v. State, 313 Ga. App. 829, 723 S.E.2d 59, 2012 Ga. App. LEXIS 86 (2012).

Trial court did not abuse the court's discretion in admitting similar transaction evidence because the evidence was sufficient for a rational trier of fact to have found the defendant guilty beyond a reasonable doubt of possession of cocaine with intent to distribute, O.C.G.A. § 16-13-30(b), even without the similar transaction evidence; the defendant testified on direct examination that the defendant was on parole at the time of a traffic stop and had previously pled guilty to a drug charge, and the trial court properly instructed the jury to limit the jury's consideration of the similar transaction evidence to the appropriate purpose. Wright v. State, 313 Ga. App. 829, 723 S.E.2d 59, 2012 Ga. App. LEXIS 86 (2012).

New trial ordered after evidence improperly admitted. —

Because the seizure of cash found on the defendant's person was conducted based on a lawful arrest for a domestic violence act of assault, given information by the defendant's girlfriend, the girlfriend's obvious injuries, and the defendant's attempt to flee, the trial court properly denied suppression of the evidence; however, because the defendant maintained a reasonable expectation of privacy in the curtilage surrounding the defendant's residence, absent a warrant or exigent circumstances, suppression of cocaine found in that area was erroneously denied, and as such the defendant was erroneously denied a new trial. Rivers v. State, 287 Ga. App. 632, 653 S.E.2d 78, 2007 Ga. App. LEXIS 1046 (2007).

Custodial statement by defendant properly admitted. —

Custodial statement in which the defendant admitted having turned over an electric meter used in the manufacture of drugs was properly admitted at the defendant's trial and did not improperly introduce character evidence against the defendant since even though a defendant is not charged with every crime committed during a criminal transaction, every aspect relevant to the crime charged may be presented at trial. Ward v. State, 285 Ga. App. 574, 646 S.E.2d 745, 2007 Ga. App. LEXIS 583 (2007).

Conflicting descriptions of the defendant in officer's report. —

Conflicting descriptions of the defendant given by a deputy in reports summarizing incidents where the deputy purchased drugs affected the weight of the deputy's testimony, not the testimony's admissibility, and the jury was entitled to overlook the discrepancies and believe the deputy when the deputy testified that the deputy bought cocaine from the defendant. Mathis v. State, 265 Ga. App. 541, 594 S.E.2d 737, 2004 Ga. App. LEXIS 176 (2004).

Even though an officer had not been qualified as an expert at trial, the officer's testimony was admissible to prove that the substance found in the defendant's pickup truck was marijuana because at the time of the defendant's arrest, the officer who discovered the substance in the defendant's truck was certified to recognize the odor of marijuana and to identify and test marijuana, and the officer was subject to cross-examination by defense counsel; it was then for the jury to decide the weight and credibility the jury would give to the officer's testimony. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818, 2011 Ga. App. LEXIS 408 (2011).

Chain of custody of methamphetamine sufficiently established. —

Because the state met the state's burden in establishing a chain of custody by sufficiently demonstrating that the evidence seized was the same as that which was admitted at trial, the defendant was not entitled to a directed verdict as to a charge of possession of methamphetamine with intent to distribute based on this ground. Cook v. State, 287 Ga. App. 81, 650 S.E.2d 757, 2007 Ga. App. LEXIS 879 (2007), cert. denied, No. S07C1874, 2008 Ga. LEXIS 127 (Ga. Jan. 28, 2008).

Evidence sufficient to support conviction for possession of methamphetamine with intent to distribute. —

Defendant's conviction for possession of methamphetamine with intent to distribute was upheld on appeal since sufficient evidence showed that: (1) the trial court properly admitted similar transaction evidence despite addressing all of the Williams factors, but preserving the defendant's confrontation rights; (2) the defendant's trial counsel was not ineffective; and (3) no Brady violation occurred. Hinton v. State, 290 Ga. App. 479, 659 S.E.2d 841, 2008 Ga. App. LEXIS 353 (2008).

Evidence that when a defendant's vehicle was stopped, the defendant was in possession of 14 grams of methamphetamine packaged in small plastic bags, other illegal drugs, and a digital scale, along with testimony from an experienced officer that the packaging indicated an intent to sell the methamphetamine, was sufficient to support the defendant's conviction for possession with intent to distribute under O.C.G.A. § 16-13-30(b). Driscoll v. State, 295 Ga. App. 5, 670 S.E.2d 824, 2008 Ga. App. LEXIS 1332 (2008).

State presented evidence that the officers found about 14 grams of methamphetamine crystals hidden in the defendant's shoe, which was a large amount of methamphetamine, and the state showed the defendant's intention to sell or distribute the methamphetamine; the defendant also gave a statement to a police officer admitting that the defendant possessed the methamphetamine and intended to sell the methamphetamine. Thus, the evidence was sufficient for the trial court to find beyond a reasonable doubt that the defendant was guilty of possession of methamphetamine with intent to distribute in violation of O.C.G.A. § 16-13-30(b). Boyd v. State, 300 Ga. App. 455, 685 S.E.2d 319, 2009 Ga. App. LEXIS 1120 (2009), cert. denied, No. S10C0309, 2010 Ga. LEXIS 204 (Ga. Mar. 1, 2010).

Evidence was sufficient to convict the defendant of trafficking in methamphetamine under O.C.G.A. § 16-13-30(a) because testimony of drug enforcement agents and co-indictees as well as drugs, money, and drug paraphernalia obtained during a search established that the defendant engaged in three sales of this contraband. Williamson v. State, 300 Ga. App. 538, 685 S.E.2d 784, 2009 Ga. App. LEXIS 1218 (2009), cert. denied, No. S10C0387, 2010 Ga. LEXIS 191 (Ga. Mar. 1, 2010).

Evidence was sufficient to convict the defendant of conspiracy to distribute methamphetamine in violation of O.C.G.A. § 16-13-30(b) because methamphetamine was found in a trailer on the defendant's property, which the defendant occupied and controlled, a known drug dealer was found on the defendant's premises, who had been "fronting" the defendant and the defendant's spouse methamphetamine on a weekly basis, and the defendant's spouse kept a book regarding their sales from the drugs supplied by the dealer. Peacock v. State, 301 Ga. App. 873, 689 S.E.2d 853, 2010 Ga. App. LEXIS 12 (2010).

Evidence was sufficient to find beyond a reasonable doubt that the defendant was guilty of manufacturing methamphetamine, O.C.G.A. § 16-13-30(b), conspiring to possess methamphetamine, O.C.G.A. § 16-13-3, and possessing methamphetamine, § 16-13-30(a) because the state was not required to show that the defendant was in sole or actual possession of the methamphetamine but could establish the element of possession by showing that the defendant was in joint constructive possession of the contraband; the evidence allowed for a finding that the defendant lived at the residence where the methamphetamine was found, that methamphetamine was found in the master bedroom atop the same dresser as a driver's license bearing the defendant's name and the residential address, that stored in a lockbox underneath the bed in that room were recipes for producing methamphetamine or a similar substance, along with digital scales associated with the drug trade, and that the defendant's residential premises was being used as a clandestine methamphetamine lab. Edwards v. State, 306 Ga. App. 713, 703 S.E.2d 130, 2010 Ga. App. LEXIS 1034 (2010).

