



CaseLaw

Update

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CaseLaw This Week

Week Ending July 2, 2004

- **Miranda Rights**
- **Search & Seizure**

must be granted and the defendant's statement will not be admissible.

Search & Seizure

Rocco v. State, A03A1512 (06/17/04), 04 FC DR 2089, 2004 Ga. App. LEXIS 841.

Miranda Rights

Livingston v. State, A04A1368 (06/15/04), 04 FC DR 2080, 2004 Ga. App. LEXIS 802.

The defendant was convicted for cocaine trafficking and possession with intent to distribute ecstasy. On appeal, the defendant claims that the State failed to produce evidence that he knowingly waived his *Miranda* rights and that his custodial statement was admitted in error. The court held a pretrial *Jackson v. Denno* hearing but failed to make specific findings on whether the defendant understood his *Miranda* rights and whether he knowingly and voluntarily waived those rights. The case was remanded to the trial court to determine if the defendant knowingly and voluntarily waived his *Miranda* rights with the condition that if the court finds he did not waive his rights then a new trial

The defendant was convicted of various drug charges and appeals the trial court's denial of his motion to suppress evidence. In March 2001 the defendant was arrested on drug charges. A bail order was issued which contained a condition that the defendant waives his 4th amendment right as to search and seizure under the federal and Georgia Constitutions. The defendant agreed and signed the bail order and was released from jail. In August 2001, while the defendant was free on bail, the police received a tip that the defendant was involved in the drug trade. They went to the defendant's home to conduct a search pursuant to the 4th amendment waiver condition of defendant's bail order. During this search the officers found methamphetamine and marijuana. The defendant's motion to suppress evidence involved the drugs found at

his home during the August 2001 search.

According to the court and the parties, there is apparently no case law on the issue of a search conducted pursuant to a 4th amendment waiver in a bond order. However, the court viewed case law addressing 4th amendment waivers contained in probationary sentences as analogous to the issue at bar. The court held that a search conducted pursuant to a waiver of 4th amendment rights in a bond order should be subject to the same requirements as a search made pursuant to an analogous waiver in a probationary sentence. Therefore, in order for a search to be made pursuant to a 4th amendment waiver in a bond order, there must be some conduct that is reasonably suggestive of criminal activity. The police cannot act in bad faith or in an arbitrary or capricious manner. In this case, the court found that the officers' search was triggered by a good faith suspicion arising in the course of routine police work. The motion to suppress was properly denied. However, the dissent argues that a warrantless search based on a tip from an informant of unknown reliability does not create a reasonable suspicion of criminal activity without further corroboration.

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