Evidence sufficient to show sale of controlled pills. —

Combined evidence established that the defendant actively participated in and was a party to the three separate sales of a controlled substance based on the defendant freely and voluntarily admitting that during the last controlled drug buy, the defendant supplied an informant with 500-600 pills, the pills tested positive for trifluoromethylphenyl piperazine, and that the defendant acted the same during all of the controlled purchases. Walker v. State, 323 Ga. App. 685, 747 S.E.2d 691, 2013 Ga. App. LEXIS 707 (2013).

Sufficient evidence prison guard intended to distribute drugs in prison. —

Evidence supported convictions of possession of cocaine with intent to distribute, possession of marijuana with intent to distribute, and crossing a prison guard line with drugs when the defendant, a corrections officer, was found with a cookie box containing drugs. Although the defendant claimed to be unaware of the contents of the package, none of the people the defendant named as being involved in the transaction were proven to exist, and the jury was authorized to infer that it was unreasonable for a corrections officer to take a suspicious package from an unknown person into a prison to give to an unknown recipient; furthermore, given the large amount and variety of contraband, the contraband's high street value, and that the defendant was taking the contraband inside a heavily guarded prison facility, the jury was authorized to infer that the defendant intended to distribute the contraband to others instead of using the contraband personally. Bradley v. State, 292 Ga. App. 737, 665 S.E.2d 428, 2008 Ga. App. LEXIS 850 (2008).

Marijuana

"Manufacture." —

O.C.G.A. § 16-13-30(j)(1) applies to the cultivation or planting of marijuana, and it is therefore error for a trial court to conclude that "one

O.C.G.A. § 16-13-30(j)(1) applies to the cultivation or planting of marijuana, and it is therefore error for a trial court to conclude that "one cannot manufacture marijuana by growing same." State v. Hunt, 201 Ga. App. 327, 411 S.E.2d 273, 1991 Ga. App. LEXIS 1362 (1991), cert. denied, No. S92C0094, 1991 Ga. LEXIS 987 (Ga. Nov. 21, 1991).

Marijuana is not a controlled substance for the purpose of a prosecution under O.C.G.A. § 16-11-106 for possession of a firearm during the commission of a "crime involving the possession, manufacture, delivery, distribution, dispensing, administering, selling, or possession with intent to distribute any controlled substance." Asberry v. State, 220 Ga. App. 40, 467 S.E.2d 225, 1996 Ga. App. LEXIS 82 (1996).

Question of whether marijuana is a harmful drug is essentially a scientific one. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

If marijuana is a dangerous drug, state has right to make the drug's sale and use criminal. Blincoe v. State, 231 Ga. 886, 204 S.E.2d 597, 1974 Ga. LEXIS 1269 (1974).

Legal capability of certain pharmacists to sell marijuana to certain customers is not an element of the offense of selling marijuana. May v. State, 179 Ga. App. 736, 348 S.E.2d 61, 1986 Ga. App. LEXIS 2002 (1986).

To authorize felony punishment, jury must find possession of more than one ounce of marijuana. —

When the evidence is in dispute as to the amount of marijuana defendant possessed, the jury must be instructed that to authorize felony punishment the jury must find possession of more than one ounce. Jones v. State, 151 Ga. App. 562, 260 S.E.2d 555 (1979).

Weight of plants. —

Testimony of expert as to the weight of the marijuana produced by a given quantity of marijuana plants which were seized, together with photographs of the plants, is sufficient to establish the weight of the plants which had been destroyed upon confiscation. Evans v. State, 176 Ga. App. 818, 338 S.E.2d 48, 1985 Ga. App. LEXIS 2907 (1985).

Proof of weight. —

To discharge the burden of proving that the weight of the marijuana exceeded one ounce, it is not necessary for the state to come forward with evidence of how many grams equal an ounce, even if the state's witnesses testify about the weight of the marijuana in terms of grams; when O.C.G.A. § 16-13-2(b) refers to an "ounce" of marijuana, the statute refers, as a matter of law, to an avoirdupois ounce, which is the equivalent of, when rounded up to the nearest hundredth of a gram, 28.35 grams, and the number of grams in an ounce is not something that varies from case to case or is open to reasonable dispute. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399, 2011 Ga. App. LEXIS 453 (2011), cert. denied, No. S11C1610, 2011 Ga. LEXIS 851 (Ga. Oct. 17, 2011).

Identification of marijuana. —

Identification testimony regarding the identity of illegal drugs, when made by experienced officers, is admissible, and expert testimony based on scientific tests is not required to establish that a substance is marijuana. Jones v. State, 268 Ga. App. 246, 601 S.E.2d 763, 2004 Ga. App. LEXIS 897 (2004).

During testimony, the defendant referred to a substance as marijuana, and this, together with an officer's testimony, established the evidence was marijuana beyond a reasonable doubt and was sufficient for the jury to find the defendant guilty of possession of marijuana. Dulcio v. State, 297 Ga. App. 600, 677 S.E.2d 758, 2009 Ga. App. LEXIS 488 (2009).

Sufficiency of evidence. —

Trial court did not err in denying defendant's motion for a directed verdict on the charge of possession of marijuana with intent to distribute, a codefendant testified that the marijuana belonged to defendant, and no other evidence showed that the large amount of marijuana, contained in five bags total, was for defendant's personal use. Pitts v. State, 260 Ga. App. 553, 580 S.E.2d 618, 2003 Ga. App. LEXIS 419 (2003).

Convictions for trafficking in cocaine and possession of marijuana with intent to distribute were supported by sufficient evidence which showed that defendant was the sole lessee and resident of an apartment where nearly 500 grams of cocaine were found, along with several bags of marijuana packaged for resale, and that defendant had recently sold cocaine, which came from a blue bag holding 111 grams of cocaine, which was also found in the apartment. Vance v. State, 268 Ga. App. 556, 602 S.E.2d 276, 2004 Ga. App. LEXIS 956 (2004).

There was sufficient evidence to support convictions of possession of marijuana with intent to distribute and possession of a handgun during commission of a crime after an undercover officer met the defendant in the defendant's car, the defendant had a handgun beside the defendant, the officer showed the defendant the money that the officer showed brought to buy ten pounds of marijuana, and the defendant showed the officer a sample of the marijuana and told the officer that the marijuana was in a nearby van; after the transaction was called off because the officer would not give the defendant the money before receiving the marijuana, police found ten pounds of marijuana in the van and the handgun in the defendant's car. Davis v. State, 285 Ga. App. 460, 646 S.E.2d 342, 2007 Ga. App. LEXIS 547 (2007).

There was sufficient evidence to support a defendant's conviction for possession of more than an ounce of marijuana as although the evidence of the defendant's constructive possession of the marijuana found in a shoebox in the backseat of the car the defendant was operating was circumstantial, it was within the jury's province to exclude every other reasonable hypothesis other than the defendant's guilt. The car owner testified that the owner did not possess the vehicle for over three months and the defendant's passenger testified that the marijuana did not belong to the passenger, thus, the jury was entitled to find that the proved facts excluded the possibility that the car owner left the marijuana on the backseat where the marijuana had gone unnoticed for several months or that the passenger left the marijuana in the backseat. Prather v. State, 293 Ga. App. 312, 667 S.E.2d 113, 2008 Ga. App. LEXIS 933 (2008), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

In a prosecution for two counts of possession of less than one ounce of marijuana, evidence of the defendant's three prior convictions for the same offense was properly admitted. Given that the defendant denied possessing marijuana in two of the prior cases and in the case at bar, the prior transactions were probative of the defendant's bent of mind and course of conduct. Neal v. State, 297 Ga. App. 223, 676 S.E.2d 864, 2009 Ga. App. LEXIS 414 (2009).

Evidence that a defendant showed officers a can in the defendant's kitchen cupboard with a false bottom that concealed 33.18 grams of cocaine and 19.8 grams of marijuana was sufficient to support the defendant's convictions for trafficking in cocaine and possession of marijuana in violation of O.C.G.A. §§ 16-13-30(j)(1) and 16-13-31(a)(1)(A). The jury was charged on equal access and clearly rejected the defendant's defense that a confidential informant working as a handyman at the defendant's home could have placed the drugs there. Daniel v. State, 306 Ga. App. 48, 701 S.E.2d 499, 2010 Ga. App. LEXIS 816 (2010).

Even though an officer had not been qualified as an expert at trial, the officer's testimony was admissible to prove that the substance found in the defendant's pickup truck was marijuana because at the time of the defendant's arrest, the officer who discovered the substance in the defendant's truck was certified to recognize the odor of marijuana and to identify and test marijuana, and the officer was subject to cross-examination by defense counsel; it was then for the jury to decide the weight and credibility the jury would give to the officer's testimony. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818, 2011 Ga. App. LEXIS 408 (2011).

Evidence was sufficient to sustain the defendant's conviction for possession of more than one ounce of marijuana in violation of O.C.G.A. §§ 16-13-2(b) and 16-13-30(j) because the state adduced evidence at trial that the defendant had possession of 28.8 grams of marijuana, which was, by definition, more than one ounce of marijuana. Gaudlock v. State, 310 Ga. App. 149, 713 S.E.2d 399, 2011 Ga. App. LEXIS 453 (2011), cert. denied, No. S11C1610, 2011 Ga. LEXIS 851 (Ga. Oct. 17, 2011).

Evidence was sufficient to enable a rational trier of fact to find the defendant guilty beyond a reasonable doubt of malice murder, felony murder while in the commission of armed robbery, armed robbery, and conspiracy to violate the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., through a violation of O.C.G.A. § 16-13-30(j)(1), because: (1) the defendant and another buyer met with the victim and another seller where the defendant and the other buyer inspected marijuana which the victim and the other seller had for sale;

(2) after some discussion about price, the victim told the defendant what the price was and that the defendant could take it or leave it; (3) the defendant said that the defendant would take it, pulled a gun from the defendant's waistband, and fatally shot the victim; and (4) there was conflicting testimony as to whether the defendant took the marijuana and ran away with the marijuana after shooting the victim. Darville v. State, 289 Ga. 698, 715 S.E.2d 110, 2011 Ga. LEXIS 671 (2011).

Trial court did not err in denying the defendant's motion for a directed verdict because the evidence was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of distribution of marijuana, O.C.G.A. § 16-13-30(j), and possession of a firearm during the commission of a felony, O.C.G.A. § 16-11-106(b)(4); the testimony of a party to the transaction was corroborated by the observations of the detectives, the marijuana taken into evidence, the written statements of the parties regarding the defendant's involvement, and the defendant's own statement to a detective. Arnett v. State, 311 Ga. App. 811, 717 S.E.2d 312, 2011 Ga. App. LEXIS 859 (2011).

When the police discovered marijuana as the result of an illegal arrest, evidence was insufficient to support the defendant's conviction for possessing less than one ounce of marijuana. Ewumi v. State, 315 Ga. App. 656, 727 S.E.2d 257, 2012 Ga. App. LEXIS 399 (2012).

There was sufficient evidence to support the defendant's conviction for felony possession of marijuana based on the parties' stipulation that the marijuana in question in the case was scientifically determined to be marijuana and that it weighed 29.3 grams and the testimony of an officer that the officer saw the defendant trying to hide the marijuana, that the defendant asked for mercy, and the officer identified the marijuana and the bag as the one the officer recovered from the defendant's car during the traffic stop. Davis v. State, 318 Ga. App. 166, 733 S.E.2d 453, 2012 Ga. App. LEXIS 872 (2012).

Evidence that the defendant lived at the residence where the drugs were found gave rise to a rebuttable presumption that the defendant possessed the contraband and supported the defendant's convictions of possession with intent to distribute and possession of more than one ounce of marijuana. Evans v. State, 318 Ga. App. 706, 734 S.E.2d 527, 2012 Ga. App. LEXIS 979 (2012), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence there was a path between the closest residence and the marijuana plants; one of the tires on the vehicle the defendant drove was the same as the tire the plants were grown in; the defendant had a relationship with the owner of the house near which the plants were found; the owner denied knowing marijuana was growing there; and the defendant's car contained rolling papers, fertilizer, and a book about marijuana authorized the jury to find the defendant guilty of manufacturing marijuana. Ross v. State, 323 Ga. App. 28, 747 S.E.2d 81, 2013 Ga. App. LEXIS 647 (2013).

Defendant's admission to staying at the apartment with the defendant's girlfriend, and the presence of the defendant's clothing and a picture of the defendant and girlfriend in a bedroom supported the jury's determination that the defendant committed the offenses of trafficking in cocaine and possession of marijuana with the intent to distribute, and the defendant's experience in handling cocaine established that the defendant knew the weight of the cocaine was more than 28 grams. Griffin v. State, 331 Ga. App. 550, 769 S.E.2d 514, 2015 Ga. App. LEXIS 41 (2015), cert. denied, No. S15C1138, 2015 Ga. LEXIS 473 (Ga. June 15, 2015).

Evidence was insufficient to support the defendant's convictions for trafficking in cocaine or possession of marijuana with intent to distribute as the state failed to show that the defendant owned or rented the house where the drugs were found, lived at the house, occupied the master bedroom or kept personal belongings there, had keys to the house, or received mail at the house. Holland v. State, 334 Ga. App. 600, 780 S.E.2d 40, 2015 Ga. App. LEXIS 689 (2015).

Evidence was sufficient to support the defendant's conviction of conspiracy to purchase marijuana because the defendant had previously gone to the seller's home to purchase marijuana, the defendant accompanied the codefendant to the seller's home when the latter went to purchase marijuana, the defendant entered the neighbor's porch with the codefendant where the seller was selling marijuana, drugs and money were visible on the porch, the defendant remained with the seller and the codefendant as they discussed the sale of marijuana for $20 and $10, and the defendant blocked the seller's friend's exit as the friend was leaving the residence. Hunter v. State, 355 Ga. App. 520, 844 S.E.2d 858, 2020 Ga. App. LEXIS 346 (2020).

Constructive possession. —

Because the state showed that, in addition to a juvenile's close proximity to a bag of marijuana, the juvenile confessed to an intent to

purchase the marijuana, and had money equal to the marijuana's approximate street value, such established a sufficient connection between the juvenile and the marijuana to support an adjudication for the marijuana's constructive possession, contrary to O.C.G.A. § 16-13-30. In the Interest of B.J.C., 281 Ga. App. 228, 635 S.E.2d 833, 2006 Ga. App. LEXIS 1058 (2006).

Sufficient evidence supported the defendant's convictions of trafficking in cocaine, possession of marijuana with intent to distribute, and possession of cocaine with intent to distribute within 1,000 feet of a school, despite an argument on appeal that no evidence of either actual or constructive possession was presented as: (1) sufficient additional evidence, albeit circumstantial, tied the defendant to those crimes and established more than the defendant's mere presence to the drugs seized; and (2) the proved facts excluded any reasonable hypotheses that a crime could have been committed by anyone else. Slaughter v. State, 282 Ga. App. 276, 638 S.E.2d 417, 2006 Ga. App. LEXIS 1365 (2006).

Evidence supported an adjudication of juvenile delinquency based on possession of marijuana; an officer saw the juvenile defendant searching the floorboard of a car, and marijuana was later found on the floorboard in the area where the defendant had been searching. In the Interest of Q.P., 286 Ga. App. 225, 648 S.E.2d 731, 2007 Ga. App. LEXIS 740 (2007).

Trial court did not err in convicting the defendants of felony possession of more than one ounce of marijuana in violation of O.C.G.A. § 16-13-30(j)(1) because the trial court was authorized to conclude that the defendants had equal access to and joint constructive possession of the marijuana that was found in a minivan and that the defendants participated as parties to the drug possession offense; the defendants, who were passengers in the back of the minivan, knew that marijuana was inside the minivan, and the driver informed an officer that the passengers were hiding marijuana inside the minivan. Dennis v. State, 313 Ga. App. 595, 722 S.E.2d 190, 2012 Ga. App. LEXIS 31 (2012).

Definition of marijuana under § 16-13-25. —

Since a prosecution for misdemeanor possession of marijuana cannot be instituted on the basis of a blood or urine test which shows "positive" for marijuana, because such positive showings will be based upon the presence of THC "without the morphological features" of the marijuana plant and are thus excluded from the definition of "marijuana" under O.C.G.A. § 16-13-25, prosecutions for possession of marijuana based upon positive blood or urine samples must be brought as a felony prosecution for possession of a Schedule I drug, i.e. THC. Cronan v. State, 236 Ga. App. 374, 511 S.E.2d 899, 1999 Ga. App. LEXIS 168 (1999).

Marijuana and THC distinquished. —

Georgia law distinguishes marijuana from THC (tetrahydrocannabinol) as O.C.G.A. § 16-13-21(16) provides that marijuana means all parts of the plant of the genus Cannabis, whereas O.C.G.A. § 16-13-30(a) and (j) separately addresses any controlled substance and marijuana. C. W. v. Department of Human Services, 353 Ga. App. 360, 836 S.E.2d 836, 2019 Ga. App. LEXIS 698 (2019).

Jury need not make special finding as to amount where evidence not in conflict. —

When evidence is not in conflict as to amount, it is not necessary for the court to charge the jury that the jury must find amount specially. Coffey v. State, 141 Ga. App. 254, 233 S.E.2d 243, 1977 Ga. App. LEXIS 1857 (1977).

Pleading amount of marijuana possessed and first offender status. —

While it is necessary to plead amount of marijuana possessed and whether the defendant is a first offender when trial is to be had in an inferior court having jurisdiction over misdemeanors only, there is no requirement to plead this matter in an indictment or accusation when trial is to be had in a superior court which has concurrent jurisdiction over felonies and misdemeanors. Stinnett v. State, 132 Ga. App. 261, 208 S.E.2d 16, 1974 Ga. App. LEXIS 1666 (1974).

When the jury asked the court to distinguish possession of marijuana from the sale of marijuana, and the trial court responded that the defendant was accused of selling marijuana and then read O.C.G.A. § 16-13-30(j)(1) to the jury, it was held that it is not usually cause for a new trial that an entire Code Section is given, even though a part of the charge may be inapplicable under the facts in

evidence, and the conviction of selling marijuana was affirmed. McBurse v. State, 182 Ga. App. 759, 357 S.E.2d 144, 1987 Ga. App. LEXIS 1811 (1987).

Proof that proffered marijuana same as that seized. —

State showed with "reasonable certainty" that marijuana offered into evidence was same as that seized. Williams v. State, 165 Ga. App. 708, 302 S.E.2d 609, 1983 Ga. App. LEXIS 1993 (1983).

Testimony of arresting officer sufficient for felony possession of marijuana sufficient. —

Defendant was properly convicted of felony possession of marijuana as a deputy sheriff testified that the defendant admitted that the marijuana found in the trunk of a rental car belonged to the defendant. Even though the defendant denied saying this, or possessing the drugs, the credibility of witnesses was for the jury to determine, and under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8), the testimony of a single witness was sufficient to establish the facts. McKinney v. State, 293 Ga. App. 419, 667 S.E.2d 210, 2008 Ga. App. LEXIS 958 (2008).

As a defendant's landlord could not give valid consent to search the defendant's trailer to find the subject of an arrest warrant who did not live there, and no emergency required the subject's immediate arrest, an officer's warrantless entry into the defendant's trailer violated the Fourth Amendment. Therefore, the plain view doctrine did not apply, and the officer could not seize marijuana plants found in the trailer. Looney v. State, 293 Ga. App. 639, 667 S.E.2d 893, 2008 Ga. App. LEXIS 1039 (2008).

Evidence sufficient for conviction of possession of marijuana. —

See Johnston v. State, 178 Ga. App. 219, 342 S.E.2d 706, 1986 Ga. App. LEXIS 2516 (1986); Kelly v. State, 181 Ga. App. 605, 353 S.E.2d 92, 1987 Ga. App. LEXIS 2554 (1987); Akins v. State, 184 Ga. App. 441, 361 S.E.2d 707, 1987 Ga. App. LEXIS 2798 (1987); Rich v. State, 188 Ga. App. 287, 372 S.E.2d 670, 1988 Ga. App. LEXIS 956 (1988); Crawford v. State, 233 Ga. App. 323, 504 S.E.2d 19, 1998 Ga. App. LEXIS 888 (1998); Driver v. State, 240 Ga. App. 513, 523 S.E.2d 919, 1999 Ga. App. LEXIS 1395 (1999), cert. denied, No. S00C0321, 2000 Ga. LEXIS 205 (Ga. Feb. 25, 2000); Brown v. State, 244 Ga. App. 440, 535 S.E.2d 785, 2000 Ga. App. LEXIS 752 (2000).

When there was more evidence to connect defendant to the marijuana than that of mere spatial proximity or presence as the marijuana was hidden during the transport in the patrol vehicle to the station by one of the three codefendants, and when defendant admitted that defendant knew the owner of the marijuana, although the defendant refused to identify such person and there was evidence that marijuana had been used in defendant's vehicle and that defendant had recently used marijuana there was sufficient evidence to find defendant guilty of joint constructive possession, or at least as a party to the crime. Harvey v. State, 212 Ga. App. 632, 442 S.E.2d 478, 1994 Ga. App. LEXIS 328 (1994), cert. denied, No. S94C1123, 1994 Ga. LEXIS 739 (Ga. May 27, 1994).

Based on the defendant's statements regarding the "dope" in the defendant's apartment and the fact that the defendant waived the defendant's claim that the state failed to prove that the substance was marijuana by failing to object to the state's alleged failure to lay a foundation for the officer's testimony that it was marijuana, the evidence was sufficient to support the defendant's conviction for possession-of-marijuana. Ballard v. State, 268 Ga. App. 55, 601 S.E.2d 434, 2004 Ga. App. LEXIS 840 (2004).

Evidence was sufficient to sustain defendant's convictions for possession of marijuana and possession of cocaine with intent to distribute; officers testified that they recovered the 34 bags of cocaine and one bag of marijuana that the defendant threw out the window of a car, as well as two bags of cocaine the defendant still had and that such a large amount of cocaine individually wrapped was consistent with an intent to distribute. Mayo v. State, 277 Ga. App. 282, 626 S.E.2d 245, 2006 Ga. App. LEXIS 62 (2006).

Evidence supported a defendant's conviction of bringing stolen property to Georgia, eluding an officer, and possessing marijuana as a party, if not as a conspirator, since: (1) the defendant discussed with the defendant's boyfriend what would happen if they were apprehended by the police; (2) the boyfriend gave the defendant a handgun after the boyfriend stole a new gun and the defendant packed two guns with the defendant's personal items and the ski masks; (3) the defendant suspected that the truck was stolen, refused to ask about the truck's

the defendant's personal items and the ski masks; (3) the defendant suspected that the truck was stolen, refused to ask about the truck's origin, saw the stolen gun on the seat of the truck, observed two gas drive-offs, ate stolen food, smoked shared marijuana repeatedly, and sat next to the glove compartment where the marijuana lay; and (4) the defendant was silent during the police pursuits, saw the defendant's boyfriend retrieve a stolen handgun just prior to an assault of a police officer, did not hinder the boyfriend or warn the police,

lied to the police to cover up the matter, and referred to the entire affair as having "fun for a minute." Michael v. State, 281 Ga. App. 289, 635 S.E.2d 790, 2006 Ga. App. LEXIS 989 (2006), cert. denied, No. S07C0097, 2006 Ga. LEXIS 950 (Ga. Nov. 6, 2006), overruled in part, Gibbs v. State, 340 Ga. App. 723, 798 S.E.2d 308, 2017 Ga. App. LEXIS 126 (2017).

Evidence supported the defendant's conviction of possession of less than one ounce of marijuana, O.C.G.A. § 16-13-30(a), as the state presented direct evidence of the defendant's admission that the contraband belonged to the defendant and that some marijuana was found in the defendant's bedroom; the conflicts in the evidence in this regard presented a question for the jury's resolution. Wheeler v. State, 307 Ga. App. 585, 705 S.E.2d 686, 2011 Ga. App. LEXIS 18 (2011), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to conclude beyond a reasonable doubt that the defendant was guilty of possession of less than one ounce of marijuana because, at trial, the sergeant testified that marijuana was taken from the defendant's pocket and entered into evidence; the defendant did not object to that testimony; and the marijuana was later admitted into evidence over the defendant's objection. Harvey v. State, 344 Ga. App. 7, 806 S.E.2d 302, 2017 Ga. App. LEXIS 528 (2017), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence sufficient for conviction. —

Evidence was sufficient to support the defendant's conviction for possession with intent to distribute marijuana because the defendant was in possession of clear plastic baggies, smaller baggies of suspected marijuana, a digital scale, and cash, and a police officer testified that in the officer's capacity as a marijuana tester for the county sheriff's office, the officer tested a total of 11 bags, containing approximately 190 grams of a substance that tested positive for marijuana; possession of a scale, baggies, and large amounts of currency along with drugs can constitute circumstantial evidence of intent to distribute. Hardaway v. State, 309 Ga. App. 432, 710 S.E.2d 634, 2011 Ga. App. LEXIS 353 (2011).

Evidence was sufficient to permit a rational trier of fact to find the defendant guilty beyond a reasonable doubt of possession of cocaine with intent to distribute because a chemist testified that in the chemist's opinion, the substance found in the defendant's pocket consisted of cocaine; a drug task force officer testified about a field test indicating the presence of cocaine. White v. State, 310 Ga. App. 386, 714 S.E.2d 31, 2011 Ga. App. LEXIS 564 (2011).

Trial court did not err in denying the defendant's motion for a directed verdict of acquittal as to the charge of possession of methamphetamine because the trier of fact was presented with sufficient evidence to determine beyond a reasonable doubt that the defendant was guilty of possessing methamphetamine since the court was authorized to conclude that the defendant either dropped or discarded the methamphetamine during the struggle with police when the defendant fled from a traffic stop; the evidence included the officer's testimony that the officer saw the defendant tuck something into a waistband while in a car, the defendant's flight from law enforcement after being stopped for a minor traffic offense, the proximity of the methamphetamine to the location where the defendant fell to the ground, and the defendant's statement to the officer that the defendant had exchanged drugs for use of the car. Bone v. State, 311 Ga. App. 390, 715 S.E.2d 789, 2011 Ga. App. LEXIS 739 (2011), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence was sufficient to authorize the defendant's conviction for possessing more than one ounce of marijuana because the defendant was presumed to have exclusive possession and control of the marijuana that a police officer found in the car the defendant was driving; as the factfinder, the jury was entitled to reject the testimony of the defendant's friend that the marijuana was the friend's and to determine that the presumption of the defendant's possession of the marijuana had not been rebutted. Nix v. State, 312 Ga. App. 43, 717 S.E.2d 550, 2011 Ga. App. LEXIS 880 (2011).

Defendant's convictions for possession of marijuana and a firearm were affirmed because, although circumstantial, the evidence was sufficient to show that the weapon was within arm's reach of the defendant during the commission of a crime. Under the circumstances

sufficient to show that the weapon was within arm's reach of the defendant during the commission of a crime. Under the circumstances, the trial court could find that, given the close proximity, the defendant passed within reach of the handgun while handling the marijuana. Carter v. State, 319 Ga. App. 609, 737 S.E.2d 714, 2013 Ga. App. LEXIS 20 (2013), cert. denied, No. S13C0836, 2013 Ga. LEXIS 525 (Ga. June 3, 2013).

Combined evidence was sufficient to enable a rational trier of fact to find the defendant guilty beyond a reasonable doubt of possession of marijuana with intent to distribute because the owner of the residence where the police found drugs and drug paraphernalia testified that the defendant brought marijuana to the residence along with digital scales and assisted in picking the stems out of the marijuana; the testimony of a witness who saw the defendant where the marijuana, scales, and marijuana stems were located in plain view and the testimony of the deputies who participated in the execution of the search warrant served to corroborate the owner's testimony. Kegler v. State, 317 Ga. App. 427, 731 S.E.2d 111, 2012 Ga. App. LEXIS 726 (2012), overruled in part, Hamm v. State, 294 Ga. 791, 756 S.E.2d 507, 2014 Ga. LEXIS 222 (2014).

Evidence was sufficient to establish that the defendant possessed marijuana with intent to distribute under a conspiracy theory because the defendant admitted to agreeing to drive a passenger to pick up the marijuana in exchange for the crack cocaine, which demonstrated an agreement between the defendant and the passenger; both the defendant and the passenger committed acts in furtherance of the agreement because the defendant drove the passenger to pick up the marijuana, and the passenger acquired the marijuana. Stokes v. State, 317 Ga. App. 435, 731 S.E.2d 118, 2012 Ga. App. LEXIS 725 (2012), overruled, Hill v. State, 360 Ga. App. 143, 860 S.E.2d 893, 2021 Ga. App. LEXIS 318 (2021).

Evidence sufficient to sustain conviction for possession with intent to distribute marijuana. —

See Wiley v. State, 178 Ga. App. 136, 342 S.E.2d 342, 1986 Ga. App. LEXIS 2508 (1986); Rivers v. State, 178 Ga. App. 310, 342 S.E.2d 781, 1986 Ga. App. LEXIS 2510 (1986); Brooks v. State, 190 Ga. App. 430, 379 S.E.2d 228, 1989 Ga. App. LEXIS 250 (1989); Ward v. State, 195 Ga. App. 166, 393 S.E.2d 21, 1990 Ga. App. LEXIS 432 (1990); King v. State, 238 Ga. App. 575, 519 S.E.2d 500, 1999 Ga. App. LEXIS 873 (1999); Buckholts v. State, 247 Ga. App. 697, 545 S.E.2d 99, 2001 Ga. App. LEXIS 92 (2001).

Presence of the marijuana in defendant's home, coupled with the quantity of marijuana and the presence of scales used to weigh drugs, was sufficient evidence of possession of marijuana with an intent to distribute. Midura v. State, 183 Ga. App. 523, 359 S.E.2d 416, 1987 Ga. App. LEXIS 2036 (1987).

When drugs were found in the area of a car where the defendant sat, when the evidence showed that the driver of the car was trying to buy drugs from the defendant, and when the driver denied to an officer that the seized drugs belonged to the defendant, the defendant's conviction of possessing drugs with intent to distribute was supported by the evidence. Johnson v. State, 268 Ga. App. 808, 602 S.E.2d 840, 2004 Ga. App. LEXIS 1024 (2004).

Evidence was sufficient to convict defendant of possession of marijuana with the intent to distribute based on the testimony of an officer and a forensic chemist that the leafy substance that was found on the floorboard of the truck that defendant used was in fact marijuana. Marion v. State, 268 Ga. App. 699, 603 S.E.2d 321, 2004 Ga. App. LEXIS 989 (2004).

Evidence was sufficient to support a conviction for possession of marijuana with the intent to distribute given that the defendant was riding as a passenger in a vehicle that was stopped, the defendant immediately informed the police where individually packaged bags of marijuana could be found within the car, the defendant had been previously convicted of a similar offense a few months earlier, and the driver indicated that the drugs belonged to the defendant. Williams v. State, 277 Ga. App. 106, 625 S.E.2d 509, 2005 Ga. App. LEXIS 1399 (2005).

There was sufficient evidence that the defendant was guilty of possessing with intent to distribute 40.1 pounds of marijuana in violation of O.C.G.A. § 16-13-30(j); the defendant's intent to distribute was proved by evidence that the amount of marijuana was far in excess of that possessed for personal use, and the circumstantial evidence showed a connection between defendant and the marijuana other than spatial proximity. Taylor v. State, 285 Ga. App. 697, 647 S.E.2d 381, 2007 Ga. App. LEXIS 629 (2007), cert. denied, No. S07C1515, 2007 Ga. LEXIS 655 (Ga. Sept. 10, 2007).

Evidence, although circumstantial, was sufficient to connect the defendant to the house where drugs were found; thus, it was sufficient to

support convictions of trafficking in cocaine and possession of marijuana with intent to distribute. Although others might have been present on the property on various unspecified occasions, the defendant was allowed by the owner to use the house, had been seen at the residence by police on previous occasions, had a vehicle on the premises, and hurriedly walked away from officers when the officers

arrived; the evidence also showed that no other persons were present when officers executed the search warrant. Clyde v. State, 298 Ga. App. 283, 680 S.E.2d 146, 2009 Ga. App. LEXIS 649 (2009).

Evidence was sufficient to establish the defendant's conviction for possession of marijuana with intent to distribute in violation of O.C.G.A. § 16-13-30(j)(1) because during the execution of a search warrant at the defendant's residence, police officers seized eighteen baggies of marijuana individually packaged in a manner that was indicative of possession with intent to distribute, and the residence belonged to the defendant, which permitted an inference that the defendant controlled the premises and was in constructive possession of the drug contraband; the circumstantial evidence implied the defendant's consciousness of guilt and further supported the defendant's conviction because, when the officers approached the residence, the defendant fled inside to the closet area where the drugs were later located, and when the officers searched the closet, the officers discovered that the jacket the defendant had been wearing was placed over the box containing the drugs. Williams v. State, 303 Ga. App. 222, 692 S.E.2d 820, 2010 Ga. App. LEXIS 321 (2010).

Trial court did not err in denying the defendant's motion for a directed verdict after a jury found the defendant guilty of trafficking in cocaine, O.C.G.A. § 16-13-31(a)(1)(A), and possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j), because the verdict was not insupportable as a matter of law; in addition to evidence that the defendant rented a hotel room where illegal drugs were found, had a key to the suite, and was going to the suite at a time when a great quantity and variety of drugs were in open view, there was other evidence linking the defendant to the contraband found there, including the defendant's suspicious behavior upon seeing officers near the suite and the presence of the defendant's personal property inside the suite. Glass v. State, 304 Ga. App. 414, 696 S.E.2d 140, 2010 Ga. App. LEXIS 540 (2010).

Evidence was sufficient to find the defendant guilty of possession of marijuana with intent to distribute, O.C.G.A. § 16-13-30(j)(1), and possession of marijuana with intent to distribute within 1,000 feet of a housing project, O.C.G.A. § 16-13-32.5(b), because it appeared that the jury accepted that version of the events most unfavorable to the defendant after hearing all of the evidence and resolving the credibility of all of the witnesses, and the jury was solely authorized to make such determinations. Bass v. State, 309 Ga. App. 601, 710 S.E.2d 818, 2011 Ga. App. LEXIS 408 (2011).

Evidence was sufficient to support the defendant's conviction for possession with intent to distribute marijuana as over a pound of marijuana was found in the defendant's vehicle, and the marijuana was found with a trafficking amount of 3,4 methylenedioxymethamphetamine (MDMA) and a loaded weapon, constituting evidence of involvement in the drug trade. Jackson v. State, 314 Ga. App. 272, 724 S.E.2d 9, 2012 Ga. App. LEXIS 179 (2012).

Evidence that the defendant was in possession of the marijuana during a pat-down search prior to being transported in the patrol car, but the pat-down failed to discover the marijuana on the defendant's person, that the defendant placed the marijuana under the backseat while being transported, and the marijuana found in the backseat was packaged in seven individual bags supported a conviction for possession with intent to distribute. Wiggins v. State, 323 Ga. App. 754, 748 S.E.2d 120, 2013 Ga. App. LEXIS 733 (2013).

Evidence sufficient to convict for manufacture of marijuana. —

Evidence supported conviction for manufacture of marijuana even though laboratory expert could not definitively state that certain alleged marijuana plants on the manufacturing premises were marijuana. Burch v. State, 213 Ga. App. 392, 444 S.E.2d 370, 1994 Ga. App. LEXIS 558 (1994), cert. denied, No. S94C1446, 1994 Ga. LEXIS 936 (Ga. Sept. 8, 1994).

Evidence sufficient to support conviction for selling marijuana. —

See Puckett v. State, 178 Ga. App. 143, 342 S.E.2d 487, 1986 Ga. App. LEXIS 2502 (1986); Byrd v. State, 182 Ga. App. 284, 355 S.E.2d 666, 1987 Ga. App. LEXIS 2608 (1987).

Evidence supported the defendant's conviction for selling marijuana after undercover officers saw the defendant sell marijuana from a distance of 10-15 feet, the buyer dropped a bag of marijuana when arrested, and when officers later approached the defendant, defendant said, "I didn't sell my man no weed." McKay v. State, 234 Ga. App. 556, 507 S.E.2d 484, 1998 Ga. App. LEXIS 1300 (1998), cert. denied, No. S99C0220, 1999 Ga. LEXIS 205 (Ga. Feb. 19, 1999).

Defendant's convictions for simple battery and the sale of marijuana were upheld on appeal as sufficient evidence was presented that the defendant spat in the face of another and the undercover officer who the defendant sold the marijuana to testified regarding the sale; further, the trial court properly admitted similar transaction evidence as the evidence was probative of defendant's bent of mind to become belligerent with police officers when arrested. Williams v. State, 287 Ga. App. 40, 651 S.E.2d 347, 2007 Ga. App. LEXIS 868 (2007).

Evidence insufficient to convict for selling marijuana. —

Prior inconsistent statement by marijuana dealer charged with selling marijuana in violation of O.C.G.A. § 16-13-30(j)(1) that defendants were involved in selling marijuana, and evidence that the defendants were in close proximity to seized marijuana did not establish that the defendants were a party to the crime of violating paragraph (j)(1). Oldwine v. State, 184 Ga. App. 173, 360 S.E.2d 915, 1987 Ga. App. LEXIS 2756 (1987).

Evidence insufficient for conviction for possession with intent to distribute. —

Although the trial court properly admitted evidence of similar transactions, given the quantity of marijuana and methamphetamine found, the evidence was insufficient to convict defendant of possession with intent to distribute under O.C.G.A. § 16-13-30(b). Ryan v. State, 277 Ga. App. 490, 627 S.E.2d 128, 2006 Ga. App. LEXIS 132 (2006).

Evidence insufficient for possession conviction. —

Evidence did not support a defendant juvenile's adjudication of delinquency for possession of marijuana as: (1) a substance an officer said was marijuana was found in a truck in which the defendant juvenile was riding; (2) the defendant juvenile did not own the truck; (3) the marijuana was not found where the defendant juvenile had been sitting; and (4) the state did not have the bag tested at the crime lab and therefore there was no testimony that the substance found in the truck had actually tested positive for marijuana. In the Interest of C.C., 280 Ga. App. 590, 634 S.E.2d 532, 2006 Ga. App. LEXIS 905 (2006).

Evidence was insufficient to support the defendant's conviction of possession of marijuana as there was no evidence connecting the defendant to the drugs other than the defendant's own equal access. The drugs and paraphernalia were not found in an area exclusively used by the defendant, and the defendant's cousin had the same access to the drugs and paraphernalia. Xiong v. State, 295 Ga. App. 697, 673 S.E.2d 86, 2009 Ga. App. LEXIS 96 (2009), overruled in part, Maddox v. State, 322 Ga. App. 811, 746 S.E.2d 280, 2013 Ga. App. LEXIS 617 (2013).

Evidence sufficient to convict for attempt to possess marijuana. —

There was sufficient evidence to support a defendant's conviction for attempting to possess marijuana based on the evidence that the defendant solicited undercover officers and asked for marijuana and attempted to pay for the marijuana. The defendant's rejection of the first bag the undercover officers gave did not establish abandonment of the crime since the defendant asked for a second bag. Collins v. State, 297 Ga. App. 364, 677 S.E.2d 407, 2009 Ga. App. LEXIS 434 (2009).

Confrontation clause violation was harmless error in light of other evidence of marijuana. —

Although a trial court erred in excluding evidence that a witness had pending unrelated drug charges, violating the defendant's right to confrontation, the error was harmless given the overwhelming evidence of the defendant's possession of marijuana, scales, and plastic bags in a car the defendant had rented and was driving. Shelton v. State, 323 Ga. App. 798, 748 S.E.2d 278, 2013 Ga. App. LEXIS 749 (2013).

Necessity of jury instruction on lesser included offense of misdemeanor possession. —

Defendant was improperly convicted of purchasing marijuana under O.C.G.A. § 16-13-30(j)(1) because the trial court should have given a jury instruction on the lesser included offense of misdemeanor possession of less than one ounce of marijuana under O.C.G.A. § 16-13-2(b) as the defendant did not pay for the marijuana and testified that the defendant did not intend to purchase the marijuana. Johnson v. State, 296 Ga. App. 697, 675 S.E.2d 588, 2009 Ga. App. LEXIS 317 (2009), cert. denied, No. S09C1191, 2009 Ga. LEXIS 420 (Ga. June 29, 2009).

Objection to jury instruction on possession of firearm in conjunction with marijuana possession. —

Trial counsel was not ineffective for failing to object to the trial court's jury instruction on possession of a firearm during the commission of a crime that referenced possession of marijuana as a potential predicate felony offense because there was sufficient evidence to support the defendant's felony conviction for possession of marijuana with intent to distribute, which could serve as the predicate felony offense for the defendant's conviction of possession of a firearm during the commission of a crime; and there was not a reasonable probability that, if the trial court had omitted the reference to simple possession of marijuana from the instruction, the outcome of the trial would have been more favorable to the defendant. McNorrill v. State, 338 Ga. App. 466, 789 S.E.2d 823, 2016 Ga. App. LEXIS 472 (2016).

Jury instruction with reference to marijuana possession. —

Although the trial court's jury instruction included a reference to simple possession of marijuana, the jury instruction did not prejudice the defendant's case because the trial court read the indictment to the jury that charged the defendant with possession of marijuana with intent to distribute, instructed the jury that the state had the burden of proving every material allegation of the indictment beyond a reasonable doubt, instructed the jury that the jury could find the defendant guilty if the jury found beyond a reasonable doubt that the defendant committed the offenses alleged in the indictment, and provided the indictment to the jury during the jury's deliberations; thus, the defendant could not succeed on an ineffective assistance of counsel claim. McNorrill v. State, 338 Ga. App. 466, 789 S.E.2d 823, 2016 Ga. App. LEXIS 472 (2016).

Jury instructions on mere association and mere presence. —

Trial court's instructions on "mere association" and "mere presence" with regard to charging a defendant as a party to a crime under O.C.G.A. § 16-2-20(a) were misstatements of the law and also directly conflicted with other closely related instructions, and were harmful error requiring reversal of the defendant's convictions for possession of marijuana with intent to distribute in violation of O.C.G.A. § 16-13-30(j)(1). Able v. State, 312 Ga. App. 252, 718 S.E.2d 96, 2011 Ga. App. LEXIS 936 (2011).

Inconsistent verdict. —

Guilty verdict for charge of possession of marijuana with intent to distribute was not inconsistent where the jury simply broke down the verdict into the two primary findings necessary to find defendant guilty of the offense; in any event, simple possession of marijuana is a lesser-included offense of possession of marijuana with the intent to distribute, and there is nothing improper with a jury finding a defendant guilty of both the charged offense and a lesser-included offense. Ellison v. State, 265 Ga. App. 446, 594 S.E.2d 675, 2004 Ga. App. LEXIS 140 (2004), overruled, Middleton v. State, 309 Ga. 337, 846 S.E.2d 73, 2020 Ga. LEXIS 476 (2020).

No speedy trial violation. —

Upon the appellate court's analysis of the four Barker v. Wingo factors, given the negative weight of one of two factors against the state, specifically, the reason for the delay, and the defendant's failure to show prejudice and timely assertion of a speedy trial right, no abuse of discretion resulted by the trial court's denial of a motion to dismiss the indictments filed against the defendant, charging the sale of cocaine

and marijuana, on speedy trial grounds. Simmons v. State, 290 Ga. App. 315, 659 S.E.2d 721, 2008 Ga. App. LEXIS 302 (2008).

No double jeopardy violation. —

Because the reduced possession of marijuana charge to which the defendant pled guilty in Forsyth County arose from the seizure of 11 pounds of marijuana in the parking lot of a hotel in Forsyth County on the morning of April 4, 2018, while Count 2 of the Fulton County indictment arose from the discovery of additional marijuana at defendant's home pursuant to the execution of a search warrant later that same day, it was proper to charge each offense separately. Laghaeifar v. State, 360 Ga. App. 843, 861 S.E.2d 808, 2021 Ga. App. LEXIS 403 (2021).

Maximum punishment provisions of section apply to charge of conspiracy. —

If defendants are indicted under general conspiracy statute, maximum punishment provisions of it apply, but if indictment charges, "Conspiracy to Possess and Sell Marijuana," a violation of provisions of the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., is properly charged and the maximum punishment provisions of it apply. Jones v. State, 135 Ga. App. 893, 219 S.E.2d 585, 1975 Ga. App. LEXIS 1864 (1975).

Marijuana conviction not aggravated felony under Immigration and Nationality Act. —

Because petitioner alien's O.C.G.A. § 16-13-30(j)(1) conviction for marijuana distribution failed to establish that the conviction involved either remuneration or more than a small amount of marijuana, it was not an aggravated felony under the Immigration and Nationality Act, 8 U.S.C.S. § 1101 et seq. Moncrieffe v. Holder, 569 U.S. 184, 133 S. Ct. 1678, 185 L. Ed. 2d 727, 2013 U.S. LEXIS 3313 (2013).

Opinion Notes

OPINIONS OF THE ATTORNEY GENERAL

Access to database. —

Registered nurses and licensed practical nurses cannot access the GAPDMP database as dispensers or as practitioners authorized to dispense under the Georgia Prescription Drug Monitoring Program, but nurses may be able to access the GAPDMP database as delegates of physicians who do have the authority to prescribe or dispense. 2016 Op. Att'y Gen. No. 16-7.

Reporting of convictions. —

Convictions for violations of O.C.G.A. §§ 40-6-391(2), (4), (6), and 40-5-151 should be reported by the superior court clerk to Department of Driver Services (DDS) and violations of O.C.G.A. §§ 16-13-30(b), 16-13-31, and 16-13-31.1 should be reported to DDS only upon the clerk's determination that the conviction meets the mandate of O.C.G.A. § 40-5-54(a)(2). 2017 Op. Att'y Gen. No. 17-4.

Research References & Practice Aids

Cross references.

Jurisdiction in marijuana possession cases; retention of fines and forfeitures; transfer of cases, § 36-32-6.

Use of marijuana for treatment of cancer and glaucoma, § 43-34-120 et seq.

Law reviews.

For article surveying judicial developments in Georgia Criminal Law, see 31 Mercer L. Rev. 59 (1979).

For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

For article, "Criminal Law," see 53 Mercer L. Rev. 209 (2001).

For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 290 (2012).

For article, "Taxing Marijuana: Earmarking Tax Revenue from Legalized Marijuana," see 33 Ga. St. U. L. Rev. 659 (2017).

For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 61 (2017).

For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

For note, "Substantive Due Process and Felony Treatment of Pot Smokers: The Current Conflict," see 2 Ga. L. Rev. 247 (1968).

For note on airport searches of drug couriers, see 33 Mercer L. Rev. 433 (1981).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 212 (1992).

For note, "Comparative Analysis of Democracy and Sentencing in the United States as a Model for Reform in Iraq," see 33 Ga. J. Int'l & Comp. L. 303 (2004).

RESEARCH REFERENCES

Am. Jur. 2d. —

25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 19 et seq., 40, 141 et seq., 180, 197 et seq.

C.J.S. —

28 C.J.S., Drugs and Narcotics, §§ 210 et seq., 263 et seq., 342 et seq.

U.L.A. —

Uniform Controlled Substances Act (U.L.A.) § 401.

ALR. —

What constitutes "possession" of a narcotic drug proscribed by § 2 of the Uniform Narcotic Drug Act, 91 A.L.R.2d 810.

Construction and effect of "sale" or "sell" in Uniform Narcotic Drug Act, 93 A.L.R.2d 1008.

Admissibility, in prosecution for illegal sale of narcotics, of evidence of other sales, 93 A.L.R.2d 1097.

Homicide: criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

Offense of aiding and abetting illegal possession of drugs or narcotics, 47 A.L.R.3d 1239.

Marijuana, psilocybin, peyote, or similar drugs of vegetable origin as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution, 50 A.L.R.3d 1284.

Permitting unlawful use of narcotics in private home as criminal offense, 54 A.L.R.3d 1297.

Conviction of possession of illicit drugs found in automobile of which defendant was not sole occupant, 57 A.L.R.3d 1319.

Validity and construction of statute creating presumption or inference of intent to sell from possession of specified quantity of illegal drugs, 60 A.L.R.3d 1128.

Modern status of the law concerning entrapment to commit narcotics offense — state cases, 62 A.L.R.3d 110.

Sufficiency of prosecution proof that substance defendant is charged with possessing, selling, or otherwise unlawfully dealing in, is marijuana, 75 A.L.R.3d 717.

What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 A.L.R.3d 280.

Constitutionality of state legislation imposing criminal penalties for personal possession or use of marijuana, 96 A.L.R.3d 225.

Narcotics conviction as crime of moral turpitude justifying disbarment or other disciplinary action against attorney, 99 A.L.R.3d 288.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 A.L.R.3d 854.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute — state cases, 83 A.L.R.4th 629.

Minimum quantity of drug required to support claim that defendant is guilty of criminal "possession" of drug under state law, 4 A.L.R.5th 1.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance, 13 A.L.R.5th 1.

Criminality of act of directing to, or recommending, source from which illicit drugs may be purchased, 34 A.L.R.5th 125.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Marijuana cases, 1 A.L.R.6th 549.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Cocaine cases, 2 A.L.R.6th 551.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — factors other than proximity, explanation, amount, packaging, and odor, 101 ALR 6th 1.

Drug abuse: what constitutes illegal constructive possession under 21 USCS § 841(a)(1), prohibiting possession of a controlled substance with intent to manufacture, distribute, or dispense the same, 87 A.L.R. Fed. 309.

Admissibility of expert evidence concerning meaning of narcotics code language in federal prosecution for narcotics dealing — modern cases, 104 A.L.R. Fed. 230.

cases, 164 A.L.R. Fed. 250.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — marijuana offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 ALR Fed. 2d 1.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — cocaine and crack cocaine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 76 ALR Fed. 2d 61.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — heroin offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 ALR Fed. 2d 133.

What constitutes "aggravated felony" for which aliens can be deported or removed under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — illicit methamphetamine offenses under 8 U.S.C.A. § 1101(a)(43)(B), 78 ALR Fed. 2d 151.

What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(a)(2)(A)(iii)) — Miscellaneous or unspecified narcotics offenses under 8 U.S.C.A. § 1101(a)(43)(B), 79 ALR Fed. 2d 335.

Hierarchy Notes:

O.C.G.A. Title 16

O.C.G.A. Title 16, Ch. 13

O.C.G.A. Title 16, Ch. 13, Art. 2

O.C.G.A. Title 16, Ch. 13, Art. 2, Pt. 1

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